

LUHC Committee Inquiry: Exempt accommodation – Commonweal Housing evidence submission

Summary

With over 150,000 individuals living in ‘exempt’ supported housing, a number that is rapidly rising, and at a public cost of an estimated £1 billion per annum, the sector is on the verge of crisis.

The respective regulatory and funding frameworks currently in force are overly complicated, are severely outdated and therefore not fit-for-purpose. This has led to a plethora of systemic issues such as gaming of the system; excessive profiteering; the creation of complex financial structures to better bypass regulation; and failures in the planning system which has resulted in large clusters of exempt properties emerging in neighbourhoods across the country.

The lack of robust regulatory frameworks has significant consequences for tenants of exempt accommodation, the majority of whom are often very vulnerable and in need of specialist support. The lack of a clear and robust definition of support to be provided has resulted in a case law expectation of “more than minimal care, support or supervision”. This loose and ambiguous condition that enables providers to access exempt rent levels is a regulatory failure, the cost of which is felt acutely by those that desperately need adequate and appropriate support services.

Poor housing quality and conditions, a failure to offer acceptable levels of support, unsuitable client group matchings within properties, and the inability for local authorities to map new exempt units are all contributing to significant social harms, including violence, poor mental and physical health, and crime, both within the properties and in the wider communities.

The Government must urgently act and seek a series of reforms. These should include:

- The Government must support, enable and fund councils to review their local situation, including where appropriate the development of an Exempt Accommodation Strategy so that local authorities can be actively engaged in oversight of this sector.
- Developing on from the Exempt Accommodation Strategies, the Government should introduce a local authority-managed accreditation system to ensure providers meet the necessary standards of housing quality, support and governance.
- The Government must ensure that the emerging consumer regulation for social housing - as outlined in the social housing white paper - includes specific standards relating to exempt accommodation.
- There must be a comprehensive review and revision of the definition of “more than minimal care, support and supervision” that is a key condition of providing exempt accommodation as set out by the DWP.

- Ultimately, the Government must deliver a greater volume of good quality social housing and appropriately fund local authorities to commission support services based on the needs of the local community.

Commonweal Housing's engagement in exempt accommodation

Commonweal Housing is an independent action-learning charity, working to investigate, pilot and champion housing-based solutions to social injustice. We provide experts and partner organisations with the opportunity to trial and test new approaches designed to enhance housing equality and justice. We also commission research into areas of injustice where housing is part of the problem, but where better quality, appropriate housing may also be the solution.

In 2019, we commissioned Spring Housing Association and the University of Birmingham's Housing and Communities Research Group to investigate injustices in the exempt accommodation sub-sector, to shine a light on national and regional data, and to seek potential for solutions to the injustices. *Exempt from Responsibility?* was a landmark report that catalysed much of the subsequent attention and debate around the extent of the exempt problem.¹ The findings demonstrated an array of structural failures and 'accountability deficits' that have caused much of the issues we are witnessing at present.

Commonweal Housing has no vested interest in what form the sector exists; we are not a landlord, managing agent, investor or provider operating in this sector. Rather, we have pursued a position as a broker of conversations among various stakeholders. Across the last nine months, we have met with local authorities, developers, housing providers of various sizes, housing charities, politicians, civil servants, experts, journalists and writers, the Regulator of Social Housing, institutional investors, and people with lived experience of exempt accommodation. This has been in an attempt to dissect and understand as much of the system as possible. Through these conversations, we have gained hugely valuable insight and perspectives, continuing to share our learning with relevant stakeholders and in the media.

Driven by our growing concerns over the injustices in an ever-expanding sector, and our frustrations over limited political action, we sought opportunities to educate policy-makers and stakeholders in an attempt to reignite the pathway to reform. In September 2020, Commonweal hosted a series of webinars titled *Experts on Exempt: From policy-makers, providers and people with lived experience*.² This five-part series captured a diverse range of opinions and perspectives, and brought to light new and imaginative solutions to a highly complex series of problems. These [recordings and write ups](#) remain

¹ Raisbeck, T. (2019) [Exempt from Responsibility? Ending Social Injustice in Exempt Accommodation Research and Feasibility Report for Commonweal Housing](#).

² Webinar series hosted by Commonweal Housing in September 2020. Full video recordings and writes up can be found at: <https://www.commonwealhousing.org.uk/events/exempt-accommodation-webinars>

publicly available to continue our positive intentions of information sharing and supporting best practice within the sector.

Commonweal Housing has been alerted by the injustices surrounding the sector. We are particularly concerned over the failure to protect and support tens of thousands of vulnerable people and the wider communities they live in. Increasingly, our attention has been directed in the systemic failures that have enabled excessive profiteering and harsh exploitation to flourish while the delivery of good-quality housing and funding for specialist support has massively deteriorated. As a result of these continued conversations and brokering of public forums, we believe we are well-positioned to offer our own views and understanding of the apparent issues within exempt accommodation.

The current context

Despite the extensive social changes that have occurred in the two and a half decades since the 1996 Housing Benefit regulations amendments were enforced, exempt accommodation remains a viable and often valuable means of housing and supporting some of the country's most vulnerable citizens. We note that the model is financially viable, but the value for money is not effective because it is being siphoned off into excessive private profit. Funds should be more appropriately administered and greater transparency and regulation will help to prevent this exploitation.

The vast majority of concerns surrounding exempt accommodation relate to the non-commissioned portion of provision – exempt supported housing that has not been directly commissioned by a local authority. This often creates a gulf in transparency and accountability, with local authorities unable to appropriately track and monitor: i. where new exempt units are being delivered and; ii. the standard of housing and support services. Local authorities therefore lack the ability to clamp down on those entering the market with questionable or unethical intentions and practices, or those failing to deliver appropriate accommodation. However, this should not be taken to mean that non-commissioned services are the problem. There is a significant number of vital non-commissioned services that deliver high-quality accommodation and support, and these should be maintained, promoted and better funded. These are often smaller specialist services, such as domestic abuse refuges, that offer much-needed support to the more marginalised client groups.

Through the research that we commissioned and initial stakeholder engagement, our impression was that it was a minority group of 'bad apple' housing providers who were tarnishing the reputation of both the sector and the 'good' providers, who remained in the majority. However, following extensive conversations spanning across various stakeholders, it has become increasingly aware to us that the measure of apparently 'good' providers is outweighed by the apparently 'bad' providers, insofar as that the majority of providers are either failing to deliver suitable, safe housing, or appropriate care, support or supervision. This is despite providers being able to access as much as £250 of public money per

unit, per week,³ with the 10 largest independent providers in the country collecting more than £180m in Housing Benefit in 2020.⁴ In total, an estimated £1 billion of public money is being spent annually on exempt accommodation.⁵

A contributing factor in the difficulty to ascertain the proportion of ‘good’ versus ‘bad’ providers, and by extension the difficulty in discerning ‘good’ from ‘bad’ is the lack of a recognised standard or benchmark. The current system does not enable local authorities to recognise or promote best practice providers. The associated risk with that is that the worst offending providers, such as those entering the market under clear intentions to profiteer, are often painted with the same brush as the providers offering acceptable or commendable housing and support.

Our 2019 report, *Exempt from Responsibility?* helped to demonstrate that exempt accommodation was an urban issue, and one that impacts all regions of England. The most acutely impacted city is Birmingham, which at the time of publication had over 11,000 exempt accommodation units, almost three times more than Liverpool, the city with the second highest number nationally. In the three years since our report, the number of units has doubled in Birmingham alone. The total figure nationally is now higher than 153,000, with a 62 percent increase between 2016 and 2021.⁶

While the government has acknowledged the sector’s concerns around exempt accommodation, and suggested its intention to legislate, beyond the initial five pilot schemes introduced in 2020, little has been implemented. We note that the pilots are ongoing and there has been a range of positive policy introductions, including the Charter of Rights and Quality Standards for exempt accommodation in Birmingham.⁷ We recognise and appreciate the launch of the Committee’s inquiry into exempt accommodation and urge the government to heed the advice offered by the many who share our views.

Systemic failings and financial consequences

The respective regulatory and funding frameworks currently in force are overly complicated, were introduced in a bygone era, and are severely outdated and therefore not fit-for-purpose. This has led to a plethora of systemic issues such as gaming of the system, excessive profiteering, the creation of complex financial structures to better bypass regulation, and failures in the planning system resulting in large clusters of exempt properties emerging in neighbourhoods across the country.

³ Thea Raisbeck, expert on exempt accommodation, speaking at the [Experts on Exempt webinar series](#) hosted by Commonweal Housing, 2021.

⁴ Wall, T. (2021) The Guardian. [Hostels from hell: the supported housing that blights Birmingham.](#)

⁵ Prospect Housing (2021) [Safe Successful Sustainable: A shared vision for better homes, support and opportunities.](#)

⁶ Crisis (2021). [Crisis Policy Briefing: Tackling problems with non-commissioned exempt housing.](#)

⁷ Birmingham City Council. [New Charter of Rights and Quality Standards for exempt supported housing launched.](#)

Housing Benefit

While Housing Benefit should remain a separate funding stream to Universal Credit, the system does not require any evidence or assurance around the location or condition of the property, the 'legitimacy' and services of a landlord or provider, or any safeguarding and risk assessments. Evidently, this has created a significant gulf in local authorities' ability to monitor the delivery, management or location of new non-commissioned exempt units. This grossly exacerbates the propensity of ill-intentioned investors, managing agents, landlords or providers to enter the market purely for profit-making purposes.

Further, with no oversight into the locality of properties, new units can be delivered in large clusters, which is inappropriate for both individual clients and the wider community, and can encourage anti-social behaviour and crime, and fail to protect vulnerable people living in this type of accommodation⁸. Similarly, without quality assurances, housing conditions can be well below what should be deemed acceptable, and in many cases, conditions are dangerous, cramped and regressive to clients' support, recovery or wellbeing.⁹

In addition, the subsidy rules of Housing Benefit regulation can disincentivise local authorities from challenging or scrutinising exempt claims from Registered Providers.¹⁰ This is because 'exempt' claims under Registered Providers of Social Housing allow the local authority, in most cases, to claim back 100 percent of the benefit they pay out; whereas with other charities or non-profit organisations, the local authority will have to pay between 40-60 percent of the rental costs themselves, if they are unable to restrict the rent level to that set out by a Rent Officer Determination.¹¹

The system too often incentivises providers to keep tenants on who would be suitable to move-on due to cost efficiencies for providers. It also incentivises tenants to remain in exempt accommodation so as to prevent them paying rent into the private rented system. Similarly, high, 'flat rate', exempt rents act as a barrier, or disincentive, to residents gaining employment, and can preclude those already in employment from being able to access the sector.

Manipulation of regulatory frameworks

There are a number of challenges around definitions within the exempt accommodation regulatory frameworks that are too easily manipulated.

⁸ Raisbeck, T. (2019) [Exempt from Responsibility? Ending Social Injustice in Exempt Accommodation Research and Feasibility Report for Commonwealth Housing.](#)

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

The first and perhaps most relevant is the Department for Work and Pensions' (DWP) condition that enables providers to access exempt rent levels so long as they offer "more than minimal care, support or supervision". The lack of clarity and comprehension on this key condition enables providers to offer very limited provision of support despite accessing high rental incomes from the DWP. This is further marred, as explained above, by the lack of oversight that local authorities can provide.

Secondly the legal definition of social housing is too ambiguous. Social housing is deemed to be low-cost rental accommodation and low-cost home ownership accommodation as defined by sections 68-70 of the Housing and Regeneration Act 2008, insofar as it is offered below market rates. Exempt accommodation properties are excluded due to high rent levels being accessed. This means they fall outside the regulatory scope of the Regulator for Social Housing (RSH). In addition, the RSH has a different oversight and regulatory regime for Registered Providers with less than 1,000 social housing homes. This has resulted in some very large operators managing many thousands of exempt homes not facing the full scrutiny and oversight of the regulator that their Registered Provider status would normally be expected to carry with it. This is a significant issue we feel should be addressed.

The weak regulatory structure in exempt accommodation has created loopholes in the system. Exempt accommodation can be delivered by Registered Providers, charities, Community Interest Companies (CICs), and 'for-profit' landlords. Many of these providers fall under different regulatory oversight. The RSH is the predominant administrator of regulation within the exempt system, however, the Charity Commission provides oversight for registered charities, the Regulator of Community Interest Companies for CICs, while the Financial Conduct Authority also provides additional oversight. Each regulator varies in its size, operation, and crucially, its understanding of exempt accommodation. This has, according to anecdotal evidence we have received, led to providers amending their structures and provider statuses to better bypass regulation or minimise scrutiny, while reaping large returns.

Similarly, loopholes in regulation have engendered complex financial and organisational structures, utilised by investors looking to maximise returns. Most commonly, this is in the form of an umbrella structure, with housing provided by lease-based registered providers behind one or more for-profit organisations, such as private landlords, investors or managing agents.

Social harms and impact on vulnerable individuals

While much of the systemic issues surrounding exempt accommodation concern the exploitation and profiteering that is occurring in the sector, there are a number of severe consequences of this that harm very vulnerable tenants.

As determined in the prior section, the “more than minimal care, support or supervision” condition is a regulatory failure, the cost of which is felt by those that desperately need adequate and appropriate support services. These individuals include:

- Women who have experienced trauma, exploitation, violence and abuse
- Refugee and migrant groups, often directly after leaving asylum accommodation
- Those experiencing substance or addiction issues
- Individuals with mental health problems in varying degrees of severity
- Those rough sleeping immediately prior to access
- Care leavers
- People in contact with the criminal justice system: both newly released from prison and those with offending histories
- Individuals leaving a range of other institutional settings such as hospitals, care homes, and addiction treatment centres
- Other individuals who have a housing need and are financially, systemically or socially excluded from accessing other forms of more suitable - or more desired - housing provision

Without clear regulatory guidance and a lack of agency oversight, providers are able to lawfully offer next-to-no real support to their tenants. Estimates from experts in the field suggest that the average amount of support provided by a support worker is one hour a week.¹² The support services are a critical condition upon which providers can access the exempt provision of funding. It is also the most crucial element to tenants who rely and expect this service when entering the tenancy. For the most marginalised and vulnerable residents, proper support services are a lifeline.

It is difficult to determine the quality of exempt accommodation provision on a national scale. This is in large due to the fact that neither local authorities nor the RSH have adequate powers to oversee and monitor delivery or quality of exempt accommodation. However, a host of reports, including our own, suggest that there are crucial social and human harms that are a consequence of inadequate housing.^{13 14} While there are many providers who provide appropriate and commendable standards of accommodation, there are simply many that do not.

Inappropriate or poorly considered placements and ‘matching’ of individuals into small, shared, lightly monitored units of exempt accommodation can pose a risk of harm to both residents and staff. ‘Harm’ can be defined as both ‘quantifiable’ and interpersonal, such as violence, injury, abuse or loss of life,

¹² Thea Raisbeck, expert on exempt accommodation, speaking at the [Experts on Exempt webinar series](#) hosted by Commonweal Housing, 2021.

¹³ Raisbeck, T. (2019) [Exempt from Responsibility? Ending Social Injustice in Exempt Accommodation Research and Feasibility Report for Commonweal Housing.](#)

¹⁴ Wall, T. (2021) The Guardian. [Hostels from hell: the supported housing that blights Birmingham](#) .

and more pernicious, 'unquantifiable' harms such as poor mental health and wellbeing; feelings of mental and physical insecurity; isolation, fear and worry; and acts of intimidation or coercion¹⁵. Due to the untracked, unmonitored and unrecorded nature of the exempt sector, it is impossible to quantify how many individuals are at risk, or affected. However, extensive research and discussion within the sector suggests this is a prevalent concern. Reports of damp, dangerous and dirty conditions are also common. Rodent infestations, leaks and building quality issues, and crime and violence occurring inside the properties are examples of this.

Safeguarding, risk assessment, and appropriate 'matching' of tenants are all consistently posited as important considerations that if not met can lead to significant issues for tenants and the wider community. Despite this, there is little in-depth research into referral and access procedures and mechanisms for shared exempt accommodation, particularly for more vulnerable groups and those in accommodation schemes at the 'lower end' of the market or in more hidden, unregulated, and temporary housing.

The lack of transparency, information and mapping of the sector gives clients little-to-no choice and control over their housing placements and they are often forced to rely on the limited information referring agencies have to hand. The majority of providers do not have websites and do not offer information packs or literature to referring agents or prospective clients. Much of the information on the sector is by word of mouth; with sourcing, referrals and communication largely conducted via telephone and email correspondence.¹⁶ This lack of choice and input extends to the mix of residents within a household, with clients often feeling they had no control or say over who moved in, increasing feelings of insecurity and fear, and those with highest presenting 'risk factors' are often given the least choice. This can include housing diverse and unsuitable client groups together, such as domestic abuse survivors with those who have previously committed violent crimes. In addition, the lack of centralised planning and mapping has led to tenants being moved to unfamiliar cities, often losing vital support systems from friends, family and their communities.

Under the Housing Act 2004, Schedule 14, Houses in Multiple Occupation (HMOs) operated by Registered Providers are exempt from statutory licensing conditions. HMOs under Registered Providers are also exempt from the Management of Houses of Multiple Occupation (England) Regulations 2006, which governs the way such premises are managed. Further, Permitted Development Rights have facilitated many providers to convert small- or medium-sized family housing into large scale HMOs. We have heard evidence of 3-bedroom properties being converted into 15+

¹⁵ Raisbeck, T. (2019) [Exempt from Responsibility? Ending Social Injustice in Exempt Accommodation Research and Feasibility Report for Commonweal Housing.](#)

¹⁶ Ibid.

bedroom HMOs, leaving tenants extremely cramped and creating social strains both within the residency and the neighbourhood.

Where providers are offering good quality accommodation and support services, there remain issues around the level of support they can provide to 'high need' individuals. There was an awareness amongst housing support staff that sometimes a resident is too 'high need' for their service but they were unable to find more appropriate support or accommodation. This is due to either a lack of provision, a lack of knowledge and available information on alternative exempt provision, or increasingly high statutory thresholds, especially within social care. These providers felt forced to cope 'the best they could' with such residents, rather than see them 'out on the street'. This can lead to a situation within which staff members, and organisations, are carrying out more intensive work than they are remunerated for, through salaries or through exempt rental costs, potentially putting individuals at risk and increasing the associated risk of staff 'burnout'.¹⁷

A case for reform, not abolition: recommendations

While the evidence above demonstrates significant flaws within the exempt accommodation system, it retains real purpose for housing some of the country's most vulnerable individuals. Thus, exempt accommodation must not be abolished and instead we urge the Committee to consider a series of comprehensive reforms, as outlined below:

Government must support, enable and fund councils to review their local situation, including where appropriate the development of an Exempt Accommodation Strategy so that local authorities can be actively engaged in oversight of this sector.

Developing on from the Exempt Accommodation Strategies, the Government should introduce a local authority-managed accreditation system to ensure providers meet the necessary standards of housing quality, support and governance. This would include a criterion for existing and prospective providers to meet prior to developing or opening new units. There is a significant need to set benchmarks around housing quality and support service performances, and to nationally raise the bar of expectations, which at present is too low. An accreditation system should be ongoing, and local authorities provided the powers to regularly inspect and monitor properties. Those that fail to meet the new standards should be prevented from accessing exempt funding provisions.

The Government must ensure that the emerging consumer regulation for social housing - as outlined in the social housing white paper - includes specific standards relating to exempt accommodation. This

¹⁷ Raisbeck, T. (2019) [*Exempt from Responsibility? Ending Social Injustice in Exempt Accommodation Research and Feasibility Report for Commonwealth Housing.*](#)

will help raise the expectations over quality of standards that permit landlords to receive additional funds for delivery, and to better protect vulnerable residents.

There must be a comprehensive review and revision of the definition of “more than minimal care, support and supervision” that is a key condition of providing exempt accommodation as set out by the DWP. This is a major recommendation, and without reform, the condition will continue to fail vulnerable people leaving them without the necessary care and support they need. Measures should be implemented immediately to ensure that tenants receive the necessary and expected quality of care and support. Indeed, additional funding should be generated in order to commission providers with a proven track record of delivering high quality accommodation and services.

There should be a review of the legal definition of social housing which has been too easily manipulated by providers, investors, landlords and agents. One potential route for government to consider is constituting exempt accommodation exclusively as social housing, thus requiring Registered Provider status and ensuring that the RSH has complete oversight.

All loopholes that have granted housing providers the opportunity to exploit the system must be closed. This includes the capacity for RPs to act as umbrella organisations and to prevent providers from switching from RPs to CICs or other related statuses.

Additionally, the RSH must be given extended and strengthened powers to proactively monitor, investigate and act in areas where RPs are involved.

A Charter of Rights should be rolled out nationally, either by subscription or prescription. If implemented by subscription, tenants must be made aware of the providers who have signed up to a Charter of Rights and should be advised that these are the more trusted, better quality providers.

Registered Providers should also follow the HMO licensing system and local authorities should have greater capacity to monitor and map where new units are emerging.

The primary factor in the crisis in exempt accommodation has been the failure to deliver appropriate levels and/or an appropriate quality of social housing in the UK over the past few decades. This has occurred in unison with a significant drop in support funding for vulnerable people, leaving far too many relying on an underregulated and exploitative market. Ultimately, the Government must deliver a greater volume of good quality social housing and appropriately fund local authorities to commission support services based on the needs of the local community.