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RLA licensing win – and why it's important



Hounslow Council has axed plans to bring in a new landlord licensing scheme after the RLA threatened the authority with judicial review. Policy officer Samantha Watkin talks to RPI on why the RLA took a stand

Local licensing is a minefield. With mandatory, selective and additional licensing schemes operating across the country, each with their own fee structures and conditions, keeping track of exactly what each landlord should be paying – and whether this is a valid charge – can feel like a never-ending battle.

New and proposed schemes are springing up all the time, but at the same time some landlords are fighting back – taking local authorities to court over unlawful fees or conditions.

Samantha said: “These schemes need to be scrutinised and local authorities held to account, but with so many licensing schemes, each with their own conditions and charges, and so many local authorities across the country it is difficult to get a clear picture.”

Hounslow Council's cabinet passed plans for an additional licensing scheme in July.

However, the RLA, backed by agent accreditation scheme Safeagent, threatened the council with judicial review on the basis that the consultation it ran to establish the scheme was flawed and that decisions had

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been made without any evidence. It wrote to the council stating it had:

- Failed to provide any information upon which the plans for the scheme were being made.
- Failed to provide information to prove the ineffective management of HMOs for which such schemes are generally used.
- Failed to outline, as is required by law, how such a licensing scheme would be consistent with the council's housing strategy and what conclusions the council had reached regarding potential alternative ways of addressing the problems this scheme was seeking to address.

The RLA also raised concerns that:

- While the consultation proposed

the scheme be adopted across the whole borough it made reference to applying it across a smaller area without giving respondents to the consultation any information about what this might look like. This gave the clear impression that the council had made up its mind before the consultation began.

- Although much of the information was presented to the council's cabinet, the papers could not be found on the authority's website for respondents to access. The council's lawyers have confirmed it will not be progressing the scheme, although they could choose to re-run the consultation.

Samantha said: “The RLA has come in for criticism for intervening by the council, which said the licensing plan was passed democratically, but the fact is this scheme is unlawful. Intervening in this way is important in that it sends a message to councils that landlords are not simply cash cows and licensing schemes more than just easy money.

“We are pleased that Hounslow took our suggestions on board and admits there were issues with the way the consultation was carried out.” The RLA objects to selective licensing schemes on the basis they

WHAT ARE THE DIFFERENT LICENSING SCHEMES OPERATED BY LOCAL AUTHORITIES?

Mandatory

If you are a landlord of a house in multiple occupation (HMO) that is shared by five or more people living in two or more households that share facilities, you must hold a licence.

Selective

Selective licensing was introduced to deal with 'problems of poor property management and anti-social behaviour (ASB)'. All privately rented properties within a selective licensing zone must be licensed, regardless of their occupation and size. There are currently between 55-60 active schemes run by between 40-50 councils. Exact figures are difficult to come by as they are not held centrally, with some

schemes coming to a natural end and others starting up all the time. If a council wants a selective licensing scheme to cover more than 20% of its geographical area or to affect more than 20% of privately rented homes in the local authority area it needs to get permission from the Secretary of State.

Additional

This is a discretionary scheme that can be introduced to deal with the problems associated with HMOs that are not already covered by mandatory licensing. This could be safety standards not being met, or properties that are not being managed properly. It will typically include smaller privately rented shared houses and flats.

offer no guarantees when it comes to the quality of homes, with no property inspections required as part of the licensing requirement.

RLA research has also shown there is no clear link between a council operating a licensing scheme for landlords and levels of enforcement.

It found two thirds of councils in England and Wales brought no prosecutions against private landlords in 2017/18.

Nearly a fifth of councils didn't even issue any Improvement Notices which order a landlord to carry out certain repairs or improvements to a property. And despite new powers allowing councils to issue civil penalties against landlords failing to provide acceptable housing in 2017, figures from 2017/18 showed 89% of local authorities didn't use them.

Samantha said: "Hounslow, like other councils the length of the country, has access to a wealth of information on landlords from council tax returns, tenancy deposit schemes and the electoral roll. It doesn't need licensing to identify who they are. As the RLA's own research shows there is little

correlation between a local authority running a licensing scheme and successful prosecutions.

"What is needed now is a serious commitment from councils to devote proper resources to enforcement activities to root out the criminals whose behaviour is tarnishing the whole sector. We will continue to examine each and every scheme as and when they are proposed and object to any we believe are unreasonable or unlawful."

Richmond v Gaskin: Councils still ignoring court ruling

In the last edition of RPI we shared the story of landlord Peter Gaskin. The High Court overturned a prosecution against Mr Gaskin, after the landlord refused to give what he believed to be unnecessary details about his tenants and pay an 'excessive' renewal fee.

The ruling has far-reaching implications for local authorities – which should all have reviewed the criteria and fees for their licensing schemes in wake of the decision. Rather than charging a single fee for licensing,

local authorities should now be asking for charges in two parts, part A being the processing fee and part B – charged once the licence has been granted – for enforcement.

However, some councils are still charging the full cost upfront – meaning a landlord could have their licence application refused, yet still be paying for the enforcement element. Local authorities could refund this element of the fee, but if they want to go down this route, they need to make that abundantly clear on their website.

Costs

Licensing costs vary wildly across the country. In Warrington for example the borough council charges £420 for a HMO licence *per property*, whereas in London and the South East charges can be significantly higher. In Lewisham, for example, landlords have to pay out £500 *per household* living in their HMO – which can add up to a significant amount of money for landlords with multiple large properties. Samantha said: "The RLA wants councils to be transparent

RLA FINDINGS

The RLA sent a Freedom of Information request to every council in England between the end of 2018 and April 2019. It found:

- Just 66% of local councils have reviewed their fee structure following the Richmond v Gaskin case
- Only 48% of local councils in England have a set timescale for processing HMO applications
- Of those with a set timescale, the average processing time was more than a month, less than three months
- In Bristol it takes an average two years to process a HMO application, followed by Gedling Council with a year-long wait
- Salford Council is one of the fastest moving, arranging for a property inspection within three weeks of receiving an application

when it comes to the way they calculate costs, their fee structures and the time it is taking them to process applications, particularly in the wake of the Gaskin case.

"Some local authorities don't even have their fees listed on their website, others are happy to take landlords' money, yet can take up to two years to process a licensing application. This has to change."

Licensing: rejected applications

While some schemes appear to be set up at the whim of a local authority some have been rejected.

Stoke

Stoke on Trent Council had proposed a selective licensing scheme to cover 154 streets across 14 areas in the city. However, the Secretary of State, who has the final say when it comes to large scale licensing schemes turned it down. It was rejected on the grounds it 'did not meet the statutory criteria'.

Bournemouth

In Bournemouth the council's own cabinet rejected plans to introduce a selective licensing scheme in the areas of Boscombe East, Boscombe

West, East Cliff and Springbourne back in 2017. The council instead agreed to develop a "targeted enforcement approach" to address its PRS housing issues.

Stockton

Landlords in a part of Teesside have been given permission to operate a "collaborative" licensing scheme when the council backed down following vocal protests about its £845-a-property proposal.

Stockton Council was proposing to introduce a selective scheme in two parts of the area but backed down when local landlords - in a group called Private Landlords Supporting Stockton (or PLUSS) - came up with the alternative. Members of the group own two thirds of the private rental properties in the areas in question, and will run a self-funding tenant referencing scheme, set to include random inspections by the local authority.

What does the RLA think?

The RLA has always opposed blanket licensing schemes. While each includes its own terms and conditions there are some objections that apply across the board.

Existing powers

There are already over 150 Acts of Parliament and more than 400 regulations affecting landlords in the private rented sector and councils have a range of powers at their disposal to enforce them.

The Housing and Planning Act 2016 allows councils to use civil penalties, rent repayment orders and banning orders to target criminal landlords and also introduced a database for rogue landlords and letting agents.

The RLA believes they should use these, rather than relying on licensing schemes.

Identifying landlords

Councils argue licensing schemes help them identify rentals, however PRS homes and landlords can already be identified through the council tax registration process. Unlike licensing, this does not require self-identification by landlords, making it harder for criminals to operate.

Evidence of improvement?

There is little evidence that licensing schemes improve housing standards.

The focus of staff becomes the processing and issue of licences, while prosecutions centre on whether a property is licensed or not, rather than improving management standards and property conditions.

Viable alternatives

There are alternatives to licensing. The RLA supports a system of self-regulation for landlords whereby compliant landlords join a co-regulation scheme which deals with standards and complaints in the first instance, while those outside the scheme remain under the scope of local authority enforcement. ▲