

Communities and Local Government Committee

Oral evidence: Private Rented Sector and Draft Tenant Fees Bill, HC 440 & 583

Wednesday 21 February 2018

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Watch the meeting

Members present: Mr Clive Betts (Chair); Bob Blackman; Helen Hayes; Jo Platt; Mr Mark Prisk; Liz Twist; Matt Western.

Questions 203 - 264

Witnesses

I: Andy Fisher, Head of Housing, Health and Communities, Boston Borough Council; Councillor Robert Lawton, Cabinet Member for Housing, Bournemouth Borough Council; Councillor Clare Salier, Cabinet Member for Housing, London Borough of Wandsworth.

II: Melanie Rees, Head of Policy, Chartered Institute of Housing; Tamara Sandoul; Policy Manager, Chartered Institute of Environmental Health; Alison Farrar, Lead Officer, Chartered Trading Standards Institute.

Examination of witnesses

Witnesses: Andy Fisher, Councillor Robert Lawton and Councillor Clare Salier.

Q203 **Chair:** Good morning. Thank you all for coming to give evidence to the Committee today. This is our fourth evidence session in our inquiry into the private rented sector and the pre-legislative scrutiny of the draft Tenant Fees Bill. Thank you for coming.

Just to begin with, could you go down the table and say who you are and which organisation you are representing?

Cllr Lawton: My name is Robert Lawton. I am portfolio holder for housing for Bournemouth Council.

Cllr Salier: My name is Clare Salier. I am the executive member for housing for Wandsworth Council.



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Andy Fisher: Good morning. I am Andy Fisher. I am head of housing, health and communities at Boston Borough Council.

Chair: Thank you for coming. Just before we begin the questions to you, I would ask members of the Committee to put on record any particular interests they have which are relevant to this inquiry. I am a vice-president of the Local Government Association.

Liz Twist: I am a member of Gateshead Metropolitan Borough Council.

Matt Western: I am a county councillor on Warwickshire County Council.

Jo Platt: I employ two councillors in my constituency office.

Q204 **Chair:** I also have one property that I rent out as well. I will just put that on the record also. I do not think any of you have been to the Select Committee before. Our objective is to try to get information from you and to allow you to tell us the situation as you understand it, what you think is wrong and how you can help us in terms of putting forward proposals to make it better.

Just to begin with, perhaps you could say to the Committee a bit about the private rented sector in your area and the challenges you face in dealing with it. You clearly come from very different authorities. It would be helpful for the Committee to understand the background of what actually happens in the area you come from.

Cllr Lawton: I will start. I will bite the bullet first, so to speak. Bournemouth is a very buoyant and vibrant town at the present time. It is a tourism town, as you are probably aware, but it has two main industries, obviously, growing into three. One of the main industries is obviously tourism; the second main industry is the financial sector. JP Morgan is a big employer in the town; we have Barclays close by, Nationwide, et cetera. They are big employers for the town.

We have a very large migrant population, which has come to Bournemouth over a number of years, not just from Europe but from around the country. A lot of people move to Bournemouth from the London area. Bournemouth's population has grown by 10% in the last five years, so there is quite a considerable growth rate. We are nearly touching 200,000 people within the area. When I moved to Bournemouth in the mid-1980s, there were about 165,000 people. The growth has been quite considerable.

Within that growth, the private rented sector has grown quite considerably as well. Rents for the area are quite high. You will find it extremely difficult, if you are a person moving into the area, unless you are selling a nice house in London to move or retire to Bournemouth. The rent ratio is quite high. Private landlords are charging a considerable sum for properties because that is the sum they can attract. If you are on welfare or in that area, it is difficult to try to match that price. That is one of the dilemmas we face. I don't mean any disrespect, but, also, if you were a private landlord, who would you rather rent to? Would you



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rather rent to a professional or would you rather rent to a welfare claimant? Unfortunately, they tend to prefer the professional person for whatever reason; primarily, probably, it is an economic reason.

The dilemmas we face are in that area in the private rented sector. Primarily, the dilemma is about the difference between what a claimant can receive and what the landlord expects or wants for that property. That is a real issue for us in Bournemouth.

Cllr Salier: I am from Wandsworth, which is an inner London borough. It is a very vibrant one as well. We have a really large private rented sector; it is about 44,000 households, according to a 2015 survey we undertook. It is a very mixed bag. About 20% of those would be families with children that are renting, and 30% have rented for less than a year in their current property—20% are over five years. The vast majority are between one and five years. There is quite high turnover within the private rented stock. There are quite a lot of sharers. The private rented sector will continue to grow in Wandsworth, particularly as the cost of purchasing there increases. We have about a fifth who are sharing with a non-relative—that is, flat sharers.

We have 500 licensed HMOs at the moment. The rest of our stock of the 44,000 is currently unlicensed. The overwhelming majority of our tenants and landlords either own or occupy decent properties. We have a small number of rogue landlords. The way we deal with the system is that we sort of work backwards from what we want our endpoint to be. We want Wandsworth's housing stock to be good and desirable to live in, and for it to be easy for landlords to enter the market and easy for tenants to find something that meets their need within their price bracket and that is high-quality.

Working back from that point, the way we approach our private rented sector is to be as co-operative as possible with both landlords and tenants. We want to have a high-quality relationship, so that both can come to us. We have spent quite a lot on our online reporting for both. We have landlord conferences, where we invite landlords to come in and talk to us about how we can make the sector work better.

Our enforcement work is quite targeted and quite small, because we tend to have a very small number of people who do not obey the rules where there is low-quality housing. In our work there, we mostly manage to work co-operatively with landlords to bring the house back up to standard. If the house is out of use, for example, we work to try to bring it back on to the market to increase the supply. In a London borough, the number of available properties is always one of our main issues. For the most part, that approach has worked very well for us; it has kept our stock high-quality in the borough.

Andy Fisher: Boston has a very interesting housing market. It is an incredibly dynamic housing market. There is a population of 68,000, and



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just under 30,000 dwellings in the borough, and 25% of those are now privately rented, of which 40% are houses in multiple occupation.

As I am sure many of you will know—I have given evidence here before around the impacts of population change—there are significant numbers of eastern European migrants in our locality. Pushed-up population numbers mean that demand for housing significantly outstrips supply, hence the proliferation of houses in multiple occupation and the overall growth of the private rented sector.

Boston has benefited from two tranches of rogue landlord funding. We have just been successful in our controlling migration fund, where we have a focus on rogue landlords. We are a very small local authority. We have 285 staff. In-house, we have grounds, refuse, leisure, arts, heritage and culture. Our enforcement capacity is small. As I sit here today, with my vacancies, I have 1.6 full-time housing enforcement staff. For us, enforcement of the sector and regulation is key. We have done a huge amount of work to engage landlords, to engage letting agents and to engage tenants. As I am sure most housing markets do, we still have the good, the bad and the indifferent in the market both in terms of landlords and tenants. We have the highest rents in our region, yet we have the lowest wages. That gives you some assessment of the complexity of the market.

We use parts 1 to 4 of the Act very effectively. We target rogue landlords. We take a reasonable amount of enforcement action for an organisation of our size. In terms of population, we are the smallest authority in Lincolnshire, but last year we took more enforcement action than any other authority.

Enforcement is the end product. It is very disappointing to have to get to that enforcement route. The issues we have in flood risk mean that housing growth generally is really stifled, while we now suspect that population influx pretty much matches population outflow in terms of churn, particularly among the eastern European community. Despite our real ambitions for growth and economic development, there is little evidence that the market will change significantly. We have some really interesting views on what the draft Tenant Fees Bill may actually do.

Chair: Okay, we will come on to that in due course. We will move on now to the points you raised about powers and enforcement.

Q205 **Liz Twist:** Do local authorities have sufficient powers to intervene in the private rented sector?

Cllr Lawton: It is not so much about the powers. Powers are always welcome—we all want more power—but we also want more money.

Chair: We will come on to resources in a minute. We are just focusing on powers for this question.



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Cllr Lawton: Powers and resource are the main problems. You can give us all the powers we want by passing a statute, but if we do not have the resource to implement or follow up those powers, it is an extremely difficult situation. We are almost embarrassed, because the argument against us as councillors or as a council is, "You have these powers. Why are you not implementing them?" We are not implementing them because we do not have the resource or the power to carry out that particular Bill.

Cllr Salier: From our perspective, the ability to issue financial penalties has been very welcome. At the moment, we do have the right powers in place in order to do it. We can carry out inspections; we are able to issue enforcement notices. Because we focus very strongly on the rogue landlord element, the resourcing, both financially and in terms of people doing the job, is pretty good in Wandsworth.

We try as much as we can to try to negotiate and to keep relationships open between landlords. For us, the powers are a last resort, and at the moment they are adequate for what we are trying to do.

Andy Fisher: From my perspective, the suite of tools we have in our toolbox is probably among the best in any enforcement role. I have a very broad enforcement remit in my organisation. Parts 1 to 4 of the Housing Act 2004 deal with condition. The management regulation is supplemented by the Environmental Protection Act for statutory nuisance. All of the tools are absolutely all there. The 2004 Act gives local authorities the ability to demand production of any document it wants at a time and place of its choosing to be able to assess. That is an outstanding power. Boston has always been a real admirer of the strength and depth of tools that statute gives us in terms of housing, maintaining standards and management. Resource is a very different issue.

Q206 **Liz Twist:** You have all said that you think there are sufficient powers. Looking at some of the specifics, we have heard from some other witnesses that there can be some confusion. Some things like the HHSRS are actually quite difficult to use; they are not very clear. I just wonder how you think that particular legislation could be improved to help local authorities intervene more effectively.

Cllr Lawton: My own personal feeling on the HHSRS is that we need clearer and higher standards to be set out in the Act. That is one of the things. As local authorities, we have to know what we are actually enforcing and how to carry that out. In fairness, landlords need to know what they need to do to comply with those particular Acts as well.

We do support the LGA when it says that much of the information that supports councils in applying legislation in some of the life situations is slightly out of date. Therefore, they are based on information from 2006. We need to upgrade or update that; it is over 10 years out of date. As I said in my opening statement, the market is moving very rapidly and



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very quickly compared with how it was when I first started trying to look for flats when I was a student.

The difficulty with it is that it is not clear. It does not give clear standards that we can implement as a council and that the landlord can adhere to. That is one of the dilemmas we face. We also feel that it is based on information from 2006, I am assuming, and we feel that it just needs a bit of updating.

Cllr Salier: From our perspective, one of the issues is between tenants and landlords and them knowing what to report and what they can report to us. Our teams will often get a complaint about a noise nuisance from a neighbour, which is really something that needs to be dealt with between the neighbour, the landlord or the letting agent. It is not something for environmental health. It is about having the awareness and ability to know what is covered directly under the Act. That is not necessarily something that requires more legislation. That is more to do with how councils, and the Government generally, present the rules and get the rules across to tenants and landlords in a very simple way: "You have this right, if your house is too cold or if the windows are broken. These are things that landlords need to deal with".

In real layman's terms, the powers are not there at the moment to deal with it. It is just a question of information, what is in the public domain and what people can understand from that about who to contact and how to do that.

Andy Fisher: For me, it is simply in the skill of whoever is trying to explain to whomever the audience is—be that in a written narrative or in a discussion with the landlord—the categories of hazard, the system and the process. For non-housing or environmental health professionals, what we all need—particularly myself, as a practitioner—is clarity on how we explain things. There is certainly an element in terms of uprating the evidence base to actually shift where hazards actually form.

There is also a really big training issue for staff who are actually using the housing health and safety rating system, but also for people sitting on residential property tribunals. If I may, Chairman, I will just read something from a tribunal where the borough council effectively lost, and the tribunal revoked our notice. The tribunal said, "The respondent sought to rely on the guidance given in the housing health and safety rating system operating guidance". Because we, the authority, relied on the guidance given, the tribunal sought to overturn our evidence. There is a huge quality-assurance training issue for me. It has to be explained clearly and made sure that it is equitably and equally applied. Ironically, I went to appeal the decision, but you actually appeal to the tribunal that made the ruling, and they refused my leave.

Q207 **Liz Twist:** Two of you have referred to the need for updating. Ms Salier, do you agree that the regulations need to be updated?



Cllr Salier: I am not sure whether the regulation necessarily needs to be updated. When we are using the powers, we are finding that it works well. We have enough evidence that our cases are proceeding well, but possibly it is just a difference in what we are doing.

Andy Fisher: I am sorry, Chair. If I can just clarify, I mean the statistical evidence on which the assessment process is underpinned. The market has moved on so significantly, so what was normal at the point the evidence base was used to assess where we are is now fundamentally different. My view is that the sector has improved itself, so what was normal in the baseline data section is now below par. Actually, given the tools the quasi-judicial process has in looking at assessments and then making rulings, we are effectively underselling and hence stifling our ability as enforcement organisations to improve quality.

Cllr Salier: May I add that I agree with that? A national benchmarking exercise would definitely be useful for our officers in terms of carrying out their jobs. That could be updated and reflect the standards as they are today.

Cllr Lawton: I am sorry. Just to answer your question, I feel that the Act is good, but the reason I say "updating" is because some of the information that it is based on and that we use to apply the Act just needs updating. For example, the average condition of properties has not been updated since it was collected in 2006. That is a simple piece of information on which the Act is based and using which we can apply the Act, and it just needs updating, because, as I said earlier and as has just been confirmed by Boston, the housing market is changing so dramatically and quite quickly. The shift from ownership to private rented has been quite dramatic, as you are all aware, over the last few years.

Q208 **Mr Prisk:** I want to come back to Mr Fisher particularly around the HMO situation in your part of the world, but it may relate elsewhere. We are talking about powers that you have as authorities, but of course the powers that the police, HM Revenue and Customs and the immigration service have are very relevant in terms of the management of properties, the people therein and the landlords. I am not asking you to point the finger at your local agencies, but how supportive are those agencies in applying their powers? To deal with some of the criminality that is behind the worst cases, you need to have the police and HMRC, et cetera, using their powers. Are they engaged, or is that an area that needs improvement?

Andy Fisher: They are, but I have a really old saying that is not mine: partnership working seldom comes down to much more than the goodwill of a few key people in each organisation. I am privileged to sit on the safer Lincolnshire board, which is the Lincolnshire Community Safety Partnership. I also sit on the strategic management board for serious and organised crime. Our joint working with the police and with Lincolnshire fire and rescue, and our route through the Government



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Agency Intelligence Network to tackle, engaging particularly with HMRC, tax, VAT, evasion, et cetera, is there, for me, because I am that individual who has those relationships. On my patch, it is not an issue. For the rogue landlord funding we had, we worked with the Gangmasters Licensing Authority, as it was in the day, actually trying to really explore and address some of the issues between labour provision and the provision of accommodation, which is largely inextricable in Boston, as you will know.

I cannot give you any frame of reference in relation to the rest of country. With the information-sharing agreements we have in place, my frontline staff really do not have an issue in terms of ringing the public protection unit over the road or the divisional research unit and getting somebody to talk to them about a particular property.

Q209 Liz Twist: As you know, we have Karen Buck's Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill going through at present. How could that be improved from the point of view of local authorities?

Andy Fisher: There is real merit in the Bill in terms of looking to review Section 8 of the 1985 Act. As local authorities, when we used to enforce based on fitness standard, it was a relatively simple professional route. The difference here is that the proposals are that section 8 will be for the benefit of tenants. The issue there for me is the ability, advice, advocacy and support that will be available for tenants to actually seek redress themselves. My experience in my market is that there are not going to be flocks of tenants in a position to secure the independent legal advice to bring claims and cases. Yes, it has merit in certain markets, and there will be tenants who seek redress.

In introducing any regulation, we need to be very careful that we do not get fraudulent claims, and hence the link to the Consumer Protection Act. We will have to review a whole host of other primary legislation in terms of linking it to retaliatory evictions and everything. From what I have seen written at the moment, it is as much of a risk as it is an opportunity. It is certainly a route for redress. How widely and extensively it will be called on, I am not sure at this stage.

Cllr Lawton: Our feeling is similar to Boston's. It is a well-intentioned and very good piece of legislation, and it will raise standards at the higher end of the market. Our concern is at the lower end of market, where people are more vulnerable. Of those more vulnerable people, how many are going to report the landlord to claim that the conditions in which they are renting are not meeting that particular standard? In the real world, those people may suffer the consequences of reporting that particular landlord, and that could be eviction or whatever.

It is difficult for those people to gain legal advice. They can go to Citizens Advice or they can come to the council. We will give them advice and we will help them, but it is a difficult position. If you are a vulnerable



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person living in a two-bedroom or one-bedroom flat and there is water running down the wall or whatever, and you go and make a complaint about that particular landlord, his argument would be, "If you do not like it, go somewhere else. I have got 20 people waiting to fill in that space". At the higher end of the rental market, it will improve, because it will lay standards down for councils and for landlords. The dilemma is about how much impact it will have at the lower end of the market. That is our concern with it.

Cllr Salier: I would echo that concern. It is always the bottom 1% or 2% of the market that needs the change that the legislation seeks to drive through, but it possibly will not be forced to implement it, because of what you have said about tenants being frightened or not being sure who they can report to. Vulnerable tenants often do not realise that they can contact the council and have a conversation with our private sector team. They would be able to advise them off the record or on the record and help them to approach their landlord. That would be the issue we would have with the Bill; it might not give protections where they are most needed.

Q210 Jo Platt: Moving on to resources now, do local authorities have sufficient resources to undertake enforcement duties?

Cllr Lawton: If you ask me as a councillor, of course I could do with more resources. If you have a back pocket full with a couple of million, I will have it, thank you very much. Yes, we could do with more resources, but, as I said earlier, it is about having the power and the resource to implement that power. It is sometimes difficult to get that equation right.

The enforcement we do is targeted. HMOs are a real issue for us in Bournemouth, and you need to target those areas. To take Mark Prisk's point earlier on, we do have a multiagency approach within Bournemouth where we have an operation called Operation Galaxy. It is not a chocolate bar; it is an operation called "Galaxy". We have the fire brigade, the police, the immigration service, social services and public health all working as one team. We receive some funding from the police and a little bit of funding from the fire service as well. We operate things and make inspections on properties where we believe there may be an issue. There could be various issues: it could be fire, health, illegal immigrants or a multitude of things. Prostitution is also sometimes an issue as well. We address that in a targeted and specific way to try to pick off, if you like, the ones who we are after.

There are two dilemmas for us. First, when we are targeting a particular landlord in a particular area, they tend to be as slippery as eels when we try to pin them down, so to speak. Secondly, when we do manage to get them into court, some of the fines levied are pitiful. We spent a lot of time, effort and money in getting that particular person to sit before a man or a woman in a wig and a red gown, and then they end up with a pitiful fine of £100 or £200, and we have spent upwards of £2,000 or



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£3,000 to try to get them there. For some landlords, the fines are unfortunately not a deterrent. They actually tend to look upon them as an occupational hazard.

Q211 Jo Platt: I would ask the same question to Clare and Andy as well regarding the types of enforcement you do.

Cllr Salier: From our perspective, we have a good balance in terms of the resourcing and the enforcement. As you have said, you can always do more with more. We have six full-time environmental health officers who serve Wandsworth. The way we work is very much a partnership approach. Their job is to work co-operatively with landlords.

In terms of our referrals, 248 homes were improved last year as a result of discussions the officers had. For us, any legal or financial penalty is absolutely a last resort. We have a different housing market. We had 46 notices last year, for example, so it is a very small number of homes that really will not work co-operatively with you and will not take up the offer of the council when we offer resources to help them make repairs if necessary, or to bring the home back into use if it is an empty home.

From our perspective, our officers could perhaps benefit from a national benchmarking scheme, whereby we know what other authorities are doing. We are lucky in that we are in a shared services agreement at the moment, so the private sector housing manager manages two teams in two different local authorities with quite different areas. Just from listening to Andy and Robert today, they have very different problems, but they are probably using different solutions, which we would benefit from working with. From our perspective, something like a national best practice scheme would work, or a place where officers could work co-operatively through councils would be a good way to maximise how we use our resources.

Andy Fisher: My permanent human resource base in Boston is 2.6 full-time equivalents. I currently have a vacancy and some temporary posts through the controlling migration fund. I work in a political organisation where we are masters of our own destiny, and we allocate resources to our own priorities. The challenge is that there are so many competing internal priorities in terms of things like holding events, enforcing on housing and having sufficient building control officers despite it being a trading service.

In some ways we are in control of our resources, but the biggest resource gap for me is the pool of professionals in the market who are sufficiently trained and suitably competent to actually apply the HHSRS. I go back to your previous point about skills and complexity. I have just gone out to advertise for one senior and three enforcement officers, and nobody squared applied. That is partly due to my geography, because 50% of my travel-to-work area is the Wash and the North sea, so I do have those particular challenges. The big resource issue is my internal resource allocation. Once we have prioritised, it means I pay £28,000 for



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those roles. That is not enough to bring people to my locality with the skills that I need. Monetary resource and its sustainability and sufficiency is critical. Yes, councils can give it to themselves in the right areas, but, as politicians, you will know how challenging that is.

For anything that we introduce, when we look at new burdens funding, it is actually significantly under-assessed. It is a generic allocation formula. For example, in the extension of mandatory licensing, there will be a two or threefold notional increase across the board. Boston is likely to go from 23 licensed HMOs to 1,437. I am going to really struggle without the additional resources I need. Yes, the financial resource in a sustainable way is a real issue. It is a real issue at national Government level and at local council level.

Q212 Jo Platt: Is there any other enforcement activity you have not mentioned that you do in your authority?

Andy Fisher: I am head of corporate enforcement, so I enforce a whole range of things across the board. What I still have is a pool of people with enforcement expertise. All of my team are able to capture data to full CPIA standards—that is not an issue—but there is only so much knowledge that enforcement officers can have. They need the ability to enforce the building regulations, the Environmental Protection Act, the housing health and safety ratings system and the Town and Country Planning Act. There are some generic skills in terms of carrying out interviews under caution, et cetera, across my organisation that we share between professional disciplines, but I would still argue—of course I would—that I have a lack of resource capacity for very specialist areas of work.

The issue with the ratings system is that it is a technical assessment. A newly qualified EHO does not become trained, competent and proficient coming out of a three-year full-time course. It is the difference between knowledge and experience. You can be young and knowledgeable, but you cannot be young and experienced. Shaping how you apply things is a time-consuming, resource-intensive programme. As an enforcement organisation with limited resources, I really struggle with succession planning and building a sustainable business case to get my FD to give me money for two trainees that, in three years' time, will probably be half-competent to go out in the field and do everything I need them to do.

Cllr Salier: I would say it is similar in Wandsworth in terms of it being a recruitment issue. It is always resourcing. Under any extension of mandatory licensing, it would be impossible for every local authority in England and Wales to find the staff, because the people just do not exist. I would agree that it is a generic skillset to an extent, but, in terms of the housing aspect in the teams that come directly under my portfolio, you could not substitute people in from another enforcement area. It is a long process.



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Even if you are looking at people starting a degree in September, they may be five years away from being able to work alone in a competent manner. If you were to extend licensing significantly and if we all went to the market to compete for the very small number of people that are currently there, it would just be impossible. I do not see how it would work. I do not see how that is a money issue. I just think it is a people issue.

Cllr Lawton: Resource is one of the issues we have talked about but, as my friend from Wandsworth has indicated, trying to get skills and attract those skills into the organisation to implement those Acts is obviously quite a serious problem. You put an advert out and the response could be poor. It is a dilemma that we all face in various aspects. I used to find the same when I worked in industry.

The other dilemma we have not touched on, which includes enforcement, is the landlords who hide under the radar, which is a real issue for us. Most of them are licensed and most of them we are aware of, but there are some landlords who set up and hide under the radar, and we do not know they are there. It is a terrible admission to make, but it is a fact of life that some people do that. They come to the fore when there is an incident or whatever. That is another dilemma that we face.

Q213 **Jo Platt:** How many landlords have you prosecuted in the last year?

Cllr Lawton: We have prosecuted 791. It is a considerable number, but one of the points is that a considerable amount of resource, time and effort has gone into reaching that target. As I said earlier, the fines that those people incur are quite poor. The fine needs to be of a magnitude for them not to do what they are doing, if you understand what I am saying.

Cllr Salier: We have only had one prosecution in the last year. We have had 46 legal enforcement notices. We have had seven prohibition orders and 100 warning notices. Like I said, for us, prosecution is a last resort.

Andy Fisher: We have prosecuted three in Boston. As head of corporate enforcement, when I put my signature on, "Refer to legal services", I am afraid that my assessment of public interest also comes into an assessment of cost, not just the media message that the prosecution will send. Anybody who works on my patch knows that me and my people would rather work with them than have to take enforcement action. We will ask you, we will tell you and then we will prosecute you.

We had three prosecutions. We are not scared of enforcement as a local authority. The last enforcement we had was a joint action with Lincolnshire fire and rescue. The fine handed down on appeal was just over £70,000. The landlord was not happy with the £50,000 handed down by the first court, so he appealed and it was increased to £70,000. Prosecution is absolutely the last resort. One of the real issues of prosecution is that, if you are unlucky and you get a judge that gives a



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pitiful fine, it does not even send out a media message. Our authority was in that exact situation, where keeping a case quiet and out of the media was more of a strategic view than actually promoting and publicising it. For 23 breaches of the Housing Act, a £10,000 fine was really quite poor.

Cllr Lawton: Can I just come back? I am sorry. I have given you the wrong figures. Over the last three years, we have served 1,113 statutory notices, and we have prosecuted 21 people.

Q214 **Jo Platt:** What level of enforcement should you be aiming for, or will you be aiming for? You have answered that in the sense of this being about collaborative working.

Cllr Salier: We have got the balance right at the moment in enforcement. For me, the prosecution is a failure. When you get to that prosecution, you have gone through so many steps. You have already invested a lot within the organisation in trying to help them get homes up to standard and in trying to make landlords understand their duties under the Act. In terms of enforcement, I think we have the balance right at the moment. The overwhelming majority of our landlords are good people doing good jobs by renting good properties. You can see that. We have 44,000 houses in the private rented sector. We have only had 248 notices, which led to this one prosecution last year. That is a tiny, tiny, tiny percentage of people who require help. Of those, 50% of landlords will almost immediately bring their home up to standard and take the necessary steps.

Enforcement has to be a balance of the carrot and the stick. We do not need more enforcement powers, or to extend them to other aspects of the sector. That would create unnecessary work for our EHOs, who are in such short supply.

Q215 **Matt Western:** Very briefly, Mr Lawton, you were talking about fines, how insubstantial they are and how frustrating that is. Is there no framework, then? Perhaps you could just inform us very briefly about that.

Cllr Lawton: I am not a lawyer, but my understanding is that there is a limit on what they can do. Unfortunately, magistrates and judges—certainly magistrates—tend to fine at the lower end of the scale. In my personal opinion, there should be a minimum fine and then anything above that. If you are going to have a scale from one to 100, make it 50 at least. Anything over 50 is a substantial fine. Some of the fines that are quoted are £5,000, but people are unlikely to be charged £5,000. They might only pay a couple of hundred pounds, which, as I said earlier, to a wealthy landlord is just an occupational risk. If the minimum fine was £5,000 or even £10,000, it would make them think a little bit more clearly about what they are doing and the fact they may face prosecution.

Q216 **Liz Twist:** Very briefly, all of you mentioned recruitment issues. I just



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wondered whether you could say what the problem is. I understand Boston has geographical issues. Is there a wider issue?

Cllr Lawton: It is skills.

Cllr Salier: Yes, it is just finding people who are qualified to do the job.

Q217 **Liz Twist:** It is qualification and experience.

Cllr Salier: You need both.

Cllr Lawton: You need a wide range of skills. You need environmental health skills, you need some of the skills of a solicitor, and you also need some determination and doggedness, because you are dealing with some landlords who can be quite difficult and quite intimidating. There are a whole range of skills that that particular person needs. Unfortunately, they do not just come off the shelf. You need to train them up.

Q218 **Liz Twist:** We are not talking about a shortage of professionals in the area.

Cllr Salier: There is a shortage of qualified people, yes. More people doing the degree would help, but you have already said it: it is about them bringing them into organisations to get that experience and bring them up. It is a long-term issue, rather than a short-term one.

Q219 **Mr Prisk:** Can I just look at licensing? We have heard different views on this issue. What consideration have your authorities given to adopting a selective licensing scheme in the sector? If, on balance, you have decided against it, what alternative approach are you taking instead?

Cllr Lawton: We looked at selective licensing—I presume that is what you are talking about—quite seriously. We took a long time doing a consultation and all the rest of it. We spent a fair amount of money doing that consultation. The consultation was extremely useful, because it gave a lot of information and a lot of intelligence about the general sector within the town. On balance, I decided not to do it, and there are several reasons why. One of the issues at stake is the licensing fee. I always maintain for Bournemouth—other authorities may have a different view—that it was always going to be financially neutral, meaning that the fee would only pay for the service. I did not look upon it as a money-making exercise. It should only just break even. That was one point.

There was another danger that came through in the consultation. Funnily enough, about 70% of residents wanted it and approximately 70% of landlords did not want it. It is about trying to get that balance right. That is understandable in some ways. The other issue was that if you charge a landlord £500 per unit over five years—the licence would last for five years—it is £100 a year. That is £2 a week, and they would probably increase the rent by that amount. As I said earlier, although the people at the higher end of the market could probably afford that, people at the



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lower end may find it difficult. It really could just tip the balance against them.

On balance, I decided that selective licensing was unlikely to work at this stage. One of the other issues with it is that in some ways it is a difficult piece of legislation, and you have to get it right, because you are always open to challenge from the NLA or whatever. If you go to judicial review, that is quite expensive. That could cost authorities quite a considerable amount of money as well. In the end, I decided to beef up the team that enforces the legislation within Bournemouth, and we have done that.

One of the other dilemmas with selective licensing is that it did not really cover HMOs. The mandatory licensing, which comes into force in October, will cover that for us. That coming down the track and the issues with doing selective licensing slightly tipped the balance when I made my decision to say, "Let us do this rather than that". It was a political decision, but on balance I think we got it right. Some authorities have decided to go ahead and do selective licensing—I have no comment on that—but in our particular case we decided not to.

Cllr Salier: We looked at selective licensing as well, and the council agreed not to pursue it. From our perspective, in the areas where our private sector landlords need help to bring themselves up to standard, it is a very small number of people, and we did not think that extending the licensing would not be the best use of resources. It would not target that number. It would add burdens to people who are already doing a pretty good job.

We undertook a survey of our private sector tenants in 2015, and I actually have the committee papers here, which I can hand over to the Committee to look at. We surveyed households, and it was done independently. About 85% of people were happy with what they already had in terms of the area. They were happy with the services they were receiving from their private sector landlord. We have tried to keep our focus on working co-operatively with our landlords, building good relationships and looking at what our end goal is, which is a high-quality and vibrant private rented sector market, which we are expecting to grow over the next few years. In order to get there, we work backwards from that.

The majority of our relationships and the majority of our contact with our tenants and our landlords is going to be co-operative, informational and assistive. Adding something like licensing is likely to end up taking up officer time that could be better spent elsewhere, so it was decided not to go ahead with it.

Andy Fisher: We did the same in 2013. We put our evidence base together, and we did a 13-week consultation. The decision of the landlords, tenants, businesses and others that responded was unanimously that we were doing the wrong thing. We were looking at putting an additional and selective licensing programme in place to cover



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the entire private rented sector in Boston. The feedback was very much that we were prejudicing everybody for the risk of the minority and that, instead, we should be focusing our enforcement action on targeting the worst, which we did. We got our rogue landlords funding.

There was a political drive, as a consequence of the population change report that I presented in this room some time ago, to explore things, but our politicians looked at the evidence base, looked at the feedback and, in my view, came up with the right pragmatic response: that it did not work as a carte-blanche tool. My analogy is that I have had a full, clean driving licence for 27 years, but you would not want to drive with me. It is not a panacea for regulating the sector, improving standards and making sure that the homes in which people live present them with no threat, risk or harm.

Q220 Helen Hayes: I have a quick supplementary. These are councils who have all been through a process of considering selective licensing and decided not to do it. Should it be entirely up to you as local authorities to make that decision? Had you decided that you wanted to proceed, you would have then had to apply to the Secretary of State for permission to proceed.

There is a view among councils that have chosen to go down that route that, actually, they should not have to apply and that they should not have to reapply to the Government for permission. Having done their consultation, they should be able to go ahead with it. As councils that have decided not to do that, do you think that the decision-making process should rest only with councils?

Cllr Lawton: Clare and I should answer, because the yes or no is more of a political decision than an officer decision. The answer to your question is, yes, it should be down to the local authority, because it depends on the local circumstances of that particular authority.

When we were looking at it, we went to several authorities who were actually implementing it. There were a couple up north. We went to Lincoln, Bristol and a couple of other places to try to assess the impact of it. It was a political decision to do it there, and this was a political decision not to do it, but I accept and understand exactly what you are saying.

Chair: You both agree with that comment. I am conscious of the time.

Cllr Salier: I would agree, yes.

Chair: We have got on to the draft Tenant Fees Bill. We have 10 minutes to do this.

Q221 Mr Prisk: There is an issue about powers, but we have touched on that more broadly. This is the draft Tenant Fees Bill. One of the issues is around the penalties. The Government are obviously consulting on that and reflecting on that. At what point—Councillor Lawton has obviously



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already touched on this in a way—do you feel that the financial penalties would be a sufficient deterrent for the kind of inappropriate activity you are looking to deal with in terms of breaching a ban? We have seen figures of £5,000. Some are saying that there should be a civil penalty at £30,000. Where do you feel that line should be reasonably drawn?

Andy Fisher: It is very difficult, because enforcement, for me, is fact and degree—reasonable, justified and proportionate. That is my doctrine with all of my team. I would need to look at the scale of exploitation of landlords and agents in terms of charging prohibitive fees in enforcement. As with civil penalties, the ability to develop your own system and effectively put things into a penalty matrix is more relevant.

It is about fact and degree. I apologise; you are getting an officer's perspective from being in front of a court and being told: "Mr Fisher, you made that decision. That has contrary to the law. I am not here to preside over morals; I am here to look at section XXX." The ability to have a sliding framework based on fact and degree would be more appropriate for a lot of areas.

In Boston, the average large-portfolio letting agent has about 300 properties with 7.5% to 10% fees of an average of £600 a month and £233 in average tenant fees in advance. People are not making millions at that scale. It is very different in London and in metropolitan authorities and things. To me, the ability to set fees locally should probably be explored.

Cllr Salier: I would agree with that. There is a degree of local knowledge required to make sure that fees and any penalties for charging those fees are sufficiently high to deter. My issue, which you may want to move on to later, is about how we actually get there and how we enforce it in terms of officer time. I could speak about that now. Is that all right?

Mr Prisk: I am coming on to it.

Cllr Salier: You are coming on to it. I would then agree that a sliding scale is needed for the penalties.

Cllr Lawton: Yes, we could have a sliding scale, but where you start is the point that concerns me.

Q222 **Mr Prisk:** It would be low-ish for a first offence and then scale up.

Cllr Lawton: Yes, exactly, but you have to be careful that a decision to prosecute is not coloured by the cost to the council, if you understand what I am saying. The fines should normally come back. If you spend £5,000 prosecuting Mr A or Mrs X and you get £100 back, understandably, given the budget pressures we are under these days, you might get that bit in the local paper and you start to wonder whether it was worth it. I know this is a terrible indictment, but it is a fact of life.



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Mr Prisk is right. There should be a scale. For a first offence, you might avert and you can give them the benefit of the doubt. If they are a persistent offender, the scale should be higher and higher and higher.

Cllr Salier: This is playing into that resourcing issue. If you put on a new burden and make it cost-neutral, we have to say, "How much are we getting back for carrying out that prosecution?" When people are referred for a first offence, the problem is that it is not their first contact with us. It is their 50th, possibly. If we are considering prosecuting them, they could already be one of our worst, worst performers in a pool of 44,000 people. If you make the first offence too low, we do not get over that barrier. I know it might sound harsh to have a very high number for a first offence, but you have to think that that is not the first point of contact.

Cllr Lawton: That is a very good point, actually.

Andy Fisher: I am not a trading standards authority. I am a district council, so I am a local housing authority, with all of the physical housing enforcement and management regulations. For me, there is potentially a real issue with putting this under the consumer protection element and bringing it under trading standards authorities. My trading standards authority has not taken any action against energy performance certificates, because of resource. Unless we know a particular scale at a particular geography, getting a county to work with a particular district where it may be prevalent is a long-term resource issue.

In the consultation, the Chartered Trading Standards Institute said that they are well placed to enforce. To me, Chair, that is fundamentally different to being best placed to enforce. I am not asking for the additional requirement without any resource, obviously, but I have gone to my trading standards authority and said, "Will the county council delegate those powers to me?" There are ways around it, but I am in and out of letting agents all day; trading standards are not. I am in and out of properties, working with tenants all day; trading standards are not. The local housing authority, with the additional resource, may be a longer, more sustainable view. If I am there, I can look more widely. I am concerned about having to call somebody in to look at things specifically.

Q223 **Liz Twist:** We touched on some of this already. Will the retention of any money through the civil penalties sufficiently equip local trading standards, noting your point, to enforce the Bill? How much should the fines be? Again, you have commented on both of those areas.

Cllr Salier: It needs to take account both the cost of any court action but also all the work that has gone on before. We are a unitary authority, so the split between the roles is less important for us. The base level of the fine needs to take a lot of things into consideration. On this issue with the low fining and the idea of trying to make something self-financing, I would not want to say that finance was at the bottom of our decision on



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whether to prosecute a rogue landlord, and I do not think that it should be. Whenever you are setting that minimum level, do take into account what that needs to cover us for cost-wise. That would be what I would ask for.

Q224 Liz Twist: How do you envisage the lead enforcement agency interacting with local authorities? I am talking about this idea of a national trading standards body or a nominated authority for trading standards working as the lead in this area. How would you see that working with other local authorities?

Cllr Lawton: Any help we can get is good. We are not going to refuse anybody trying to assist us in trying to tackle rogue landlords. By the way, it is not just rogue landlords. We do occasionally get rogue tenants as well. It is a two-way street, but there are more rogue landlords than there are rogue tenants. We are quite open to help that can be forwarded to us. If there was a national database, for example, of rogue landlords or people who have been prosecuted, that would be useful for other authorities to take action or whatever. It would give them that database. I know there is data protection and all the rest of it, but if it is in the public domain that this particular person has been prosecuted in Bournemouth and they are about to set up a HMO in Manchester, the local authority should be able to check whether that particular person has a track record of prosecution or whatever. A local authority can then be aware that this particular person may be a problem to them. A national database like that would be helpful to us as a local authority.

Cllr Salier: Andy has already referred to this. Where a lead agency is outside of a central authority structure, an awful lot of this is reliant on relationships, and that can come down to goodwill and various things. I am a little bit cautious about giving us a duty that we are responsible for and, politically, the council would be the one receiving the flack for any failure to undertake that duty, but then we are giving the powers to someone over whom we have no control. That is from a political perspective, but, again, if I were the line manager of that organisation, I would not really want to be in charge of delivering something that was being delivered by someone else over whom I had no power. I do have concerns about how that would work.

Q225 Liz Twist: Are there any ways in which the draft Bill could be simplified to support enforcement efforts?

Chair: Answer very briefly, please, because I want to conclude.

Cllr Lawton: One of our concerns is the default fees within that. We suspect that it is open to abuse, if we are not careful. That is a real issue. If you are putting a rent deposit down on a particular unit and there are other fees involved, it can amount to quite a considerable amount of outlay for you, and sometimes you do not get that money back when you exit. There is a real dilemma there.



Cllr Salier: My concerns are predominantly around the financially neutral aspect of it and where you set the fine levels.

Andy Fisher: For me, putting it as a criminal level of proof, beyond reasonable doubt, makes it difficult to enforce at such low-cost values.

Chair: Thank you very much indeed for coming to give evidence to us today.

Examination of witnesses

Witnesses: Melanie Rees, Tamara Sandoul, and Alison Farrar.

Q226 **Chair:** Thank you for coming. Could you go down the table and tell us who you are and the organisation you represent?

Melanie Rees: Good morning. I am Melanie Rees. I am head of policy at the Chartered Institute of Housing.

Tamara Sandoul: I am Tamara Sandoul. I am the policy manager at the Chartered Institute of Environmental Health.

Alison Farrar: I am Alison Farrar, a volunteer lead officer for the Chartered Trading Standards Institute.

Chair: Thank you very much for coming today.

Q227 **Helen Hayes:** Could you tell us, from the perspective of each of your organisations, the scale of the problem that you perceive with low standards in the private rented sector? Which groups within the population are most likely to be at risk of living in poor-quality accommodation?

Melanie Rees: The first thing that is worth noting is the scale with which the sector has grown, because 4.7 million households are now living in that sector. The number of households with children is huge at 38%, and that has increased by a million over the last 10 years, so there are lots of issues attached to that.

The English Housing Survey shows that around 27% of privately rented homes are below the decent home standard. There is analysis from Shelter that shows that a million homes have at least one hazard that affects health and safety. Around 2.5 million people within those households are affected by that.

The other thing worth noting is that privately rented homes are generally older—35% were built before 1990—so there are particular structural issues for those homes, particularly around damp and so on. Those are the headlines from us.



Tamara Sandoul: From an environmental health perspective, our members are most interested in the effect on health from poor housing. The Building Research Establishment estimated that £1.4 billion of costs to the NHS results from poor housing conditions. Unfortunately, the private rented sector has some of the worst conditions, whether you look at energy efficiency, or smoke and carbon monoxide alarms, or the category 1 hazards, which are the most serious hazards under the housing health and safety rating system. Some 17% of private rented sector dwellings have one of these hazards. That makes around 800,000 homes, according to our calculations from the English Housing Survey. The private rented sector has been increasing and continues to increase. Even in the past year, while the proportion of the sector has remained at 20%, it actually increased by 200,000 homes. That is a huge number and it keeps growing, and it is a concern to us.

Alison Farrar: Can I explain from a trading standards perspective? Most of this work, in terms of the housing standards and the quality, would be dealt with by our colleagues in housing and environmental health. People would come to trading standards for issues such as being conned out of the fees or being misled in some way—something under the Consumer Protection from Unfair Trading Regulations—and that kind of thing.

In my day job, I work for the National Trading Standards estate agency team, but that does not cover lettings at present. In that job, we get quite a lot of people who come and query issues about lettings and that kind of thing, so I do have some experience of that. At present, issues about lettings that come to trading standards would mostly be about being misled into the contract in the beginning, and fake landlords and that kind of thing. That is where people are pretending to be landlords, and somebody hands over a deposit, but it turns out there is no property to be let. There is an awful lot of that going on. That is the kind of thing that we would deal with, so I would not be able to answer your question any further than that.

Q228 Helen Hayes: Can you say a bit about how each of your organisations works to improve standards in the sector? Also, what are the strengths and weaknesses of those approaches and what things might perhaps be done differently?

Tamara Sandoul: We are a registered charity and a professional body. The professional body part of us sets standards for our members. We set competencies. We ensure that they are up to date and doing professional development every year. We are also an awarding body. We ensure that the qualifications for environmental health are up to date, that they are getting the theory as well as the practice as part of their course and that they are well trained. We are also a knowledge hub. We design lots of conferences, events and workshops, again to supplement knowledge, look at court cases and ensure that they are on top of their game. We also provide a news service as part of the EHA.



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There are lots of strengths to our approach. We try to cover a lot of areas. The weakness of our approach is the fact that we are very small and we would like to do so much more than we are able to.

Melanie Rees: CIH is the professional body for people who work in housing. We are also a charity. Something we have done recently that has been quite successful is the development of a qualification for landlords and lettings agents in letting and managing residential property. It is still quite early days, but 220 have completed it so far, and 440 are going through the programme.

We have had really good feedback from some of those who have completed, such as that they learned things that they did not know were their responsibilities, which is really interesting. They also learned about things they could do at the start of the tenancy to avoid difficulties as things unfold.

In terms of the relative strengths and weaknesses, of course it is the willing ones that are doing that qualification, but there is masses of scope for us to develop that further.

Alison Farrar: The Chartered Trading Standards Institute is a professional development body. We are a body for our members, so we undertake training and qualifications for our members. What we find is what the previous panel said: resource is an issue. Our latest workforce survey, which is just about to be released, talks about only 36% of authorities that responded being confident that they can recruit and retain staff. That is because of the cuts to local authorities. There is going to be a report of the first time a trading standards authority has had no fully qualified trading standards officer within that local authority. While the local authority cuts continue, this is of major concern to us as an institute, and 57% of the people who responded to this survey say they have expertise to deal with local issues, which means the others do not, because of resourcing.

Q229 **Helen Hayes:** Tamara, can I ask you whether you have also had feedback from your members about resourcing within local authorities, and the capability of your officers working in local authorities to cover the ground that they are tasked with dealing with?

Tamara Sandoul: It varies quite a lot. Different authorities prioritise their housing enforcement teams in different ways. In some areas, we see teams that are very well resourced. In others, we are seeing teams of one or two people covering a whole county council level area, and they can only provide a basic reactive service.

Q230 **Helen Hayes:** We have had quite a lot of evidence, including from the last panel, about the way that environmental health officers and trading standards officers work within local authorities, and how that fits with housing authorities and so on. Could you tell us how environmental health and trading standards could be aligned more effectively within



local authorities to tackle low standards in the private rented sector?

Tamara Sandoul: The structure of local government varies. In England, trading standards and local housing authorities sit at different levels. Sometimes that means that they sit in different departments or they are part of different organisations. Where there are unitary authorities, the process of working together is much easier. Essentially, if they sat closer together it might help with partnership working. We know that many of our members do work very closely with our trading standards counterparts. We, as professional bodies, also work together and encourage that.

Alison Farrar: That is very true. It is different in every local authority, and there is scope for collaboration. In some authorities, the two departments sit within public protection or other similar departments. We do different things and work in different ways. Environmental health would look at the standards of the housing and obviously the licensing of HMOs and that kind of thing. Trading standards would look at working in a different way. Our work is much more intelligence-led rather than inspection-based. It is borne of necessity as well. We would have to look at what comes as a priority first. What we would want to do is to look at the kind of issues that were happening locally, within the area, and look at national issues and how they could be addressed. There are plenty of opportunities for collaboration work there. It is something that we would be happy to develop in some areas.

Q231 **Helen Hayes:** Do you have a view from housing about the relationship with environmental health and trading standards?

Melanie Rees: Not specifically, except, as we can tell, the arrangements vary quite widely.

Q232 **Helen Hayes:** Several witnesses, including the Residential Landlords Association, told us that many environmental health officers have trouble understanding what their powers are and find it difficult to use them in practice. Would you agree with that statement? If so, is that an issue about the complexity of the enforcement powers and the regulation, or is that an issue about training and capacity of environmental health officers, or a mixture of the two?

Tamara Sandoul: We do not think that environmental health officers do not understand their powers. In fact, they are trained both in understanding the law and applying it as part of their qualification. They cannot graduate until they can demonstrate that they can do both of those things. The course is both practical and theoretical. We think that comments such as those come from the fact that environmental health officers work for local authorities, and all local authorities have their own enforcement policies, which can sometimes restrict what an environmental health officer can do.

One way that that could perhaps be improved relates to the fact that the housing health and safety rating system enforcement guidance is very



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old. It is from 2006. It says that you have to take a formal enforcement action on category 1 hazards, but, at the same time, it encourages an informal approach before anything else. It says to try informal approaches first and use formal action as a last resort. That is very confusing, and I do not believe that that is actually the stance or the policy of central Government at the moment. Having that old enforcement policy in place, which local areas draw from to make their own enforcement policies, is not very consistent.

Q233 Matt Western: That leads neatly on. I would be interested to hear, in your respective views, about the extent to which the legislative framework through which the local authorities derive their powers to intervene needs overhauling?

Melanie Rees: As Tamara said, the housing health and safety rating system—HHSRS—has been in place for some time now. The market has changed considerably in that time, as we were hearing from earlier witnesses. I am not sure we would say that we needed a radical overhaul.

It is worth noting that, over the last two or three years, we have seen a lot of new measures come into place. There are more in the pipeline, with more Bills coming through the system. It is potentially worth seeing how all of those things work together and interact. It has happened on a piecemeal basis and not as part of a tight strategy. It is worth seeing them bed in, and where there may be some unintended consequences, lack of impact, or some great outcomes, it would be worth reviewing that in time.

Tamara Sandoul: I would just like to talk a bit about some research that we did and published in December. We asked a lot of environmental health professionals what they thought of the HHSRS, and 97% of them said that it should be updated. The whole system has several parts, and you have heard about the underlying statistics. The statistics actually come from the late 1990s, not 2006, so they are about 20 years old, not 12 years old, so they really do need updating.

The provisions in the operating guidance basically say to everyone who uses the system that it is their responsibility to keep up to date on any evidence relating to the 29 different hazards and to different changing housing conditions. If you ask thousands of people to keep up to date over 20 years on evidence relating to all those things, you will get variations. We think updating that system will really help to bring back consistency and ensure that a system that is described as evidence-based is based on current evidence, not 20-year-old evidence.

Alison Farrar: Trading standards do not really enforce the same legislation. Therefore, I believe the legislation and powers that we have are sufficient for what we are expected to do in this area. I have some comments for later about consumer redress and that kind of issue. That is usually the problem that we come across.



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Q234 Matt Western: An area of particular interest to me is energy poverty and tackling that. I think the Committee heard previously from an organisation that described the minimum energy efficiency standards, which are due for implementation in April, as not being fit for standard. How do you think they should be amended prior to implementation?

Tamara Sandoul: The original regulations were drafted with the green deal in mind. Landlords were required to bring their F and G-rated properties up to an E standard when there was no upfront cost to them. The Government have recognised that this is a massive loophole, because it would require no landlords to make any improvements, so they are now consulting on bringing in a cost cap of £2,500 for those landlords with the worst energy efficient properties to bring them up to an E standard. I should say that is actually not very high in itself because that could still be really cold.

We think the cap should be a bit higher, simply because that would only bring 30% of F and G properties up to an E standard, which is not good enough. That would leave about 217,000 dwellings in the private rented sector languishing in F and G. Since the Government want to bring all properties up to a C standard by 2030, it does not really make sense to allow those properties to sit there in the lowest bands. We will be responding to that. We are very supportive of the fact that a cap is being introduced, but we would like it to be a bit higher.

Q235 Matt Western: Did you say that 30% would rise up to F and G standard?

Tamara Sandoul: If the £2,500 cap was to be introduced, only 30% of the F and G properties would be raised up to an E standard. 70% would be left in the worst two standards.

Q236 Matt Western: How many properties did you say that was?

Tamara Sandoul: 217,000.

Melanie Rees: We know that 36% of people living in the private rented sector are living in poverty. Fuel poverty will be part of that, so measures of this kind are really important. We have a question about awareness and the extent to which landlords will be aware of their obligations here. Some landlords and lettings agents—the better ones—will do these things automatically, although there are some issues around the quality of assessments. They are not always easy to carry out. For instance, insulation under floorboards and things of that kind can be quite hard to assess. Being realistic, for many local authorities enforcement may not be high up the list of priorities due to the various pressures and the ways in which they are having to prioritise.

Q237 Matt Western: Finally, you will be familiar with Karen Buck's Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill—it is a bit of a mouthful. How do you think it could be improved, from the perspective of your organisations?



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Tamara Sandoul: It needs to be aligned to other legislation. Obviously, the Bill is seeking to amend the Landlord and Tenant Act 1985. In particular, there is a problem about retaliatory evictions. If the local authority takes a formal action to protect a tenant in response to a complaint, the tenant should be protected for at least six months under that legislation, whereas if the tenant goes to court on their own, they will not be protected. Some provision needs to be made there.

Tenants also need to be able to go to court with little or no representation. That will be difficult. When the tribunals were first set up, they were intended to be an easier type of court to go to. Now we are hearing from our members that landlords are bringing barristers to the court, which is not helpful. A tenant might not feel confident or that they have a realistic chance to take their matters.

Karen Buck's Bill is great, and we support it, because it gives the tenant another avenue to get compensation. In some cases, if you are living with bad conditions for about six months and then the landlord suddenly fixes something, you have no recourse to get any money back off your rent. This Bill would be an avenue that you could go to court and say, "You have put me and my children in a dangerous position. I want my rent reduced."

Melanie Rees: CIH has welcomed the Bill. Broadening landlords' responsibilities to include structural defects as well the general state of repair is a really important step. As many councils are stretched, it gives some tenants a faster option, while bearing in mind that access to legal representation is difficult, with limits on legal aid and the fear of comebacks that Tamara mentioned.

We have identified that it is worth considering that the provisions do not apply to residential licences. That is where occupiers do not have exclusive occupation of the property, and as such they have fewer rights and less security of tenure. We would be alert to unscrupulous landlords potentially seeking to create sham licences as a way of evading the provisions—saying that someone does not have exclusive occupation when in fact they do. It is worth bearing that in mind and trying to include some safeguards around that if possible.

Alison Farrar: Consumer redress is obviously very important to us in trading standards. What we are concerned about is exactly both those comments: that tenants are too scared to come forward and complain when there is an issue. They are worried about being evicted. They are worried about how they will get treated by the landlord if they decide to stay in the property. It is very difficult for them to just up sticks and move, because most of the time their deposit money is tied up until all this gets resolved.

It is very difficult for the average consumer to go through the county court process, and that is made doubly so when the other side turns up with very experienced barristers. It is really stressful. We are concerned



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that there could be a great many cases involving exactly what you said about fake licences, fake paperwork and that kind of thing. Going back to the previous point about energy efficiency ratings and that kind of thing, there is a possibility that there could be faked paperwork out there. That could put a tenant in a really difficult position, and they may find it difficult to argue their case and come out of it. We would want to look at strengthening the ombudsman and that kind of thing.

Q238 Jo Platt: My question is on selective licensing schemes. Several local authorities have adopted landlord licensing schemes to improve the quality of the private rented sector. Is licensing an effective way to improve the sector?

Tamara Sandoul: A lot of our members tell us that it is. Where licensing is accompanied by inspections, it is certainly effective. The big difference between licensed properties and areas that do not have licensing is in the way the system works. A tenant in unlicensed areas would have to complain to the council, and then the council would have to give 24-hour notice to the landlord and tell them that the tenant has complained, and that puts tenants off from complaining in the first place.

In licensed areas, authorities can go in and inspect properties without any reason. That means that they go in and find things that are wrong with it without the tenant having to come forward. From that perspective, you can see how it would improve standards. It should be up to local authorities to decide how widely the scheme should apply. I know some of them choose very small, specific areas where they know there are problems, and others think that the problem is wider.

Alison Farrar: Consumer education is easier when there is a licensing scheme, because you can publicise it. You can tell tenants or prospective tenants exactly what they should be looking for in a landlord. It is also easier to provide education to those businesses, which is what the landlords are. Even though some of them do not think they are businesses, they actually are. It is much easier to provide that education and guidance to them if you know who they are in the first place.

Melanie Rees: We think licensing is a useful tool. There are challenges around enforcement. As I mentioned earlier, local markets vary quite widely, so it is helpful that local authorities have the freedom to decide how best to do it. Something we have thought of that could help local authorities identify privately rented properties and target their efforts is that there could be some sharing of information between council tax and enforcement teams. It could be a simple data protection thing, but it would certainly help with pinpointing and having more effective outcomes.

Q239 Jo Platt: Does that actually go on? Is there any evidence of that going on?



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Melanie Rees: We have considered that that might be worth recommending.

Q240 **Jo Platt:** On that same point, what are some of the alternative approaches local authorities could adopt to support letting agents in driving up standards in the private rented sector?

Alison Farrar: There are many schemes that trading standards run, such as "Buy With Confidence" and that kind of thing, that could be extended into that. Also, it could be mandatory for everyone to belong to a consumer redress scheme and that kind of thing. The other issues to do with housing would obviously be separate, so we could not answer on that.

Tamara Sandoul: I know that lots of local authorities engage with landlords and agents in their areas. They try to train and educate them about their responsibilities. In other nations of the UK, there are national registration schemes. In Wales, all landlords have to do a very short, cheap course on how to be a good landlord. We believe that is a good system. If you are going to go in and put other people's lives in your hands then it is a good way of knowing what your responsibilities are.

Q241 **Jo Platt:** Are there any other thoughts, Melanie, on alternative approaches?

Melanie Rees: Preventive work is very positive. We know a lot of local authorities are engaging in that. Things like opportunities to learn to be a good landlord are to be welcomed.

Q242 **Chair:** I have one specific question and then a more general one. On lockdown properties, which are unfortunately becoming more commonplace in parts of London in particular, is there anything that you think could be done there by central or local government to deal with this development? It really is quite appalling and is taking a lot of resources from the taxpayer for pretty awful accommodation.

Tamara Sandoul: I am afraid we cannot really comment on that because we have never seen the final report from that project. I think it was shared with DCLG at the time. Although we know the basics of it, it is difficult for me to comment in detail on what could be done without having seen the detailed work behind it.

Q243 **Chair:** You do not have to see a report to know what might be done to cure a problem that your members must be dealing with on a daily basis.

Tamara Sandoul: It was a project in London that I think looked at the rate of housing benefit paid for single units of accommodation. These units were very small. Without having seen the report, different areas seem to have taken different approaches to dealing with that. Essentially, they have tried to cut the incentives out of that system.

Melanie Rees: I would not have a comment on that.



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Q244 **Chair:** I have a more general point, then. The private rented sector is growing. More people live in it, including more families with children. The majority have probably got reasonable properties with reasonable landlords and reasonable managing agents, but there is a minority there. Some of them have absolutely appalling properties with appalling landlords—rogues and criminals—but your members throughout the country are only tackling a tiny fraction of them, are they not? In some authorities, your members are not prosecuting a single one of these people a year. Come on, you have the canvas in front of you now. Tell us what two or three things you would like to see done to solve some of the challenges that are out there.

Tamara Sandoul: As I said right at the beginning, we want local authorities to put resources into housing enforcement.

Q245 **Chair:** You are talking about resources. There is nothing about powers or legislation at all.

Tamara Sandoul: The powers and legislation are there, but there are not enough people on the ground to be able to take a prosecution and to respond to it. If there are two officers in a huge area with thousands and thousands of private rented sector properties, there simply is not enough resource for them to go out and visit all the properties. Some local authority policies are about taking informal approaches and working with landlords, as you have heard from Wandsworth, to solve problems, because going to court can take years.

Q246 **Chair:** I am going to push a bit harder, because Melanie Rees said a few minutes ago that we are getting bits of legislation all the time and it is piecemeal, and yet you are saying it is all alright, everybody understands it and there is no problem. Some of the legislation goes back over 100 years. Is it really fit for purpose, or should we be having an overall look at what it is, what it is designed to do and whether it is actually capable of doing it?

Melanie Rees: I was suggesting that it was not part of a strategic approach. Ideally, we need an overall view about what we want to achieve and what we need to do in order to get there. It is almost as if the growth in the sector has taken us by surprise, and the increase has certainly been bigger than we thought. I am sorry to bring up resources again, but we have seen at the same time a one-fifth reduction in the amount of spending by councils on enforcement activity—around £8.75 per privately rented home a year. There are some real issues that need to be addressed.

Tamara Sandoul: Just to add to that, of course we could improve legislation by looking at it together. There are parts of it that probably do not align as well as they could. Civil penalties are great, but you need to design a whole policy on the ground to be able to use them in the first place. We need the people and then we can look at the whole legislation.



Melanie Rees: Another fundamental reason why landlords and agents are able to exploit people in this way is the acute shortage of affordable housing of good quality. That is a combination of a declining level of social rented homes, and, for some people, difficulty accessing other good quality options. We need to consider that as well.

Q247 **Mr Prisk:** I am intrigued by this. I do not think anyone doubts the idea, as Councillor Lawton said in the previous session, of, "Give me more money and I can do more". What is very noticeable in the evidence is the vast difference between neighbouring authorities who have the same powers and, very often, the same demographics. Why is it that neighbouring authorities with the same set-up are able to perform radically differently? Some are really on top of their game. They know their market, they know where the rogues are and they are engaged. Next door, however, who knows? That is not about money. That is about leadership. What is your view on that?

Tamara Sandoul: It is about leadership, exactly. It is about local priorities and how many people you have in the team to be able to assess the market, to go out and inspect properties and to see where licensing schemes are needed for certain problem areas. When you have a couple of officers just being able to firefight—you are getting hundreds of complaints from tenants and no more money is being given to your department—that is a problem. In areas where they are well resourced, they are performing really well. They are being proactive. They are doing everything that they need to do. Then there are those areas that are not doing enough because there are not enough people in the team locally.

Q248 **Mr Prisk:** Or they do not see it as a priority.

Tamara Sandoul: Or they do not see it as a priority.

Alison Farrar: Local authorities have to be influenced by the council that they belong to and by their local priorities, as well as by national enforcement priorities. In trading standards, our work is now intelligence-led. We do not do routine inspections. Because of the massive cuts to trading standards budgets of as much as 50% in many authorities, we have had to turn to being intelligence-led. Therefore, we deal with the problems that we get the most intelligence about. We do horizon-scanning, we do tactical assessments and we look very proactively at what we think should be the work that we do. It is very difficult to balance.

Q249 **Mr Prisk:** I get that, but very often you can literally look at the written evidence and see the enforcement levels and the activity levels of neighbouring authorities with very similar resources. It says to me that political leadership in many cases is the driving force. That is where you see the difference between a housing market that is properly regulated and one that is not. If it is the cuts, why are two neighbouring authorities behaving differently?



Alison Farrar: Enforcement levels come from a huge amount of prior work. Trading standards work on the basis that we try to advise and give guidance to and work with businesses first. Therefore, if that is what has happened and that has been successful in an area, you would not see any prosecutions or enforcement results. In effect, you have prevented the problem in the first place. Effective business guidance, consumer education and work in general in that area could prevent prosecutions, which is ultimately what we want. We want the market to work well and fairly, we want consumers protected and we want businesses thriving. We do not want to be out there, prosecuting people. What we want is to stop it from happening in the first place.

In some areas, that might be what you are seeing. You are seeing more proactive enforcement work, which means education and guidance first, rather than authorities going straight in for a prosecution.

Q250 **Chair:** Let me make one point about the housing health and safety rating system, which is such a mouthful that it is amazing that we do not have a shortened version. Is it not so complicated that many in environmental health—I am sorry—struggle to understand it fully? That is the evidence we have had so far. Most landlords do not understand it at all. Tenants probably do not even know about it. With regard to fitness standards of properties, should we not have something that is more relevant that everyone can understand? Do we not need to have a look at it?

Tamara Sandoul: We should have another look at it. I am not sure that going back to the old fitness standard is the way. When we asked this question in our survey, most of our members who worked under the old fitness standard preferred a risk-rated approach, because it looks at the effect of poor housing on health, rather than at an arbitrary standard. It was also recognised that the reason we got rid of the old fitness standard was because the application of it was very variable. We should consider new standards. Energy efficiency is a great example. We should see how the HHSRS can be improved.

Q251 **Chair:** There is something slightly bizarre about a system that says a property can be made fit not because you do anything to the property but because the tenant changes.

Tamara Sandoul: Not necessarily, but the hazard comes out worse for the elderly and young people. When you do the assessment, the hazard is always the worst, but it is when you come to taking enforcement action that you have to take into account who the actual tenants are. That is one of the things that should be clarified in the enforcement guidance, because obviously visitors to the property could be the elderly, even if they are not living there all the time. Rickety stairs could kill them.

Chair: We will go on to the draft Tenant Fees Bill.

Q252 **Liz Twist:** Does the draft Tenant Fees Bill give local trading standards an appropriate level of enforcement power?



Alison Farrar: We are back to resources again, are we not? Unfortunately, we would need resources to be able to enforce it properly. As I said previously, enforcement is not just about taking people to court, prosecuting them and keeping the money from the fines. It is about a huge amount of work before that to do with educating traders and tenants, and obviously creating business guidance and making sure that it is being adhered to. It is going to be really difficult to envisage being able to do this work without proper resourcing locally. It might possibly be necessary to collate all the work and have some kind of overarching body.

Q253 **Liz Twist:** Do you think that the financial penalties in the draft Bill will be a sufficient deterrent to landlords and letting agencies to stop them breaching the law?

Alison Farrar: They need to be on a sliding scale, and it all comes down to whether it is the first offence and the scale of the consumer detriment as well. You might find that it is one landlord with one property and one tenant and that it has not been going on for very long, or you might find that there are hundreds of properties involved and huge amounts of consumer detriment going back over years. It needs to be proportionate, in relation to the actual consumer detriment involved in the offence and the potential detriment in the future.

Q254 **Liz Twist:** Does that mean you would like to see some guidance on the levels, if you are talking about a sliding scale?

Alison Farrar: Very much so, yes. It would make sense for it not to start at too low a level, because, as the previous panel said, when you get to a prosecution stage, you have obviously done an awful lot of work. There may have been a number of actions before the prosecution. The actual penalties need to be prohibitive enough to stop this from happening again.

Q255 **Liz Twist:** Do you think the penalties in the draft Bill will be sufficient to cover the cost of resourcing the additional work?

Alison Farrar: Definitely not, because, at the end of the day, a huge amount of work would need to be done. Also, you would not want trading standards to be accused of only doing this work just to obtain the money from the fines. That is not why we do any of the work that we do. We do it because the intelligence suggests that there is consumer or business detriment and that this is a market that needs working on. Producing the guidance and actually working through this with a business is a huge amount of work. What you would get at the end from very few prosecutions would in no way reflect the amount of work that you had put into it.

Q256 **Liz Twist:** That kind of preventive work is not accounted for if you get to a prosecution.



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Alison Farrar: No, it is never accounted for. This is the issue that trading standards has at the moment. The preventive work is very expensive. With the cuts that we are facing, we are going to find it more and more difficult to do that work.

Q257 **Liz Twist:** In your submission to the Government's public consultation, the institute said that landlords and letting agents who breach the fees ban should be penalised by a banning order offence and a civil penalty of up to £30,000. What was the reason for that?

Alison Farrar: At present, that can happen with estate agents. If there is a prosecution under one of the trigger offences under the Estate Agents Act, estate agents can be banned from acting in that field again. What you find with letting agents and landlords is that, if they are repeat offenders, it may be that it would be appropriate for that to happen. Obviously by the time you get to a prosecution, you will have normally advised them two or three times. You will have taken preventive action and worked with them. You have already got a repeat offender by the time you get to court.

This is a massive area for the tenants. Quite often it takes an awful lot for a tenant to come forward and make an official complaint, because they are scared of the repercussions and the issues around that. When it gets that far, the problem is usually huge. They do not complain about the little things. Therefore, that would indicate that problem is sufficiently serious to consider that kind of action.

Q258 **Liz Twist:** You are learning from experience in other legislation to comment on this.

Alison Farrar: Yes.

Q259 **Matt Western:** Just to explore a little bit further about enforcement bodies, will the retention of any money levied through civil penalties sufficiently equip trading standards to enforce the draft Bill? If not, how much should the fines be?

Alison Farrar: I do not think that the fines should be funding the enforcement work that comes prior to this. When you issue a fine in court and you get the costs, you do not ever get the real costs of the investigation. The education, advice and guidance, and producing all that and working with the business is going to cost a huge amount proportionate to how many businesses are in your local area. Depending on whether they belong to one of the letting agents' associations or whether there are just lots of individual landlords, it could cost different amounts in different areas. That is where the money is going to be spent mostly. Therefore, obtaining and keeping the money from the fines does not really cover a proportion of the costs. It would be difficult to answer until anybody could undertake some kind of survey on how much preventive work would be expected to be done. You could not put a cost on how much it would take to do that education.



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Q260 Matt Western: It is obviously a real challenge for local authorities, given the existing pressures. They are really under a lot of pressure, with having to deliver more with possibly less. Of course, as has been explained, there is this explosion in the private rental sector, and there is a desperate need to ramp up the enforcement level. The money needs to come from somewhere to make sure we have a good standard across the piece. How do you envisage the lead agency interacting with the local authorities?

Alison Farrar: I will draw on my experience of working with the estate agents team at the moment, rather than speaking on behalf of the Chartered Trading Standards Institute. In terms of the lead authority for estate agents, we work as an overarching body. We work very closely with trading standards and other enforcement agencies. We work a lot on intelligence-sharing, producing guidance and working with the local authority, finding out about prosecutions and issues that they have going on that they then pass to us. I would imagine that it would work in a very similar way.

Q261 Matt Western: Are there ways the Bill could be simplified to support enforcement better?

Alison Farrar: There could be one lead enforcement authority for estate agents and lettings, rather than two separate bodies. There is quite a lot of crossover. At present, this would not be possible because the legislation provides that a lead authority would have to be in England and the estate agents team is hosted in Wales. That could be amended in legislation.

Q262 Chair: Are there any loopholes or unintended consequences in the legislation that you think we ought to be looking at and recommending to be addressed?

Melanie Rees: From the CIH point of view, we welcome the proposals overall. We know from our members that finding the money for up-front fees is a real barrier to people trying to find a home, including those who are threatened with homelessness. For us, we would like to see it come into effect as soon as possible, because we have the Homelessness Reduction Act coming into effect on 3 April. It would play an important part in removing barriers to access.

An area of concern is around default fees, which have already been mentioned, both in terms of the lack of definition around what could be included and also what reasonable charges might be. A concern for us is that that could be exploited quite considerably by perhaps less scrupulous agents.

Also, the maximum tenancy deposit—up to six weeks' rent—is quite high. I know it will not always be charged, because it is a maximum, but you could be looking at an average of around £1,000 or £1,800 in London, up front. Again, that is a potential barrier. We wonder whether four weeks would be a more appropriate figure.



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Tamara Sandoul: We also really welcome this draft Bill, because we need to remove as many barriers as possible for people moving away from poor accommodation to better accommodation. There will still be barriers there, with the deposit being quite high. I would echo the default fees concerns that you have heard from other people. We do not want to leave any loopholes in this Bill that would allow agents to charge tenants by a different route. To amend the Bill again would take a really long time. I know I have had so many people asking me already if the fees have been banned, and I have had to tell them that, no, they have not been banned yet.

Alison Farrar: I have nothing to add.

Q263 **Chair:** The point was raised by the previous witness from Boston about the issue for district councils, perhaps in a fairly rural location, with a county council organisation often based some miles away. Do you think that the legislation can be enforced by people other than trading standards officers—maybe private sector housing officers or environmental health officers who go into the properties anyway and work in the area? Could powers be delegated to them?

Alison Farrar: It is different legislation and it is looking at the fairness of the fees and what should be done. Trading standards are enforcing a very similar kind of legislation that would cross over with this in a way. For example, the Consumer Protection from Unfair Trading Regulations talks about misleading statements, misleading omissions and things said to induce people into contracts. There is quite a lot of crossover with legislation that trading standards originally enforce.

The fees and the up-front stuff come into inducing people into the original contract. The actual standards and quality of the housing is completely separate, because it is two separate issues. You have got the way that people are induced into signing this contract and into coming in in the beginning.

Q264 **Chair:** I take your point, but during the course of the tenancy there may be arguments about whether the price of replacing a key can be taken from the holding deposit, or there may be issues about trying to get fees back from tenants through a termination agreement of some kind. Such things are going to come up during the course of the tenancy. Do we really need a separate set of officers to enforce those when other officers are maybe already dealing with the housing conditions in the property?

Tamara Sandoul: As long as there is a good relationship between trading standards officers and environmental health, information and issues can be shared. However, they are slightly different issues.

Alison Farrar: We already do work quite closely together. There would be occasional things that would get passed between the two departments and joint work on occasion. Things like charging extra for using utilities and that kind of thing would already be dealt with by both. There are



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plenty of capabilities on which people could work together. I do not think it has been an issue in the past.

Chair: Thank you all for coming to give evidence to us this afternoon.