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ORIGINAL ARTICLE

Local authority intervention in private renting: from compliance to hardline enforcement

DAVE COWAN[1] | **ALEX MARSH**[2] | **JENNIFER HARRIS**[2]

[1]School of Law and Politics, Cardiff University, Cardiff, Wales

[2]School for Policy Studies, University of Bristol, Bristol, England

Correspondence
Dave Cowan, School of Law and Politics, Cardiff University, Law Building, Museum Place, Cardiff, CF10 3AX, Wales.
Email: CowanD1@cardiff.ac.uk

Abstract

Drawing on data from two empirical projects concerned with local authority enforcement of standards in the private rented sector, this article argues that there are signs of greater use of formal enforcement approaches, and that these approaches are increasingly 'hardline'. This finding runs counter to the existing scholarship on regulatory enforcement, which emphasizes securing compliance over formal enforcement. Securing compliance is also integral to the regulatory guidance in this sphere of activity. Further, in the context of cuts to local authority funding and greater local authority demand for private rented stock to meet household needs, the shift to hardline approaches requires explanation. Drawing on Keith Hawkins' and Peter Manning's theory of legal decision making, which emphasizes consideration of the surround, the field, and the frame, the authors explain how changes to the field, in particular, have encouraged this shift.

1 | INTRODUCTION

A generation of scholarship on regulatory agencies' enforcement activities has predominantly found that criminal sanctions are used as a last resort;[1] rather, agencies engage primarily in activities that are oriented towards compliance, such as negotiating with regulatees; providing information, training, and knowledge exchange; and fostering and establishing relationships of trust.[2] Various factors encourage compliance approaches, including the relationships between the parties, the resources available to the regulatory agencies, the problem of rules (such as over-inclusiveness or producing creative compliance), and the low level of penalties imposed through criminal sanction.[3] However, compliance approaches are not uncontroversial; labelling activities as regulatory offences, as opposed to real crimes, becomes self-reinforcing, and reflects power in society.[4]

This article is concerned with regulatory strategies and enforcement in the private rented sector (PRS). In 2001, Cowan and Marsh argued that local authority regulation of harassment and unlawful eviction by private landlords was susceptible to adopting compliance-focused approaches.[5] However, they contended that the sector had a combination of characteristics that distinguished it from other regulatory fields. These included that most landlords were small operators, with many owning fewer than five properties and a considerable proportion owning only one; that the reputation of the sector was being rehabilitated by central government; that most tenants had limited security in their homes, which neutered consumerist approaches; and that private sector landlords had become a partner in meeting housing need, which placed limits on the scope for unrestrained punitive regulation.

In the subsequent two decades, the PRS has grown substantially as a result of changes to both demand and supply, including the rise of buy-to-let landlordism and the emergence of the investor-backed build-to-rent sector. Landlords are heterogeneous in their motivations, particularly in the extent to which their business models emphasize income or capital growth. Concerns about property and management standards persist, including a recognition of the intersection between private landlordism and criminality in the 'shadow' PRS.[6] Our focus here

[1] See for example K. Hawkins, *Environment and Enforcement: Regulation and the Social Definition of Pollution Control* (1984); K. Hawkins, *Law as Last Resort: Prosecution Decision-Making in a Regulatory Agency* (2002); B. Hutter, *The Reasonable Arm of the Law? The Law Enforcement Procedures of Environmental Health Officers* (1988); B. Hutter, *Compliance: Regulation and Environment* (1997); K. Yeung, *Securing Compliance: A Principled Approach* (2004); B. Morgan and K. Yeung, *An Introduction to Law and Regulation: Text and Materials* (2012) ch. 4.

[2] Hawkins, id. (2002), pp. 47–59. See also P. Manning, '"Big Bang" Decisions: Notes on a Naturalistic Approach' in *The Uses of Discretion*, ed. K. Hawkins (1992) 249; S. Fairclough, 'Using Hawkins's Surround, Field, and Frames Concepts to Understand the Complexities of Special Measures Decision Making in Crown Court Trials' (2018) 45 *J. of Law and Society* 457.

[3] See R. Baldwin et al., *Understanding Regulation: Theory, Strategy, and Practice* (2012) ch. 11. Much of this literature owes a debt to Michael Lipsky's identification of the influences on street-level bureaucrats' processing of cases: M. Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Service* (1980).

[4] Compare F. Pearce and S. Tombs, 'Ideology, Hegemony, and Empiricism: Compliance Theories of Regulation' (1990) 30 *Brit. J. of Criminology* 423; K. Hawkins, 'Compliance Strategy, Prosecution Policy, and Aunt Sally: A Comment on Pearce and Tombs' (1990) 30 *Brit. J. of Criminology* 444. See also F. Pearce and S. Tombs, *Toxic Capitalism: Corporate Crime and the Chemical Industry* (1988) ch. 7; D. Cook, *Rich Law, Poor Law: Different Responses to Tax and Social Security Fraud* (1989).

[5] D. Cowan and A. Marsh, 'There's Regulatory Crime, and Then There's Landlord Crime: From "Rachmanites" to "Partners"' (2001) 64 *Modern Law Rev.* 831.

[6] T. Crook and P. Kemp, 'Private Renting in England: Growth, Change and Contestation' in *Private Renting in the Advanced Economies: Growth and Change in a Financialised World*, ed. P. A. Kemp (2023) 91; R. Spencer et al., *Journeys in the*

is not primarily on the evolution of the regulated population but on the strategies currently being directed towards it by local regulatory bodies. This is a topic on which recent research has provided survey data giving a snapshot of the profile of regulatory approaches;[7] our aim is to concentrate more specifically on changes of approach among local authorities.

We challenge the analysis offered by Cowan and Marsh by drawing on two projects that gathered data between 2019 and 2021. The projects considered local authority enforcement and regulation in the PRS (Project 1) and health and safety regulation in housing (Project 2).[8] We found that a number of local authorities were giving more attention to what we term 'hard-line approaches'. Rather than focusing on securing compliance, hardline approaches emphasized sanctioning landlords and sought to reduce deviant landlord behaviour through deterrence. Rather than educating and working with landlords, those operating hardline approaches showed a greater propensity to initiate formal legal enforcement. There was geographical unevenness in approaches, but a general shift was perceptible.

This shift runs against the generation of scholarship on regulatory enforcement strategies, which emphasizes the effectiveness of compliance. It also requires explanation because the context for our studies might have been expected to reinforce the desirability, and necessity, of compliance-based strategies. That context included austerity policies that have resulted in perhaps the tightest squeeze on local authority resources in their history;[9] routinized and greater use of the PRS by local authorities in what is frequently described as a housing crisis;[10] and health and safety guidance widely understood as encouraging compliance practices.[11]

In order to provide that explanation, we draw on Keith Hawkins' and Peter Manning's influential analysis of regulatory decision making. They propose that regulatory decisions can only be understood by reference to both their broad environment and particular contexts.[12] As Hawkins puts it, '[d]ecisions about legal standards and their enforcement … are made … in a much broader setting (their "surround") and within a context, or "field", defined by the legal and

Shadow Private Rented Sector (2020), at <https://tfl.ams3.cdn.digitaloceanspaces.com/media/documents/Safer_Renting_Journeys_in_the_shadow_Private_Rented_Sector_-_September_2020.pdf>.

[7] K. Reeve et al., *Local Authority Enforcement in the Private Rented Sector: Headline Report* (2022) ch. 11, at <https://www.gov.uk/government/publications/local-authority-enforcement-in-the-private-rented-sector-headline-report/local-authority-enforcement-in-the-private-rented-sector-headline-report>.

[8] Project 1 was funded by the Economic and Social Research Council's UK Collaborative Centre for Housing Evidence, together with the Dispute Service Charitable Foundation and the Safe Deposits Scotland Charitable Trust. Project 2 was part of an umbrella project on housing health and safety conducted by RHE and commissioned by the Department for Levelling Up, Housing and Communities (DLUHC). Project 2 ranged beyond the PRS in scope to other housing tenures – the Housing Act 2004 being tenure neutral; however, enforcement regimes tended to be more narrowly focused on that sector.

[9] See generally M. Blyth, *Austerity: The History of a Dangerous Idea* (2013).

[10] In 2001, this use was policy oriented rather than franked in statute; subsequent amendments to the homelessness legislation gave authorities the option to satisfy their duties by offering private rented accommodation. This was developed further by the duties under the Homelessness Reduction Act 2018: see Housing Act 1996, s. 189B 193(7); D. Cowan, 'Reducing Homelessness or Re-Ordering the Deckchairs?' (2019) 82 *Modern Law Rev*. 105.

[11] See for example D. Ormandy and S. Battersby, 'Landlords' Rights Trump Public Health' (2019) 22 *J. of Housing Law* 28; S. Battersby and J. Pointing, *Statutory Nuisance and Residential Property: Environmental Health Problems in Housing* (2019) ch. 6; S. Battersby, *Are Private Sector Tenants Being Protected Adequately? A Study of the Housing Act 2004, Housing Health and Safety Rating System and Local Authority Interventions in England* (2011), at <http://www.academia.edu/94237132/A_study_of_the_Housing_Act_2004_Housing_Health_and_Safety_Rating_System_and_Local_Authority_Interventions_in_England>.

[12] See in particular Hawkins, op. cit. (2002), n. 1, p. 47.

organizational mandate'.[13] Hawkins then moves to analysing the decision 'frame', in which he is attentive to the instrumental, organizational, and symbolic effects of prosecution, deterrence, and blame.[14]

Our argument proceeds, first, by briefly outlining the regulatory compliance literature, with a particular focus on Hawkins' theory. We then outline our research methods. We follow this by discussing how the surround, the field, and the frame are shaping local authority approaches. Our argument is that the principal alterations have been to the field, which appear instrumentally to have encouraged a more hardline approach. However, the causal connection between these changes to the field and changes in regulatory practice is not direct. This poses a further puzzle about the shift to hardline approaches. Discursive changes have had material effects in pushing authorities towards such approaches, and certain extreme events, most notably the Grenfell Tower fire, though apparently not directly related, have produced changes in practice.

2 | REGULATORY COMPLIANCE

In this section, we discuss briefly some key elements of the compliance literature. In particular, we return to Bridget Hutter's seminal work on environmental health officers (EHOs) because those officers formed the focus of our projects. We then further sketch out Hawkins' and Manning's theory of legal decision making.

2.1 | Towards compliance

Much of the regulatory literature starts from a critique of the effectiveness of command-and-control or deterrence-focused approaches. The interest in informal and compliance-oriented approaches flows from the perceived limitation of relying on deterrence. These models invite us to consider regulatory strategies and structures in a much broader sense than formal enforcement. The key argument is that our ability to increase compliance and raise standards within a sector would be enhanced by also considering more fully economic, social, and normative matters, including the characteristics and capacities of the regulated population.[15] This point is critical to arguments for adopting decentred and pluralist approaches to regulation, on the one hand, and behaviourally informed public policy, on the other.[16]

The concept of the regulatory pyramid has been particularly influential. This pyramid has self-regulation at the base with the ultimate sanction of criminal prosecution at the apex. The argument is that regulators should approach their task through a graduated series of enforcement measures that escalate in severity. The apex sanctions should be sufficiently severe as to render informal action effective; they should enable the regulator to 'speak softly with big sticks' and to operate as a 'benign big gun'.[17] This pyramidal approach is designed to be responsive to the facts

[13] Id., p. 48.

[14] Id., Part IV.

[15] C. Parker and V. L. Nielsen, 'Compliance: 14 Questions' in *Regulatory Theory: Foundations and Applications*, eds C. Parker et al. (2017) 217.

[16] For an overview, see for example E. Shafir (ed.), *The Behavioral Foundations of Public Policy* (2012).

[17] See I. Ayres and J. Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (1992) 19.

on the ground, taking account of the motivations and behaviours of regulatees.[18] There are several elaborations of, and variations on, this approach, including smart and risk-based regulation.[19] While there are currents and counter-currents in regulatory policy,[20] these theoretical models can be seen refracted into policy and practice through interventions such as the Better Regulation agenda. Critics of the responsive approach argue that it has 'barely concealed ambiguities, which allow it to be all too easily incorporated into policy initiatives with a deregulatory, rather than a "transcending", effect'.[21]

There are a significant number of empirical studies of compliance approaches. Hutter's classic 1988 study of EHOs is precisely on point because our projects also concerned EHOs. Hutter notes that environmental health legislation tends to place emphasis on local authorities 'being reasonable', and that the housing legislation involves lengthy procedures with variable powers and derisory penalties for offenders.[22] In her study, EHOs considered their role to be primarily remedial; they were ambivalent about the criminal status of their governing legislation, not punitive; and their work was bounded by the characteristics of their locality.[23] Generally, EHOs were inclined to take account of the financial considerations underlying the regulated business' economic position in determining their approach to enforcement, and the department's own resources were particularly relevant in officer decision making.[24]

Hutter's study proposes two different compliance strategies: persuasive and insistent. Both strategies are at the compliance end of the compliance–deterrence scale, but the insistent strategy is further towards the deterrence end.[25] The difference lies in the degree to which they adhere to an accommodative approach. Hutter indicatively places the persuasive strategy near to one end of the scale – close to a flexible accommodative strategy – while the insistent strategy moves some way towards the formal enforcement end of the scale.[26] Our data suggests that some authorities have effected a shift yet further along that scale towards a legalistic sanctioning approach.

2.2 | Surround, field, and frame

We use the theory of legal decision making developed by Hawkins and Manning to structure the presentation of our data. It draws attention to influences on decision making that operate at three levels: the surround, the field, and the frame. Changes at one level may prompt changes at another. The theory provides a flexible framework that mediates between structure and agency. Manning

[18] Id.

[19] See for example N. Gunningham, 'Enforcement and Compliance Strategies' in *The Oxford Handbook of Regulation*, eds R. Baldwin et al. (2010) 120; R. Baldwin and J. Black, 'Really Responsive Regulation' (2008) 71 *Modern Law Rev*. 59; R. K. Weaver, 'Compliance Regimes and Barriers to Behaviour Change' (2014) 27 *Governance* 243; Parker and Nielsen, op. cit., n. 15.

[20] R. Baldwin, 'The New Punitive Regulation' (2004) 67 *Modern Law Rev*. 351.

[21] S. Tombs and D. Whyte, 'Transcending the Deregulation Debate? Regulation, Risk, and the Enforcement of Health and Safety Law in the UK' (2013) 7 *Regulation & Governance* 71, at 72. See also P. Mascini, 'Why Was the Enforcement Pyramid So Influential? And What Price Was Paid?' (2013) 7 *Regulation & Governance* 48.

[22] Hutter, op. cit., n. 1, pp. 38–40.

[23] Id., pp. 55–61.

[24] Id., pp. 120–125.

[25] Id., p. 156.

[26] Id.

uses this approach to analyse how 'big bang' decisions – those that change an organization's approach to decision making as a result of 'a known, public event that disrupts organizational routines' – might affect the decision-making frame.

The surround is the 'broad political and economic currents and developments within which decisions are cast'.[27] It is 'unbounded', so remote events occurring outside geographical and decision-making boundaries can be important to its construction, but it is spontaneous and outside the control of the decision-making agency.[28]

The field 'is the social basis for labeling a situation of deciding: the seen-as-relevant-at-the-moment assemblage of facts and meanings within which a decision is located. Fields constitute both the "background" and "foreground" for decision-making activity.'[29] Material in the field is excluded from the frame.[30] Hawkins develops his idea of the field by reference to 'the boundaries of a legal decision-maker's mandate, creating the setting within which decisions are made', and included legal bureaucracy in its formulations of policy.[31] This draws attention to the difference between enforcement strategy (the enforcement choices of regulatory agencies) and enforcement style (an officer's everyday interactions with regulatees).[32] One significant element within the field is agency leadership and its impact on organizational culture.[33] Within the field sits the idea that prosecution can be not only an instrumental act aimed at punishment and deterrence but also an expressive act where 'appearance' is more important than 'practical and desirable change'.[34] Indeed, its expressive characteristics can, in some instances, dominate.

The frame is the 'prerequisite to deciding whether [an officer] should act, how they should act, and for what purpose'.[35] It is applied to an event, which leads to the selective organization of facts.[36] It is 'keyed' – that is, transformed by the understandings between the parties – through officers' particular characterizations and theories of motivation, compliance, and punishment.

Hawkins discusses four possible frames – instrumental, organizational, symbolic, and legal – each of which reflects different approaches to the balance between prosecution, on the one hand, and compliance, on the other. Officers' resources (such as workloads and time), organizational understandings and strategies, and constructions of blame all affect understandings of this balance.[37] Underpinning each such frame are moral constructions of the seriousness of behaviour.[38]

[27] Manning, op. cit., n. 2, p. 263.

[28] Hawkins, op. cit. (2002), n. 1, p. 49.

[29] Manning, op. cit., n. 2, p. 261.

[30] Id.

[31] Hawkins, op. cit. (2002), n. 1, p. 143.

[32] P. May and S. Winter, 'Regulatory Enforcement Styles and Compliance' in *Explaining Compliance: Business Responses to Regulation*, eds C. Parker and V. L. Nielsen (2011) 222.

[33] R. Kagan, 'Regulatory Enforcement' in *Handbook of Regulation and Administrative Law: Public Administration and Public Policy*, eds D. Rosenbloom and R. Schwartz (1994) 383.

[34] Hawkins, op. cit. (2002), n. 1, p. 51.

[35] Id., p. 249.

[36] Manning, op. cit., n. 2, p. 260.

[37] Hawkins, op. cit. (2002), n. 1, Part IV.

[38] Manning, op. cit., n. 2. See also E. Oakley, *Policing the Missing: Negotiating Absence* (2014).

3 | RESEARCH METHODS

The research discussed below draws on two research projects – Project 1 and Project 2 – that intersected around regulatory enforcement by local authorities in the PRS. Project 1 investigated the strategies and practices that local authorities across the United Kingdom (UK) were using to improve their local PRS. We draw here only on the data from that study that was from England because that was the focus of Project 2. Project 2 addressed the regulatory enforcement by local authorities of health and safety in housing (the housing health and safety rating system, or HHSRS),[39] including owned and socially rented housing. Its purpose was to assist with the redrafting of the guidance on enforcement of the law. We draw here only on the data from that study that was concerned with the PRS. The data collection purposes and methods of the two projects were different, albeit intersecting, but the shift towards more hardline enforcement approaches emerged from both studies. In this section, we provide brief details of the projects.

3.1 | Project 1

This project was conducted between 2019 and 2020 (with fieldwork finishing shortly before the COVID-19 lockdown). The first phase entailed eight interviews with key stakeholders in the devolved nations, across local government, landlord, and voluntary organizations. These interviews provided data on the operation of the systems then in place, but also informed the design of the second phase. That second phase involved 13 case study local authorities across England (n = 7), Scotland (n = 4), Northern Ireland (n = 1), and Wales (n = 1). We explicitly sought authorities that appeared, from publicly available information and the initial interviews, to be active in regulating private renting.

Across the case studies, we conducted 61 interviews, ranging from 45 to 90 minutes in length, exploring the design and implementation of local strategies around the PRS. Our research participants included officers working at the managerial or strategic level, as well as frontline enforcement officers. The spread of activities and diversity of practices meant that we interviewed EHOs, housing renewal officers, enforcement officers, housing leads and directors, research and development officers, landlord registration officers, licensing officers and managers, representatives of local landlord groups, trading standards officers, and local councillors. Where available, we considered written enforcement strategies and related documentation in advance of our case study visit. Our dataset was analysed using the five-step approach,[40] which enabled a thematic approach combining codes generated deductively from theory with those that we developed inductively through the various phases of the project.

3.2 | Project 2

The fieldwork for Project 2 was conducted between 2020 and 2021. The first phase of the project included 15 key stakeholder interviews. These identified issues with the existing guidance,

[39] Housing Act 2004, Part 1.

[40] V. Braun and V. Clarke, 'Using Thematic Analysis in Psychology' (2013) 3 *Qualitative Research in Psychology* 77; P. Bazeley, *Qualitative Data Analysis: Practical Strategies* (2013).

'informal' enforcement action, and enforcement strategies. We then conducted six regional focus groups with senior EHOs (n = 45), five focus groups with landlords (n = 29), and five national focus groups with representative organizations and key individuals (n = 39). The focus groups concerned a range of issues around the HHSRS; about an hour of each was concerned with questions of enforcement.

The project was completed with four case study local authorities, selected on the basis of several characteristics: geographical region and level of deprivation; identified as having 'good practice' during earlier phases of the project; operating a selective licensing scheme in the PRS or an additional house of multiple occupancy (HMO) licensing scheme (to understand how enforcement might operate in those contexts);[41] and with the PRS accounting for different proportions of the local housing stock. Due to the pandemic, this part of the project was conducted remotely by video platform. Up to six participants were interviewed in each authority. The data obtained was analysed using a similar approach as Project 1.

4 | TOWARDS HARDLINE APPROACHES

In this section, we consider our finding that several authorities across our projects had shifted further towards a greater propensity to use formal legal sanctions. We call this a 'hardline approach' to indicate a shift beyond Hutter's insistent model towards the formal enforcement end of the spectrum. To be sure, an enforcement postcode lottery is evident, while recent mixed methods research, drawing on survey responses from 140 authorities and 14 local case studies, has characterized the majority of local authorities as adopting predominantly reactive approaches.[42] Some of our participating authorities still employed persuasive approaches, and some local authorities have long employed strategies that mix tools that rely on both persuasion and deterrence.[43] Our central point is that for several case study authorities a change in mindset means that this mix has shifted and is now animated by a different underlying policy stance.

In Project 1, there was a distinctive and conscious shift in four of our case study authorities towards a more hardline approach. The characteristics of such an approach included engaging in proactive inspections, perhaps including random inspections; issuing a high number of formal notices and routinely penalizing non-compliance; and viewing infractors as being ill intentioned rather than ill informed. Though these authorities were mostly urban, they were not exclusively so; this approach was also evident in a more rural authority. A key finding of Project 1 was that this shift was occurring in part because of concerns about game playing by landlords and the time and resources absorbed in following up inspections. In addition, there was political support

[41] The former was introduced in Part 3 of the Housing Act 2004 to deal with issues of low demand and anti-social behaviour: Housing Act 2004, Part 3, s. 80. The latter was introduced in Part 2 of the Act and was designed to deal with the ineffective management of these buildings, which are regarded as the most risky within the housing stock: Housing Act 2004, Part 2, s. 56.

[42] See for example National Residential Landlords Association, *The Postcode Lottery of Local Authority Enforcement in the PRS* (2018), at <https://www.nrla.org.uk/research/special-reports/postcode-lottery-of-local-authority-enforcement>; House of Commons Housing, Communities and Local Government (HCLG) Committee, *Private Rented Sector: Fourth Report of Session 2017–19* (2018) HC 440, para. 84, at <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/440/440.pdf>; Battersby, op. cit., n. 11; Reeve et al., op. cit., n. 7.

[43] See J. Stewart and R. Moffatt, *Regulating the Private Rented Sector: Evidence into Practice* (2022).

locally for a hardline approach. A partnership approach with landlords was explicitly rejected for instrumental reasons, with one manager saying:

> People say you'll see landlords exiting the market if you're taking this more robust approach on licensing and that's fine – let them exit the market. They don't take the property with them. That house will still be there and whether that becomes unoccupied or a more professional landlord takes it over and manages it, it's still there. Let's get rid of the people [who] can't manage their properties. (Project 1/LA4/Manager)

Consistent with these findings, Project 2 discerned a shift from accommodating approaches to more hardline approaches in both the focus groups and two case study authorities. As in Project 1, instrumental reasons for the shift were offered, but participants also employed organizational rationales by referring to the effectiveness and resource requirements associated with the persuasive approach: '[W]e haven't got the time to be kind of … treating the landlords like babies' (Project 2/CS4/EHO2).[44] A more hardline approach was also said to assist with transparency and clarity, offering less room for officer discretion. It was viewed as more efficient and timely, facilitated by information and communications technology (ICT), because there was limited ability to build a relationship with the regulatee:

> [W]hen [you]'ve started with informal action, you can often get strung along and then you have to end up do[ing] revisits and things like that. And then you end up going to formal action anyway. I find it, in the councils that are geared more towards, you know, an enforcement approach, they're actually more set up with the templates and things for the notices. And actually, it's just as quick to almost write a notice as it is to put the same works on a letter. (Project 2/FG/Central)

> The vast majority of our landlords are kind of single- or two-property people, so you can't really build up that kind of relationship to try and work out whether or not they are going to do the works … So therefore it makes more sense to go straight for the formal, so everyone knows where they stand. (Project 2/FG/South East)

There was, however, some geographical unevenness; both hardline and accommodating approaches were found in urban and rural areas. Project 2 found individual teams within bigger departments striking a different tone from the overall strategy locally; they were exercising hardline approaches, such as having a 'rogue landlord' unit that employed hardline practices, even when the overall organizational strategy was more accommodating.

Authorities taking a hardline approach had not, however, effected a complete shift to the 'legalistic sanctioning approach' end of the enforcement continuum.[45] For example, they commonly sought to work with landlords while engaging in formal enforcement, sometimes gave additional notice of inspections, commonly gave 14-day warnings of formal enforcement to enable landlords to rectify issues, and were willing to postpone enforcement action if landlords needed additional

[44] Similarly, for some participants, the informal approach 'just doesn't work' (Project 2/CS3/Manager), and leads to enforcement having to 'start from scratch' after the informal approach has not worked (Project 2/CS3/EHO).

[45] Hutter, op. cit., n. 1, p. 156.

time to rectify issues.[46] Many authorities also sought to filter complaints by adopting a form of 'triage', requiring tenants to (for example) use a virtual complaints system and/or demonstrate that they had engaged with their landlords before approaching the authority.[47] Nevertheless, overall, a shift towards more hardline approaches was clearly evident.

We now discuss the reasons for this observed shift, drawing on the surround/field/frame model. We draw particular attention to the factors that militated against the shift, and that therefore make the shift more intriguing.

4.1 | Surround

4.1.1 | Accommodating landlords

Several factors in the surround suggest that accommodating strategies and practices would continue to predominate. The factors highlighted by Cowan and Marsh in 2001 as fostering an accommodative approach have subsequently been exacerbated. Since the mid-2000s, the PRS has become a fixture of homelessness decision making,[48] and more significant following the introduction of the Homelessness Reduction Act 2017.[49] Private landlords are now needed more than ever as partners in meeting housing need, particularly in high-demand areas.

Deterrence-based approaches to regulation are resource intensive. After a decade of austerity, then, one might expect local authorities increasingly to be obliged to adopt persuasive, compliance-based practices. It has been estimated that the local government budget in England was cut by more than half between 2009 and 2016.[50] This particularly affected urban local government,[51] where, as Hutter identifies, insistent strategies are more likely. Spending on environmental and regulatory services in English local authorities reduced by an estimated 17 per cent (around £910 million) over that period.[52]

Austerity was, by contrast, cited by one case study authority as the cause of adopting a more hardline approach: 'The council hasn't got a lot of money itself to invest, which then pushed us really down the licensing and enforcement approach' (Project 1/CS8/Manager). This manager was alerting us to a particular feature of the licensing scheme (which also applies to the civil penalty scheme discussed below): such schemes are in theory self-financing. Accordingly, they insulate the authority against the impacts of austerity and, paradoxically, become a function of austerity. That is, budget shortfalls encourage the adoption of such schemes and, by

[46] Sometimes, these kinds of systems were put in place following a negative experience at a tribunal, which had required pre-enforcement correspondence with landlords.

[47] Particularly in Project 2, these kinds of practices were regarded as controversial because of their potential effects on vulnerable occupiers, effectively deterring them from making complaints.

[48] A local authority can now discharge its obligations to homeless households with an offer of accommodation in the PRS: Housing Act 1996, s. 193(7AA); Ministry of Housing, Communities and Local Government (MHCLG), *Homelessness Code of Guidance for Local Authorities* (2024) paras 17.12–17.30.

[49] See Housing Act 1996, s. 189B(2).

[50] Centre for Cities, 'Cities Outlook 2019: 01 A Decade of Austerity' *Centre for Cities*, 28 January 2019, at <https://www.centreforcities.org/reader/cities-outlook-2019/a-decade-of-austerity/>.

[51] M. Gray and A. Barford, 'The Depths of the Cuts: The Uneven Geography of Local Government Austerity' (2018) 11 *Cambridge J. of Regions, Economy and Society* 541.

[52] Id., p. 558.

implication, more hardline approaches organizationally, quite apart from any consideration of the instrumental benefits of deterrence.

Next, there has been rapid growth in the PRS itself. In 2001, the PRS accommodated around 9–10 per cent of households. At the time of our projects, it accommodated around 19–20 per cent of households,[53] with considerable growth after the global financial crisis in 2007–2008.[54] Cowan and Marsh supported their analysis of authorities' compliance orientation by reference to the fact that landlords generally owned few properties. Though there has subsequently been an increase in institutional investment in the PRS, the number of small landlords has grown similarly rapidly, partly because of the expansion of the buy-to-let sector.[55] There are currently 2.3 million landlords in England[56]; around 70 per cent own only one PRS property, while only 6 per cent own more than four properties.[57] This shapes perceptions of the legal consciousness and conscientiousness among suppliers. As the sector has grown, the proportion of properties with the most serious hazards has declined (from around 25 per cent to 12 per cent), though, as has always been the case, the sector has a higher proportion of properties with such serious hazards than other tenures.[58]

A further core part of the surround is that, until relatively recently, there has been comparative longevity in security of tenure laws for tenants; since 2004, the same could be said for housing conditions laws in the sector.[59] Indeed, given the significant shifts during the twentieth century,[60] one might say that the cross-party consensus on the PRS that emerged in the 1990s has been one of the most remarkable facets of the understanding of the landlord–tenant–local authority relation. The national policy narratives around the sector also remained broadly stable.[61] Those narratives were that landlords, as a group, were generally well intentioned and reputable; rather, it was tenants who required discipline. As the 2000 Green Paper put it, '[o]ur many good landlords deserve support and encouragement – to help them improve their position in the market-place and to help them deal with tenants who misbehave or refuse to pay the rent'.[62] However, there were

[53] The proportion has declined slightly since 2015: DLUHC, *English Housing Survey: Headline Report 2020–21* (2022) para. 1.7, at <https://www.gov.uk/government/statistics/english-housing-survey-2020-to-2021-headline-report>.

[54] J. Rugg and D. Rhodes, *The Evolving Private Rented Sector: Its Contribution and Potential* (2018), at <https://eprints.whiterose.ac.uk/135787/1/Private_Rented_Sector_Report.pdf>.

[55] Id., p. 23.

[56] DLUHC, *A Fairer Private Rented Sector* (2022) 16, at <https://www.gov.uk/government/publications/a-fairer-private-rented-sector/a-fairer-private-rented-sector>.

[57] K. Scanlon et al., *Taking Stock: Understanding the Effects of Recent Policy Measures on the Private Rented Sector and Buy-to-Let* (2016), at <https://www.lse.ac.uk/business/consulting/reports/taking-stock>; Rugg and Rhodes, op. cit., n. 54, pp. 29–35.

[58] DLUHC, op. cit., n. 53, paras 2.20–2.22.

[59] One example of this was that the government guidance concerned with the enforcement of the Housing Act 2004, Part 1, published in 2006, is still extant: Office of the Deputy Prime Minister (ODPM), *Housing Health and Safety Rating System (HHSRS) Enforcement Guidance: Housing Conditions* (2006), at <https://www.gov.uk/government/publications/housing-health-and-safety-rating-system-enforcement-guidance-housing-conditions>.

[60] See for example A. Holmans, *Housing Policy in Britain: A History* (1987); D. Cowan and A. Marsh, 'New Labour, Same Old Tory Housing Policy?' (2001) 64 *Modern Law Rev*. 260.

[61] See for example S. Blandy, 'Housing Standards in the Private Rented Sector and the Three Rs: Regulation, Responsibility and Rights' in *Two Steps Forward: Housing Policy into the New Millennium*, eds D. Cowan and A. Marsh (2001) 73; P. Kemp, 'Private Renting after the Global Financial Crisis' (2015) 30 *Housing Studies* 60.

[62] Department of the Environment, Transport and the Regions, *Quality and Choice: A Decent Home for All* (2000) para. 5.2, at <https://www.gm1housing.co.uk/documents/DETR%20Quality%20and%20Choice%20-%20A%20Decent%20Home%20for%20All%202000.pdf>.

a few 'bad apples', referred to in policy documents as 'rogue landlords', who operated in areas of low demand and in conjunction with anti-social tenants.[63] The political consensus was shifting during the fieldwork – with the Conservative Party making a manifesto commitment to increase security of tenure,[64] and the Labour Party at one point becoming interested in rent-dampening measures[65] – but the core legislative provisions remained relatively static.

Finally, central government embraced the Better Regulation agenda from 2001, which is itself linked with compliance-based practices. Though the 2005 Hampton Review of better regulation excluded EHOs' housing standards work,[66] it called for fewer inspections and a move to risk-based regulatory approaches in line with responsive regulation.[67] The *Enforcement Concordat* required proportionality in enforcement; it emphasized accommodating practices, working with (in this case) landlords 'so that they can meet their legal obligations without unnecessary expense, where practicable' and prioritizing regulatory talk over enforcement action.[68] The concordat was hardwired into EHO practice by its adoption in the 2006 HHSRS enforcement Code of Guidance: 'Before taking formal enforcement action, [local authorities] should follow the principles of the *Enforcement Concordat*.'[69] Our data suggests that those adopting hardline approaches were interpreting proportionality differently; enforcement and inspection were regarded as more proportionate than accommodating landlords.

4.1.2 | Factors shaping change

Though much of the surround has remained relatively consistent, two factors were identified as pushing authorities towards more hardline approaches – one particular and the other more general.

The particular factor, which represents a disruptive event of the kind originally suggested by Manning, was the devastating fire at Grenfell Tower. This was not an environmental health matter per se because there had been no inspection and it had been assumed that the cladding, which was responsible for the fire, was not a fire hazard. Nor was the fire primarily a PRS issue; Grenfell Tower provided predominantly socially rented housing. However, the fire changed practices. This part of the surround was raised most particularly in Project 2. An environmental health manager (EHM) in an urban area stated:

> [W]e do ensure that we try to stick to the *Enforcement Concordat* and allow the landlord every opportunity. However, we have completely ruled it out for fire. If we

[63] Id., paras 5.4–5.10. See also Department of Transport, Local Government and the Regions, *Selective Licensing of Private Landlords* (2001) paras 3 and 13.

[64] Conservative Party manifestos from 2015 made a commitment to repeal the mandatory right of landlords to obtain possession on service of a notice: Housing Act 1988, s. 21.

[65] The 2019 Labour Party Manifesto promised to cap rents in line with inflation and give cities the power to cap rents further: Labour Party, *It's Time for Real Change: The Labour Party Manifesto 2019* (2019) 79, at <https://docslib.org/doc/9837071/its-time-for-real-change-the-labour-party-manifesto-2019>.

[66] P. Hampton, *Reducing Administrative Burdens: Effective Inspection and Enforcement* (2005) para. 1.20, at <https://www.regulation.org.uk/library/2005_hampton_report.pdf>.

[67] Id., ch. 2.

[68] Cabinet Office, *Enforcement Concordat: Information for Insolvency Practitioners* (1998), at <https://assets.publishing.service.gov.uk/media/5a75a489ed915d6faf2b491f/enforce.pdf>.

[69] ODPM, op. cit., n. 59, para. 4.1.

> see there's a fire risk, we serve automatically now a formal notice irrespective … It was literally post-Grenfell. I think a lot of [authorities] in general have shifted. Our assistant director just came down one day and said 'You will serve – as soon as you identify a risk for fire, you will serve a formal notice and it will be charged upfront', and that's what we did from that day forward, and that's how it's been working. (Project 2/KS/EHM)

However, cladding issues were recognized to be outside the norm of everyday EHO work. Tall buildings required a more joined-up approach with other services and, indeed, the formation of an expert EHO service. This was particularly the case because the owners of tall buildings were understood to have deeper pockets than the landlords with whom EHOs usually dealt. Accordingly, greater specialism in multi-agency teams was needed to collect the significant amount of evidence required in such cases, as was a recognition that enforcement could be gamed by such operators.

The second, general, factor in the surround was the growth of the PRS and the accompanying rise of landlord and tenant groups nationally. The political and economic dynamics of policy making were perceived to have changed. A larger proportion of the electorate were exposed to the negative aspects of private renting and were attempting to exert pressure through the political system. The rise of the narrative around 'rogue landlords' – an expression that was generally decried at the level of the field and the frame – also gave rise to small funding streams for short-term projects.[70] Indeed, such streams tied to apparently unconnected issues – such as modern slavery, health, and immigration[71] – were key parts of the surround. This was particularly the case in Project 1 because case study authorities bid successfully for funding for projects that, influenced by these overlapping regulatory spheres and different regulatory cultures, required them to engage in hardline approaches, proactive inspection, and enforcement in the PRS. These funding streams were regarded as problematic because of their short duration. They were, however, examples of how local authority officers could spontaneously and entrepreneurially connect issues. They also contributed to a different way of thinking in the field, to which we now turn.

4.2 | Field

The meso level of the field was where the most significant changes had occurred. We isolate three aspects; we do so solely for analytical purposes – these aspects interacted with each other dynamically. First, we consider shifts in policy discourse and the utilization of the term 'rogue'. Second, there were legislative changes from 2015 that, while not affecting the overall regulatory structure, gave authorities the ability to issue civil penalties instead of prosecute and sought to

[70] A £2 million fund was created in 2018 by the MHCLG: MHCLG, '£2 Million for Councils to Crackdown on Rogue Landlords' *Gov.uk*, 8 November 2018, at <https://www.gov.uk/government/news/2-million-for-councils-to-crackdown-on-rogue-landlords>.

[71] The 'modern slavery fund' was a £33.5 million fund set up in July 2016. For discussion, see Home Office, *Modern Slavery Fund Review (2019 to 2021): Findings, Lessons and Recommendations* (2022), at <https://www.gov.uk/government/publications/modern-slavery-fund-review/modern-slavery-fund-review-2019-to-2021-findings-lessons-and-recommendations-accessible>. The 'controlling migration fund' and 'operation discovery' were particular funding streams in relation to immigration control.

curb landlords' use of Section 21 mandatory eviction[72] as retaliation for tenant complaints. These changes were cited as affecting authorities' strategies and practices, even though, on their face, there were limitations to their utility. Third, we draw attention to practice innovators – to whom we hinted above – who change enforcement cultures.

We note that these changes occurred alongside substantial continuity in regulation. The guidance on the enforcement of health and safety obligations in housing has remained in place since 2006.[73] This guidance – which was the focus of Project 2, but also relevant in Project 1 – was believed by most commentators to encourage a compliance approach that prioritized working with landlords. Rather than taking formal action, the guidance emphasizes 'informal working'[74] and suggests the need for 'judgment as to the necessity for intervention, given the authority's priorities and wider renewal policies and, where appropriate, their knowledge of a landlord and his or her compliance history'.[75] This guidance has generally been regarded as controversial,[76] in part because it runs counter to the statutory duty on local authorities to take action where properties have the highest category of health and safety hazards (Category 1).[77] Nevertheless, hardline approaches were being adopted in the face of the statutory guidance.

4.2.1 | Utilization of the 'rogue' discourse

Earlier, we noted a relatively consistent national policy discourse about the 'bad apple landlord'. Landlords have been constructed as, in general, well intentioned but occasionally lacking knowledge (the 'good landlord'). The figure of the 'rogue landlord' emerged in policy discourse to encapsulate the Other, and to highlight their status as 'bad' – a symbolic framing of moral blame. However, as participants in both projects regularly remarked, the idea of the 'rogue' is somewhat double edged. It implies shady but non-criminal, creative attributes and does not do justice to the kinds of behaviours identified and named as criminal by officers. The level of policy knowledge about such persons was also lacking; they were simply identified as 'a number of rogue or criminal landlords [who] knowingly rent out unsafe and substandard accommodation'.[78]

Conversely, the 'rogue' label also triggered activity and produced real effects, roughly from 2015 onwards.[79] It gave rise to legislative intervention, policy interventions, guidance, and research. 'Rogue landlords' were to be banned from acting as such, placed on a register, and the subject of

[72] See n. 64.

[73] ODPM, op. cit., n. 59.

[74] Id., para. 2.2.

[75] Id., para. 2.18.

[76] See Chartered Institute of Environmental Health (CIEH), *HHSRS – 11 Years On: Results of a Survey of Environmental Health Practitioners Working in Housing* (2017), at <https://www.cieh.org/media/1166/hhsrs-11-years-on.pdf>.

[77] Housing Act 2004, s. 5.

[78] MHCLG, *Rogue Landlord Enforcement: Guidance for Local Authorities* (2019) 4, at <https://assets.publishing.service.gov.uk/media/5cffa8bce5274a3cfa8a4fea/Rogue_Landlord_Enforcement_-_Guidance_for_LAs.pdf>.

[79] See Department for Communities and Local Government (DCLG), *Tackling Rogue Landlords and Improving the Private Rental Sector: A Technical Discussion Paper* (2015), at <https://assets.publishing.service.gov.uk/media/5a80527a40f0b62302692d19/Discussion_paper_FINAL.pdf>.

a new management order.[80] Government guidance was published,[81] some local authorities met annually to discuss best practice in a 'Tackling Rogue Landlords Forum',[82] and the term came to be used in research as well as part of ordinary chatter about the PRS.[83] At the level of the field, this diverse activity shifted practice. In Project 2, one of the case study authorities had, as already noted, set up a 'rogue landlord unit' that adopted an enforcement-first approach. The broader point is that the idea of the 'rogue landlord' had morphed into a practitioner narrative about the 'crook':

> If you're dealing with a crook … and some of these are crooks, they're not businesspeople at all. They are crooks. They are con artists. If they weren't running this, they'd be running some other fraud. So those people will do it for as long as they can get away with it. They just see the fact that you're writing them a letter as something they can screw up and throw in the bin. I think it's a shock to the system for some of these when we do take them to court. (Project 1/CS7/EHO)

Multi-agency working was the norm, including proactive inspections of properties with the police and the immigration service. It was reinforced by an understanding of the 'rogue landlord' and perhaps funded by the government's designated 'rogue landlord' funding stream. Multi-agency working could also produce proxy hardline enforcement by those other agencies, such as the police for non-housing offences. Thus, for example, one case study authority in Project 1 had co-located their service in a multi-agency hub alongside the police and other agencies. This facilitated joint inspections, intelligence sharing, and the use of wider powers by those other agencies, such as in Operation Octopus, so called because of 'its tentacles … lots of different agencies' (Project 1/CS9/EHO).

The idea of the 'rogue landlord' was used by policy makers nationally to suggest that problems were restricted to a small minority of landlords.[84] Translation into local practice, however, expanded its scope, so that the symbolic spectre of the 'rogue landlord' was regarded as more prevalent, threatening, and damaging. Accordingly, it encouraged a hardline instrumental response to rid the sector of these individuals. This spur to enforcement was, however, in the face of the limited actual effect of relevant legislative changes; at the time of Project 1, for example, no landlord had been entered on the national 'rogue landlord' database.[85] There was some discussion, at least in the media, about whether the policy changes were purely symbolic. Yet that was not the way in which they were interpreted on the ground.

[80] Housing and Planning Act 2016, Part 2.

[81] MHCLG, op. cit., n. 78.

[82] See for example Institute of Government & Public Policy, 'Tackling Rogue Landlords 2023: Ensuring Fairer Accommodation for All' *Institute of Government & Public Policy*, at <https://igpp.org.uk/event/Tackling-Rogue-Landlords-2023/agenda>.

[83] See for example Rugg and Rhodes, op. cit., n. 54. ITV and Channel 5 ran news stories and mainstream TV programmes such as *Bad Tenants* and *Rogue Landlords*. The latter has been running for six seasons.

[84] Blandy, op. cit., n. 61.

[85] S. Goodley, 'Government's Rogue Landlord List Empty after Six Months' *Guardian*, 23 October 2018, at <https://www.theguardian.com/business/2018/oct/23/governments-rogue-landlord-list-empty-after-six-months>. There were roughly 43 entries when Project 2 ended: E. Lunn, 'Just 43 Landlords on Rogue Landlord Database' *YourMoney.com*, 25 August 2021, at <https://www.yourmoney.com/mortgages/just-43-landlords-on-rogue-landlord-database/>.

4.2.2 | Legislative shifts

Similarly, the legislative changes designed to halt the practice of retaliatory eviction – that is, a landlord serving a Section 21 notice on a tenant to evict them after the tenant has complained about their housing conditions[86] – require 'complex and wordy' conditions to be satisfied before they can have any legal effect.[87] For example, a Section 21 notice served following a tenant's complaint is still valid. It requires local authority action as well. The housing law practitioner community regarded this as de facto a symbolic change (Project 2/KS). Data is not collected on the reason for service of a Section 21 notice, so it is impossible to quantify its effects in reducing retaliatory eviction.[88]

Yet, across both projects, these legislative changes were reported to have pushed local authorities into a more active hardline approach.[89] For example, in Project 2, one case study authority made the link directly:

> [T]he Deregulation Act changed that for us because we look at that now and we go 'Well, actually, we don't want to miss that window of opportunity to protect your tenancy. So if we serve the improvement notice, we've now given you some security of tenure, if you like.' (Project 2/CS3/EHO1)

The other significant legislative change was the authority's ability to levy a civil penalty of up to £30,000 per offence on landlords.[90] A civil penalty can only be imposed if the criminal standard of proof has been met; the authority must be satisfied, beyond reasonable doubt, that the offence has been committed.[91] Authorities must decide to adopt the civil penalty regime and have a publicly accessible policy explaining its application.[92] Rather than prosecuting a defaulting landlord in the criminal courts (which has given rise to recurrent complaints about derisory penalties[93]), the civil penalty option appears to offer a more direct and substantial way to

[86] Deregulation Act 2015, s. 33.

[87] C. Hunter, ' Retaliatory Evictions: Predicting the Effects of the Deregulation Bill' (2015) 18 *J. of Housing Law* 41, at 42. There must be a complaint in writing about disrepair by the tenant; the landlord does not respond to that request within 14 days, or does not do so adequately (that is, describes the action and a reasonable timescale to complete the works); the local authority has served an improvement notice or emergency remedial action, which is not revoked or suspended or quashed; and the Section 21 notice was served after the notice: Deregulation Act 2015, s. 33(2).

[88] House of Commons Public Accounts Committee (PAC), *Regulation of Private Renting: 49th Report of Session 2021–22* (2022) HC 996, para. 22, at <https://committees.parliament.uk/publications/9608/documents/163793/default/>. Data from ACORN, the tenants' union, provided to the PAC suggested that half of the tenants they surveyed had chosen not to report disrepair due to fears about retaliatory eviction: id., para. 16.

[89] An enforcement policy that made retaliatory eviction less likely was held to be unobjectionable: *Haringey LBC* v. *Goremsandu* [2013] EWHC 3834 (Admin), Ouseley J; *IR Management Services Ltd* v. *Salford CC* [2020] UKUT.

[90] Housing and Planning Act 2016, s. 126 and Sch. 9. Only one penalty can be levied 'in respect of the same conduct': Housing Act 2004, s. 249A(1), as amended by Housing and Planning Act 2016, Sch. 9, para. 7.

[91] See for example Housing Act 2004, s. 249A.

[92] MHCLG, *Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Housing Authorities* (2018) paras 3.3 and 3.5, at <https://assets.publishing.service.gov.uk/media/5ac63c47ed915d76a313cbd5/Civil_penalty_guidance.pdf>. Considerable weight is to be afforded to such policy: *Waltham Forest LBC* v. *Marshall* [2020] UKUT 35 (LC), [62].

[93] Hutter, op. cit., n. 1; Cowan and Marsh, op. cit., n. 5.

disrupt and clamp down on a landlord's business model. It produced the 'big gun', at least from one perspective, because it gave economic teeth to the PRS enforcement role. While the criminal law might have greater symbolic force in signalling the transgression of social norms, civil penalties were seen as more instrumentally powerful; the idea was to 'break the business model' of landlords, attacking them where it hurt most.[94] A further incentive to use the civil penalty regime was that the money recovered through civil penalties could be recycled back into the service itself, thus helping to maintain it. As noted above, this could be a way of circumventing the effects of austerity.

The adoption of the civil penalty regime was not a precondition for the shift to a hardline approach. Not all of the case study authorities moving towards the hardline approach had adopted the regime.[95] However, it facilitated the hardline approach and was felt by some to be a more effective deterrent than court-based prosecution:[96]

> I think if I look back it's probably one of the best if used properly because it's an instant financial impact and the landlord gets a shock, especially the ones who don't understand the risk. When you hit them with that, next time they don't do that. (Project 1/CS5/EHO)

> £60,000 – how much is that a deterrent? Massively. [There are] unlimited fines for Housing Act offences: financial penalties up to £30,000, and we're issuing those for offences. The amounts are £3,000, £4,000, £5,000, £7,000, £9,000. They're big sums of money, compared to [a prosecution]. (Project 1/CS12/Manager)

> We do much more enforcement now because the … main option for most people in the past has been prosecution, which in general takes a tremendous amount of time and often the fine is pretty miserly for the amount of work and effort and problems that have gone on with the property. And I think the penalty charge has completely changed that now. (Project 2/FG/EHO)

However, positive views of the civil penalty regime were not unqualified. First, levying a civil penalty could be just as resource intensive as prosecution because the standard of proof is the same. Second, levying a penalty does not necessarily solve the problem; it does not improve the condition of the property. Third, all of the case study authorities that used the regime found that the collection of penalties is difficult; for example, the landlord might apply for bankruptcy or simply not pay. Fourth, landlords can appeal the civil penalty to the tribunal, which increased the authority's costs and resource commitments:

> [T]he local authority has to produce the court bundles for this particular case – that will cost the local authority about £3,500. We will go to the tribunal, we will have

[94] House of Commons HCLG Committee, op. cit., n. 42, para. 90.

[95] A freedom of information (FoI) request made of local authorities in England and Wales found that 53 per cent did not have a policy to use powers to issue civil penalties, and 89 per cent had not used them at all: Generation Rent, *FOI Local Government Enforcement 2017–18* (2018).

[96] Compare more general concerns about these procedural hybrid penalties as removing procedural protections: J. Hendry, '"The Usual Suspects": Knife Crime Prevention Orders and the "Difficult" Regulatory Subject' (2021) 62 *Brit. J. of Criminology* 378.

> a half-day hearing, the court will then say 'Yes, local authority are fine, you haven't acted beyond your reach, we accept, you know, you've done it right. £5,000.' We will then go to try and get that £5,000 and before we know it, Companies House are telling us that this company has put in for voluntary wind-up procedures. (Project 1/CS7/Manager)

Both projects found that prosecutions were reserved for more serious infractions. This initially appears counterintuitive because of the 'miserly' penalties, compared with the apparent deterrent effect of the civil penalty. Officers explained that the crucial difference was that a successfully prosecuted landlord could be named and shamed, which was not the case with a civil penalty. A financial penalty without reputational damage has been characterized as 'weak signal, weak threat' and does not result in compliance going forward (at least with corporations).[97] In Hawkins' terms, then, civil penalties can be regarded as an instrumental, but not expressive, part of the field.

Finally, legislative interventions around licensing of HMOs and selective licensing of particular areas within the local authority boundary also affected enforcement approaches more broadly. Most potently, this was because licensing allowed local authorities greater knowledge of landlord activity, and levying a civil penalty for infraction of licensing rules – such as failure to obtain a licence or breach of licence conditions – was simpler because they were effectively strict liability offences. These opportunities were regarded as particularly pertinent in Project 2 because of the issues with HHSRS enforcement itself, such as delays and notice requirements.

4.2.3 | Practice innovators

Both projects found, in line with Hawkins and Hutter, that there were managers who changed their organization's enforcement culture, shifting to a more hardline approach and acting entrepreneurially to obtain cross-authority approval for the shift.[98] Support at the senior level can mean the influence of such innovators is independent of the organizational location of the service:[99]

> We have a buy-in from our support team through all our inspecting officers through to our management team where the decision to change from informal to formal wasn't just made by one person. So the support is there, and we've been a bit unlucky that we've been moved between different services and directorates. So we sit completely outside of the other environmental health disciplines. We've been in housing services, we've been in the planning service. We're now back in a new housing service, but

[97] D. Thornton et al., 'General Deterrence and Corporate Environmental Behavior' (2005) 27 *Law and Policy* 262, at 263. See also J. van Erp, 'Naming and Shaming in Regulatory Enforcement' in *Explaining Compliance: Business Responses to Regulation*, eds C. Parker and V. L. Nielsen (2011) 322.

[98] Such buy-in was not a prerequisite for a hardline approach, suggesting that organizational hierarchies can be subverted: 'The major factor that drives our enforcement culture isn't necessarily, I wouldn't say, corporate management because I don't actually think we receive a lot of support in terms of the more formal, robust approach and they tend to be a much more touchy-feely kind of organization. But in terms of my team, because [we're] a small team, we're dealing with lots of issues, it's just more cost effective to go straight for the formal notices' (Project 2/FG/Manager).

[99] The environmental health service can be located in a variety of different departments, as it is a cross-disciplinary service. In Project 1, it was found that the location of the enforcement team within the authority was a significant factor affecting enforcement approach – see below.

> there's always been the support from people higher up to say 'You do what you have to do'. (Project 2/FG/EHM)

These managers also moved between authorities and could transfer experience of a hardline enforcement approach from one authority to another. Thus, for example, in one case study authority in Project 2, a Conservative rural area, a manager who had moved from a hardline enforcement authority had re-oriented the rural service from doing no enforcement activity to a proactive, proceduralized enforcement-oriented approach.

Innovative managers gave particular thought to what they were seeking to achieve and used enforcement instrumentally for that purpose. In one sense, of course, the service was geared towards making privately rented housing – which had grown rapidly across all areas – safer:

> I think in general terms the councillors at my place and my director and then the chief executive particularly, they're all behind a fairly strong approach to dealing with housing conditions based on what we've got to deal with. So [I] think certainly when I moved into a managerial position about ten years ago, the enforcement level was quite low, and obviously that's dramatically increased. I'd like to think that's created a lot more safer homes. (Project 2/FG/EHM)

However, there were other aims as well. A sanctioning approach could be used to force landlords out of business, and it was important in authorities adopting hardline approaches that landlords were regarded as operating a business, rather than as badly informed amateurs engaged in a sideline activity. If they did not understand the parameters of the PRS, they should be prevented from operating.

In one case study authority that took a 'creative' approach to enforcement, the spur towards a hardline approach was a concern about health and wellbeing. This framing was used, in part, because local councillors were not initially in favour of a hardline approach. However, '[m]embers are more in favour of doing things for health and wellbeing and you creep your way round to starting to be able to use the tools that you need to influence' (Project 1/CS2/Manager). Officers mapped National Health Service (NHS) hospital admissions data and indices of multiple deprivation data onto the local housing conditions survey to gain a general idea of the location of the best- and worst-quality housing and the tenants most in need of support. The exercise was used to help to target not only enforcement activity but also welfare support for tenants.

Some authorities had different understandings of the outcomes that they sought. Success also depended on the activity of other stakeholders and the strength of established relationships. Improving joint working, including the prevention of homelessness, was regarded as a key objective:

> We have to be open to that and not just try to say 'Well, we've been and inspected 50 houses. We've found some problems and we've dealt with it.' It's not just about the housing. It's actually trying to, in my opinion, highlight how we can all fit and work together better in a micro-area. (Project 1/CS9/EHO)

In summary, changes to the field had been interpreted by these case study authorities in ways that shifted them towards more hardline approaches. These changes facilitated instrumental, organizational, and symbolic shifts.

4.3 | Frame

When considering the frame, as with the surround discussed above, there appeared to have been limited changes from previous studies. Rather, local actors were drawing on the portfolio of relevant issues with different emphases to fashion different conclusions and implications for practice.

The organizational location of the service could be a key consideration and could indicate a lack of political support for enforcement.[100] If the service was located with, for example, taxi licensing (as in one case study authority in Project 1), that provided a clear signal as to the expected kind of interaction with regulatees. Some departments were regarded as having greater political support, had a greater enforcement orientation, or were more willing to support a hardline approach:

> We've now moved from a housing department, and though … most of the private sector housing comes under the housing department, they're not really an enforcement body. But they're now in what's called regulatory services, or the old environmental health team, and they are very much behind enforcement, want enforcement, and our members want us to take much more robust action against private landlords as well. (Project 2/FG/EHM)

Three intersecting differences from previous studies were, first, the introduction of processes commonly described as triage; second, the discursive identification of the landlord; and, third, the impacts of joint working.

Triage processes were used to filter genuine complaints, identifying non-compliant landlords. Accordingly, when complaints reached enforcement officers, they were 'ripe' for enforcement, with the affected landlord already marked out as deviant.[101] A variety of different processes were labelled as triage – for example, accepting complaints only through a webpage with certain prerequisites (such as inaction by the landlord and photographs or videos demonstrating the extent of the issues at the property). Triage processes were regarded as an efficient use of resources: 'We haven't got the resource to go out to every complaint, and a lot of the time it could be that the tenant hasn't reported it or the landlord just needs a little push from us to do it' (Project 2/CS1/EHO2). They were also regarded as bolstering the hardline approach: '[T]here's more formal action taken, but I think there's more confidence to take that action. There's a feel[ing] that you'll be backed in the action that you'll take' (Project 2/CS3/EHO2). Commonly, then, complaints that reached enforcement teams had already framed the landlord as problematic in some way.

In terms of the discursive identification of the landlord, the view that landlords were primarily amateurs making inadvertent errors, though certainly not uniform, appeared to be morphing into thinking about landlords as businesspeople seeking profit. This way of conceptualizing landlords – as running businesses – was also linked with the idea that some businesses were being run as shadowy, more criminal entities. The expanding discourse of the 'rogue landlord', together with the projects around modern slavery and immigration noted above, was equally prevalent at the micro level of the frame, and contributed to the re-framing of certain landlords as criminal.

In addition to these deviant individuals, business landlords were differently analysed and regarded as equally problematic. In some areas, there was 'not that much money to be made out

[100] Hutter finds the social structure of the peer group to be significant, for example: Hutter, op. cit., n. 1, pp. 140–141.

[101] See B. Latour, *The Making of Law: An Ethnography of the Conseil d'Etat* (2009) ch. 2.

of it if you're doing things properly' (Project 1/CS8/EHO), but it was also felt that landlords should treat the PRS as a business:

> I just say to them 'It's a business. If you're a taxi driver, you need a licence. If you run a pub, you need a licence. And if you're looking after somebody – you know, if you're putting a living being in one of your homes – you need a licence.' It's as simple as that. If your business case doesn't work with that licence in it, then your business plan isn't working. (Project 1/CS8/EHO)

> We always get the accidental landlord thrown at us, and in my mind there's no such thing as an accidental landlord; you choose to rent a property out, or you don't. But we do have people for whom it's not their bread and butter. It's not what they do every day. Though it's a business, and it should be treated as a business, they're not in it as a professional landlord. (Project 1/CS12/EHO)

This framing was not necessarily shared by all enforcement officers; some toed the organizational line without necessarily accepting it. Consequently, some officers were more willing to find operational crevices in which to treat the landlords whom they perceived as 'accidental' more leniently (such as by giving them more time to conduct necessary works[102]). Hence, there would be unevenness in the treatment of similar cases.

Finally, joint working had significantly shifted the parameters of enforcement in some authorities because EHOs had been able to see the issues through the eyes of other enforcement agencies. Joint working was more generally regarded as integral to effective PRS regulation. Thus, for example, working with the police had given one authority the insight that there were a number of housing offences that had previously gone undetected, but that were now being investigated: '[T]he more we've done that, the more it does support the enforcement "culture" because [there are a] lot of tenants who are reluctant to complain and they are just accepting what they are given' (Project 2/FG/EHO). One particular benefit of a joint working approach was that it overcame a bugbear of the EHO role: access. Access under the Housing Act 2004 is a slow process; as a general rule, 24 hours' notice must be given to the owner of the property and the occupier.[103] For other regulatory bodies, access is easier. Accordingly, working through a different and more intrusive legal power facilitated the enforcement process. Joint working also opened up avenues for obtaining information about certain landlords who might otherwise go 'under the radar': 'I've pulled together DWP [Department for Work and Pensions] fraud and partnership guys, police, ourselves, housing benefit, community safety, and it's heads around the table. We all know little bits about this particular landlord' (Project 1/CS12/EHO). In other words, joint working produced a mutually constitutive framing of the landlord as acting outside behavioural norms.

5 | CONCLUSION

We have drawn attention to the way in which PRS enforcement appears to be evolving, in some areas, towards more hardline approaches. This development does not align with key strands of

[102] This was relatively easy even within highly formalized enforcement processes, particularly as a result of the difficulties in finding appropriate workpersons during the pandemic.

[103] Housing Act 2004, s. 239(5).

regulatory thinking, which emphasize securing compliance and tailoring regulatory responses to regulatees' behaviours and motivations. There has been a shift away from the kinds of approaches encouraged by the responsive regulation literature and Better Regulation principles towards an approach that places greater emphasis, both discursively and practically, on sanctioning and deterrence. Our use of Hawkins' surround/field/frame theory has allowed us to demonstrate how developments at the level of the field have significantly affected practice and thinking at the level of the frame. We can identify the interplay of different and divergent framings as part of evolving local practice, with local framings overlapping but not necessarily aligning with the logic(s) being articulated nationally as part of the surround.

While the characteristics of the surround appeared to push towards compliance approaches, changes to the field have induced moves towards hardline approaches, though not in straightforward ways. The 'rogue landlord' discourse was initiated at the national policy level to narrow the perceived scope of problems in the sector, but has been (re)interpreted more expansively at the local level to provide a resource in justifying more hardline approaches. Legislative change that has been treated as largely symbolic or seemingly unrelated has been taken, by practitioners, as a cue to adopt a harder line on enforcement.

The introduction of civil penalties was framed locally in instrumental and organizational terms. However, while penalties may offer instrumental benefits – they may be sufficiently severe to 'break the business model' – they lack the symbolic and expressive function of formal enforcement. The worst offenders are therefore still prosecuted. Second, civil penalties – like licensing schemes – insulate against the effects of austerity-driven budget cuts by potentially being self-financing. However, this enforcement approach can run up against implementation challenges, such as collecting the penalties.

Funding similarly comes into play when considering multi-agency working. Practice innovators can be creative in securing money from outside their usual sphere of operation – such as for combatting modern slavery and immigration – and combining agendas by coupling improving housing standards to broader policy objectives such as maximizing resident wellbeing. While such couplings can flow from organizational imperatives to boost resources, they can also set in motion processes that, through exposure to more stringent regulatory cultures, lead to a firmer stance on housing enforcement. In addition, organizational imperatives – such as using triage to manage scarce resources – can lead to symbolic reframing whereby the cases reaching the enforcement stage have already been deemed serious enough for escalation, with greater probability of a formal response.

These developments in the surround and the field do not constrain local authorities to make this change; rather, they create spaces for exercising agency. There remains local discretion over policy direction. Hence, there were also authorities in our study that retained a compliance-based persuasive model, even though some that did so were aware of its limitations. While further cuts to resources or organizational restructuring could disrupt shifts already underway in one local authority, they could open up opportunities for practice innovators to take approaches in a more hardline direction in another. These strategic moves are contingent, but the uncertainties already experienced have led to more hardline enforcement practices not only being considered but also becoming established in several authorities. A direction of travel has emerged, and national policy is giving it greater impetus.

Given the known variation in local approaches, we must be cautious in seeking to generalize from these case studies. However, we note that this direction of travel is being given further momentum by recent changes to the surround. The UK government's 2022 White Paper on the future of the PRS noted that 'variation in enforcement levels across England can leave tenants

and landlords frustrated and allow criminal operators to thrive', and it argued for greater consistency in approach.[104] Accordingly, policy proposals included 'bolster[ing] national oversight of local councils' enforcement, including by exploring requirements for councils to report on their housing enforcement activity'.[105] The White Paper has very clearly aligned with hardline enforcement approaches and, if this agenda is implemented, changes to the surround are likely to shift practice further in this direction in the coming years.

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[104] DLUHC, op. cit., n. 56, p. 45.

[105] Id., p. 52.