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**Private rented sector
licensing consultation
City of York Council**

Final report

May 2022



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Project details

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This project has been delivered to ISO 9001:2015, 20252:2019 and 27001:2013 standards.



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Executive summary

Access to decent affordable housing is essential to support good health and wellbeing and a good quality of life. Overall, housing standards in York are high – the physical condition of the city’s housing stock is generally good across all sectors and energy efficiency levels are above the national average.

However, this overall positive picture masks disparities both between and within sectors that give rise to some concern. Overall you find some of the worst conditions within the private rented sector (PRS), which includes a significant proportion of houses in multiple occupation (HMOs).

Alongside other measures, local authorities are permitted under the Housing Act 2004 to introduce additional licensing or HMOs, providing that a public consultation of those affected or potentially affected takes place. The City of York Council carried out two consultations, in spring/summer 2021 and autumn/winter 2021. This report summaries all the evidence collected across the two consultations, with analysis and reporting done by M-E-L Research on behalf of the City of York Council (the Council).

The table below summarises the key findings from the surveys for the two consultations.

Table 1: Summary responses on proposal (overall/by respondent type)

| | Overall | Residents | Private tenants | Landlord / agents | Total responses |
|--|---------|---------------|-----------------|-------------------|-----------------|
| Agree that private landlords maintain their properties to a good standard | 35% | 18% | 15% | 78% | 469 |
| Agree that private landlords act responsibly in letting, managing and maintaining their properties | 34% | 13% | 15% | 81% | 470 |
| Agree that a significant proportion of HMOs in the eight wards are being managed in a way that does or might create problems for people living in them | 48% | 78% | 75% | 9% | 252 |
| Agree that a significant proportion of HMOs in the eight wards are being managed in a way that does or might create problems for members of the public | 35% | 77% | 41% | 8% | 252 |
| Agree with the proposal to introduce a targeted Additional Licensing Scheme for HMOs in York | 69/54% | 84/84% | 91/79% | 29/20% | 476/183 |
| Agree with the proposal to designate those wards with the highest number and poorest conditions under the Additional Licensing scheme | 68% | 79% | 89% | 31% | 475 |
| Agree with the proposal to include the eight wards under the proposed Additional Licensing scheme | 53% | 84% | 81% | 19% | 178 |
| Agree with the HMO standards and conditions contained in our Implementation Policy for HMOs | 76/51% | 88/79% | 88/76% | 51/27% | 471/154 |
| Agree with the fee structure in the Additional Licensing Scheme | 30% | 55% | 44% | 11% | 154 |

The written submissions prompted the important role of the private rented sector.

The YRLA disagreed with the basis for the proposal in the first consultation, particularly around evidence for the need for a scheme. Similar views were voiced elsewhere from private landlords, whereas Safeagent questioned the link between anti-social behaviour (ASB) and the PRS. Some felt that ASB is often done to tenant behaviour and should not be pinned on landlords. In contrast, a representative body for university students strongly welcomed the proposals, as did some private landlords.

Private landlords also wanted greater resource to be put into enforcement. Some in the two public meetings wanted similar action, though a question was raised about the Council's capacity to deliver this enforcement.

Some respondents wanted greater information about new changes and regulations or the impact of the licensing scheme.

Introduction

Access to decent affordable housing is essential to support good health and wellbeing and a good quality of life. Overall, housing standards in York are high – the physical condition of the city’s housing stock is generally good across all sectors and energy efficiency levels are above the national average.

However, this overall positive picture masks disparities both between and within sectors that give rise to some concern. Overall you find some of the worst conditions within the private rented sector (PRS), which includes a significant proportion of houses in multiple occupation (HMOs).

Local authorities have an obligation under the Housing Act 2004 to keep housing conditions in their area under review across all tenures, to enforce certain statutory minimum standards in housing. An assessment of poor housing conditions completed in 2015 underpins Council policies and strategies towards improving housing standards. The same Housing Act 2004 provides mandatory and non-mandatory powers that councils can use to improve standards.

In line with the City of York Council’s strategic ambitions to improve people’s quality of life, which is focussed on using what tools and resources it has to tackle poor housing standards in York. To this end, the Council has put forward a case for introducing additional licensing of HMOs in the PRS, in those eight wards where some of the worst housing standards are found.

As part of this, the Council have run two public consultations over the proposals, providing all those affected or potentially affected to have their say. The consultation activities are outlined below.

This report summaries all the evidence collected across the two consultations, with analysis and reporting done by M·E·L Research on behalf of the City of York Council. All data was redacted of personal and identifiable data, fully compliant with data protection rules.

Consultation activities

Between 16 April and 27 June 2021, the Council carried out a preliminary statutory consultation on a proposed additional HMO licensing scheme with key stakeholders. It was open to all residents in the city. The authority decided that a second, more detailed, consultation was necessary allowing respondents to consider the more detailed proposals that have now been formulated, offering those people likely to be affected by the proposals a further opportunity to make comments. This took place 18 October and 31 December 2021, during the Covid pandemic, so in-person activities were limited. Online surveys and written responses were provided for both consultations.

Here is a summary of the communication for the two consultations:

General promotion

- Press releases
- Staff newsletter General
- Staff newsletter Housing
- Staff Teams
- Facebook
- Other social media - Twitter
- Residents fortnightly update
- Business fortnightly update
- Members Briefing
- Councillors

Landlords /Agents

- Specific communication to York Residential Landlord Association
- Specific communication to National Residential Landlord Association including attendance by officers to a NRLA virtual meeting on 20 May 2021 attended by six plus the two representatives of the NRLA
- All mandatory HMO licensed landlords
- All agents who have given the Council permission to contact them
- Two virtual sessions for Landlords 'Lets talk Housing' on the 17 December 2021.

Stakeholders

- Universities
- Student unions
- Citizen Advice
- North Yorkshire Fire and Rescue
- Police
- Advice York Partnership
- York CVS
- Health trust
- Health CCG
- 10 June 2021 – focus group arranged by the Student Union with 15 attendees
- Two student housing fairs:
 - York University housing fair on 17 November 2021
 - York St Johns University landlord fair on 26 November 2021

Through internal partners

- Homelessness forum
- Planning
- Housing Options
- Parking

Wider engagement

- List of people asked to be followed up from first consultation
- Information added to officers' electronic signature on their emails
- Support to complete the online survey was promoted through the libraries

Reporting conventions

The survey results are shown overall with a breakdown by respondent type and ward where base sizes are large enough.

Owing to the rounding of numbers, percentages displayed on charts in the report may not always add up to 100% and may differ slightly when compared with the text. The figures provided in the text should always be used. For some questions, respondents could give more than one response (multiple choice). For these questions, the percentage for each response is calculated as a percentage of the total number of respondents and therefore percentages do not usually add up to 100%.

Survey results

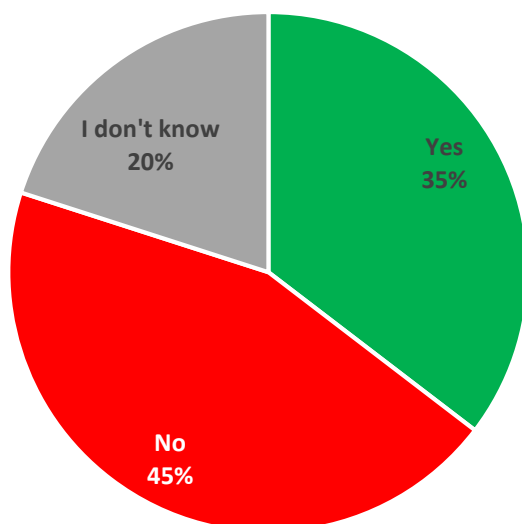
In total, 1032 responses were received to the consultations. The first consultation on additional licensing proposals concluded in June 2021. 822 responses were received, including 228 (28%) who identified as a private tenant (32% where the respondent type is known) and 238 as a private landlord, letting agent or manager (33%). The percentages shown below exclude non-answering respondents. 374 responses were received in the second consultation, during autumn/winter 2021, with a greater proportion of private tenants (41%), though similar for private landlord, letting agent or manager (32%). The profile of respondents is shown in Appendix 1. Below is a summary of these responses.

Extent of concern with property conditions

Property standards

Respondents were asked whether they think private landlords in York maintain properties to a good standard. Respondents were more likely to say No (45%) to this than Yes (35%), with a further 20% answering “Don’t know”.

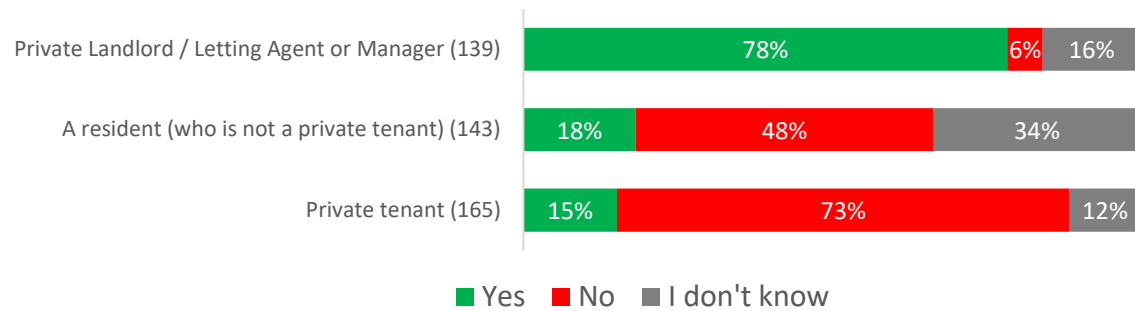
Figure 1.: In your opinion/experience do you think private landlords in York maintain their properties to a good standard? (n = 469, first consultation)



When looking at the data by respondent type, there is vast differentiation in the results. Private landlords / letting agent or managers were significantly more likely (78%) than either private tenants (15%) or residents who are not private tenants (18%) to answer “Yes” in response to the question of whether private landlords in York maintain their properties to a good standard. Meanwhile, while

almost three quarters (73%) of private tenants stated that they don't believe private landlords in York maintain their properties to a good standard, significantly fewer (6%) private landlords / letting agents or managers express this view.

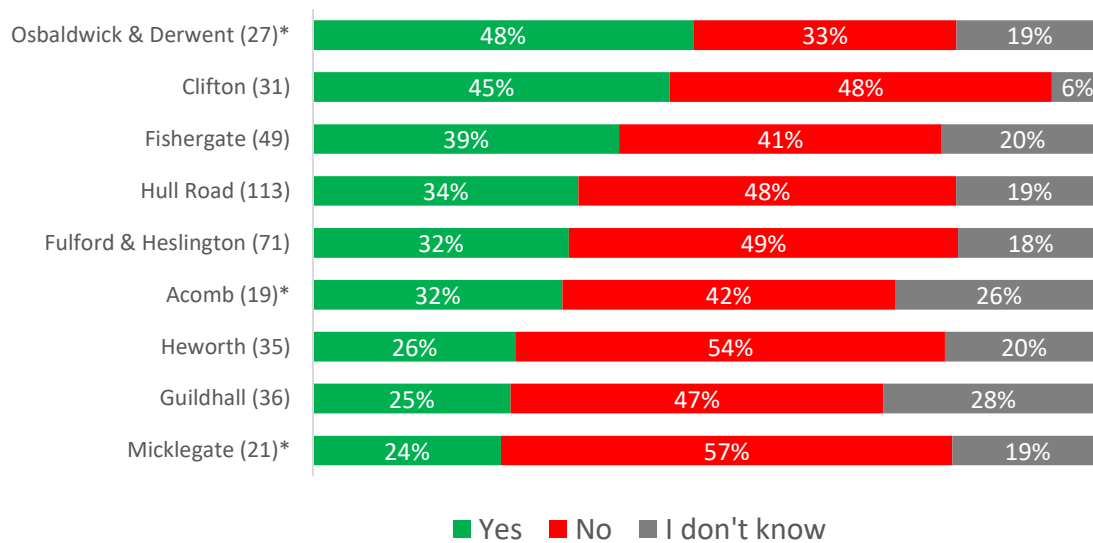
Figure 2.: In your opinion/experience do you think private landlords in York maintain their properties to a good standard? – by respondent type (base sizes in chart, first consultation)



Advice or community organisations (5), business owners or managers (5) and other (12) excluded due to low base sizes

Opinions about whether private landlords maintain their properties to a good standard also varied by ward, with respondents from Osbaldwick & Derwent (48%) and Clifton (45%) most likely to believe that this is the case. However it is notable that in Clifton, approaching half (48%) answered “no” in response to this, with only 6% providing the answer “Don’t know”. Meanwhile, respondents from Micklegate (25%), Guildhall (36%) and Heworth (26%) were least likely to state that private landlords maintain their properties to a good standard. It should be noted that the data from Osbaldwick & Derwent and Micklegate should only be taken as indicative however, due to the low base size of responses from these wards (27 and 21 respectively).

Figure 3.: In your opinion/experience do you think private landlords in York maintain their properties to a good standard? – by ward (base sizes in chart, first consultation)



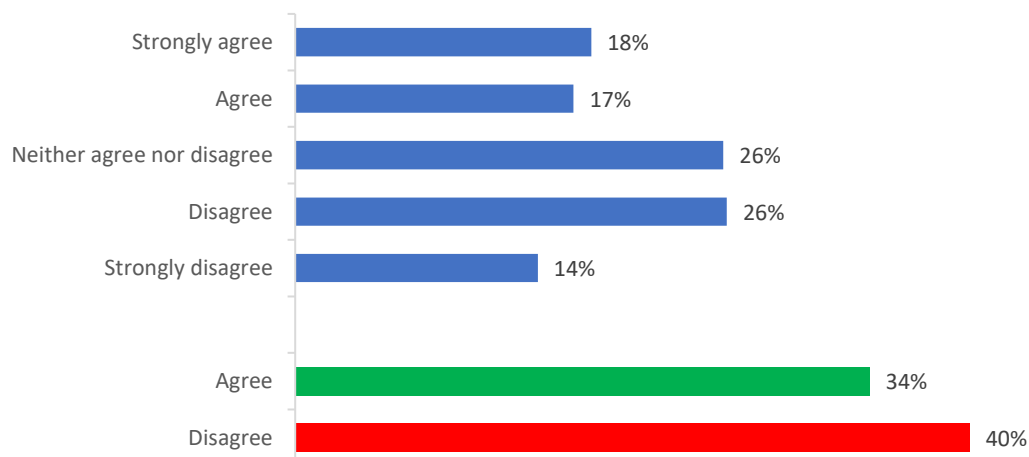
Caution advised in analysis of data from these groups due to low base size

*Wards with a base size of 10 or lower have been excluded from the chart due to very low base sizes

Responsible landlords

Further to this, when asked whether they agreed or disagreed that private landlords act responsibly in letting, managing and maintaining their properties, again more disagreed that this was the case (40%) than agreed (34%).

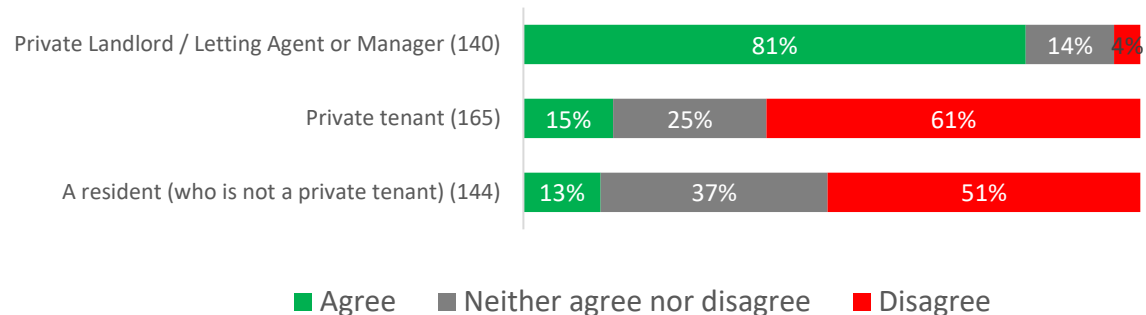
Figure 4.: To what extent do you agree or disagree that private landlords act responsibly in letting, managing and maintaining their properties? (n =470, first consultation)



By respondent type, agreement with this statement is significantly higher among private landlords / letting agents or managers (81%) than it is among private tenants (16%) or residents who aren't private tenants (13%). Meanwhile private tenants (61%) and residents who aren't private tenants (51%) are

significantly more likely to disagree that private landlords act responsibly in letting, managing and maintaining their properties.

Figure 5.: To what extent do you agree or disagree that private landlords act responsibly in letting, managing and maintaining their properties? – by respondent type (base sizes in chart, first consultation)

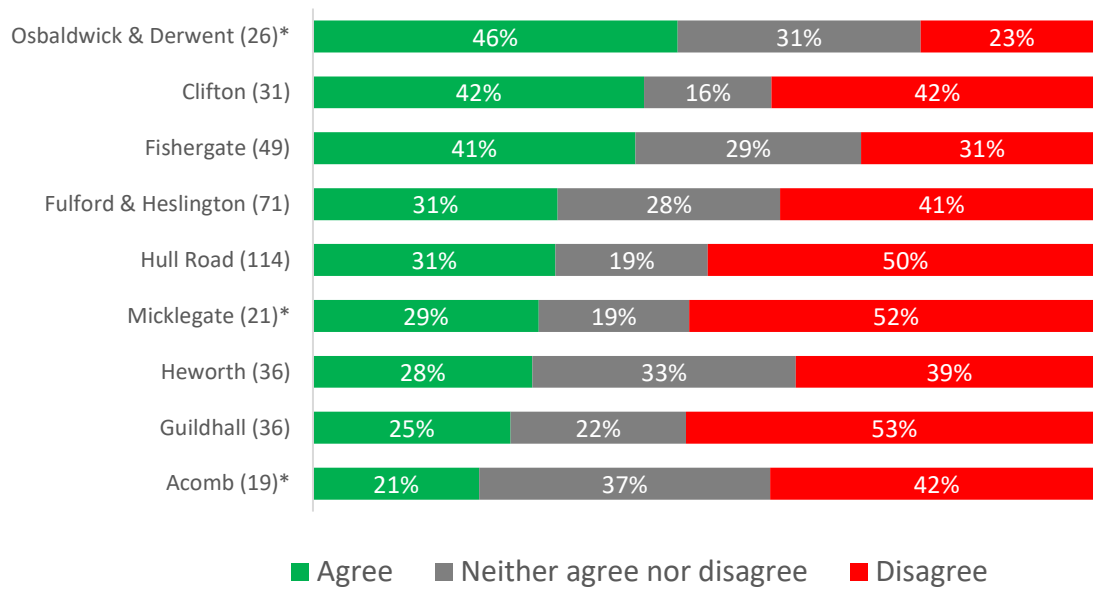


Advice or community organisations (2), business owners or managers (5) and other (12) excluded due to low base sizes

Respondents from Osbaldwick & Derwent (46%), Clifton (42%) and Fishergate (41%) were most likely to agree that private landlords act responsibly in letting, managing and maintaining their properties. Disagreement with this statement was highest in Guildhall (53%), Micklegate (52%) and Hull Road (50%). While those in Acomb and Heworth were among the least likely to agree that private landlords act responsibly (21% and 28% respectively), they had a high proportion of respondents who indicated that they neither agree nor disagree (37% and 33% respectively), meaning that although there was a lower than average level of agreement, the proportion who disagreed was roughly in line with the sample average (Acomb: 42%, Heworth: 39%, total sample average: 40%).

It should be noted that responses from Osbaldwick & Derwent, Micklegate and Acomb should be taken only as indicative, due to the low base size of these groups.

Figure 6.: 'To what extent do you agree or disagree that private landlords act responsibly in letting, managing and maintaining their properties? – by ward (base sizes in chart, first consultation)



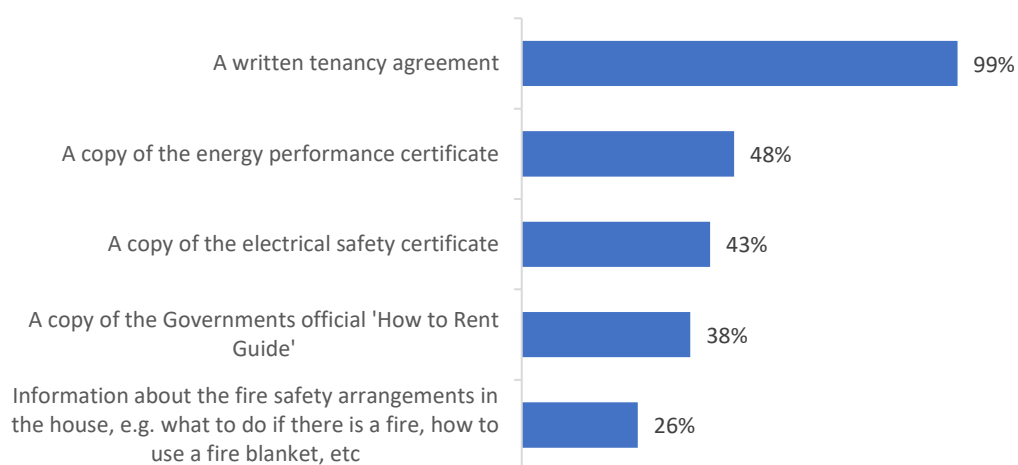
*Caution advised in analysis of data from these groups due to low base size
 Wards with a base size of 10 or lower have been excluded from the chart due to very low base sizes

Landlord practices

Paperwork/certification provision

While almost all (99%) tenants stated they were provided with a written tenancy agreement at the start of their tenancy, under half were provided with a copy of the energy performance certificate (48%), electrical safety certificate (43%), the Governments' official 'How to Rent Guide' (38%) and information about the fire safety arrangements in the house (26%).

Figure 7.: If you're a private tenant, did your landlord/agent provide you with the following at the start of your tenancy (select all that apply)? (n=201, first consultation)

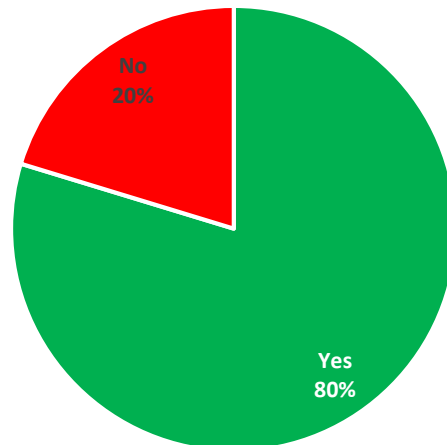


Across the wards, provision of a written tenancy agreement was consistently high. Tenants were less likely to report that they received a copy of the electrical safety certificate in Fulford & Heslington (36%) and Hull Road (41%) than in Heworth (60%), Fishergate (57%) and Guildhall (50%). A similar trend can be seen when looking at provision of the EPC (Fulford and Heslington: 41%, Hull Road: 40% cf. Heworth: 73%, Fishergate: 52% and Guildhall: 63%) and a copy of the Governments official 'How to Rent Guide' (Fulford and Heslington: 27%, Hull Road 35% cf. Heworth: 60%, Fishergate: 48%, Guildhall: 44%). However base sizes for Heworth (15), Fishergate (21) and Guildhall (16) are lower than recommended for analysis, so these differences should only be taken as indicative.

Name of landlord

One in five (20%) private tenants don't know the name of their landlord. This figure is higher in the ward of Heworth (40%), however as the base size in this group is low (15), this result is only indicative.

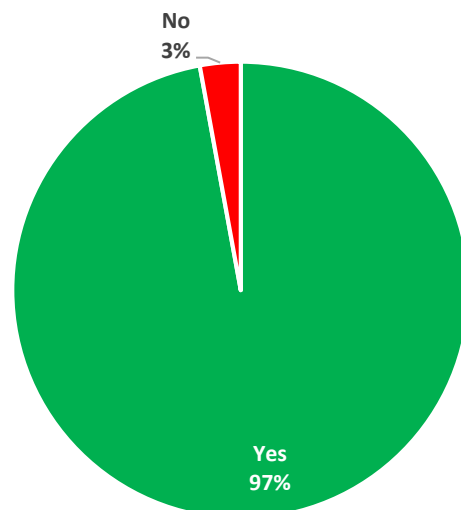
Figure 8.: If you're a private tenant, do you know the name of your landlord (not your letting agent)? (n=207, first consultation)



Deposit taken

Most landlords (97%) did take a deposit from private tenants. This figure was slightly lower in Guildhall (93%) and Heworth (93%), however with these groups only containing 15 respondents each at this question, these results should be treated with caution.

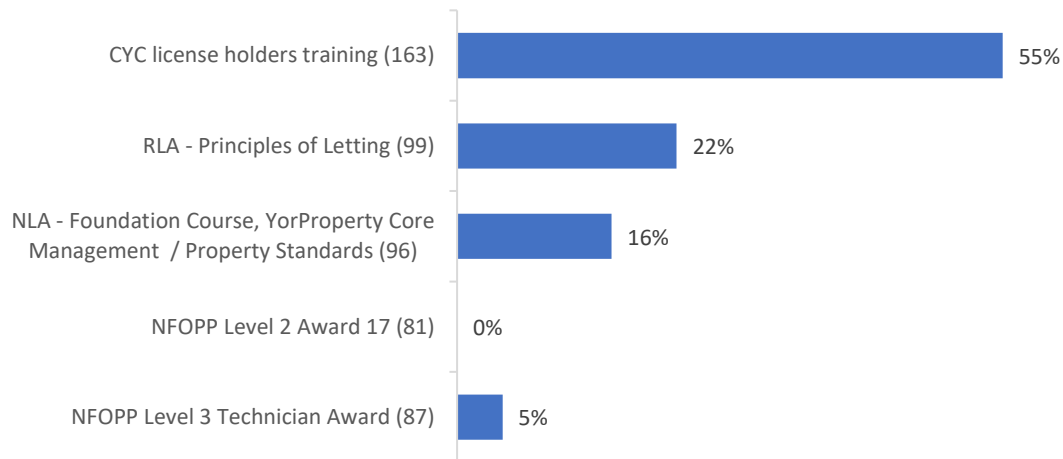
Figure 9.: Did the landlord take a deposit? (n=208, first consultation)



Landlord training

Just over half of landlords (55%) self report having attended CYC licence holders training in the last 5 years, with a lower proportion reporting attending RLA – Principles of Letting (22%), NLA – Foundation Course, YorProperty Core Management/Property Standards (16%), NFOPP Level 3 Technician Award (5%) and NFOPP Level 2 Award 17 (0%) training in this time.

Figure 10.: Have you attended one of the recognised training qualifications in the last 5 years? (n=170, first consultation)

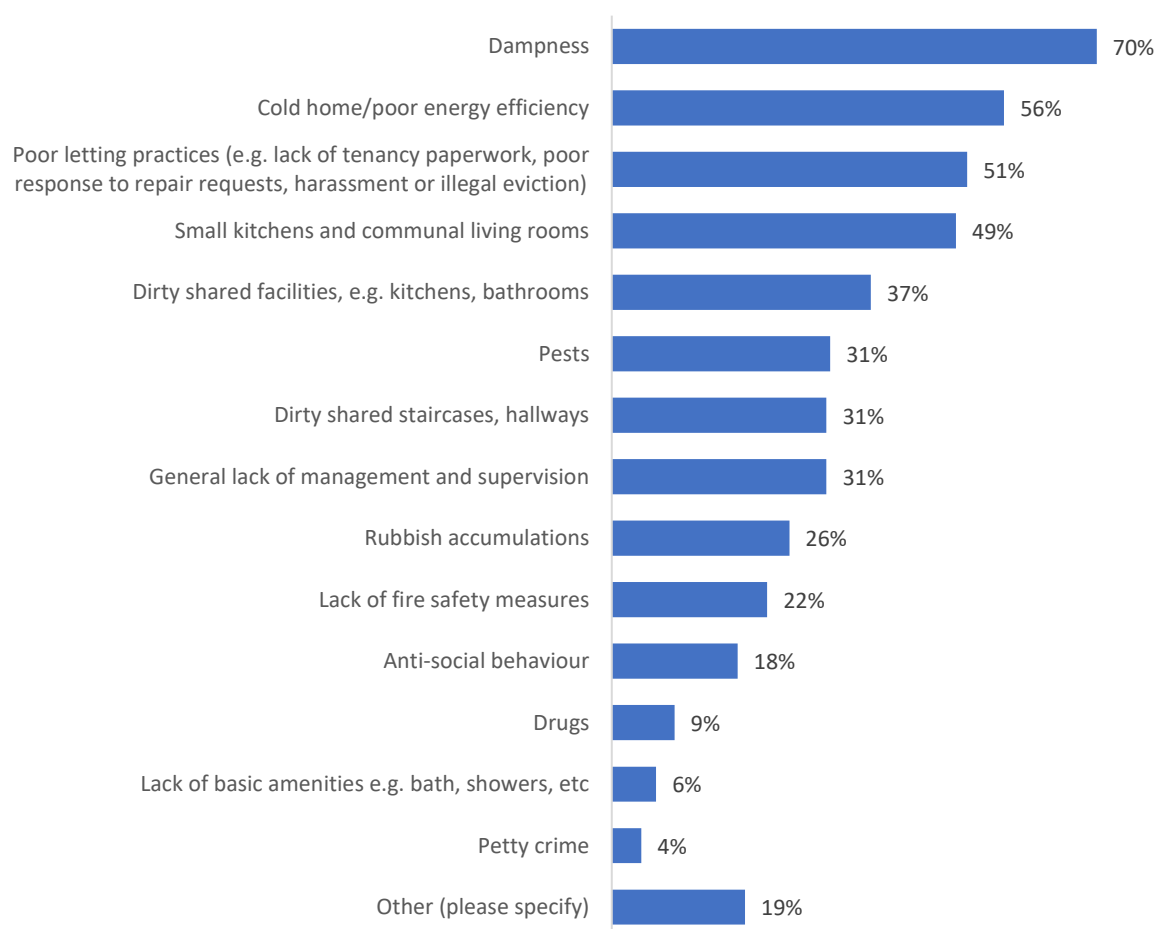


Issues with HMOs

Issues for tenants

There are a number of issues tenants report experiencing in Houses in Multiple Occupation (HMOs) in York, most commonly dampness (70%), cold homes/poor energy efficiency (56%) and poor letting practices such as a lack of tenancy paperwork and poor response times (51%).

Figure 11.: Which of the following issues, if any, have you experienced in House in Multiple Occupation (HMOs) in York? (n=188, first consultation)

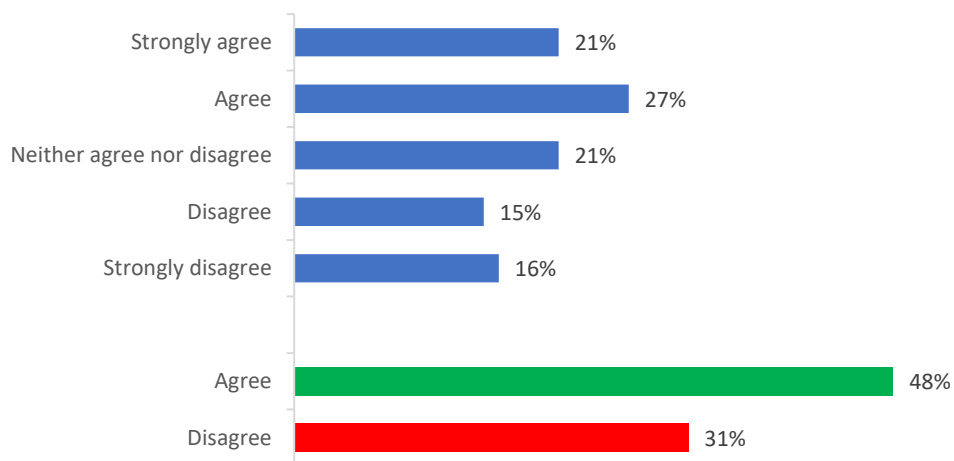


Dampness was a commonly reported problem in all wards, although it was less likely to be reported in Hull Road (64%) and Fulford and Heslington (68%) than Fishergate (86%). However it should be noted that the base size at this question in Fishergate was only 21, which is lower than recommended for analysis, so this figure should be treated with caution. Tenants in Fulford and Heslington were also notably less likely to report cold homes/poor energy efficiency (43%) than other wards. In Hull Road, pests were the third most common issue faced (47%), making them a larger issue here than in many other wards.

Management of HMOs in named wards

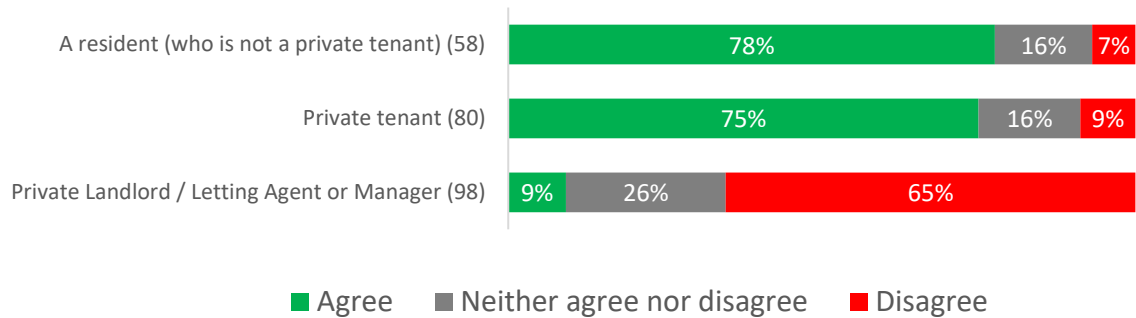
Respondents in the second consultation were more likely to agree (48%) than disagree (31%) that a significant portion of HMOs in the eight named wards are being managed in a way that does or might create problems for people living in them.

Figure 12.: To what extent do you agree or disagree that a significant proportion of HMOs in the eight wards are being managed in a way that does or might create problems for people living in them? (n=252, second consultation)



Agreement with this statement was however significantly lower among private landlords / letting agents or managers (9%) than among residents who are not private tenants (78%) and private tenants (75%). Approaching two thirds (65%) of private landlords / letting agents or managers disagree that a significant proportion of HMOs in the named wards are being managed in a way that does or might cause problems for people living in them. It is notable however that when looking at landlords or agents who own or manage HMOs in the city, those who own or manage 3 or more HMOs are more likely to disagree with this statement (81%) than those who only manage one or two (58%).

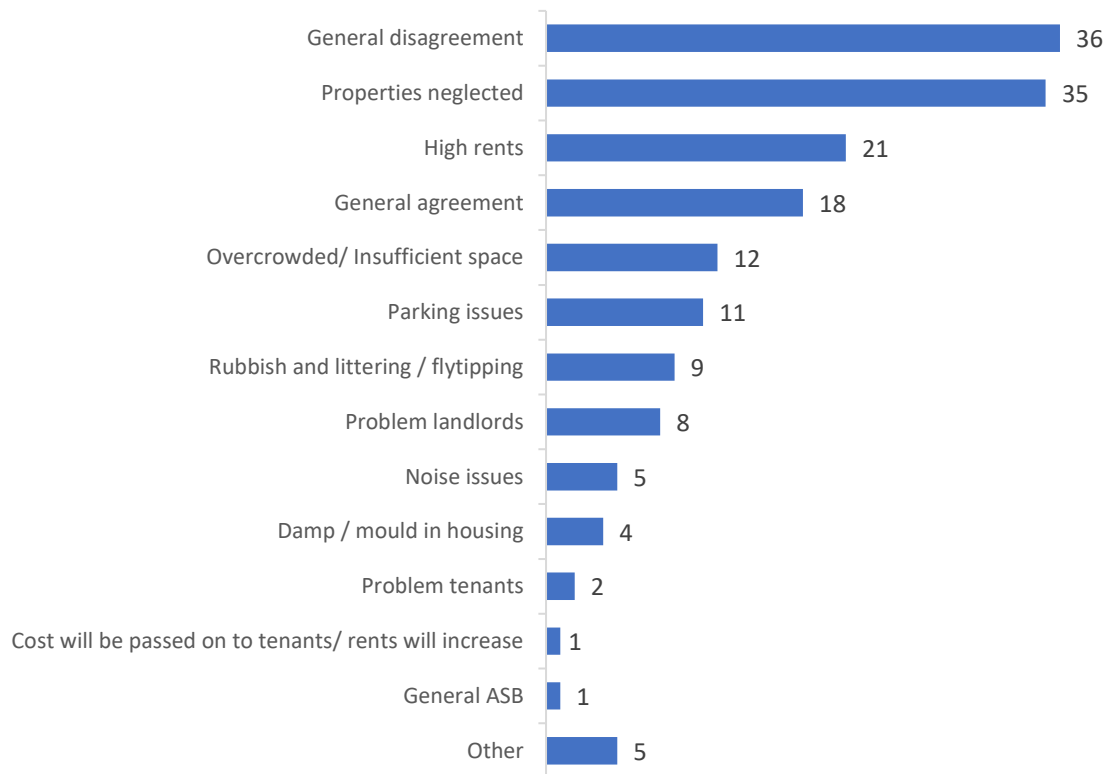
Figure 13.: To what extent do you agree or disagree that a significant proportion of HMOs in the eight wards are being managed in a way that does or might create problems for people living in them?– by respondent type (base sizes in chart, second consultation)



Advice or community organisations (2), business owners or managers (3) and other (11) excluded due to low base sizes

Respondents to the consultation were then asked to state a reason for their agreement or disagreement with this scheme. The answers have been coded into themes, displayed in figure 14. 144 respondents elaborated on their answers at this question, although 22 provided answers which were invalid. The most common theme (36 responses) is of general disagreement, with respondents expressing a good impression of how these properties are managed: *“I’m a student and have had two great experiences in student HMOs as have my friends”, “My properties are well kept and so are those of my managing agent who work to very strict guidelines”*. However, the second most common theme at this question is that properties are neglected, with 35 expressing views in line with this: *“All student accommodation I know has extensive damp and mould issues which landlords refuse to address.”, “The state of the houses outside looks very neglected. Rubbish accumulation, fly tipping in alleyways, vermin present. No outside space, because 2 up 2 down Victorian terrace houses converted to accommodate up to seven residents. Very cramped. Parking already horrendous without multiple cars per house.”*

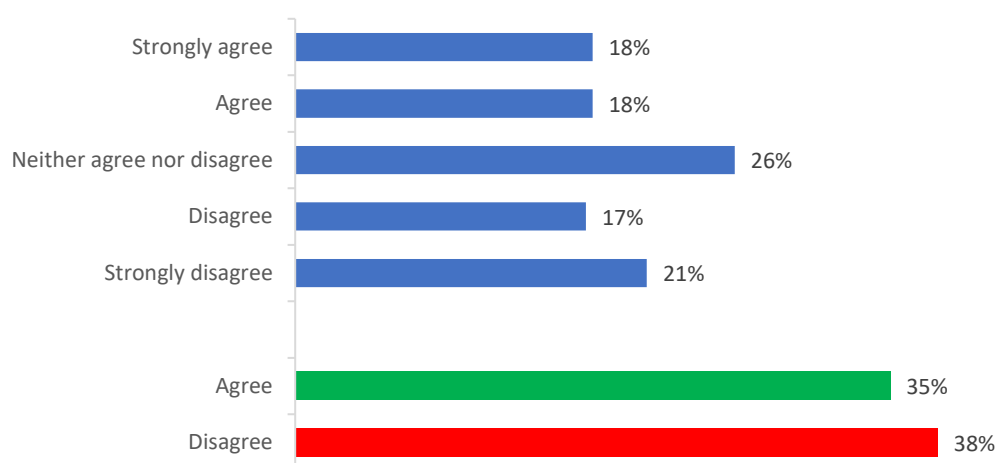
Figure 14.: Please state a reason for your response below: – by respondent type (n = 144, second consultation)



Impact on the public

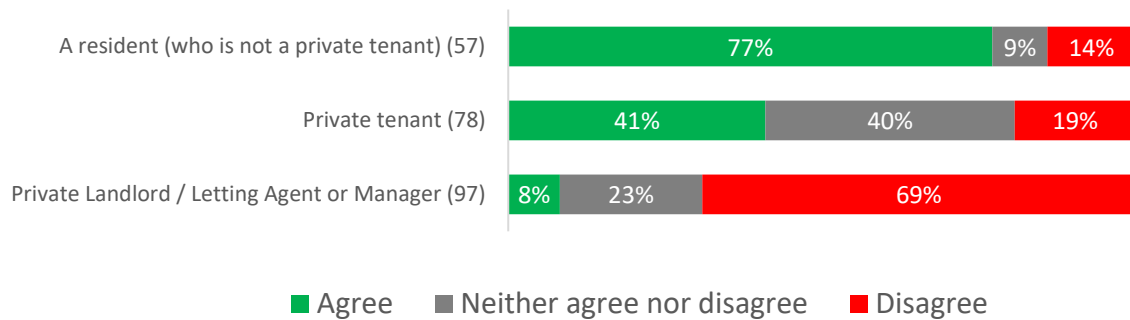
When asked whether they agreed or disagreed that a significant of HMOs in the eight named wards are being managed in a way that does or might create problems for members of the public, the responses were fairly balanced, with a slightly higher proportion disagreeing (38%) than agreeing (35%) with this statement.

Figure 15.: To what extent do you agree or disagree that a significant proportion of HMOs in the eight wards are being managed in a way that does or might create problems for members of the public? (n=248, second consultation)



Agreement with this statement is significantly higher among residents (who are not private tenants) than it is among private tenants (41%) or private landlords / letting agents or managers (8%). Meanwhile almost seven in ten (69%) private landlords / letting agents or managers disagree that a significant proportion of HMOs in the named wards are managed in a way which does or might create problems for members of the public, compared to 14% of residents who aren't private tenants, and 19% of private tenants. However, among letting agents and landlords who own or manage HMOs, disagreement is higher among those who manage 3 or more HMOs (83%) than those manage one or two (55%).

Figure 16.: To what extent do you agree or disagree that a significant proportion of HMOs in the eight wards are being managed in a way that does or might create problems for members of the public? – by respondent type (n = displayed in chart, second consultation)



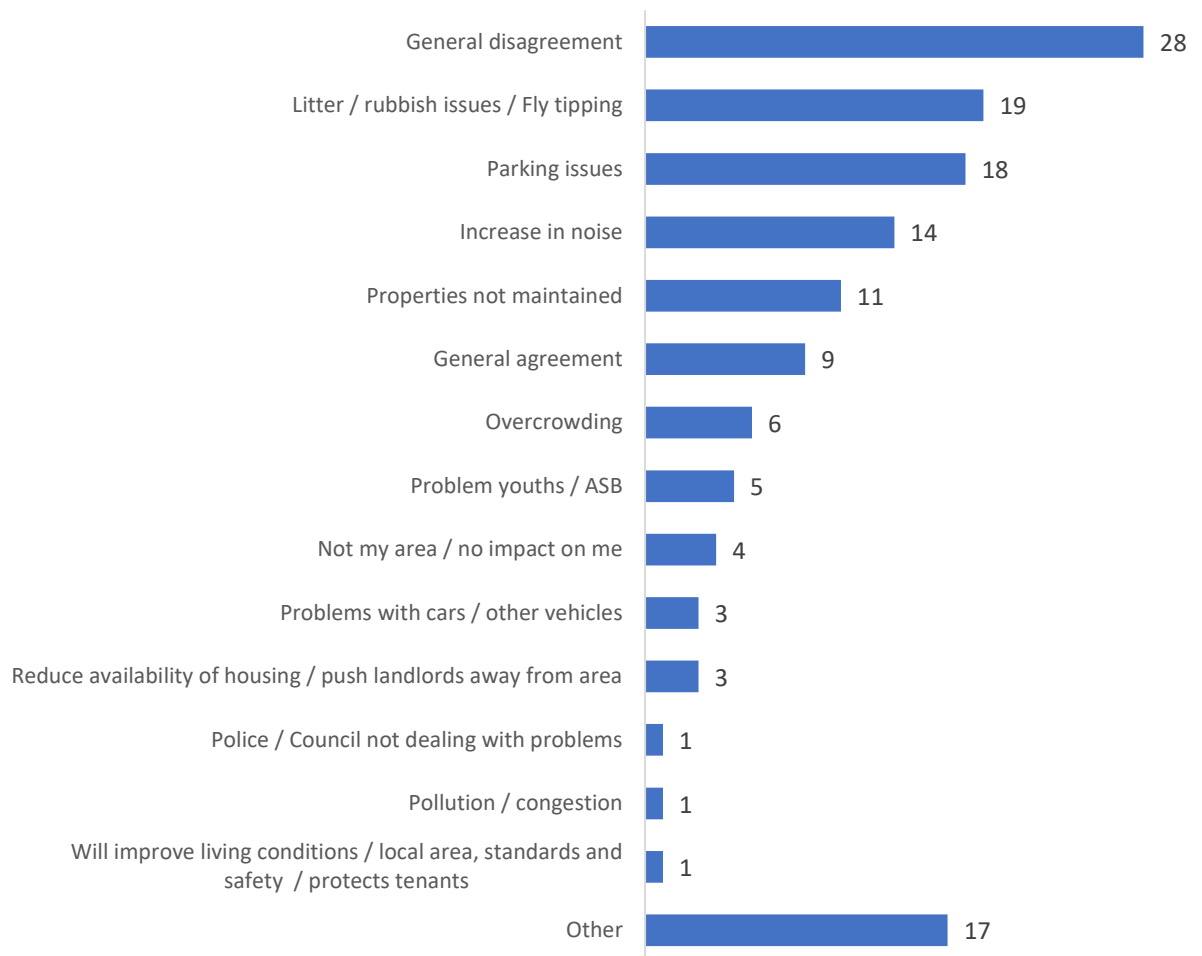
Advice or community organisations (2), business owners or managers (3) and other (11) excluded due to low base sizes

Respondents were asked to provide a reason for their agreement or disagreement that HMOs are being managed in a way does or might create problems for members of the public. 120 respondents provided answers at this question, however 22 gave answers which were invalid.

The responses were grouped into themes, with the most common theme being general disagreement. Respondents who stated this tended to report that they have experienced no major issues with HMOs, that they are well managed, or that they see no difference between them and other rented properties: *“I am not aware of any issues caused by tenants that have not immediately been dealt with by the managing agents.”*, *“While a limited number of residents dislike the concept of living next to an HMO, I’ve seen no difference between living near HMOs or any other properties”*.

The second most common theme related to litter/rubbish issues/fly tipping: *“Noise, anti social behaviour, littering and fly tipping. Encouraging vermin by leaving waste food littered about the place. Not putting refuse out on the correct days, not putting refuse in tied bags, leaving it for vermin to get to”*. Parking issues are third most common: *“Cars are poorly parked often with inadequate provision causing problems for neighbours.”*

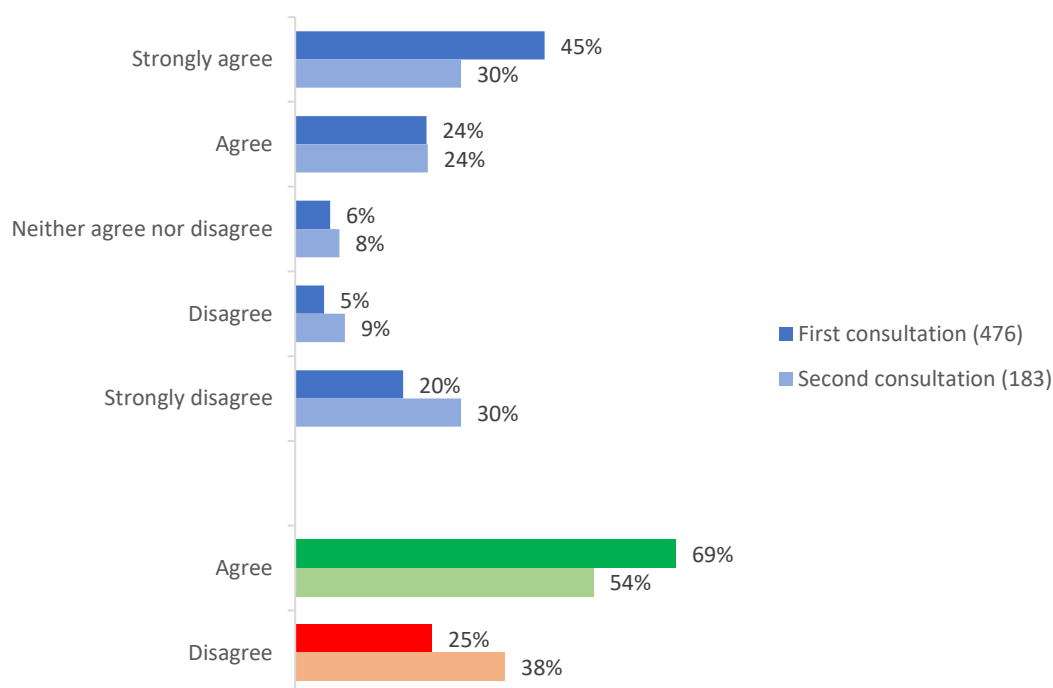
Figure 17.: Please state a reason for your response below: – by respondent type (n = 120, second consultation)



Agreement with scheme introduction

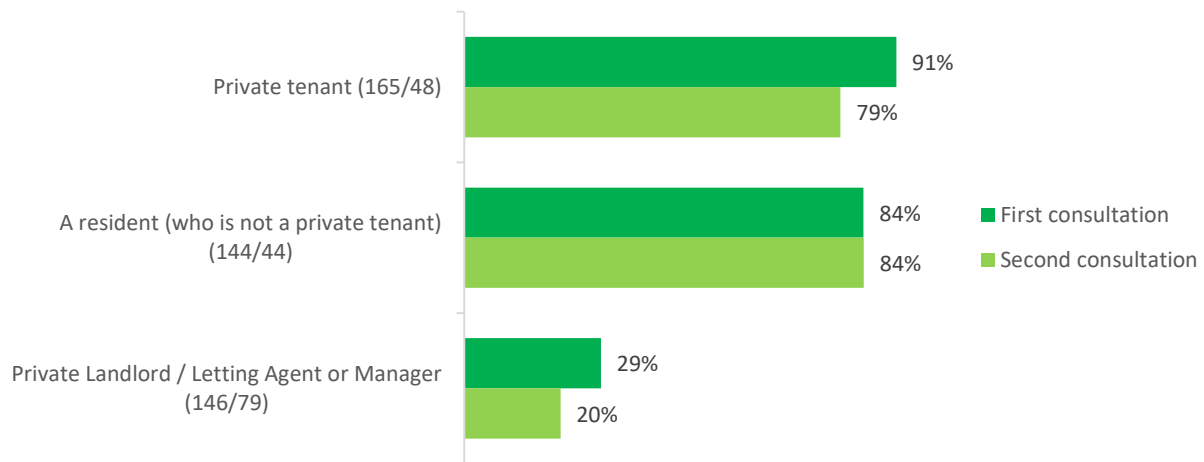
Respondents were generally more likely to be in favour of the proposal to introduce a targeted additional licensing scheme for HMOs in York. This was particularly the case in the first wave, when 69% agreed with this statement and 25% disagreed. However, the responses were slightly more balanced in the second wave, although still more likely to be in favour of the scheme. In this wave, 54% agreed and 38% disagreed with the proposal.

Figure 18.: To what extent do you agree or disagree with the proposal to introduce a targeted Additional Licensing Scheme for HMOs in York? (base sizes in chart legend, first and second consultation)



In both the first and second consultation private tenants (91% first consultation, 79% second consultation) and residents who are not private tenants (84% in both consultations) were more likely than private landlords / letting agents or managers (29% first consultation, 20% second consultation) to agree with the proposal to introduce a targeted additional licensing scheme for HMOs in York. The proportion of private landlords / letting agents or managers who agreed with the proposal fell from 29% to 20% from the first to second consultation.

Figure 19.: To what extent do you agree or disagree with the proposal to introduce a targeted Additional Licensing Scheme for HMOs in York? – Showing the proportion who “Agree” or “Strongly agree” (base sizes in chart legend, first and second consultation)

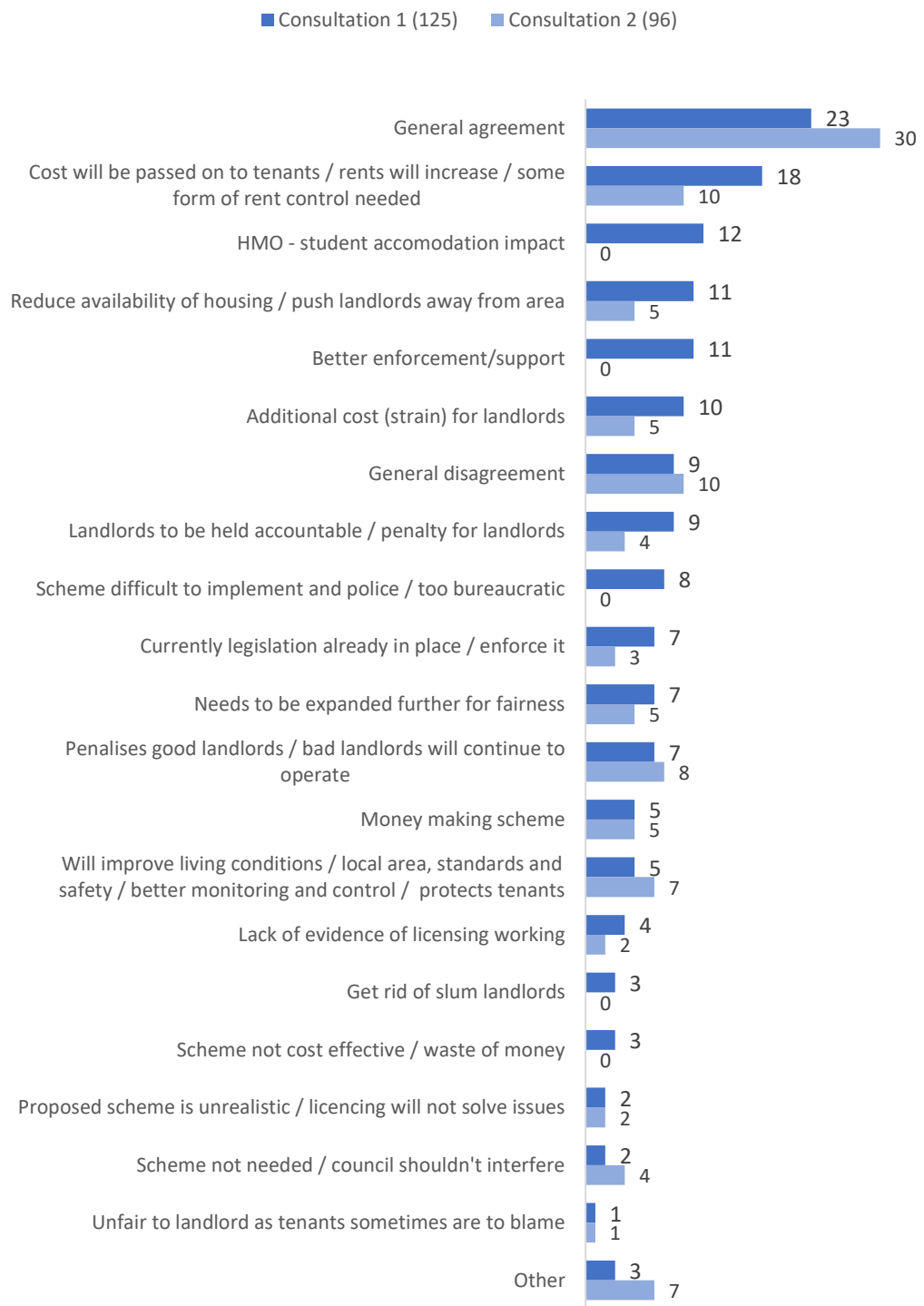


Advice or community organisations (3/1), business owners or managers (4/2) and other (12/9) excluded due to low base sizes. In the second consultation, letting agents or landlords who managed or owned 3 or more HMOs were more likely to disagree with the proposal (79%) than those who owned one or two HMOs (70%). In the first consultation, agreement with the proposals was highest in Heworth (80%) and Acomb (79%), and notably lower in Fulford and Heslington (62%). However it should be noted that with only 19 respondents from Acomb answering this question, the data for this group should only be taken as indicative.

Respondents were asked why they agreed or disagreed with the proposal – the answers to this have been coded into themes in figure 20. 125 respondents provided answers in the first consultation and 96 in the second, although 2 and 4 respondents gave invalid answers in each consultation respectively. Illustrative comments of this theme include: *“Any Licensing Scheme which will improve the upkeep/maintenance of any rental properties both internally and externally is welcomed.”*, *“Further licensing will help weed out landlords that are ineffectively managing their properties, negatively affecting both tenants and local residents.”*

However the second most common theme related to the costs being passed on to tenants/rents increasing/some form of rent control: *“Landlords will pass on administration/building/operating cost increases to their tenants by way of rent increases.”*, *“I feel this will create fewer houses for students in a city where our only accommodation choice is these HMOs or tiny student flats. The costs of these changes implemented will also be forced onto students through rental prices.”*

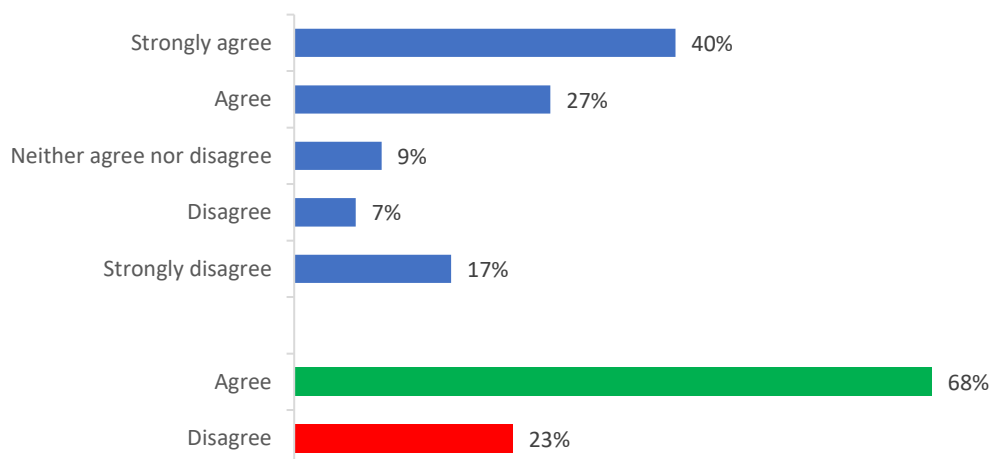
Figure 20.: Please state a reason for your response below: (base sizes in chart, first and second consultation)



Ward designation

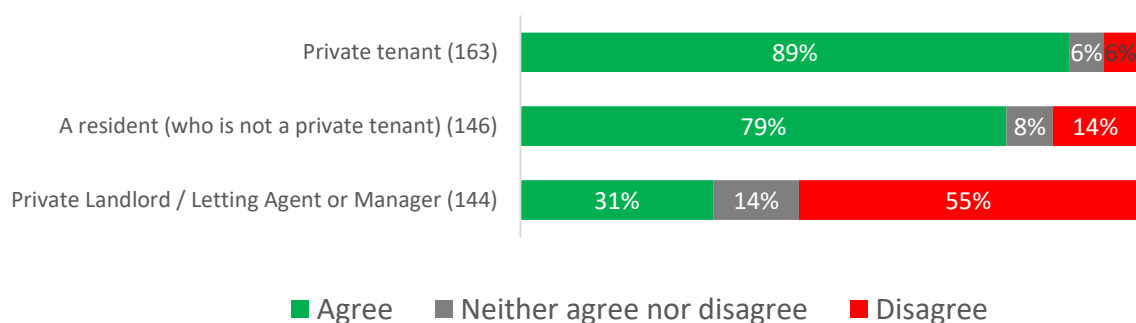
In the first consultation, there was notable agreement with the proposal to introduce the Additional Licensing scheme for wards with the highest number and poorest conditions. 68% agreed with this proposal, while only 23% disagreed.

Figure 21.: To what extent do you agree or disagree with the proposal to designate those wards with the highest number and poorest conditions under the Additional Licensing scheme? (n=475, first consultation)



Agreement with this proposal in the first consultation was highest among Private tenants (89%) and residents who aren't private tenants (79%), and significantly lower among private landlords / letting agents or managers (31%). By ward, agreement was highest in Heworth (78%) and Osbaldwick & Derwent (74%), and lowest in Acomb (58%) and Guildhall (63%). However it should be noted that the wards of Osbaldwick & Derwent and Acomb have a low base (27 and 19 respectively), thus data from these groups should be treated as indicative.

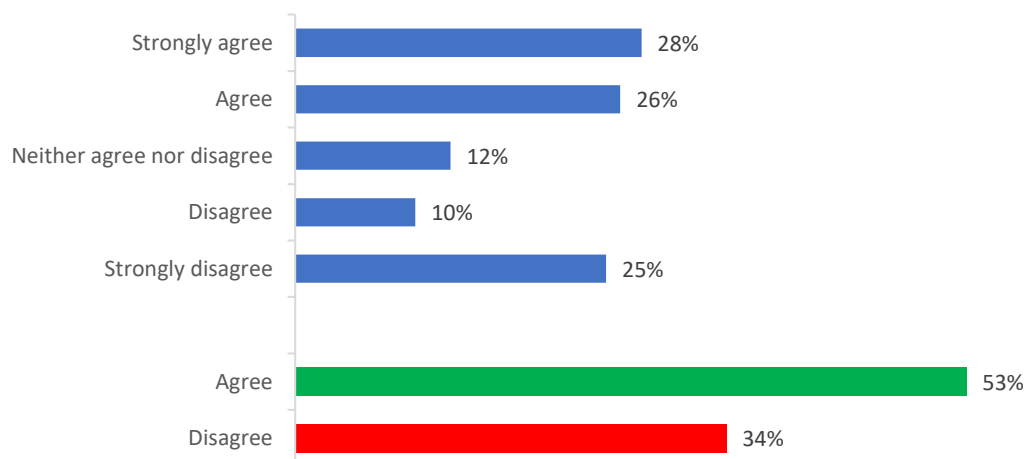
Figure 22.: To what extent do you agree or disagree with the proposal to designate those wards with the highest number and poorest conditions under the Additional Licensing scheme? – by respondent type (base sizes in chart, first consultation)



Advice or community organisations (3), business owners or managers (5) and other (12) excluded due to low base sizes

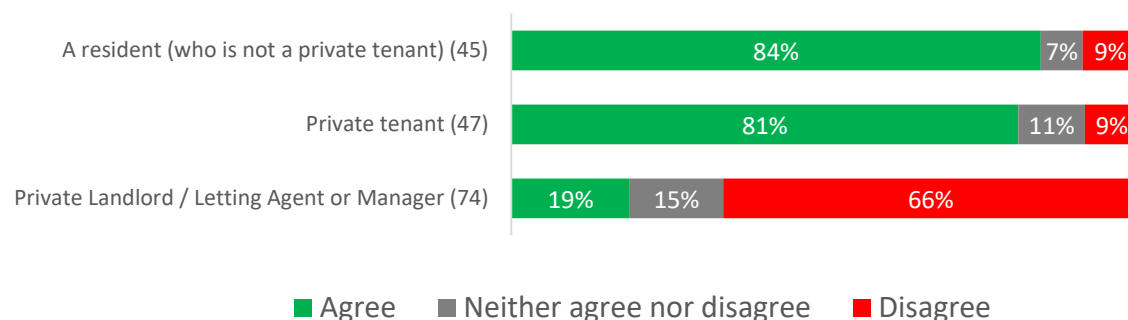
However, in the second consultation, when the specific eight wards the proposal was being considered for were listed out, agreement fell to 53%. Nonetheless the proportion agreeing with the proposal was still higher than the proportion who disagreed with it (34%).

Figure 23.: To what extent do you agree or disagree with the proposal to include the eight wards under the proposed Additional Licensing scheme? (n=178, second consultation)



In the second consultation, agreement with the proposal was again significantly higher among residents who aren't private tenants (84%) and private tenants (81%) than private landlords / letting agents or managers (19%).

Figure 24.: To what extent do you agree or disagree with the proposal to include the eight wards under the proposed Additional Licensing scheme? – by respondent type (base sizes in chart, second consultation)



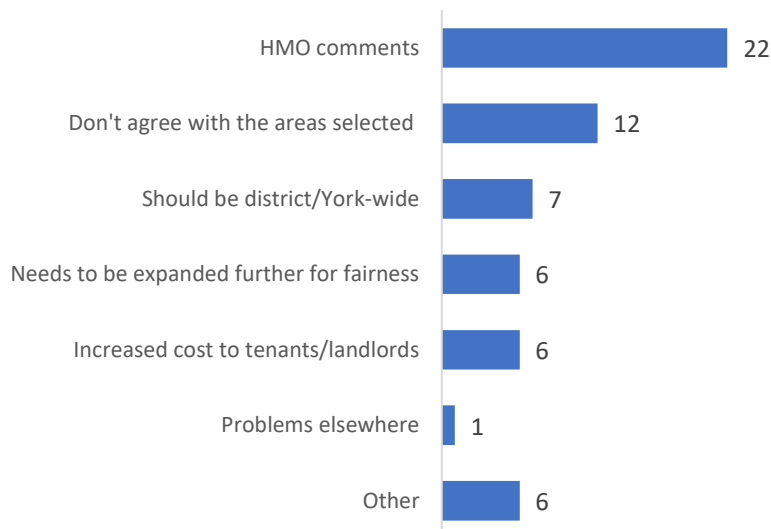
Advice or community organisations (1), business owners or managers (2) and other (9) excluded due to low base sizes

Respondents in the second consultation were asked to state a reason for their agreement or disagreement with the proposal to include the named eight wards in the Additional Licensing Scheme. 81 respondents answered this question, however 18 provided answers which were invalid. The answers respondents provided were grouped into themes, the most common of which, with 22 responses, gave comments about the volume of HMOs in these areas. Illustrative examples of these

responses include: “According to data you have provided, these are all considerably or significantly affected areas of York with HMOs”, “This feels right in terms of the balance of HMOs across the city, including around pre-dominantly student areas where a higher proportion of residents will live in shared/ rented properties.”.

The second most common theme was disagreement with the areas selected, illustrative examples of these comments include: “The Wards identified have been selected to target student landlords”, “Using the information given in your Consultation Report (anti-social behaviour, noise and waste complaint data) it clearly shows that three of the wards proposed to have additional licensing imposed on them have fewer problems than three wards where no additional licensing is proposed. Using your data these three wards should be dropped from the proposed Additional Licensing scheme Fishergate, Osbaldwick/ Derwent and Fulford/Heslington to be replaced by Westfield, Holgate and Rawcliffe/Clifton Without.”

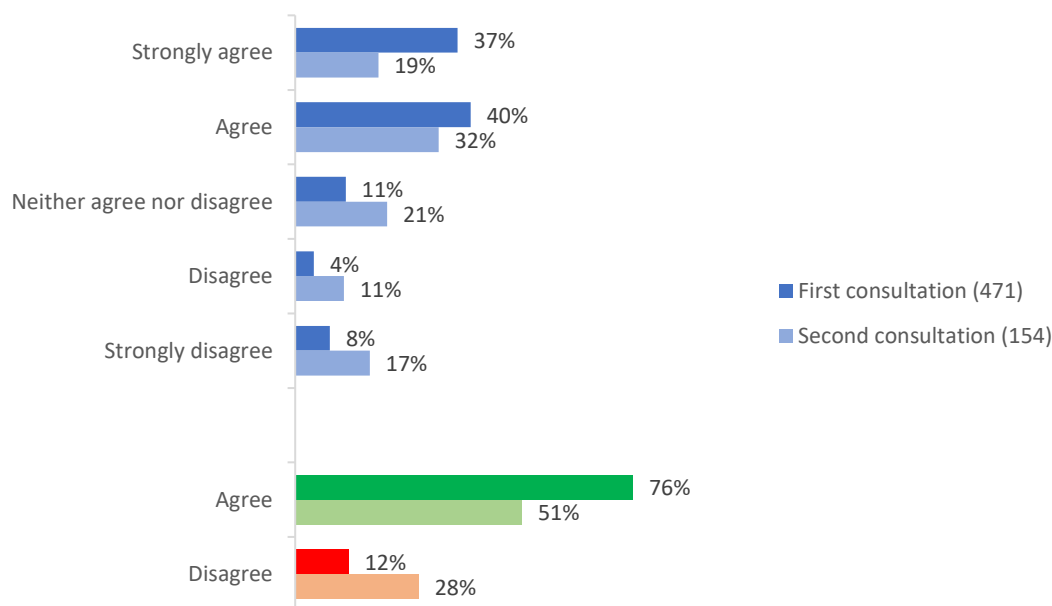
Figure 25.: Please state a reason for your response below: (N = 81, second consultation)



Licence conditions

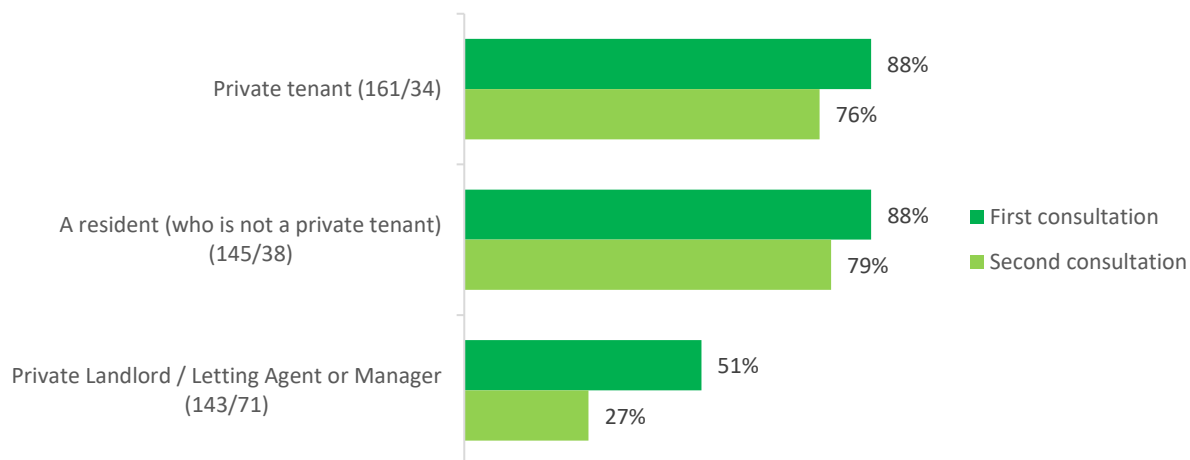
The standards and conditions contained in the Implementation Policy for HMOs were generally agreed with. In the first consultation this agreement was stronger - 76% agreed with these standards and conditions, while 12% disagreed. Agreement dropped in the second consultation, but remained just over half (51%), and still higher than the proportion who disagreed (28%).

Figure 26.: To what extent do you agree with the HMO standards and conditions contained in our Implementation Policy for HMOs? (base sizes in chart legend, first and second consultation)



In both consultations, agreement with the standards and conditions contained in the Implementation Policy is significantly higher among private tenants (88% first consultation, 76% second consultation) and residents who are not private tenants (88% first consultation, 79% second consultation) than private landlords / letting agents or managers (51% first consultation, 27% second consultation). All three groups saw a drop in the proportion agreeing with the HMO standards and conditions between the first and second consultation, however this drop was most notable among private landlords / letting agents or managers (from 51% to 27%).

Figure 27.: To what extent do you agree with the HMO standards and conditions contained in our Implementation Policy for HMOs? Showing the proportion who “Agree” or “Strongly agree” (base sizes in chart legend, first and second consultation)



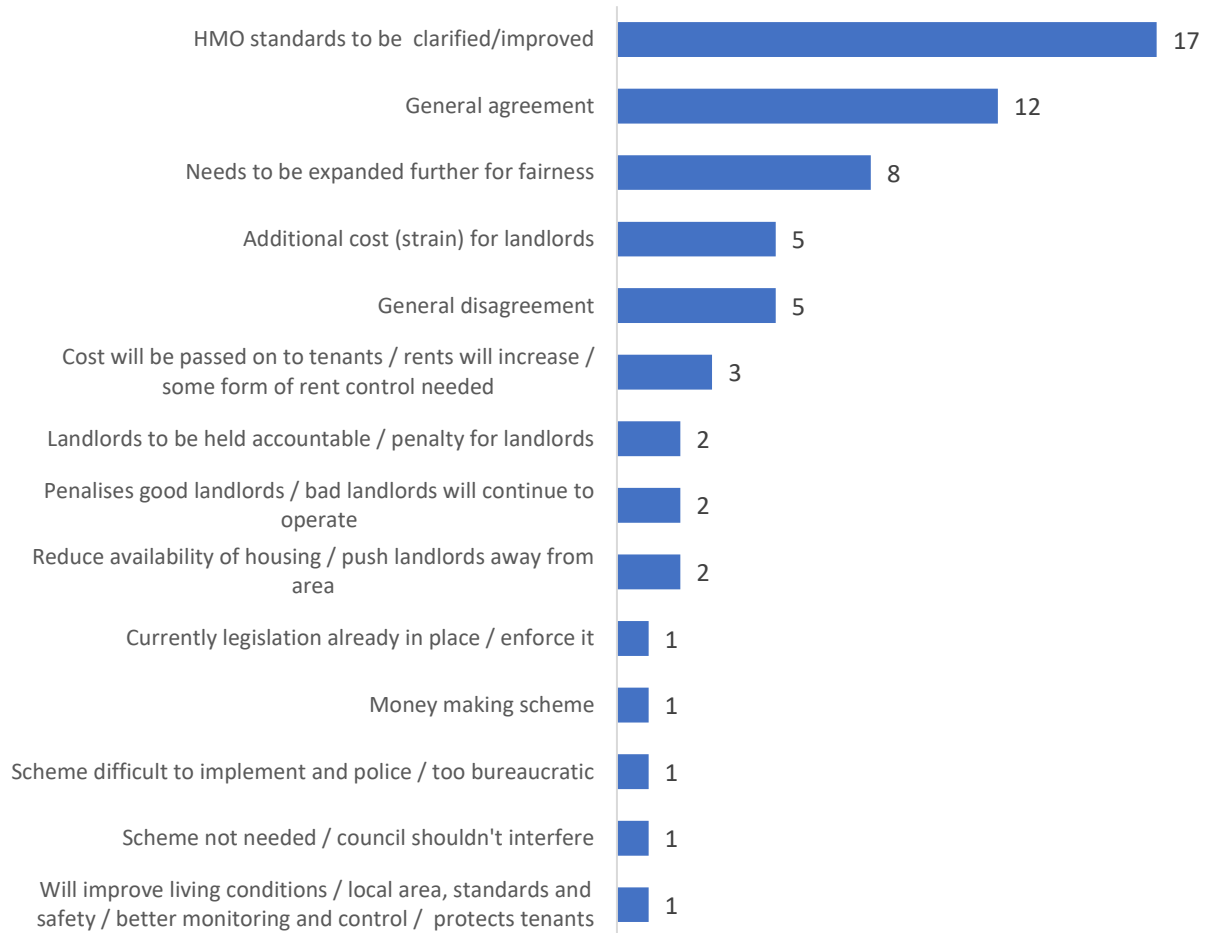
Advice or community organisations (3/1), business owners or managers (4/2) and other (12/9) excluded due to low base sizes

In the first consultation, agreement with the proposals was fairly consistent by ward, tending to fall between 74% and 85%. However in Fulford and Heslington, agreement was lower, at 69%.

In both consultations, respondents were asked if they had any comments on the proposed standards and conditions for HMOs. The responses have been coded into themes; these themes differed between the consultations. In the first consultation, 58 respondents offered further comments, 8 of whom provided invalid answers. The most common theme in these answers was a requirement that the HMO standards be clarified/improved (17 responses): *“The supporting paper and the standards applied do not provide sufficient evidence that there are sufficient numbers of sub-standard housing provision in the city.”*, *“Some elements should be a minimum such as elec/gas certs but room sizes are a matter of tenants choice as they may be happy to sacrifice a particular room size as the property has a garage or off road parking, or garden. The tenant views the property so it’s their choice to accept or not”*.

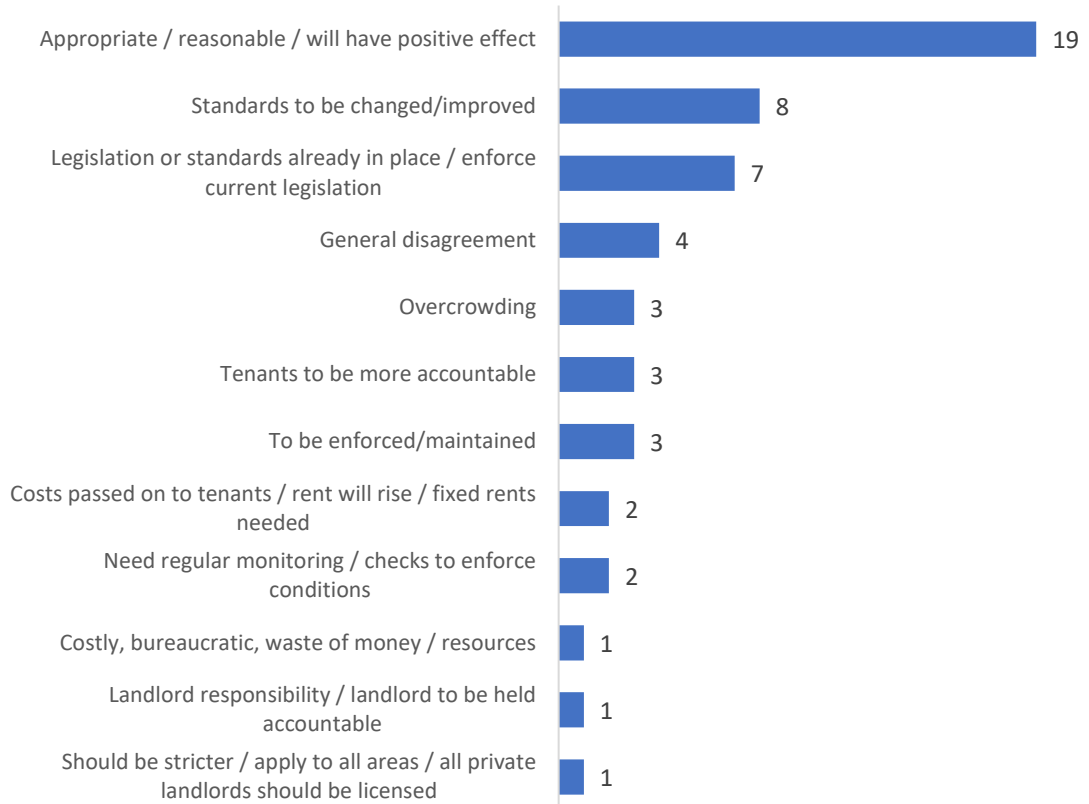
The second most common theme in the responses was general agreement (12 responses). Illustrative examples of this include: *“These appear to me to be reasonable minimum standards. Safety is paramount and the current rules appear to be targeting those who provide accommodation which most people would consider unacceptable.”*, *“Any legislation that makes sure landlords meet their obligations is to be welcomed. The new standards appear more specific and enforceable than the previous ones and as long as they are followed by the council should do this.”*.

Figure 28.: Any comments: (N=68, first consultation)



In the second consultation, 61 respondents offered comments at this question, although 11 provided invalid responses. The most common theme in this consultation, mentioned by 19 respondents, was appropriate/reasonable/will have positive effect. This was notably more commonly mentioned than the second most common theme, standards to be changed/improved (8 respondents). Illustrative comments from the appropriate/reasonable/will have positive effect theme include: *“I think the proposed standards for room size, fire safety, and heating are especially appropriate. I have rented, as a tenant, student HMOs which have very small rooms, questionable fire safety, and inadequate heating conditions (poor heating or just very cold house due to construction).”, “These are reasonable and not overly restrictive”.*

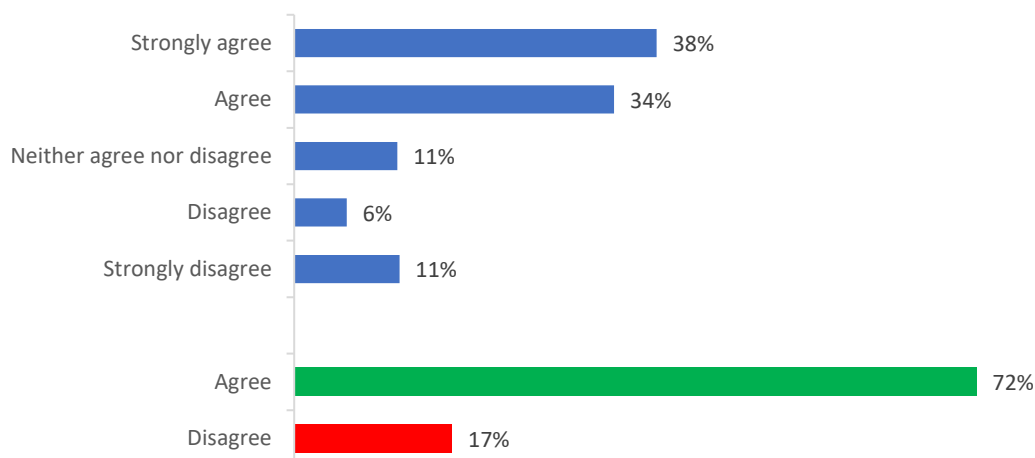
Figure 29.: Any comments: (N=61, second consultation)



Living space standards

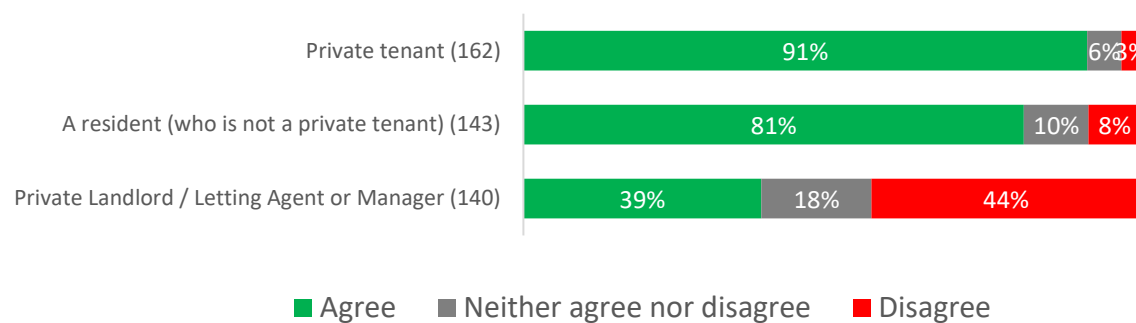
Respondents reacted positively in the first consultation to the proposal to amend amenity space standards for kitchens and communal living spaces. Over four times as many agreed (72%) with this suggestion than disagreed (17%).

Figure 30.: The Council is also considering amending its amenity standards having regard to space standards for kitchens and communal living spaces – please see document. To what extent do you agree with the council regarding this proposal? (n=466, first consultation)



Private tenants were most likely to agree with these proposals in the first consultation, with over nine in ten doing so (91%). Over eight in ten (81%) residents who aren't private tenants also agreed with amending amenity standards. Private landlords / letting agents or managers were significantly less likely (39%) to agree with this proposal than either of the two former groups. However opinion within the landlord / letting agent or manager group was fairly balanced, with 44% disagreeing, compared to 39% who agreed. Respondents from most wards reported similar levels of agreement, generally falling between 73% and 78%, however agreement in Fulford and Heslington was notably lower, at 64%.

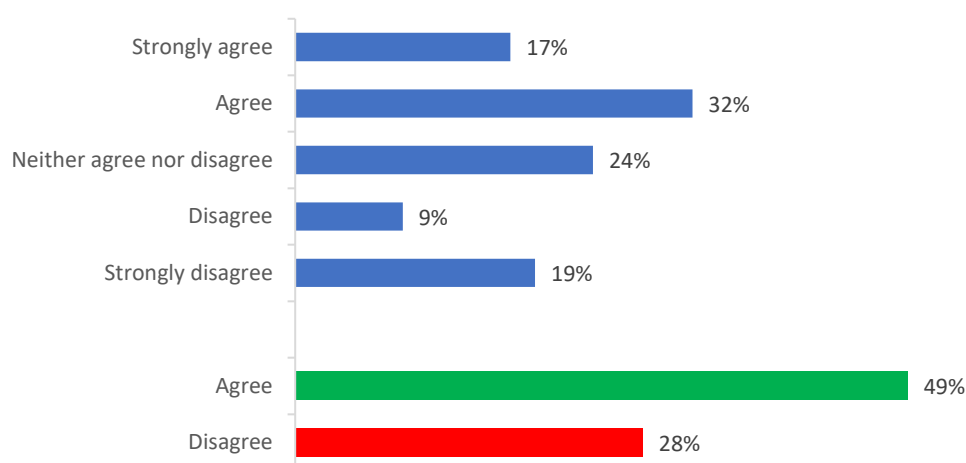
Figure 31.: The Council is also considering amending its amenity standards having regard to space standards for kitchens and communal living spaces – please see document. To what extent do you agree with the council regarding this proposal? – by respondent type (base sizes in chart, first consultation)



Advice or community organisations (3), business owners or managers (4) and other (12) excluded due to low base sizes

However in the second consultation this level of agreement fell to 49%, although still with a higher proportion agreeing than disagreeing (28%).

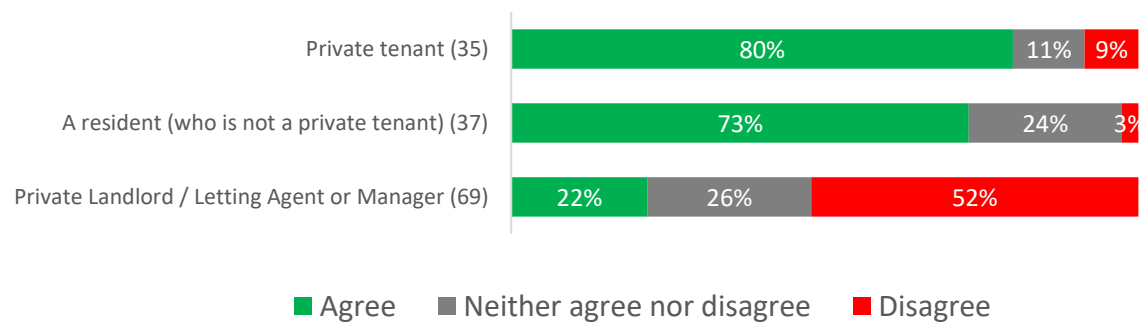
Figure 32.: To what extent do you agree or disagree with the proposed changes to the standard and size of kitchens and communal living spaces in HMOs? (n=152, second consultation)



In the second consultation, as in the first, private tenants (80%) and residents who aren't private tenants (73%) were most likely to agree with the proposed changes to the standard and size of

kitchens and communal living spaces in HMOs. Private landlords were significantly less likely to agree with this proposal (22%), a notable drop from 39% who agreed with them in the first consultation. Meanwhile, HMO owners or managers who own or managed 3 or more HMOs were more likely to disagree with the proposal (57%) than those who own or manage one or two HMOs (49%).

Figure 33.: To what extent do you agree or disagree with the proposed changes to the standard and size of kitchens and communal living spaces in HMOs? – by respondent type (base sizes in chart, first consultation)

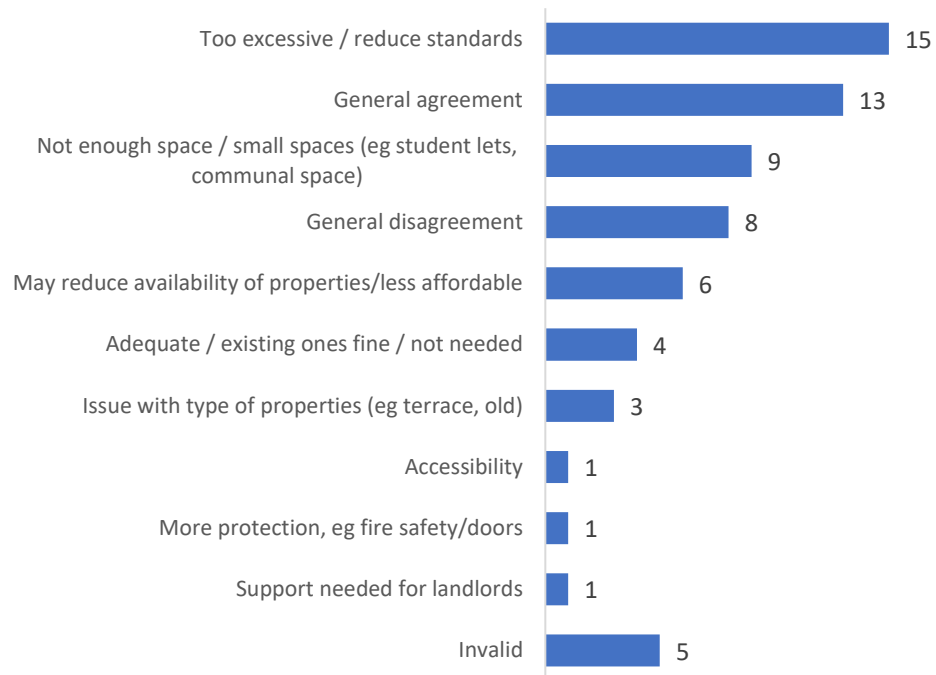


Advice or community organisations (1), business owners or managers (2) and other (8) excluded due to low base sizes

Respondents in the first consultation were asked whether they had any comments on the proposed amendments to amenity standards. 59 respondents offered answers at this question, although 5 were invalid. The responses were grouped into themes, most common among these were too excessive/reduce standards (15 responses) and general agreement (13). Among those who indicated the amendments were too excessive/reduce standards, comments included: *“The standards set for room sizes within the fitness standards used on HMO’s are at odds with current building regulations for habitable room sizes and how room sizes are calculated”*, *“There is a housing shortage. Space is not an issue. Safety is the issue. Air volume is not consider only floor space.”*, *“It’s not for the council to determine what an appropriate living space is. Your potentially make good usable property unavailable if it doesn’t make some set space criteria.”*

Among those who expressed general agreement with the amendments, illustrative examples include: *“Just because a property is an HMO doesn’t mean it has to be a hovel or a cramped living/working space.”*, *“Think current use of sitting rooms as bedrooms in many properties is very wrong. Standards of communal living space should be protected for tenants to higher degree than at present.”*

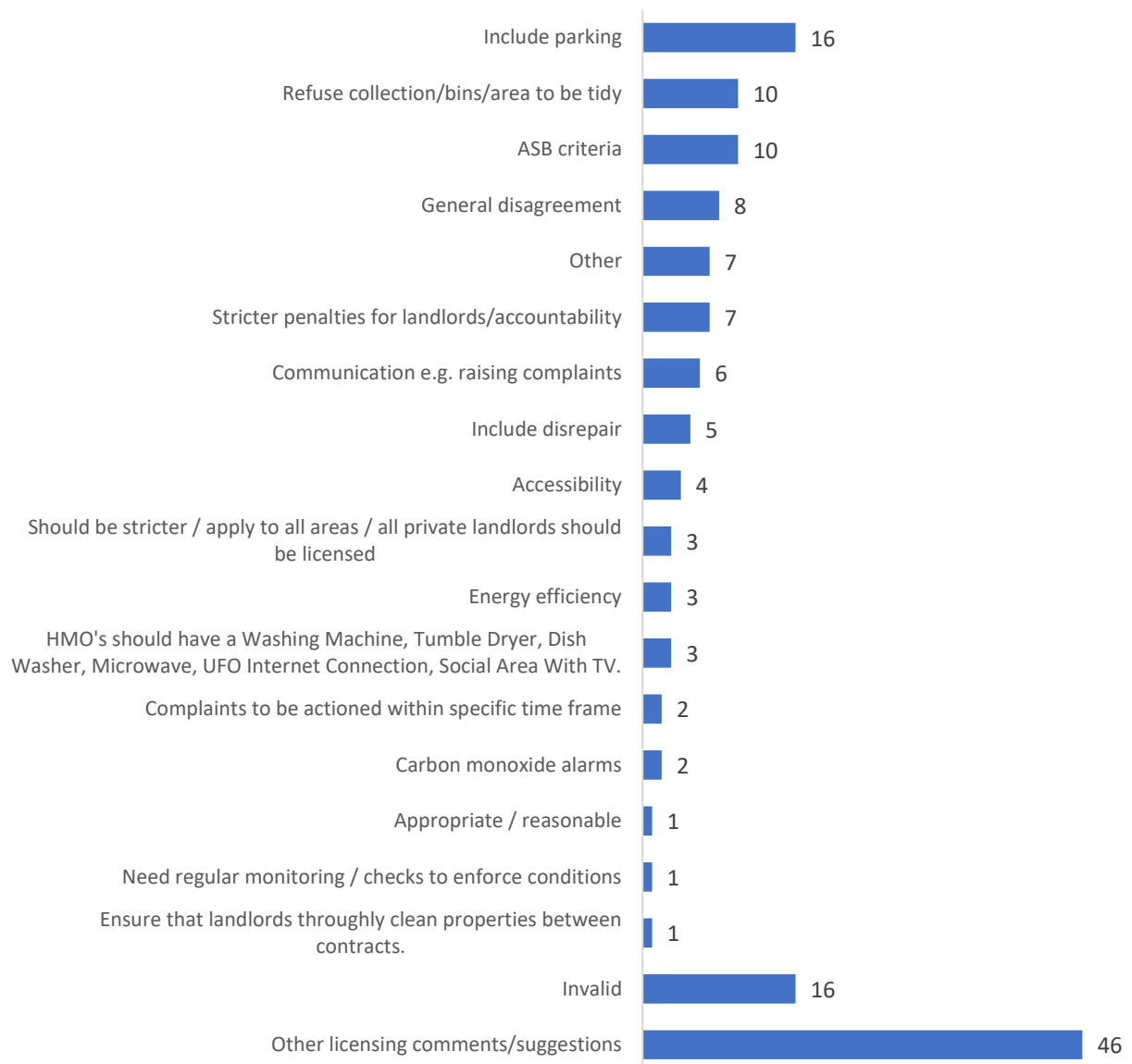
Figure 34.: Any comments: (N=59, second consultation)



Further condition suggestions

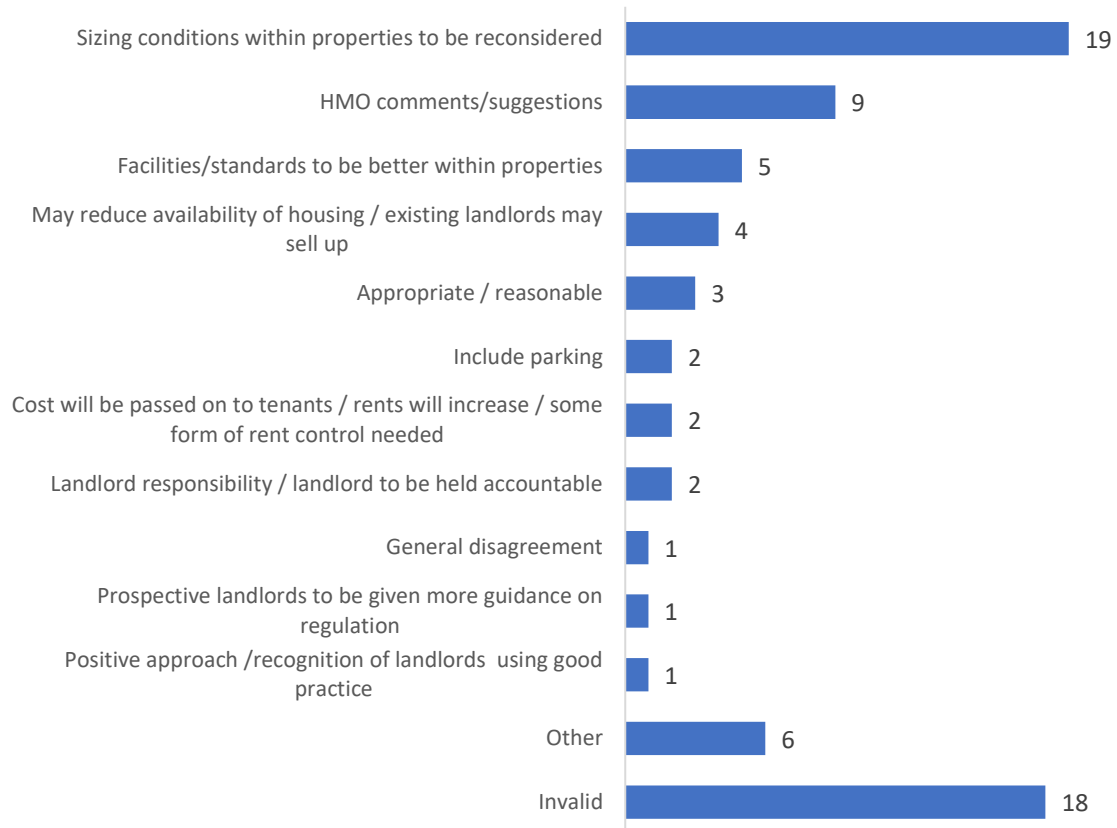
Respondents to the consultation were asked if they had any other suggestions that should be applicable to HMO licensing. 133 respondents offered a response at this question, with 16 giving invalid answers. The responses were coded into themes which can be seen in Figure 35. Most common among the suggestions at this question was that HMO licensing also include parking: *“A limit on the number of cars per property. A lot of HMOs are terraced housing with on street parking and if every tenant has a car it makes parking very difficult for other residents in the street.”*, *“Sufficient parking at property or on street without crowding (and taking into account local public places that require on street parking such as schools, community centres, parks etc)”*.

Figure 35.: Can you suggest any other conditions that should be applicable to HMO licensing? (n=133, first consultation)



64 responses were received to this question in the second consultation, with 18 providing invalid answers. The most common theme at this question was that sizing conditions within properties be reconsidered. These related both to a requirement for an expansion of sizing requirements from those in current regulations, and comments indicating that the proposed sizing requirements were excessive. Illustrative example comments on this theme include: *“Kitchens and common spaces should be bigger and have more storage space to encourage tenants to use them and be less isolated in their rooms”, “The sizes for communal areas wouldn’t be achievable in my 4 bed house but it’s perfect for us. It’s all about the overall feel of a student house. It seems mad to apply one rule for all types of house. They’re all built differently. There should be discretion allowed if the scheme is forced through.”*

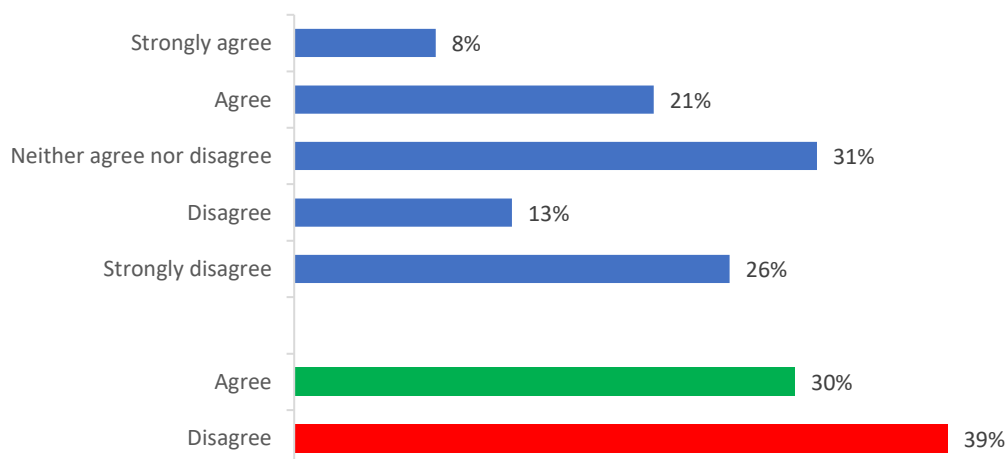
Figure 36.: Can you suggest any other conditions that should be applicable to HMO licensing? (n=67, second consultation)



Fee structure

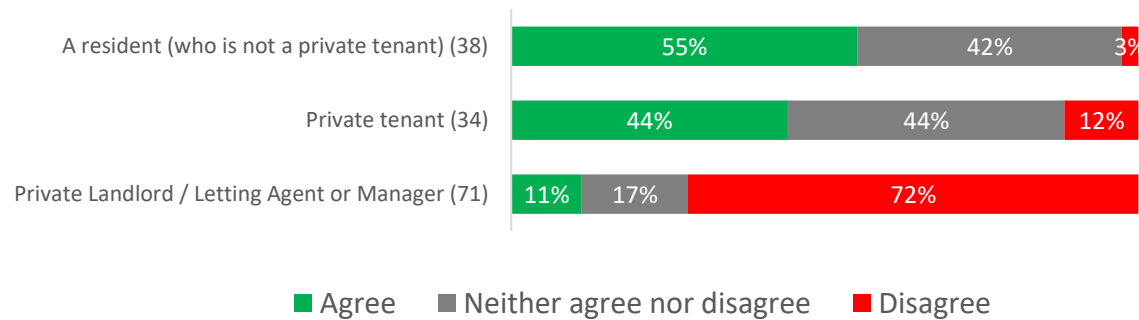
Opinion is split on the fee structure in the Additional Licensing Scheme, although leaning slightly more heavily towards disagreement, with 30% agreeing with the structure, 31% neither agreeing nor disagreeing and 39% disagreeing.

Figure 37.: To what extent do you agree or disagree with the fee structure in the Additional Licensing Scheme? (n=154, second consultation)



Agreement with the fee structure is highest among residents who aren't private tenants (55%) and private tenants (44%), and lowest among private landlords / letting agents or managers (11%). Over seven in ten (71%) of the latter group oppose the changes to the fee structure.

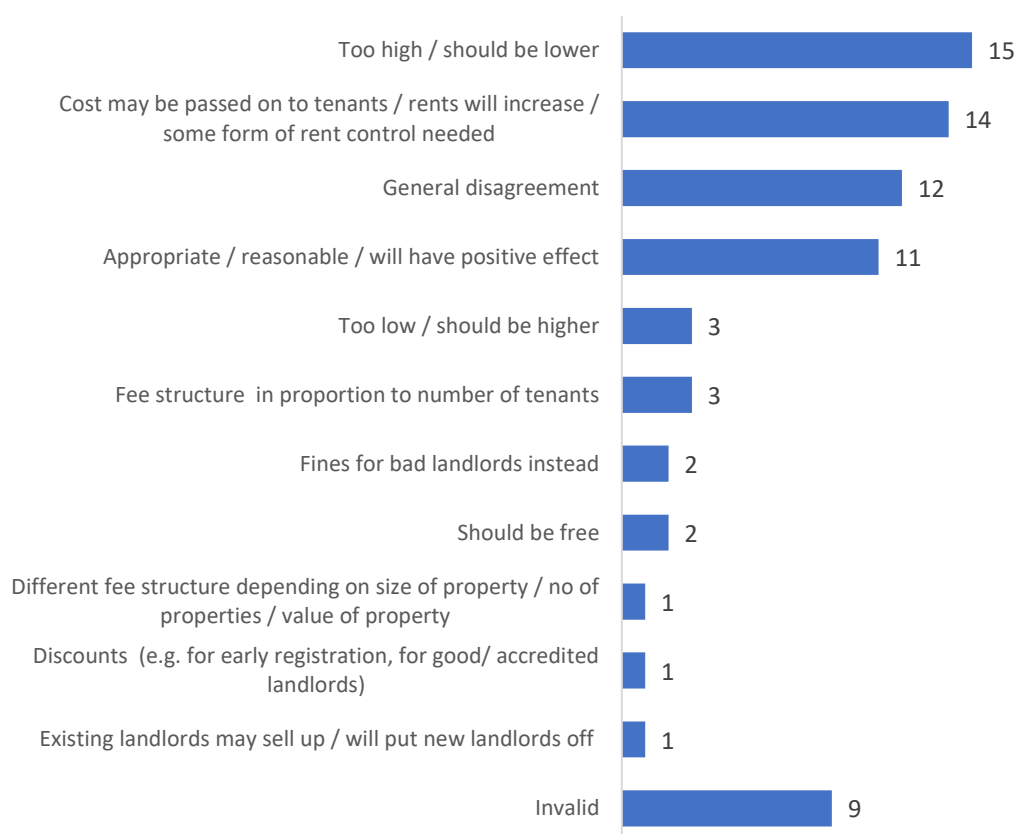
Figure 38.: To what extent do you agree or disagree with the fee structure in the Additional Licensing Scheme? – by respondent type (base sizes in chart, first consultation)



Advice or community organisations (1), business owners or managers (2) and other (8) excluded due to low base sizes

Respondents were invited to provide a reason for their agreement or disagreement with the fee structure in the Additional Licensing Scheme. 70 respondents provided an answer at this question, with 9 providing invalid answers. The responses were coded into themes, the most common of which were too high/should be lower (15 responses), cost may be passed on to tenants/rents will increase/some form of rent control needed (14 responses), general disagreement (12 responses) and appropriate/reasonable/will have positive effect (11 responses). Illustrative comments on each of these themes are provided below.

Figure 39.: Can you suggest any other conditions that should be applicable to HMO licensing? (n=67, second consultation)



Too high/should be lower

“The fees are significant and you must take into account any work that the landlord must be do to the property to bring it in line with the HMO standards. York has period properties and costs to make updates to fall in line with your guidelines can be great. I appreciate they have been split into two payments, but for a property at the lower occupancy rate license costs are high.”

“Extortionate landlords are already crippled with costs in terms of health and safety and eco systems not to mention insurance”

Cost may be passed on to tenants/rents will increase/some form of rent control needed

“The proposed scheme together with the proposed fees will inevitably be an additional cost to landlords which will no doubt be passed on to tenants in increased rents. This is at a time when inflation is already high and increasing.”

“it is a cost that in turn will be passed on to tenants and that is unfair on all parties”

General disagreement

“I suspect that if a landlord already hold a license, then some of the checks have already been done. Also if a landlord has more that one property that will be included in this new scheme then some of the checks will not need to be repeated.”

“I find the fees hard to justify and like many other PR landlords feel they are a revenue generator for CYC rather than covering the cost of the scheme / enforcement. Surely enforcement costs should be recouped from successful prosecutions rather than getting law abiding landlords to pay a tax for CYC to investigate dodgy landlords? “

Appropriate/reasonable/will have positive effect

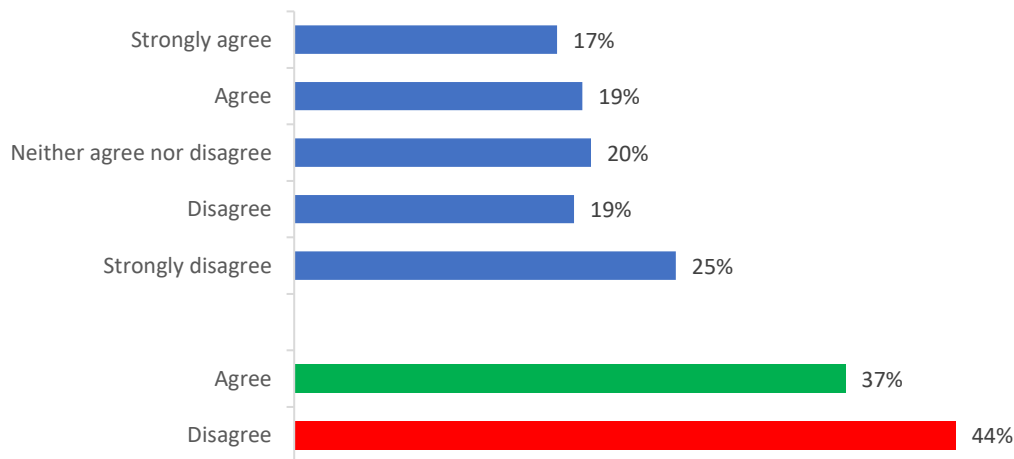
“Should enable the licensing system is self sustaining”

“I agree that poor conditions should be stopped and the regulation enforcement will attract costs”

Alternatives to Additional Licensing Scheme

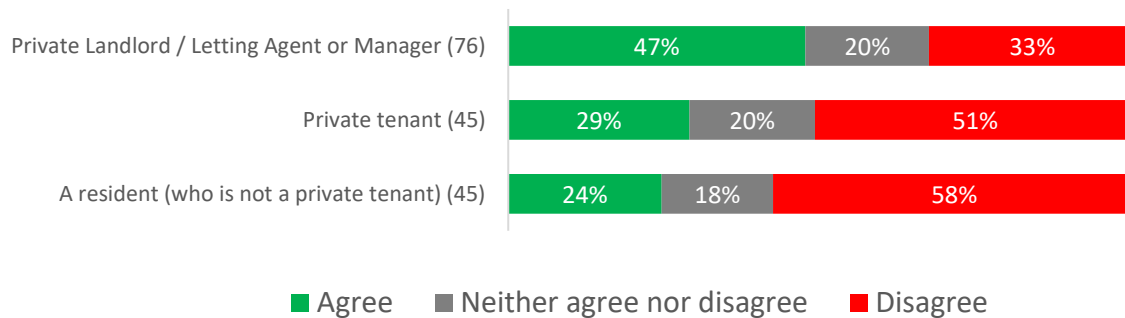
Respondents in the second consultation were asked whether they agree that the alternatives such as the continuation of existing powers and/or a voluntary accreditation scheme could present solutions to problems identified within the HMO sector. While more respondents disagreed (44%) than agreed (37%) with this proposal, neither were answered by the majority.

Figure 40.: To what extent do you agree or disagree that the alternatives such as the continuation of using existing powers and/ or a voluntary accreditation schemes instead of the proposal to introduce a targeted additional licensing have been considered in the consultation document could present solutions to problems identified within the HMO sector? (n=154, second consultation)



Agreement with this suggestion was higher among private landlords / letting agents or managers (47%) than private tenants (29%) or residents who are not private tenants (24%). The majority of the latter two groups disagreed with the proposal (51% of private tenants and 58% of residents who are not private tenants).

Figure 41.: To what extent do you agree or disagree that the alternatives such as the continuation of using existing powers and/ or a voluntary accreditation schemes instead of the proposal to introduce a targeted additional licensing have been considered in the consultation document could present solutions to problems identified within the HMO sector? – by respondent type (base sizes in chart, first consultation)



Advice or community organisations (1), business owners or managers (2) and other (9) excluded due to low base sizes

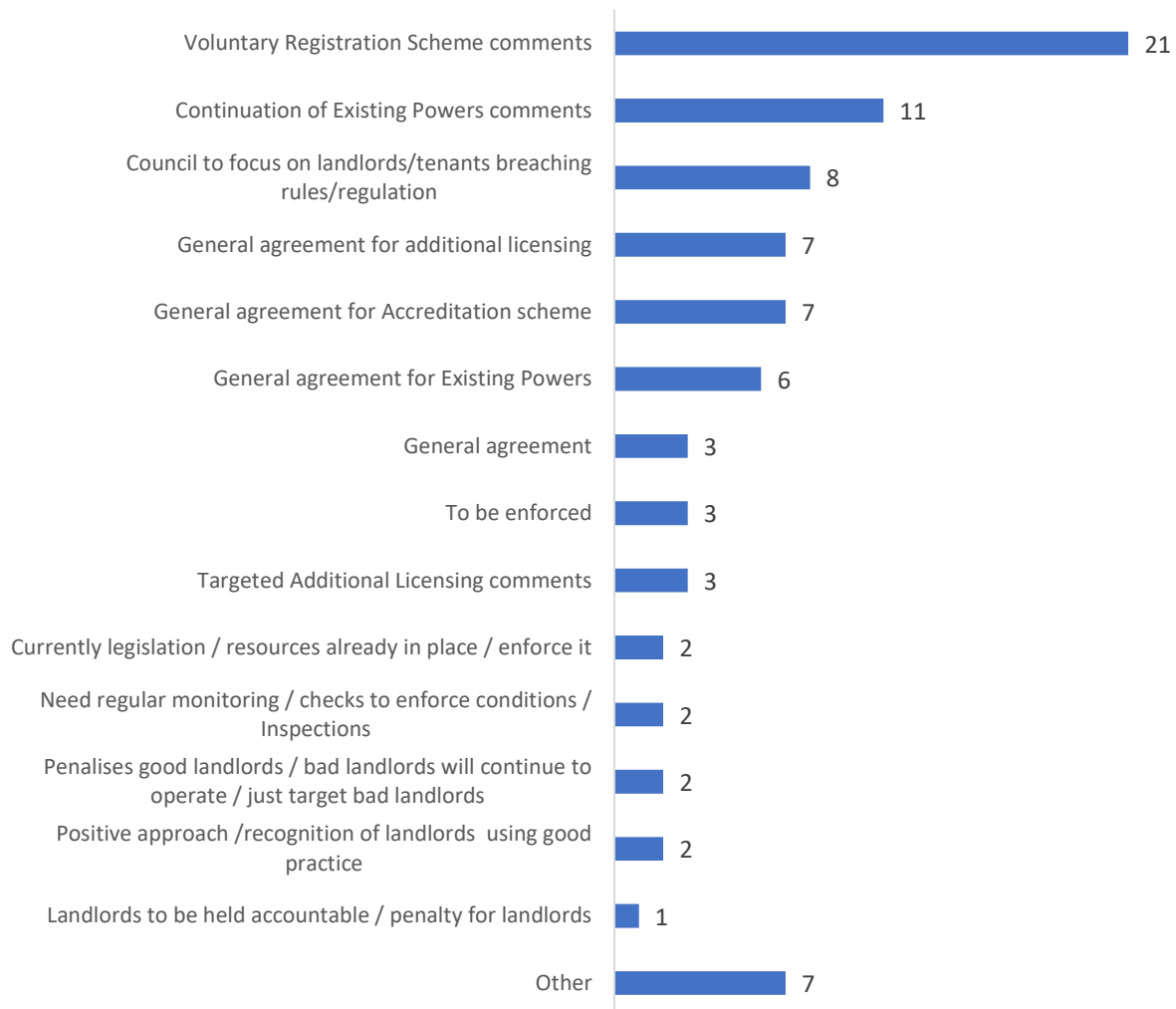
Respondents were asked to provide a reason for their agreement or disagreement with this suggestion. 82 respondents offered a response at this question, with 12 providing an invalid comment. The responses were coded into themes, the most common of which (21 responses) were comments about Voluntary Registration Schemes, many of which highlight the pitfalls of such schemes: *“Voluntary schemes are unlikely to work because they are voluntary. Landlords who only care about profit are unlikely to be incentivised to voluntarily improve their practices. Existing powers are not doing enough to combat the HMO issues within York - this is made evident by the numerous negative experiences expressed by students across the city.”*, *“There doesn't appear to be much existing power or voluntary ability to curtail anti-social behaviour problems, so this does not seem to improve the situation”*.

However a minority of respondents offer more positive views on voluntary schemes: *“Licensing is as equally self-selecting as a voluntary accreditation scheme. It's known that CYC work with DASH. There are others like Unipol. The problem with the previous voluntary accreditation scheme was that it was run by the council and landlords believe that licensing is being proposed for revenue purposes and Housing Standards is just an enabler. As such, there is an issue with trust. It needs to be run by a third party. Consumer-based approaches work. Look at the hospitality sector. You will not get the criminal landlords. The proposal self-selects the better landlords. Everyone wants a high standard of accommodation in York!”*.

Among those who discuss the continuation of existing powers, some highlight the powers councils already have, and the need for these powers to be used more effectively: *“The Council have sufficient powers already available to deal with problem HMO's, but do not use them effectively”*, while others

point out that the failure of existing powers highlights the need for further licensing: *“Current powers are not resolving issues at moment and a voluntary scheme would see little take-up or action as nothing it currently done to resolve issues”*.

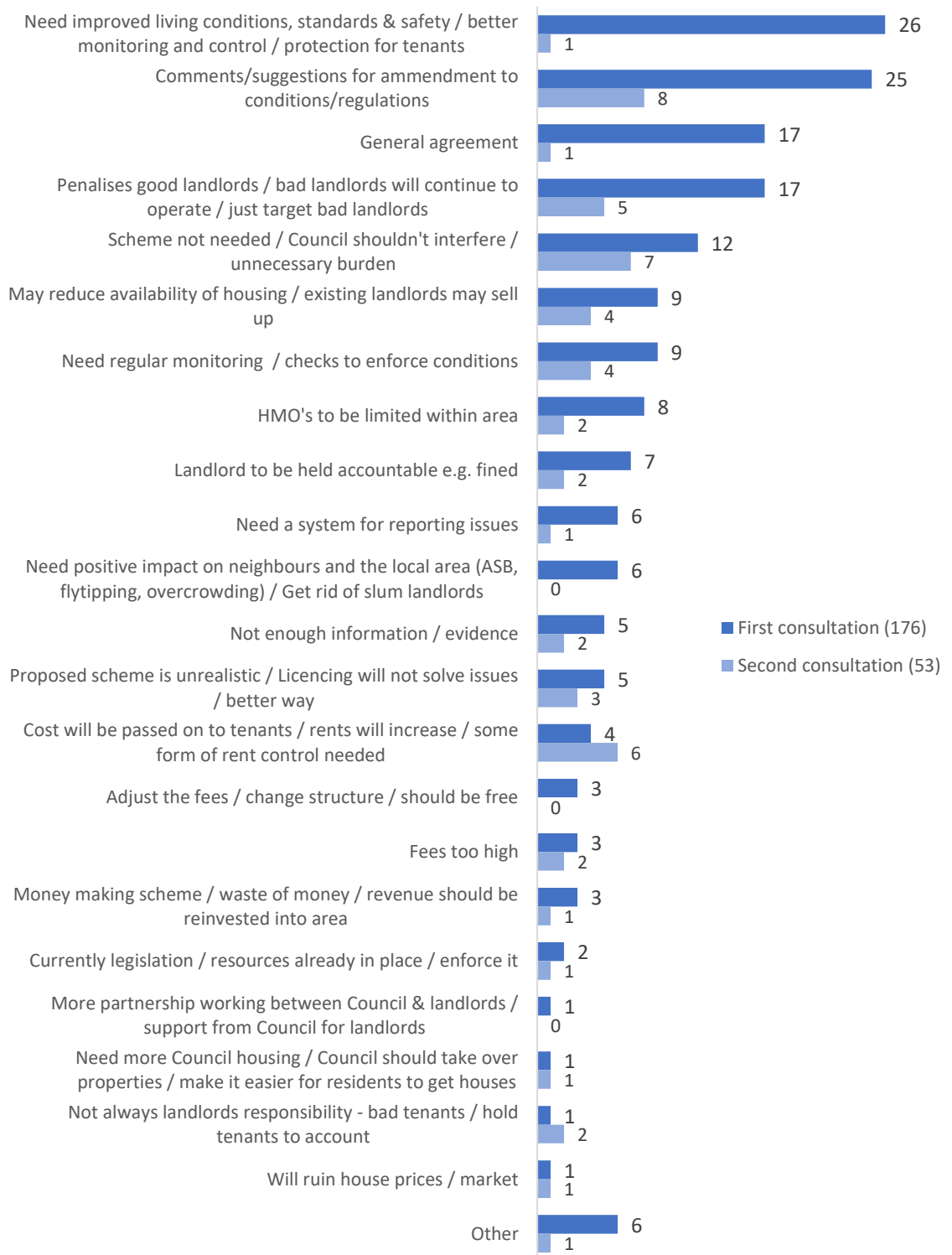
Figure 42.: Any other comments: (n=82, second consultation)



Final thoughts

At the end of the survey, respondents were asked if they had any final comments that had not been covered by the previous questions. 176 respondents provided further comments at this stage in the first consultation, and 53 in the second consultation, with 13 responses invalid in the first consultation and 4 in the second. In the first consultation, the most common themes to the comments were around needing improved living conditions, standards & safety/better monitoring and control/protection for tenants, and comments/suggestions for amendment to the conditions/regulations. The latter was the most common theme in the second consultation, followed by scheme not needed/Council shouldn't interfere/unnecessary burden. Illustrative comments in these themes are provided below.

Figure 43.: Please state a reason for your response below: (base sizes in chart, first and second consultation)



Need improved living conditions, standards & safety / better monitoring and control / protection for tenants

"I have had an awful experience so far, with a landlord that turns up at the house without notice, shouts and is abusive even when we are playing by all the rules. When asking for issues to be fixed we are met with anger and it takes a lot of time before anything is ever completed"

"I'm a 30 year old doctor and the situation is so bad that the next time I move, I'm moving to a different city as I can't deal with the poor housing situation any more after two years."

"Much of the private rental housing stock is very low quality and private landlords take advantage of housing as a necessary but scarce resource. It is disgusting."

"I have experienced good landlords in York, so I do not wish it to be assumed that all landlords are terrible. But the vast vast vast majority are. Letting agencies are perhaps even worse - and there should be no excuse since their entire business model and expertise is focussed on this one area. Letting agencies and landlords should be held to a minimum standard, and there should be a clear and accessible process for any tenant or neighbour in the city to make a formal or informal complaint on a range of key issues."

Comments/suggestions for amendment to the conditions/regulations

"There should be something in place regarding bills e.g. with bills included tenancies tenants should be notified how much they are spending in bills, and if it drops below a certain number (because for example no one is living in the house for part of the tenancy) then this should be taken off the rent. The tenants should be able to meet the landlord at least once."

"If successful in this change, would like to see this standard applied to all HMO's irrespective to location for the future."

"Should be a limit on the amount of HMOs you can buy, more opportunities for younger adults to buy HMOs (especially those that have lived in one before). They can actually be hands on and know how to meet the requirements. Maybe a scheme for recent university alumni to have the opportunity to buy a HMO?"

"The areas defined for additional licensing are ward based. I suspect that this problem is not widespread throughout the wards and is specific to a few streets or confined areas within these wards. I would recommend that it may not be necessary for the scheme area to be as wide as suggested and by limiting it to several streets a better picture of how acute the problem is in relation to this type of housing may be identified and discussed. Should other areas emerge as an issue in the future a further licensing scheme could be developed in those areas dealing with those specific concerns."

Scheme not needed/Council shouldn't interfere/unnecessary burden

"I disagree with the proposed changes. The existing laws and regulations are enough. My landlords have all been compliant and the houses safe."

"There is no requirement. There are many good landlords in York and this scheme is about further regulation, cost and revenue generation for YCC "

Written submissions

The consultation received written submissions by email from three organisations, the York Residential Landlords Association, Safeagent and an organisation representing students in York, as well as seven private landlords. Here is a summary of the key themes, with full responses provided as Appendix F.

Role of the private rental sector

- Safeagent expressed support for additional licensing initiatives, so long as they “are implemented in a way that takes account of the **Private Rented Sector (PRS)’s own efforts** to promote high standards”.
- Safeagent believe that the council could benefit from offering discounted licence fees to landlords and agents who are accredited under their own accreditation scheme. This is because members of these schemes are **less likely to be non-compliant** with the council’s proposed licence, thus reducing the administration and compliance costs to the council of enforcing the licensing scheme.
- Safeagent were keen to work with York City Council, with one suggestion being a co-licensing scheme.

Disagreement with basis for proposal

- YRLA state that the first consultation is **unlikely to meet the requirements for a lawful consultation**, due to a lack of a clearly evidenced case for the scheme, guidance on room sizes and the inclusion of insufficient information on areas such as the details of the scheme and the wards under consideration.
- YRLA acknowledge that the second consultation addressed many of the issues they raised with the first consultation; however, they still believe that the case offered in the **consultation does not provide the evidence required to prove a need for the scheme**.
- YRLA highlight that there is no evidence that a **proactive HHSRS inspection regime** wouldn’t achieve the same goals of the HMO licensing regime. They state that York City Council **already possess the powers to deal with issues of damp and properties lacking EPCs**. They also argue that the council already possess data it requires about housing stock within its benefits and council tax records, and that it doesn’t need PRS legislation to capture this.
- YRLA **disagree** that the decline in problems reported when an HMO licence is renewed is evidence that licensing reduces issues, and is instead a reflection of the fact that when renewing the licence, the property has already been inspected for the initial licence, leading to the majority of problems in the property already being identified.
- YRLA **disagree that there is a strong correlation between property age and condition**, and that two of the wards that the Council seeks to licence have property ages that are newer than the city average.
- YRLA state that **there is not a link between HMOs and environmental complaints**, with a number of the noisiest wards in the city having fewer HMOs. Where noise issues are prevalent this is more likely due to proximity to the urban core.

- YRLA argue that **no local authority** has effectively implemented and run a properly resourced licensing scheme which is effective on a self-funding basis.

Areas to designate

- Safeagent “**welcome** the targeted nature of the licensing proposals”.
- YRLA **disagree** that the wards of Heworth, Hull Road and Osbaldwick and Derwent are justifiably in need of a licensing scheme.

Enforcement

- One landlord disagrees that additional licensing in York will have an impact, **unless the council has the ability to detect wrongdoers and enforce the legislation**. They state that as some landlords will flout the rules, while putting a cost on those who do adhere to the legislation. This will cause landlords to leave the sector and drive up rents, making it less affordable to tenants.
- One landlord suggests that the title of **Enforcement Officer** be changed to **Information Officer** or something similar, as the title Enforcement Officer might be likely to immediately build a barrier.
- One landlord highlights that the Council **already have powers to enforce improvement works** on all rental properties due to HHSRS. They suggest that advertising the message to tenants that they can report issues under HHSRS may be a more suitable course of action.
- YRLA state that without effective enforcement the additional licensing scheme **will be self-selecting** in the same way that voluntary schemes currently in place are.

Link between anti-social behaviour (ASB) and the PRS

- Concerns are held by Safeagent about the assumed link between the prevalence of ASB and the volume of PRS accommodation in an area. Any **correlation between ASB and PRS does not necessarily indicate causation**, and it is therefore not reasonable for landlords and agents to “play a disproportionately large part” when it comes to tackling the causes of ASB.
- YRLA likewise argue there is **no true correlation between HMOs and ASB**, as the two wards with the highest level of HMOs have no complaints of ASB at all. There is a correlation between waste complaints and HMOs, but this is impacted by these areas being closer to the urban core of the city.
- YRLA highlight that complaints about ASB relate to the **concentration of HMO properties**, which the licensing scheme is not able to deal with, as licenses can’t be refused due to the number of HMOs in the area.
- Safeagent disagree with the implication of the proposal that there should be a “parity of approach” between the PRS and social rented sector. Social housing providers have wider responsibilities for the communities they work with, whereas **PRS landlords and agents are private businesses** which “cannot reasonably be expected to tackle wider social problems”.

Licensing conditions and fees

- Safeagent hold concerns about **the wording of the licence being valid for a maximum of five years**, particularly that if this is a fixed period, landlords or agents who apply for the licence part way through the period would be charged for the full five years. They suggest that the fee either be charged pro-rata, or that it be made clear that licenses last for a full five years regardless of when they are taken out, “and remain valid when the designation is renewed or comes to an end”.
- Safeagent suggest that landlords who are offering permanent accommodation **to meet homelessness duties should be given a fee waiver**. This approach could be made more structured through adoption of a partnership arrangement in which letting agents source properties for council referrals for homeless people or those at risk of homelessness.
- Safeagent “are **supportive of any requirement to obtain references** for prospective tenants”.
- YRLA state that the fee structure in the second consultation is not compliant with the law due to the second element of the fee being payable once an application is complete but before a notice of decision is issued. This could result in the application being refused after the second stage payment is made, making the **fee structure unlawful**.
- A landlord questioned whether there would be **a grace period of six months** once the scheme is introduced for landlords of HMOs to turn their properties back to single let properties, allowing for their current tenants to see out their notice period, without the need for licensing.

Likelihood to drive away landlords

- YRLA state that additional licensing schemes **put costs onto landlords**, leading to them leaving the sector and increasing rents.

Evidencing impact

- Safeagent request that **regular information** on the scheme’s implementation be “made available in a clear and consistent format”. This information should include, at a minimum:
 - Estimated number of PRS properties requiring licenses
 - Number of applications made for licenses and progress in the processing of these licenses
 - Analysis of reasons for queries or refusals of licenses and the extent to which remedial action is identified and taken as a result
 - Analysis of outcomes of ongoing inspections and extent to which remedial action is identified and taken as a result
 - Progress reports across the whole 5-year period covered by the scheme.

Considerations for the future

- One landlord requests that landlords be provided with **early indications of new demands and regulations** to be introduced in the next 2-5 years so that they can plan ahead.

General agreement with proposal

- A representative body for university students in York “**strongly welcome**” the proposals, and highlight that “the provision of good quality, safe and well managed accommodation for all of York’s residents should be a priority for the Council”.
- A representative body for university students in York call attention to **evidence of the extent of poor conditions and property management within York’s private rented market**, particularly among the student housing sector. Drawing upon research produced in conjunction with Citizens’ Advice York, they highlight that 42% of 600 polled residents were dissatisfied with their experience of accommodation in York, half report that repairs weren’t carried out in reasonable timeframes and 31% experienced pests or insect infestations.
- One private landlord fed back that they had **no issues** with the proposal as their properties are already of a high standard. They state that they are aware that there are a lot of 3 bedroom houses which are **below the standards they would expect**, and agree with the **importance of fire safety compliance**.

Suggestions outside of the proposal

- One landlord suggests that **C4 restrictions**, particularly around parking, be relaxed.
- One landlord suggests that there should be a **focus on small houses of families living with 5 or 6 children**, rather than HMOs, as often houses don’t have easy access to a park meaning that children are kept in the house or are playing on the street.

‘Let’s Talk Housing’ meeting feedback

As part of the second consultation, two public meetings were also held in December 2021 to give the opportunity to hear more about the HMO licensing proposals. At the end of each session the attendees were given the opportunity to ask questions about the proposal. These have been summarised into key themes below.

Challenging landlords on current violations

In both sessions, questions were asked about why the Council is not challenging landlords on violations of current legislation, such as expiration of EPCs.

Enforcement

A query was raised over whether the council has capacity to deal with additional licensing, as there is no point implementing the measures if the council doesn’t have the resources to manage them.

Licence conditions

An attendee raised a question regarding whether current HMO landlords would have a grace period to return their property back to a single let before needing to get a licence, in order to give them a chance to give notice to their current tenants.

Partnering with third party/private accreditation scheme

It was raised that institutional student accommodation providers are exempt from HMO requirements through signing up to an approved code of practice, and queries why a similar scheme isn’t proposed for HMOs.

Tenant responsibilities

It was claimed that student tenant often don’t comply with or understand safety rules such as not leaving doors wedged open, and there is a need for better education of students on these issues. Likewise, there is a need to help students to understand what they should be getting their landlords to fix and what they need to do to avoid issues, for example in waste management.

Landlord outreach

It was raised in one session that those in attendance are likely to already be in favour of licensing, as evidenced by their presence.

Timeframe for marketing of student properties

A question was raised over whether agents who specifically market student properties would or could be encouraged to market their properties from January onwards.

Relationship between HMOs and students

It was raised that the surveys included in evidence of student housing conditions don't make reference to HMOs.

Action on social housing

A query was raised over the action being taken to ensure housing standards are maintained in properties provided by the Council and registered providers, and whether proposed licensing would apply to these providers, and institutional accommodation providers.

Appendix A: Respondent type profile

Appendix B: Written responses

Appendix A: Respondent type profile

| Respondent type | First consultation | Second consultation |
|---|--------------------|---------------------|
| Private landlord / letting agent or manager | 33% | 32% |
| Private tenant | 32% | 41% |
| A resident (who is not a private tenant) | 31% | 21% |
| Business owner or manager | 1% | 1% |
| An advice or community organisation | 1% | 1% |
| Other | 3% | 3% |
| N | 699 | 354 |

| Gender | First consultation | Second consultation |
|---------------------------|--------------------|---------------------|
| Female | 221 | 64 |
| Male | 166 | 58 |
| Non-binary/gender variant | 8 | 3 |
| Prefer not to say | 57 | 27 |
| N | 452 | 152 |

| Sexuality | First consultation | Second consultation |
|-----------------------|--------------------|---------------------|
| Heterosexual/straight | 271 | 3 |
| Bisexual | 44 | 9 |
| Gay man | 16 | 11 |
| Gay woman/lesbian | 7 | 83 |
| Prefer not to say | 104 | 42 |
| N | 442 | 148 |

| Disability | | First consultation | Second consultation |
|-------------------|------------------|--------------------|---------------------|
| No | | 363 | 95 |
| Yes | limited a little | 66 | 21 |
| | limited a lot | 19 | |
| Prefer not to say | | | 32 |
| N | | 448 | 148 |

| Ward | First consultation |
|-------------------------------|--------------------|
| Acomb | 33 |
| Bishopthorpe | 5 |
| Clifton | 38 |
| Copmanthorpe | 5 |
| Fishergate | 61 |
| Fulford & Heslington | 97 |
| Guildhall | 52 |
| Haxby & Wigginton | 10 |
| Heworth | 49 |
| Heworth Without | 14 |
| Holgate | 15 |
| Hull Road | 176 |
| Huntington & New Earswick | 10 |
| Micklegate | 40 |
| Osbalwick & Derwent | 47 |
| Rawcliffe and Clifton Without | 7 |
| Rural West York | 7 |
| Strensall | 3 |
| Westfield | 5 |
| Wheldrake | 5 |
| N | 679 |

| Employment | First consultation | Second consultation |
|--|--------------------|---------------------|
| Employee in full-time job (30 hours plus per week) | 127 | 46 |
| Employee in part-time job (under 30 hours per week) | 33 | 12 |
| Self-employed full-time | 37 | 30 |
| Self-employed part-time | 19 | |
| Full-time education at school, college or university | 125 | 32 |
| Unemployed and available for work | 2 | - |
| Permanently sick/disabled | 2 | - |
| Wholly retired from work | 63 | 21 |
| Looking after the home | 5 | - |
| Other | 16 | 8 |
| Prefer not to say | 22 | - |
| N | 261 | 150 |

| Ethnicity | First consultation | Second consultation |
|---|--------------------|---------------------|
| White - English / Welsh / Scottish / Northern Irish / British | 338 | 102 |
| White - Irish | 2 | 1 |
| White - Gypsy or Irish Traveller | 0 | 1 |
| Any other White background | 20 | 4 |
| Mixed - White and Black Caribbean | 3 | 0 |
| Mixed - White and Black African | 1 | 0 |
| Mixed - White and Asian | 5 | 1 |
| Any other Mixed / multiple ethnic background | 2 | 0 |
| Asian - Indian | 5 | 3 |
| Asian - Bangladeshi | 1 | 1 |
| Asian - Chinese | 1 | 1 |
| Any other Asian background | 1 | 0 |
| Black - African | 1 | 1 |
| Any other Black / African / Caribbean background | 0 | 1 |
| Any other ethnic background | 0 | 1 |
| Prefer not to say | 69 | 32 |
| N | 449 | 149 |

Appendix B: Written responses

Response 1



YORK CITY COUNCIL'S ADDITIONAL LICENSING PROPOSALS

A RESPONSE TO THE CONSULTATION FROM SAFEAGENT – DECEMBER 2021

INTRODUCTION

safeagent www.safeagents.co.uk is an accreditation scheme for lettings and management agents operating in the Private Rented Sector (PRS) **safeagent** firms are required to:

- deliver defined standards of customer service
- operate within strict client accounting standards
- maintain a separate client bank account
- be included under a Client Money Protection Scheme

Firms must provide evidence that they continue to meet **safeagent** criteria on an annual basis, in order to retain their licence. The scheme operates UK wide and has 1500 firms with over 2500 offices.

safeagent is an accredited training provider under the Rent Smart Wales scheme and meets the requirements for training for agents under the Scottish Government Register. Recently, we have been approved by Government as a Government approved Client Money Protection scheme.

SAFEAGENT AND LICENSING

safeagent is supportive of initiatives such as Additional Licensing, providing they are implemented in a way that takes account of the Private Rented Sector (PRS)'s own efforts to promote high standards.

safeagent believes that positive engagement with voluntary schemes and the representative bodies of landlords and agents (such as **safeagent**) is essential to the success of initiatives such as Additional Licensing. We are mindful that the operational problems associated with lack of such engagement have been highlighted in House of Commons Standard Note SN/SP 4634.

The same note sets out how important it is for licensing schemes to avoid being burdensome. We believe that promoting voluntary schemes, and offering discounted licence fees to accredited landlords and agents, can help to achieve this. Voluntary schemes often require members to observe standards that are at least compatible with (and are often over and above) those of licensing schemes. We believe, therefore, that if York City Council were to allow discounts based on membership of **safeagent** (as well as other similar bodies) implementing and policing the licensing scheme would ultimately be less costly and more effective, allowing resources to be concentrated in the areas where they are most needed.

This is a commonly accepted approach by many English Local Authorities. We would further point out that, in Wales, the Welsh Government has recently recognised the importance of membership of specified bodies such as **safeagent** and is offering discounted fees to members as a consequence <https://www.rentsmart.gov.wales/en/>

PROMOTING PROFESSIONALISM IN THE PRS - THE ROLE OF AGENTS

safeagent's engagement around the country, with various local authorities, suggests that lettings and management agents have a key role to play in making licensing, accreditation and other, voluntary regulatory schemes work effectively. Agents tend to handle relatively large portfolios of properties, certainly when compared to small landlords. They tend, therefore, to be in a position to gain an understanding of licensing based on wider experience. They become expert in trouble shooting and ensuring that the balance of responsibilities between the agent and the landlord is clearly understood. This, amongst other things, can help to prevent non-compliance due to misunderstandings about local licensing arrangements.

Furthermore, **safeagent** ensures its members maintain certain operational standards, have Client Money Protection arrangements in place, keep separate client accounts and comply with their legal obligation to be a member of a redress scheme. We also provide training. All this can be of assistance to councils who are trying to drive up standards in the PRS.

Although agents are now required to belong to a government approved redress scheme, display their fees and publish their client money protection status, our experience to date suggests local authorities face challenges in enforcing these standards. Membership of bodies such as **safeagent** can reduce the need for the local authority to use its formal, legal powers in these areas.

YORK CITY COUNCIL'S PROPOSALS - SPECIFIC ISSUES

Proposed Licensing Area

We welcome the targeted nature of the licensing proposals.

Licensing Period and Changes in License Holder

We note the fact that a licence would be valid for “a maximum of five years”

Given the use of the term “maximum”, we are concerned that licence applications made part way through the designated period would incur the full fee. This is unfair and makes licenses granted later in the designated period poor value for money. In these cases, we believe the fee should be charged “pro-rata”.

Charging of full fees for part periods is also anti-competitive, as it can add cost to the process of engaging or changing a license holding managing agent. Specifically, we often see cases where a reputable agent has to take on management of a property and the license, when there has been a history of management and/or compliance problems. We would suggest that, in cases where an agent steps in as licence holder/manager, the licensing fee should again be charged “pro rata”.

Alternatively, it should be made clear that licenses taken out part way through the period last for a full 5 years - and remain valid when the designation is renewed or comes to an end. If a designation comes to an end, inspections and resultant remedial actions should continue to be in operation until all licenses have expired.

Additional Licensing Fees

We believe that the Council should offer a discounted rate for ‘accredited’ landlords and agents. We would request that York City Council specifically list **safeagent** as a recognised professional accrediting body, and offer fee discounts to:

- Agents who are members of **safeagent** (where the agent is the licence holder)
- Landlords who engage agents that are members of **safeagent** (where the landlord is the licence holder)

We would suggest that this is justified because **safeagent** members and the landlords who engage them are less likely to be non-compliant and that, as a result, there would be reduced costs to the council. We would also suggest that **safeagent** membership mitigates the need for compliance visits to be carried out by the council. For example, the timing and content of visits could be risk based, recognising that the risk of non-compliance is much lower in the case of properties managed by **safeagent** agents.

In our detailed comments below, we point out some of the areas where compliance with key standards is an inherent part of the **safeagent** scheme. These are the areas where we think promotion of **safeagent** membership through license fee discounts could ultimately save the Council money, as well as increase the take up of voluntary accreditation.

Fee Waiver – Tackling Homelessness

We would suggest that, in cases where a private landlord is assisting the Council by offering permanent accommodation to meet homelessness duties, license applications should be accepted without any fee being payable.

Furthermore, this approach could become more structured if the council were to enter into partnership arrangements whereby lettings agents source properties for council referrals of homeless people or those at risk of homelessness. **safeagent** is currently working on a model whereby a “Social Lettings Agency” is created through links to one or more established local agents. This is an alternative to the traditional approach whereby entirely new voluntary sector entities need to be set up. We would be happy to discuss this model with the council at any time.

LICENCE CONDITIONS

Tenant Referencing

We are supportive of any requirement to obtain references for prospective tenants. **safeagent** is actively involved in promoting good practice in tenant referencing. We would be happy to discuss our work in this area with the Council.

Tenancy Management

safeagent agents are expected provide and fill in a tenancy agreement on behalf of the landlord. they will always make sure the terms of the tenancy are fair and help the tenant to understand the agreement.

They will always provide clear information to the tenant about any pre-tenancy payments and what these cover. They will explain any requirement for a guarantor and what the guarantor role entails.

At the end of a tenancy, they will always serve the tenant with the correct period of notice as set out in the tenancy agreement.

Under **safeagent's** service standards, agents are required to take a deposit to protect against possible damage. They are required to explain the basis on which the deposit is being held and the purpose for which it is required, as well as to confirm the deposit protection arrangements. When joining **safeagent**, agents are asked to provide details of the number and value of the deposits they have registered with the scheme.

Agents are asked to authorise **safeagent** to contact the scheme to verify this information.

During the course of a tenancy, **safeagent** agents will check the condition of the property and draw up a schedule to outline any deductions to be made from the tenant's deposit. They will return the deposit in line with timescales and processes required by the statutory tenancy deposit schemes.

safeagent agents are also required to:

- Have a designated client account with the bank
- Operate to strictly defined Accounting Standards
- Be part of a mandatory Client Money Protection Scheme.

These requirements provide additional security for client monies held, over and above the requirements of the York City licensing scheme. Again, this is an area where increased **safeagent** membership would be of benefit to the Council and local tenants.

Licence Conditions Relating to the Property

We welcome York City Council's drive to improve property standards. We believe that **safeagent's** standards go a long way to ensuring compliance with license conditions.

Under **safeagent's** service standards, **safeagent** agents are expected to visit any property to be let with the landlord and advise on any action needed before letting the property. This includes any repairs and refurbishments needed to put it into a fit state for letting. They will also go with possible new tenants to view unoccupied property. Tenants can, therefore, be confident that **safeagent** agents have provided advice to the landlord concerning any repairs or refurbishments which are necessary.

safeagent agents are expected to explain both the landlord's and the tenant's the rights and responsibilities. To guard against misunderstandings, they will arrange for the preparation of a schedule of the condition of the property.

safeagent agents are required to ensure that tenants are provided with copies of safety certificates on gas and electrical appliances before they commit to the tenancy. They will

provide details of the condition of the property, plus a list of its contents. The property will have undergone all required safety checks on furnishings, and gas and electrical services.

Thereafter, **safeagent's** standards require agents to carry out property inspections periodically, as agreed with the landlord, in line with normal good practice. **safeagent** and our firms would anticipate inspections to be carried out every 6 months as a minimum, to identify any problems relating to the condition and management of the property. In line with common practice, records of such inspections would contain a log of who carried out the inspection, the date and time of inspection and issues found and action(s) taken. Under a licensing scheme, this information could be shared with the council in an appropriate format.

Tenants will be fully aware of access arrangements. **safeagent** agents are expected to arrange in advance a time for access, in order to inspect the condition of the property in accordance with the tenancy agreement. **safeagent** agents will arrange to have routine maintenance work carried out, up to a limit agreed with the landlord. The agent will refer expenditure above that limit to the landlord.

Training

We welcome the proposal that agents who are license holders should undergo training.

Membership of **safeagent** means that agents already have access to an extensive training package, engagement with which should reduce the need for the local authority to intervene. Although not a *condition* of **safeagent** membership, **safeagent** offers accreditation through an online foundation course as well as qualifications such as BTEC Level 3 in Lettings and Management practice.

safeagent offers training to those who have been involved in lettings and management for some time as well as those who are just starting out. Training is available for principals of firms as well as employees. Thus, **safeagent's** Virtual Learning Environment (VLE) is designed to cater for a wide range of professional development needs. Training is easily accessible and can be undertaken when it suits the trainee. Any candidate completing the **safeagent** Foundation Lettings Course successfully also has the opportunity to use the designation '**safeagent qualified**'. **safeagent** Foundation Lettings Course (Wales) is also approved training recognised by Rent Smart Wales, the Welsh Government's regulatory body as meeting the requirements for agents to have complying with their licensing requirement.

One advantage of this approach is that it makes it easy to ascertain (through on-line monitoring) that participants have in fact undertaken the required training, prior to or immediately after accreditation.

Modules available cover:

- Pre-tenancy issues
- Responsibilities and liabilities
- Setting up a tenancy
- During a tenancy
- Ending a tenancy

- General law concepts, statute vs contract
- Relationships
- Obligations
- Process
- Considerations for corporate tenants
- Continuing Professional Development (CPD)

In addition, **safeagent** provides mini online courses designed to cover a number of elements in more detail, as appropriate to the learner's role, include topics such as:

| |
|--|
| Assured Shorthold Tenancies (ASTs) |
| Client Money |
| Consumer Protection Regulations (CPRs) |
| Deposits |
| Disrepair |
| Electrical Appliances & Safety |
| Gas Appliances & Safety |
| Houses in Multiple Occupation (HMOs) |
| Housing, Health & Safety Rating System (HHSRS) |
| Inventories and schedules of condition |
| Joint Tenancies |
| Notice Requiring Possession |

We would further suggest that discounted fees for **safeagent** agents would provide an incentive to positive engagement with training that is fully compatible with the requirements of the licensing scheme.

We note that the council accepts the following as an alternative to attending the council's own course;

- Residential Landlords Association, Principles of Letting
- National Landlords Association, Foundation Course
- YorProperty Accreditation Scheme Core Management/Property Standards courses
- NFOPP Level 2 Award
- NFOPP Level 3 Technical Award

We would also urge the council to recognise **safeagent** training and add it to this list.

Anti-Social Behaviour

For our members, dealing with actual and perceived anti-social behaviour in the PRS is a day to day activity. However, in general, we have concerns about the assumed link between the amount of PRS accommodation in the neighbourhood and the incidence of ASB.

There may be some *correlation* between incidences of ASB and the prevalence of PRS accommodation on the area. However, correlation does not imply *causation*. The *causes* of ASB are many and varied. It is not, in our view, reasonable to expect agents and landlords to play a disproportionately large part in tackling them.

Furthermore, we would strongly advise against any proposals which imply a parity of approach between the PRS and the social rented sector. Social landlords are publicly funded (and regulated) to develop and manage housing on a large scale. Their social purpose brings with it wider responsibilities for the communities in which they work. As private businesses, PRS landlords and their agents, whilst having clear responsibilities to manage their properties professionally cannot reasonably be expected to tackle wider social problems.

Suitability of Licence Holder

We note and welcome the requirement that the council would only issue a licence if it is satisfied that the proposed licence holder is a 'fit and proper' person and that there are suitable management arrangements in place. We believe that this requirement highlights the importance of lettings and management agents belonging to recognised accrediting bodies like **safeagent**, who themselves apply a fit and proper person test.

All principals, partners and directors of a **safeagent** firm are asked to make the following declaration on application:

– “I confirm that: for a period of 10 years prior to this application I have had no conviction for any criminal offence (excluding any motor offence not resulting in a custodial sentence) nor have I been guilty of conduct which would bring the Scheme or myself into disrepute; I am not an undischarged bankrupt nor is there any current arrangement or composition with my creditors; I am not nor have I been a director of a company which has within the period of 10 years prior to this application entered into liquidation whether compulsory or voluntary (save for the purpose of amalgamation or reconstruction of a solvent company) nor had a receiver appointed of its undertaking nor had an administration order made against it nor entered into an arrangement or composition with its creditors; nor have I at any time been disqualified from acting as a Director of a company nor subject to a warning or banning order from the Consumer Markets Authority or the Department for Business, Enterprise and Regulatory Reform.

If I am subject to any current claim or am aware of any impending claim for professional negligence or loss of money or if I have been the subject of any investigation by the Consumer Markets Authority and/or local Trading Standards Office, full details of the circumstances are set out in a report enclosed with the application; all information provided by me in connection with this application is, to the best of my knowledge, correct”

We believe this certification is broadly in line with York City council's licensing conditions and is another example of where promotion of **safeagent** membership through discounts could help to ensure compliance.

Complaints

All **safeagent** firms are required to have a written customer complaints procedure, available on request. Our guidance sets out how the first step for complainants is to ask the firm they are dealing with for a copy, which will outline the method by which they can seek to resolve any issues.

In line with statutory requirements, all **safeagent** members must also be members of a recognised redress scheme. Firms are required, at the request of the complainant, to refer the complaint to a redress scheme once their in-house procedure has been exhausted. They are also required to comply with any award determined by the redress scheme, within the timescale prescribed.

Under co-regulation schemes elsewhere in the UK, **safeagent** has undertaken to review any complaints that have been adjudicated upon by any of the redress schemes. Under such an arrangement, **safeagent** can report to the Council on the number of complaints reaching this stage and on the adjudications made. Non-compliance with a redress scheme's adjudication would eventually lead to disqualification of the agent from **safeagent**. We would be happy to come to a similar arrangement with York City.

MEASURING THE SUCCESS OF THE SCHEME

We believe that regular information on implementation of the scheme should be made available in a clear and consistent format. Reports to local landlord and agent forums, representative bodies and other stakeholders should include at minimum:

- The estimated number of private rented properties that require licensing under the Additional licensing scheme
- The number of applications received in respect of these properties
- Progress in processing (granting, querying or refusing) the licence applications received
- Analysis of the reasons for any queries or refusals and the extent to which remedial action is identified and taken as a result
- Analysis of the outcomes of ongoing inspections and the extent to which remedial action is identified and taken as a result
- Progress reports across the whole 5 year period covered by the scheme.

This should help to enable the Council to work in partnership with landlords, agents, representative bodies and other stakeholders to ensure the success of the scheme.

CONCLUSION

It seems to us that many of the licencing requirements in the York City scheme highlight how important it is for landlords to work with reputable agents such as **safeagent** members. Offering a discount to licence holders who work with a **safeagent** accredited agent would help to promote this.

safeagent would welcome a collaborative approach with York City Council, based on shared objectives. We believe that agents who are members of a recognised body are more likely to embrace Additional Licensing and less likely to generate complaints or breaches of their licence. Discounted fees for **safeagent** members would be a significant incentive to positive engagement by agents. In return, the Council would experience reduced administration and compliance costs.

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APPENDIX 1 – COMPATIBILITY OF SAFEAGENT SERVICE STANDARDS WITH TYPICAL SCHEME CONDITIONS

| Example Scheme Conditions | SAFEAGENT Service Standard Requirements |
|-------------------------------|--|
| Fees | SAFEAGENT promotes complete transparency in agency fees. Members provide landlords with a statement of account as often as agreed. |
| Rent Liabilities and Payments | SAFEAGENT agents collect the rent and pass it on every month or as otherwise agreed. The agent will keep a separate clients' account to hold all monies. |

| Example Scheme Conditions | SAFEAGENT Service Standard Requirements |
|--|--|
| Contact Details | SAFEAGENT agents are expected to respond to tenant and other legitimate enquiries in a timely manner. Up to date contact details will enable them to respond to tenants' requests for maintenance or repairs which might in some cases have to be referred to the landlord for approval. |
| State of Repair | SAFEAGENT agents visit the property with landlords and advise on any action needed before letting the property. This includes any repairs and refurbishments needed to put it into a fit state for letting. They will also go with possible new tenants to view unoccupied property. Tenants can be confident that SAFEAGENT agents have provided advice to the landlord concerning any repairs or refurbishments which are necessary. |
| Access and Possession arrangements | SAFEAGENT agents will visit the property periodically during the course of the tenancy as often as agreed with the landlord. Tenants will be fully aware of access arrangements. At the end of a tenancy, they will always serve the tenant with the correct period of notice as set out in the tenancy agreement. |
| Repairs and Maintenance | SAFEAGENT agents will arrange to have routine maintenance work carried out, up to a limit agreed with the landlord. The agent will refer expenditure above that limit to the landlord. |
| Access, Cleaning and Maintenance of Common Parts | SAFEAGENT agents will arrange in advance a time for access to the property in order to inspect the condition of the property in accordance with the tenancy agreement. |
| Level of Facilities | SAFEAGENT agents ensure that tenants are provided with copies of safety certificates on gas and electrical |

| Example Scheme Conditions | SAFEAGENT Service Standard Requirements |
|-------------------------------|---|
| | <p>appliances before you commit to the tenancy. They provide details of the condition of the property, plus a list of its contents. The property will have undergone all required safety checks on furnishings, and gas and electrical services.</p> |
| Deposits | <p>SAFEAGENT agents provide and fill in a tenancy agreement and take a deposit to protect against possible damage. They will explain the basis on which it is being held and the purpose for which it is required.</p> |
| References | <p>SAFEAGENT agents choose a tenant in a way agreed with the landlord, taking up references or checking the tenant's rent payment record.</p> |
| Complaints & Dispute Handling | <p>SAFEAGENT agents explain both the landlord's and the tenant's the rights and responsibilities. To guard against misunderstandings, they will arrange for the preparation of a schedule of the condition of the property.</p> <p>During the tenancy, they will arrange to check the condition of the property and draw up a schedule to outline any deductions to be made from the tenant's initial deposit. They will return the deposit as soon as possible, less any appropriate deductions.</p> |

Response 2



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Ruth Abbott
Housing Standards and Adaptations Manager
Housing Standards and Adaptations
West Offices, Station Rise, York, YO1 6GA

25 June 2021

Dear Ruth

Additional Licensing Scheme Consultation

The University of York Students' Union (YUSU) is the representative body for all undergraduate and postgraduate students at the University of York. YUSU is dedicated to ensuring that our 20,000 members have the best University experience and improving the lives of students at the University of York by championing the interests and welfare of students, representing students' interests and providing social, cultural, sporting and recreational activities and forums for discussion and debate for the personal development of students.

I am writing on behalf of the Union to strongly welcome the proposals under consultation to introduce targeted additional licensing for HMOs in York to smaller properties. The provision of good quality, safe and well managed accommodation for all of York's residents should be a priority for the Council. Whilst we know that many of York's private landlords take their responsibilities seriously, unfortunately there is a very clear evidence base that poor conditions and property management are commonplace features of York's private rented market, in particular within the student housing sub-market.

As you know, based on growing concern about the scale of this problem, earlier this year YUSU [published research](#) in conjunction with Citizens' Advice York which explored the issues that students face in private housing in more depth.

The research revealed a high level of dissatisfaction from students following their experiences in York's private rented market. Almost half of those (600 respondents) polled (42 per cent) were dissatisfied or very dissatisfied with their experiences of accommodation in York. The quality of property management and conditions were key factors in this, with half of students reporting that repairs weren't carried out in reasonable timeframes and significant numbers experiencing indicators of non-decency including pests or insect infestations (31 per cent), gas, electricity or fire hazards (16 per cent), mould (18 per cent) and damaged flooring (30 per cent).

The link between mental ill-health and housing problems is well established so it is perhaps not surprising that this challenging marketplace and factors associated with it have implications for health. Of those polled, just under 40 per cent said accommodation issues had contributed to poor health, whilst over a quarter said they'd made them mentally unwell.

We have made a number of recommendations for improving the private rented sector for students, including the development of a strategic city-wide policy approach and the provision of more support to help students understand how to access help, what their rights are and how to enforce them in the most difficult situations. Such measures will only go so far however. We feel that given the scale of the challenge, a more robust approach is needed and this must be underpinned by additional licensing to provide a stronger framework in regulation.

The Council's consultation represents a major opportunity for the city that would benefit renters broadly, not just students. We feel that the proposals would build on the platform that existing mandatory licensing has established to drive improvements to rental stock, and go a long way towards addressing some of the long-standing issues many private renters face.

We strongly welcome the Council's efforts to address these challenges.

Best wishes,

A handwritten signature in black ink, appearing to read 'POD', enclosed within a hand-drawn oval.

Patrick O'Donnell
President, University of York Students' Union

Response 3

Abbott, Ruth

From: [REDACTED]
Sent: 26 November 2021 13:40
To: HMOLicensing
Subject: Statutory Consultation

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good Afternoon,

I wondered if you may be able to help, please?

Some of our 4 bed HMO landlords have some questions regarding the new licencing that may or may not come into effect in April 2022.

If a Landlord decides that they wish to turn their property back to a single let residential, but still have tenants on 6-month contracts, can they see out their existing HMO tenancies without the need for licencing. Will there be a grace period for them to comply?

Best Wishes

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

For all General Maintenance issues and enquiries,
please call our office on 01 [REDACTED]
Alternatively, please email [REDACTED]

Emergency and out of hours maintenance reporting

Out of hours - Before 9:00 and after 17:30 Plus weekends

The office phone is diverted to a member of staff out of office hours.
Please leave a voicemail describing the issue, along with your name, contact details and property address.

Utility outage

Response 4

From: [REDACTED] <[REDACTED]@york.gov.uk>
Sent: 17 December 2021 11:37
To: newsdesk@york.gov.uk
Subject: Re: Message to attendees of Landlords - Let's Talk Housing

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Thank you.

The problem was resolved.

One question arising from the seminar - please can landlords who have the future in mind and wish to plan ahead in building and developing terms please have indications of what new demands are to be made of us in the next 2 to 5 years. dealing with new initiatives in a piecemeal/knee-jerk fashion is inefficient and expensive.

Response 5

Abbott, Ruth

From: [REDACTED]
Sent: 16 April 2021 09:44
To: HMOLicensing
Subject: Re: Consultation on Introduction of Targeted Additional HMO Licensing Scheme in York

Follow Up Flag: Follow up
Flag Status: Flagged

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi Guys,

No issues here. My properties are always fully compliant and of a high standard anyway as I'm sure you'll recognise.

There's a lot of 3 bed houses I know which are well below what I'd expect for anyone to live in, and items like fire safety should always be prevalent.

What I believe is the c4 restrictions should be relaxed (certainly around parking) but HMO Licensing increased to cover any 3+ properties.

Thank you

Sent from Yahoo Mail on Android

Response 6

-----Original Message-----

From: [REDACTED]
Sent: 18 December 2021 13:06
To: housing.standards@york.gov.uk
Subject: Information

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi.

I attended the on line meeting held on 17th December.
Are the areas discussed available in a printed format please?
I wish to request consideration be given to the title Enforcement Officer be changed, I think such a title likely to immediately build a barrier, perhaps Information Officer or similar would be more appropriate.

Regards

[REDACTED]

Response 7

From: [REDACTED]
Sent: 17 June 2021 19:35
To: HMOLicensing
Subject: Re: Consultation on Introduction of Targeted Additional HMO Licensing Scheme in York

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear sir/Madam,

I feel to say I have very good relationship with the leader of the house he is very good I asked him any of you going home please when you come back for week don't contact with others if you had any sign of virus go have test if it is possible not to go home i send message and remind them take care of yourself my house have. got all certificate it should have something I most say I haven't

Seen anywhere else I don't know who is responsible for that which is very good idea a person come with stuff clean the where people touch. I think council should take care of houses people living with damp and can't heating. thank you. [REDACTED]

Sent from my iPhone

Response 8

From: [REDACTED]
Sent: 19 June 2021 10:22
To: HMOLicensing
Subject: Re: Auto Response from hmolicensing@york.gov.uk

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

My opinion the number of houses are the same and number of bed room is each houses one person live in each bedroom as I can understand you want to put the blame to HMO I haven't got the information each location you mention how many HMO houses in those street how about the very small houses Family living with 5 or 6 children I thing that is the problem and these days new houses built in that area haven't got park. Children Kept in the house or they are playing on the street. I am sorry i haven't any other useful ideas to give you. Thank you Sent from my iPhone

Response 9

Abbott, Ruth

From: [REDACTED]
Sent: 22 April 2021 10:45
To: HMOLicensing
Subject: RE: Consultation on Introduction of Targeted Additional HMO Licensing Scheme in York

Follow Up Flag: Follow up
Flag Status: Flagged

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear sirs,

Thank you for your email. I'm not averse to ensuring that tenanted properties are maintained and if necessary improved. However I have to disagree with additional licensing in York. If you look at other areas of the UK by comparison, there will always be a select proportion of landlords who flout the rules and this legislation will just make it harder for those who do adhere to legislative changes. As it's made harder and more costly, more landlords will leave the sector, driving up rents as there is less quality housing stock and consequently making it less affordable for tenants.

Unless you have availability to detect any wrongdoers and subsequently enforce this legislation with respect, this will not work.

Lastly, HHSRS is applicable to all rental properties and York City Council already have powers to enforce improvement works accordingly should tenants feel the need to report any issues. Perhaps investment in advertising this message to tenants would be more suitable. If you need any further assistance please drop me a line on 01904 622 744 (option 2).

Wishing you all the best!

Response 10 and 11



Our Ref: DAS/EMM/642004C.1/York Residential Landlords Association

Your Ref:

11 May 2021

City of York Council
Housing Standards and Adaptations
West Offices
Station Rise
York
YO1 6GA

JMW Solicitors LLP
Kings House
36-37 King Street
London EC2V 8BB

DX: 42624 Cheapside
T: 0203 675 7575
W: jmw.co.uk

By first class post and email: housing.standards@york.gov.uk, HMOLicensing@york.gov.uk
and legal@york.gov.uk

Dear Sirs

Our Client: York Residential Landlords Association

We are instructed by the York Residential Landlords Association in relation to the Additional Licensing Scheme Consultation to widen the scope of licensing of Houses in Multiple Occupation (the "Consultation") currently being conducted by the City of York Council (the "Council").

We are writing to you to express our client's deep concern with the manner in which the Consultation is currently being conducted. These concerns fall into three categories. Firstly, it is our view that the Consultation is unlikely to meet the requirements for a lawful consultation in terms of the manner in which it is being conducted. Second, the document entitled "Considering the case for additional licencing of houses in multiple occupation" (the "Case"), presented alongside the Consultation simply fails to make a clearly evidenced case for the implementation of an additional licensing scheme. Third, the limited aspects of the proposed scheme set out in the documents entitled "HMO Implementation Policy" (the "Implementation Policy") and "Guidance notes for room sizes" (the "Guidance Notes") are unlawful and do not properly accord with clear decisions of the Upper Tribunal as to the manner in which decisions as to property suitability should be made. We will elaborate on these decisions below.

For these reasons, we consider that any decision to proceed with an additional HMO licensing scheme on the basis of the Consultation as it stands is likely to be irrational, unlawful, and *ultra vires* the powers of the Council. If a decision is made on this basis we will advise our client to challenge it by way of judicial review in the Administrative division of the High Court.

Manner of Consultation

The Council is permitted to create an additional licensing scheme by reason of s56, Housing Act 2004. This provides, at s56(1), that a local authority may designate either—

- (a) the area of their district, or
- (b) an area in their district,

as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.

In order to make such a designation a local authority must consider, per s56(2), that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.

A local authority is further required, by s56(3), to:

- (a) take reasonable steps to consult persons who are likely to be affected by the designation; and
- (b) consider any representations made in accordance with the consultation and not withdrawn.

Designations for additional licensing are also subject to approval by the Secretary of State. Approval has been given on a general basis by way of the Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015 (the "Approval"). The approval of a designation is however made conditional in paragraph 5 of the Approval on a local authority consulting "persons who are likely to be affected by it ... for not less than 10 weeks." It is implicit in this phrase that such a consultation will be lawfully carried out.

The proper approach to a consultation was originally set out in *R v Brent LBC ex p Gunning* (1985) 84 LGR 168 and are commonly known as the Sedley criteria. These are:

1. That the consultation must be at a time when proposals are still at a formative stage.
2. That the local authority must give sufficient information for an intending respondent to give the proposal proper consideration and to formulate an appropriate response.
3. That adequate time must be given for consideration and response; and
4. That the consultation responses must be conscientiously taken into account in finalising any proposals.

These criteria were applied to consultations for HMO licensing schemes in the case of *Peat & Ors, R (on the application of) v Hyndburn Borough Council* [2011] EWHC 1739 (Admin). In that case the Respondent local authority was criticised for failing to provide a consultation which met the second criteria. Notably the Court stated, at paragraph 52 that: in order to comply with the requirements of valid consultation envisaged in the *Gunning* case and later authorities, the consultees must be given sufficient information to enable them to reach an informed decision upon that on which they are being consulted. Without some fleshing out of the reasons for the proposals, the nature of the proposals as regards the licence conditions and as to a fee structure, it seems to me that an informed response was really impossible.

It is submitted that the Consultation being conducted by the Council has fallen is a similarly defective in that it fails to give details of what it is that is in fact being consulted on. The survey itself contains no details of any scheme and at no point asks what is thought of any specific scheme structure, referring consultees to the Case. It is not even made clear exactly which wards are actually intended to be included within the proposed designation beyond the statement that they will be "those wards with the highest number and poorest conditions". There is no clarity as to what this means as the Case makes clear that the wards with the highest number of HMOs and the wards with the highest density of HMOs are not in fact the same wards. In addition, the Case and survey do not specify what is meant by "poorest conditions". The Case in fact states that there is little to no correlation between number or density of HMOs and the criteria it appears to use to define poorness.

Finally, there is also no clarity as to how many such wards are to be designated. Indeed, the Case suggests in section 8 that there is consideration being given to licensing all HMOs in the entirety of the Council's area of responsibility, in marked contrast to the suggestion in the survey that it is to be limited to specific, if hazily specified, wards. In summary, there is no

way for a consultee to clearly see which wards and how many are proposed for designation and on what basis it is proposed to make that designation.

In addition, the Consultation does not specify what a proposed scheme might look like. The fees are not clearly specified. The only information is in the Implementation Policy in which it is stated that the fees will be "set in line with the Council Fees Policy for a 5/5 bedroom HMO". This provides little clarity as to what fee will be applied to an HMO occupied by three persons or any other form of HMO. Likewise, the Implementation Policy has a confusing discussion of various changes to licence conditions without setting out clearly what licence conditions are proposed to be applied to a licence under the proposed additional licensing scheme.

In short, the Consultation as it stands in no way meets the requirements set out in *Peat* as it is not possible for a respondent to properly ascertain what they are being consulted on in such a way as to meaningfully comment on the proposal.

It may be that the Consultation is, as the Case suggests, an initial review. The Case states in section 5 that the "results of the consultation will be considered as part of the development of the proposed structure of any additional licensing scheme." This would seem to suggest that a further consultation will be held once that proposed structure has been developed. Were that to be the case then our client entirely accepts that a further consultation would be likely to meet the requirements of the decision in *Peat*. Without a further consultation the tests set out in *Gunning* and elaborated in *Peat* cannot be met by the current Consultation.

Nature of the Evidence

The evidence for making a designation set out in the Case is weak at best. The Case to a large extent openly admits these weaknesses.

The Case refers to MHCLG guidance that is associated with the Approval and compliance with this. Such a position is misconceived. The only current guidance associated with the Approval is the document entitled "Selective licensing in the private rented sector". This refers to consultations around selective licensing and has no application to the Consultation being carried out by the Council.

The Case starts out at section 4.6 by seeking to draw a connection between property age and poor condition. This assertion is made in the Case as a bland statement that it is "well reported" that poor conditions are associated with property age without any specific evidence being cited. This assertion is one that we dispute. The evidence is not as equivocal as is being claimed and it should in any event be cited if the Case is to make a clear argument for HMO licensing. While we agree that older properties can bring a range of challenges in terms of condition, they can also be better in some aspects. In particular we dispute the evidence for the further harms claimed of overcrowding and homelessness. These are not properties of age of dwelling but relate to other social-demographic factors which may often be found together with the age of a property. In any event, homelessness is not a factor which relates to or provides an evidence case for HMO licensing.

It is also notable that the Case sets out in section 4.6 the lack of information available to the Council. It calls into question the entirety of the Case if the Council is not in fact fully aware of the quantity of HMO stock in the City. In addition, the lack of information available to the Council, while it may be a benefit of a licensing scheme is not a factor which should weigh into the decision to make one. The acquisition of useful information may form part of a case for the making of a selective licensing designation but is not relevant to the making of an additional HMO licensing designation. In any event, such information is available from a range of other sources already available to the local authority as a number of local authorities have convincingly demonstrated over the years. This includes making use of data

collection alongside Council Tax returns, a matter the Secretary of State for Housing and Local Government wrote to local authorities about some years ago as well as the use of benefit data and other records.

The Case goes on to produce energy performance data suggesting that this shows lower standards in HMO property. Again, this is disputed. First, there is no requirement to obtain an Energy Performance Certificate ("EPC") in an HMO that is being let on a room by room basis. We refer you to page 7 of the guidance produced by the MHCLG entitled "A guide to energy performance certificates for the marketing, sale and let of dwellings". This states that an "EPC is not required for an individual room when rented out, as it is not a building or a building unit designed or altered for separate use. The whole building will require an EPC if sold or rented out." Accordingly, EPC data for HMO property is itself likely to be suspect as it will not be available for a significant range of properties and EPCs will not have been updated for other properties where work has been done. In addition, the control of energy performance standards is not a criteria that falls within the decision making process for an additional licensing scheme. It is not a factor that relates to the management of the relevant property provided that the energy performance rating is not at a level which breaches the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015. If those regulations are being breached then the local authority has clear powers to remedy that situation by enforcing those regulations. The information to do so is available direct from the relevant energy performance registers maintained for this purpose. In addition, the government is already consulting on hardening the energy efficiency standards in the private rented sector to require landlords to have a rating of C or better. Accordingly, we do not see that this issue is one of any relevance to HMO licensing. It is a matter which the local authority already has the necessary powers and information to manage and it is not one which requires a licensing scheme to deal with.

In relation to comments in the Case in section 4.8 on HHSRS data there seems little that this adds. York is much the same as the rest of England. The increased incidence of falls on stairs is likely to reflect the historic character of parts of the city and the steeper stairs in older buildings. This is not a factor that can be controlled by the HHSRS or licensing as there is a need to respect the construction of dwellings in both cases.

The discussion of HMO enforcement in section 4.9 of the Case shows that the Council takes active enforcement measures. It is hard to see what a licensing scheme would add to this. In addition, it is noted that there is a tacit admission that the Council has not kept up with its statutory duty to inspect all licensable property within five years. Given the current inability to meet this obligation it is hard to understand why it would be an appropriate decision to create further licensing regimes, thereby increasing the number of properties to be inspected within this timeframe.

Section 4.10 discusses the Covid-19 pandemic but again raises entirely spurious and irrelevant matters. It is of no relevance to a decision to designate a licensing scheme that courts will have a backlog. The majority of enforcement powers used by local authorities involve statutory notices backed up by civil penalties. These are all dealt with in the First Tier Tribunal which is not known to have a significant backlog of work. Backlogs in other courts are of no relevance to this situation. In addition, given that any licensing scheme will be designated for five years it is hard to see why a temporary backlog caused by the Covid-19 pandemic, one which the government has already pledged to reduce by the end of the year, is relevant over the term of a scheme.

Section 4.12 is the most critical part of the Case. Given that the major criteria for deciding whether or not to designate a scheme is whether there is ineffective management that is causing problems for tenants or the public. It is for this reason that section 4.12 should be the strongest part of the argument. Sadly, it is the weakest. The Case states that there

"appears to be some correlation between anti-social behaviour complaints and areas with higher numbers of HMOs" and that "there appears to be some correlation between HMO prevalent areas and noise complaints". This is an excessively generous assertion as there is in fact no true correlation at all. Indeed as the Case also accepts there are two wards with high levels of HMOs which have no complaints of ASB at all while the top ten wards with noise complaints have high levels of HMOs in only half of them while the one with most complaints has a relatively few HMOs within it. In fact, the Case is more accurate when it discusses waste complaints which it suggests are more prevalent in wards with large numbers of HMOs as it also states that "some of this could be related to littering and commercial operations within or towards the city centre." This is in fact the true correlation in the data. The areas with more complaints are closer to the urban core in which there is a higher level of business and leisure activity and more tourism. There is in fact, as this part of the Case makes clear no true correlation between numbers of HMO property and the alleged negative effects set out. It is this part of the Case that most closely links to the actual criteria set out in the statute as the appropriate points on which to base a decision to designate an area for additional licensing. Finally, it should be noted that much of the complaints the Council makes relate to concentration of HMO properties. This is not something that a licensing scheme can deal with. There is no basis for refusing licences due to excessive numbers of HMOs in an area. In fact, the Council already has the necessary tools to deal with this issue by way of the Article 4 direction it has already made. This allows for control of numbers of HMOs and can be enforced more effectively than a licensing regime as the penalties are far greater. The issues of detection of HMOs are no different but the ability to recover profits made by landlords by way of recovery orders made under the Proceeds of Crime Act makes an aggressive planning enforcement regime self-funding to a far greater extent than an HMO licensing regime with the additional benefit that monies recovered from POCA cases are not ring-fenced for specific uses.

The case studies presented in section 4.13 have no relevance. They are all matters which were detected and resolved without the use of the proposed additional licensing scheme and so provide no support for the need to designate one.

Turning to the option appraisal, this is entirely inaccurate. It does not discuss an increased use of HHSRS powers coupled with a civil penalty regime. In fact, it suggests that the only option that does not require funding from Council Tax is a licensing regime. This cannot possibly be correct. Any system will require some initial funding, including a licensing regime. However, an HHSRS based scheme will require less funding and for a shorter time period as for every formal notice served the cost of that notice can be recouped. An active regime of enforcing breaches of the Tenant Fees Act and missing EICR certificates will add further funding and have a far more direct effect on tenant welfare than an HMO licensing scheme. In fact, as has been demonstrated in the London Borough of Newham for example, for an HMO licensing scheme to be effective it will require considerable funding above and beyond that recovered from license fees in order to fund an effective detection and enforcement process to identify HMOs that should be licensed and deal with them. In fact, the true objective of the licensing scheme is set out toward the end of the option appraisal where it is stated that other options "will not give the council detailed and accurate information concerning the HMO stock. This is essential in order to undertake meaningful prioritisation and work planning." The ability to obtain information is not an appropriate or lawful reason to designate an area for HMO licensing. In addition, the statement that other methods will not recover the necessary data is entirely untrue. Indeed the Council was written to in common with every other English local authority in late 2015 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/477122/Data_on_housing_tenure_letter.pdf) to remind them of their powers to obtain tenure data through council tax and then to use it for housing purposes. This option has not been mentioned in the appraisal but is in fact a zero cost method of obtaining the data that the Council claims to need.

The other benefits set out in section 6.2 are largely irrelevant and could all be achieved in other ways. The Council states that it has tried a local accreditation scheme. This argument is rejected. The Council failed to commit to this scheme fully, and our client has made this point several times. By committing more fully to this the Council could form a group with our client and other key stakeholders which would allow for information flow and engagement. The suggestion that this can only be achieved through licensing is untrue and the level of engagement with landlords, whether with or without a licensing scheme, is something that is entirely dictated by the approach taken by the relevant local authority. The claimed benefit that licensing is pro-active and therefore reduces reactive work entirely underestimates the work required in detecting unlicensed properties and enforcing against them. The fact that this cost has been ignored suggests that any licensing regime will be entirely ineffective in dealing with the poorer landlords in York as they simply will not sign up to be licensed and there will be limited resources devoted to rooting them out. Further, the admission that cuts in resources and budgets have already led to a reduction in pro-active activity for existing licensed properties gives little confidence that there will be any more of a pro-active approach taken in relation to any new scheme.

Unlawful Scheme Structure

Finally, our client is particularly concerned by aspects of the scheme, specifically in relation to room sizes, which are plainly unlawful. The Guidance Notes despite describing themselves as guidance and setting an expectation of being non-mandatory in nature then go on to set out "minimum bedroom sizes". It is clear therefore that there is no aspect of guidance in relation to this issue and these are in fact standards. The Upper Tribunal has been entirely clear in the case of *Clark v Manchester City Council* [2015] UKUT 129 that local authorities have no power to set minimum standards in relation to room sizes. This is a power that only central government can set as it did with the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018. Local authorities have no similar powers under the Housing Act 2004. Later decisions of the Upper Tribunal which have accorded local authority guidance more respect in relation to the setting of civil penalties have continued to uphold the decision in *Clark* and it remains good law. Any attempt to promulgate a set of fixed room size standards by way of a consultation or otherwise is to ignore the statutory requirement in s64(3)(a), Housing Act 2004 to consider the house and its suitability for use as an HMO in a holistic sense. Any attempt to use minimum room size standards is directly contrary to the statutory requirement to consider a property as a whole and is a wholly inflexible and inappropriate means of making an assessment of suitability.

Conclusions

For the reasons set out above our client is of the view that any decision made by the Council to proceed with an additional HMO licensing scheme based on the current Consultation and the evidence set out in the Case would be unlawful. The Consultation fails to meet the Sedley criteria as further amplified in *Peat* as it does not clearly set out any scheme that can be responded to. The Case fails to set out a coherent and properly evidenced argument for any form of licensing scheme that actually meets the criteria set out in s56. Finally, any approved scheme that relied on the minimum room sizes set out in the Guidance Notes would be unlawful as it would use assessment criteria which the Upper Tribunal have clearly stated are not permitted.

Our client remains happy to discuss alternatives to a licensing regime and to engage positively with the Council. However, if the Council determines to proceed with a licensing regime on the basis of the Consultation then our client will have little choice other than to proceed to issue proceedings for judicial review of that decision.

Yours faithfully



David Smith
Partner
For and on behalf of
JMW Solicitors LLP

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Email: david.smith@jmw.co.uk



Our Ref: DAS/CCH/642004C.1/York Residential Landlords Association

Your Ref:

03 December 2021

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Housing Standards and Adaptations
West Offices
Station Rise
York
YO1 6GA

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Dear Sirs

Our Client: York Residential Landlords Association

We are again instructed by the York Residential Landlords Association in relation to the Second Additional Licensing Scheme Consultation to widen the scope of licensing of Houses in Multiple Occupation (the "Second Consultation") currently being conducted by the City of York Council (the "Council").

We note that this is a follow up to the original consultation from the spring (the "First Consultation") about which we wrote to you for our client in a letter dated 11 May 2021 (the "First Letter"). We are pleased that some of the comments we made on behalf of our clients at that time have been taken into account and used to inform the Second Consultation.

However, our fundamental concerns about the evidence case remain unchanged. We note that you properly set out the requirements that need to be met to justify an additional HMO licensing scheme being introduced. However, we do not believe that the case set out in your consultation document at section 4 meets that evidence requirement.

Firstly, we note your comments about the national context and in particular the statement that the PRS contains properties at a lower standard than those in other sectors. We do not disagree with this but fail to see how an additional HMO licensing scheme is a substantial contribution to resolving this problem. An additional licensing scheme only deals with HMOs of a prescribed description in specific areas which leaves untouched the majority of PRS properties. Given that one of your concerns appears to be property standards we consider that you have not properly considered an integrated HHSRS inspection regime with a clear movement to formal notices. This would have the benefit of a targeted and direct resolution of any property standards issues and would also allow for a more appropriate charging policy by charging inspection costs to those landlords whose properties were not in good condition rather than charging all landlords and imposing a cost on those landlords whose properties were complaint. Such an approach would also seem to fit with local strategies which specifically state that the objective is to eliminate category 1 hazards in rental properties. By contrast additional licensing schemes, which load cost onto all landlords, lead to landlords leaving the sector and increase expenses, and therefore rents. This does not assist the local problem of high housing costs identified towards the end of page 15 of the consultation. However, your own consultation admits that your HHSRS inspection policy is largely reactive rather than proactive. It is difficult to see how you can properly conclude that an HMO licensing regime will achieve things that a proactive HHSRS inspection regime will not if no such regime has been attempted. The evidence provided showing a reduced level

of problems on HMO licence renewal is not evidence that licensing reduces issues. It simply reflects the fact that on a renewal a property has already been inspected for the initial licence and the majority of problems have therefore been identified. On a renewal it is inevitable that there will be a far lower number of identified hazards on the basis that the most serious ones were dealt with previously. This is not evidence that any reasonable person could see as supporting the conclusion that HMO licensing leads to reduced property hazards.

In relation to licence conditions, we fail to see how they can bring the benefits you claim. In fact, the majority of issues you assert that you have issued licence conditions for fall within the obligations imposed on HMO landlords by the Management of Houses in Multiple Occupation (England) Regulations 2006 (the "HMO Management Regulations"). Therefore, many of the issues could have been dealt with irrespective of HMO licensing regimes. Your comments on licence conditions speak more of your failure to utilise the existing powers that you possess effectively rather than providing evidence of a need for further powers. A similar point arises from the survey data after the first consultation. You identify that a significant number of HMO tenants have not been provided with statutory documents and that others suffer from damp conditions. You also identify from your property surveys that there are a greater number of properties in the wards which you wish to licence that do not have valid EPCs. Again, these are matters that you are already fully equipped with the necessary powers to deal with whether under the HMO Management Regulations, under the specific regimes relating to EPCs and EICRs, or using the HHSRS.

You suggest that a licensing scheme would allow collection of more data about housing stock, particularly in the HMO sector. However, the council already has all the data it requires within its benefits and council tax records. Finding out about property structure is not a justified basis for creating a licensing scheme.

In relation to the other statistical data you provide, we have commented on this extensively in the First Letter, but you have done little or nothing to address any of our comments in this area. Looking at the statistics on property age we repeat our comments from the First Letter. The correlation between age and condition is not as strong as you assert and it is not, as you claim, "well reported". You in fact make this assertion without providing a single source for your comments. In addition, it is notable that two of the wards you propose to licence, Heworth and Hull Road, have property ages that are newer than the city average. Therefore, property age is not a good evidence base to justify licensing, particularly in these two wards.

In regard to energy performance your figures are self-serving. The fact that the targeted wards have lower EPC rating on average is far more likely to be linked to the fact that they have a higher number of older properties within them which are inevitably less energy efficient. As above, any figures showing properties with no EPC or rating below E speaks as much to your own lack of effective enforcement activity as it does to the need to have a licensing scheme. If you can identify properties with no EPC or an EPC rating that makes it unlawful to rent the property then these should be addressed using the substantial powers you already have. Given your extensive powers to deal with this issue and the fact that those powers extend beyond HMOs to the entire PRS this is a more appropriate means to ensure compliance than a licensing scheme which only deals with HMOs.

In regard to environmental complaints, it is notable that these are not higher in two of the wards you seek to licence and, by your own admission, the correlation between HMOs and noise is weak and that a number of the noisiest wards have fewer HMOs. You state that proximity to the urban core is also linked to increased environmental complaints and the fact that the wards with lower complaints are further from the urban core bears this out. You assert that HMOs are "inherently" linked to higher levels of noise and ASB but this is again an entirely unevicenced assertion. Your own evidence points to the urban core as being

more likely to be the source of these issues. We addressed this in more detail in the First Letter and we refer you to that letter. However, we also note that this second consultation has much of the detail from the previous consultation case removed. This is extremely self-serving and it is not appropriate to remove material that does not support your case. In fact, as the remaining material is equally unresponsive of your position it simply narrows your evidence base further.

As we have set out above, nothing in your consultation provides convincing evidence that reasonably links any specific problem you describe to HMOs, still less to the management of those HMOs. Energy performance is more closely linked to age than HMO status while environmental problems appear to be more closely linked to the urban core.

Further, there is no evidence that you have considered using the extensive powers you already have to deal with properties that do not meet Minimum Energy Efficiency Standards, do not have EICRs, do not meet the HMO Management Regulations, or which have hazards under the HHSRS. In fact, your consultation largely admits that you have not used those powers fully and your own evidence indicates that there are areas in which your powers could be used to deal with properties that you have apparently already identified. Indeed, seeking to use existing powers more effectively in an integrated fashion is barely even mentioned in your option appraisal. Your option to “do nothing further” is disingenuous and might be more properly characterised as “do nothing at all” while your option of using proactive action does not fully set out what the options and powers are and how you might use them.

Your option appraisal is accordingly entirely self-serving. It states that an additional HMO licensing scheme will be self-funding. This is simply untrue. No local authority has effectively run a licensing scheme that was properly resourced and effective on a self-funding basis. In addition, there is no funding appraisal of a proactive action scheme and it is quite apparent that you have not in fact carried one out at all. Your criticism of a voluntary scheme that it self-selects the better landlords is equally applicable to an HMO licensing scheme. Without effective enforcement such a scheme selects the better landlords who will apply for licensing and simply ignores the criminal landlords who do not. Given that you have not really produced any evidence which convincingly links problems such as noise or rubbish to the management of HMOs it is unreasonable for you to state that a licensing scheme is fairer because it will charge landlords who you claim, without evidence, are the problem.

The failings listed above make it impossible for any reasonable local authority to conclude that it had properly met the requirements to designate an additional HMO licensing scheme.

Fees

We also wish to address your fee structure. We understand that you have sought to deal with the judgement in *Gaskin, R (On the Application Of) v Richmond Upon Thames London Borough Council & Anor* [2018] EWHC 1996. However, we do not believe that your amended fee structure is any more compliant with the law than the one complained of in that case. One of the outcomes of the *Gaskin* case was that a fee for an HMO licence application could not include a fee element for management and enforcement. You have sought to deal with this decision by splitting the fee into two elements with the second element, presumably for management and enforcement, being payable once the application is complete but before a Notice of Decision is issued. We assume that what you mean by this is that you intend to issue a notice of intention to grant a licence application, expect payment of a fee, and then give a final notice with the licence once this fee is paid. We do not consider that this structure is any more lawful than requiring a single payment in advance as, in effect, it amounts to the same thing. By seeking the second fee payment before the final decision is made you are seeking that payment during the ongoing decision-making process. You could,

for example, serve notice of your intention to licence and seek the second stage payment from the landlord but then in response to the intention notice receive a submission from a third party which would lead to you deciding to refuse a licence after all. This would leave you having to refund the second stage payment which Gaskin indicated would be unlawful. This illustrates that the second stage payment is not being taken once a decision is made but only after, a wholly reversible, interim decision and therefore the second stage payment is still being taken as part of the application process. Therefore, we consider your fee structure to be unlawful and in need of amendment.

For all the reasons above we consider that this proposed license scheme remains unlawful. Your evidence base does not justify licensing at all and certainly not in respect of Heworth, Hull Road and Osbaldwick and Derwent. The second consultation, which undoubtedly remedies some of the weaknesses of the first consultation. As a result we contend that no reasonable local authority could decide to proceed with this scheme on the evidence before it, especially in relation to the three named wards. Further, even if the scheme were to proceed, the fee structure that is proposed in relation to it is not lawful as the second stage fee is in breach of the Provision of Services Regulations 2009.

With regret, if the Council decides to proceed with a scheme on the basis of the current evidence or with the proposed fee structure then our client will take steps to institute judicial review proceedings. We hope this step does not prove necessary and in order to attempt to avoid it and in accordance with the Judicial Review Pre-Action Protocol's requirement to attempt ADR we suggest that a meeting between representatives of our client and the Council should be convened urgently in order to find common ground and seek to narrow the areas of dispute.

Yours faithfully,



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