TLIC Recommendations for the PRS

TLIC PRS report May 2022

Chair: Theresa Wallace

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Foreward

The Lettings Industry Council (TLIC) formed by industry stakeholders from across the PRS have united to work through some of the expected changes to be introduced in the Renter's Reform Bill. Forming 6 working groups looking at different subjects we have produced this paper to help the Government understand what can work in practice and to encourage a vibrant PRS that works for all.

Landlords have been exiting the market for various reasons, many due to the increased legislation introduced piecemeal on an annual basis which, so far, has not solved the issues in the sector. Those issues include some sub-standard properties, rogue and naïve landlords, untrained agents and a minefield of legislation confusing even diligent landlords due to the complexities surrounding providing a rental home. These issues were also referenced in the April 2022 PAC report into the regulation of private renting. Each year, in an attempt to combat some of these issues, more legislation is introduced but, so far, this has just compounded the problems further and the raft of unaligned legislation, which often comes at a financial cost to the landlord, is a core reason given for why landlords are exiting the sector, leaving a shortfall of available rental properties. It must be recognised that there are a number of different tenant demographics, for example: students and young professionals who often live in sharer households and are not yet ready to settle in one place, long-term tenants who actively choose to rent long-term instead of buy, aspiring first-time buyers who are unable to obtain a mortgage yet due to mortgage affordability criteria and deposit requirements and, finally, low-income tenants who have been forced into the PRS due to a shortage of social housing.

The lack of social housing has encouraged a small underground market of unscrupulous slum landlords who provide unfit accommodation with vulnerable tenants unable to complain for fear of losing their home. Enforcement is inconsistent and poor due to lack of resource and funding. The industry is keen to see a minimum standard of accommodation and service provided by agents, in a bid to eradicate this small pocket of the market and help target enforcement where it is most needed.

However, it must be said that, overall, the PRS is not broken. In fact the majority of agents and landlords want to do the right thing. However, the minority who cause such issues has meant we have seen a raft of legislation swept in, ultimately negatively impacting the very people the changes are meant to protect.

A broad-brush approach is not the answer. The issues predominantly surround lower income individuals and families and Government need to take this into account when making any changes. Targeting the whole PRS to help one sub section dilutes the ultimate impact.

As a result of the above, in 2022 we are experiencing the biggest crisis we have seen surrounding the shortage of rental property. We need to encourage investment into the market and that includes private landlord investment. We must avoid more private landlords exiting the PRS. Losing Section 21 is causing many to review their investment, as they become more risk adverse. Landlords fear they may never be able to regain possession of their property and must be left with confidence in a legal system that works for them when necessary. Social housing has been depleted, institutional investment is not enough to meet the demand, nor can it plug the huge gap left by private landlords currently exiting the market and it is also a misnomer that these properties will be purchased by first time buyers, many of whom are not able to access affordable mortgages due to strict lending criteria and the need for a sizeable deposit. Therefore, we still require the private landlord to provide affordable and safe rental accommodation to meet the ever-increasing demand of a growing tenant sector.

Theresa Wallace
Chair: The Lettings Industry Council

Executive Summary

This report considers what changes could be made to smooth the path for the abolition of section 21's, improve the court process by making use of mediation earlier on in the process, release those locked in tenancies and unable to move due to financial constraints, help improve property conditions so that every rental property meets a minimum standard, introduce a property portal to deal with property registration and, finally, introduce an agent regulation model to enable better education and awareness.

For the sake of transparency, we do not believe that abolishing section 21's is the ultimate answer to resolving the above issues. Rental properties are investments and landlords prefer to have an occupied property rather than risk a void period, with statistics showing that the majority of tenancies are ended by option of the tenant, not the landlord. However, we accept that the Government have committed to do this and we have to come together as an industry to find the best way of introducing this far-reaching change and avoid unintended consequences. Abolishing section 21's effectively abolishes Assured Shorthold Tenancies (AST's). Apart from losing landlord confidence, which is a serious concern, it will change the entire working model of an AST. For agents alone, this will mean amending all current terms of business, landlord guides, tenant and guarantor guides, communications and processes, software systems and training courses which are all designed around AST's. For tenants, this will unfortunately mean that landlords become more risk adverse, meaning that those with lower incomes and poor rental history will be rejected in favour of higher income renters with a satisfactory rental history.

Summary of recommendations:

Tenants' interests are best served by having a vibrant rental market where landlords have confidence to invest, giving tenants a wide-ranging choice of properties to rent. However, in cases where a landlord requires his property back to either live in, sell or where rent arrears continue to escalate, there must be an easy evidence-based approach process to enable this.

Abolishing section 21's will not stop landlord re-possessions. The section 8 notice will be used in place of a section 21. The reality is that most of the section 21 notices currently served could have been section 8 notices. It is not in a landlord's interest to end a tenancy with a good, reliable tenant. The majority of section 21 notices are issued where a tenant is in rent arrears, or where a landlord wishes to sell or move into their property. Therefore, abolishing Section 21 will not significantly change the number of evictions, it will simply change the process. We outline the changes required to strengthen section 8 notices to avoid any knock-on consequences for the number of open court cases and the associated costs for which the tenant will be liable.

Every tenancy should have a written tenancy agreement in place or at the very least a written Statement of Terms. Written in plain English so that everyone can understand what they are contracting to. In the absence of either of these then the Government's model tenancy agreement should be used as the default agreement.

The courts have never been busier dealing with a huge backlog of cases due to the delays enforced during the pandemic. This is not going to ease and urgent reforms are required. A review of the accelerated procedure is needed, to reduce the listing of PRS claims and prioritise these cases so they can be taken out of the system without delay.

The route for dealing with abandonment cases must be clarified, enabling a process without recourse to the court to further reduce unnecessary court cases where a tenant has clearly already left the property.

By prioritising cases with high or persistent rent arrears, dropping review hearings, and employing more judges will further reduce the workload and strain on the courts.

Mediation should be a recommendation in all cases, other than where there is evidence the tenant cannot afford to pay the rent. Costs can be kept to a minimum and could reduce court hearings by up to 25%.

The problem faced by some tenants in bridging the deposit between two tenancies is not universal and Government should avoid seeking to impose universal solutions for a problem that only affects one section of the tenant market.

Government should consider its own bond/loan solution or finance local authorities to issue their own bond guarantees. This option could be available solely for tenants on Universal Credit and/or in receipt of specified benefits to ensure that the deposit problem is specifically targeted to the right demographic.

By embedding use of the Unique Property Reference Number (UPRN) within the Renter's Reform Bill discrete data points across different existing public and private databases can be joined together. Property safety records can be captured and collated within a property portal, to form one comprehensive safety record delivering a safe property at low cost. A property portal linked to a landlord redress scheme will ultimately provide a Landlord Register enabling direct communication with landlords and education on property safety, legislation and better remote enforcement.

A Regulator for Regulation. The sector is like a puzzle with lots of pieces that need to be joined up. A regulator would tie all of the pieces together. It has to start with agents, if they are not qualified to do the job how can landlords using an agent be expected to be compliant? The property register, property passport (MOT), landlords, regulated agents, tenant redress, enforcement could all sit under the one roof headed up by the regulator along with client money protection (CMP) and tenancy deposit protection. Tenants need one portal door to enter which then signposts them to where they need to go.

The short-term letting industry can produce local economic benefits, but we are at a crossroads for policy development. We need a balance between the supply of short and long term let property. Recommendations include ensuring tax policies do not disincentivise investment in the private rented sector, exploring ways to redress the balance of regulatory obligations across the two industries, developing technology to define the different categories of second homes to improve data collection and piloting the introduction of a short-term rental registration scheme.

Section 1

Loss of section 21 and changes to section 8 grounds

Loss of section 21

Currently the vast majority of tenancies end because the tenant chooses to leave. Of those where notice is served, the most common notice to be used is the section 21 notice, but this does not mean there is not a reason available under section 8, it rather indicates the lack of faith landlords have in the section 8 notice and the associated court process. In considering these grounds it has to be remembered that if there is no section 21 notice, the section 8 notice and associated grounds will become the norm. Landlords who previously wrote off arrears and used section 21 will potentially now seek those arrears via section 8, to the disadvantage of the tenant because research[1] has commented that the end of an AST is the most common reason for someone reporting homeless to the local authority. Following these changes, most evictions will still take place, they will just use the section 8 notice instead of section 21, as most of the section 21 notices currently served could have been section 8 notices. It will not significantly change the number of evictions, it will simply change the process, which may have knock on consequences for the number of open court cases and the associated costs for which the tenant will be liable[2].

However, the tenants' interests are best served by having a vibrant rental market where landlords have confidence to invest, giving tenants a choice of properties to rent at a competitive price due to a balance of supply and demand. Landlords want tenants to stay in their property long term (as evidenced by the very high percentage who leave only because they want to), and only serve notice as a last resort. It is important that future rules continue to encourage investment in the market as there is already a supply and demand imbalance, so any loss of stock will be negative for tenants. If landlords are not able to borrow or feel they get a better return on investment elsewhere, considering risk, by investing in some other way, then stock levels could fall to the loss of the tenant.

The suggestions outlined below (with more details in Appendix 1) recognise that balance. Look at the effect of the post war Rent Acts, culminating in the Rent Act 1977. The tenant had life-time security at an artificially controlled rent. This was good for those in such a property, but landlords typically sold the property as soon as it became vacant losing stock to the market and giving those wanting a rental less choice. From nearly 60% of households living in the private rented sector in 1939 numbers fell due to a range of changes, including the Rent Acts, reduced that to 9.1% under the Rent Act 1977[3] by 1988. A fair and balanced market should be good for landlords and good for tenants.

Section 8 Grounds

Appendix 1 gives more details about the proposed changes to section 8 notices grounds.

Here we have simply given a very brief summary:

Ground	Change	Proposed Length of Notice
1	There are gaps in this ground which should be closed: 1. Currently the ground only allows for landlords to recover a property for their own use or that of their spouse or civil partner. This should be widened to include immediate members of the household as defined in s258. Housing Act 2004 https://www.legislation.gov.uk/ukpga/2004/34/section/258 2. The ground is only effective if notice has been given in advance of the tenancy commencing. This requirement creates a trap for the unwary and should be removed; 3. The ground cannot be used if someone has purchased a property during the tenancy, this limit should be removed to allow for changes in personal circumstances; 4. This ground could be expanded to include situations where the landlord wishes to sell the property. If s21 is to be removed there will need to be some mechanism to recover possession for sale and this requirement fits naturally with the other parts of this ground or ground 2.	Two months.

Sources: 1. https://www.generationrent.org/no_fault_evictions_drive_up_homelessness
2. TLIC research provided to DLUHC on the reason 95,000 section 21 notices were issues by agents.
3. https://www.gov.uk/government/statistical-data-sets/tenure-trends-and-cross-tenure-analysis FT1101 Trends in tenure

Ground	Change	Proposed Length of Notice
2	Could be changed to allow the landlord to sell, as well as a lender. Reference to ground one should be removed. There is further discussion on this in Appendix 1.	The tenant has done nothing wrong (assuming the rent is paid up) so a minimum of two months seems reasonable.
3	No change proposed.	No change proposed.
4	Could be extended to the Private Rented Sector. This ground could also be extended to allow for the eviction of students as a replacement to s21. If landlords cannot reliably remove students at the end of their contracts then the student let market will become unviable as there will be no certainty of property becoming available for the following year's students as and when they need it.	As it follows prior notice it is suggested a shorter notice should be allowed if the letting is for less than three months. Notice could have to be served fairly soon after move in.
5	No change proposed.	No change proposed.
6	Currently the ground is subject to a limitation on its use where the property is purchased with a tenant in place. This is a historical anachronism which was intended to protect fully assured tenants from development speculation. The redevelopment of older property for higher occupancy is highly effective and should not be barred simply because a landlord has invested in the sector with tenants in the property.	Two months.
7	The timescale should be extended to 24 months.	Two months.
7A	If s21 is to be removed this ground will need to enable eviction prior to conviction on appropriate evidence at the civil standard as ground 14 does. It would be better to abandon ground 14 and import its requirements into a reformed ground 7A.	Two weeks, if retained.
7B	No change proposed.	Two weeks.
8	It is suggested that this ground could become more flexible. For example ordering a suspended order so that if the arrears could be cleared by the court order date the tenant could remain, but without delaying the total possession time. More details in Appendix 1.	Remain at two weeks.
9	No change proposed.	Remain at two months.

Section 1 cont.

Ground	Change	Proposed Length of Notice
10	Align the second date when arrears must exist to the court hearing to match ground 8.	Remain at two weeks.
11	The scale of "what is persistently late is difficult to ascertain without going to court with the associated costs. Greater clarity suggested. See Appendix 1 for more details.	Remain at two weeks.
12	No change to the ground suggested but if there is no written agreement it could be a comparison to the government model agreement.	Remain at two weeks.
13	No change proposed.	Remain at two weeks.
14	Suggest losing (b). More detailed information in Appendix 1.	Remain at the requirement to serve notice but not wait any length of time before commencing court action.
14ZA	Suggest this ground is removed.	Nil.
14A	Should be extended to the PRS.	As ground 14, no notice period.
15	No change proposed.	Remain at two weeks.
16	No change proposed.	Suggested the length becomes flexible depending on the reasons for the employee ceasing work.
17	Remove the requirement for "tenant's instigation".	Remain at 14 days.

Other Grounds	Change	Proposed Length of Notice
SALE	Mandatory. Add a ground allowing for the sale of the property. See Appendix 1 for suggestions of details.	Two-step process, involving one notice of intent at least two months long, and a second "completion notice" of 14 days.
END OF LEASE	Mandatory. Add a ground, similar to sales, where a landlord needs to recover possession due to the landlord's lease ending.	Two months.
RELATIONSHIP BREAKDOWN	Discretionary. This is complex but as with any commercial relationships sometimes it does not work. Like a marriage, having an official way to terminate it, regardless of how sad the termination is, actually improves the situation for the parties who are now not permanently trapped. See Appendix 1 for more details.	At least two months.
LOSS OF GUARANTOR	In situations where a tenant needed a guarantor for the letting and either the guarantor gave notice when the tenancy was periodic, or perhaps passed away, if the tenant cannot provide an alternative guarantor, the landlord should be entitled to seek possession. In some cases the landlord may have established that the tenant can afford to keep up with the rental payments and be happy to continue the rental without a guarantor, but in other cases the letting may have relied on the guarantor more and the loss will prove fatal. Therefore, the landlord should be able to serve notice as the fundamental details around the letting have changed.	Two months.

Summary

These suggestions seek to find a balance between encouraging investment in the sector to increase available homes and ensure they are of good quality through natural supply and demand competition (i.e. a plentiful supply giving tenants real choice), and the very serious issue of a tenant losing their home. Some are relatively small changes but could have a significant impact in the post section 21 notice world. Further details on the reasons and proposals are contained in Appendix 1.

Section 2

Court reform, bailiff reform, mediation and written tenancy agreements

BEST PRACTICE SHOULD BE THAT EVERY TENANCY SHOULD HAVE A WRITTEN CONTRACT

Observations

- What should be mandatory in a tenancy agreement? (These may be referred to as 'occupation contracts' if developments in Wales are followed in England).
- What should the agreement look like in layman's language?
- How should the tenancy agreement differ, compared to the current Government Model Tenancy Agreement?
- The group felt it was impossible to cover all key heads of agreements in one place but liked the idea of a summary of clauses on the front page.
- In absence of this use the Government Model Agreement.
- How do you enforce a default minimum standard for a tenancy agreement if parties don't use the minimum key heads of agreement?

Recommendations

- Best practice should be for every tenancy to have a written agreement in place or at the very least a Written Statement of Terms. In the absence of this the Government Model Agreement should be the default.
- Tenancy agreements must be written in plain English, so renters understand their responsibilities.
- Landlords should be encouraged to seek professional advice to ensure their current agreements are correctly updated.
- Where an agent is used, they should be part of a credible organisation such as Propertymark, RICS or Safeagent until such time as agents are regulated.

COURT REFORM

Observations

Property stock: the industry has never seen such low stock available. Who is buying? – the Government feels property is sold to first time buyers or other buy to let landlords but there is no data to evidence this. What we can evidence is the worst shortage of available rental property we have seen since the Housing Act 1989 was introduced. Sales are also being driven by fears over EPCs on older properties.

Rent arrears: record amount of rent arrears since covid. It can take up to 6 months for rent arrears cases to be reviewed and processed.

Courts: it is impossible to get through to court offices by telephone, the impact mainly is within the southern regions.

Possession claims issued in the courts:

Year	Accelerated	Private	Social	Total Claims Issued
2019	19,042	24,092	67,773	110,907
2020	9,070	12,514	18,097	39,681
2021*	4,680	10,224	8,671	23,575

* This data is for Q1, Q2 and Q3 only

For 2022, we anticipate more than 80,000 claims

Judges are experiencing issues with mental health in the court room equating to a shortage of judges.

Landlord Action* has never been busier - 40% of their work is serving s21 notices and 60% is serving s8 notices. Main reason for s21s is to sell and leave the sector as fed-up of being landlords. During covid Landlord Action had a record amount of instructions to service anti-social behaviour notices.

* Landlord Action is one of the UK's best known eviction and housing law specialists, dealing with problem tenants, landlord and tenant disputes, squatters, rental debt collection and other housing matters in England and Wales. Landlord Action is authorised and regulated by the Solicitors Regulation Authority and respected by industry, government and the press www.landlordaction.co.uk.

Local authorities: largely ignoring the Homelessness Reduction Act re threat of homelessness. An alternative would be to focus on when someone is homeless – treat tenants as homeless when possession order made not when bailiff turns up. Councils still advising tenants to stay in the property, forcing landlords to issue accelerated possession claims under section 21 so the tenants can be rehoused.

Social housing providers: have not been issuing possession claims in the last two years but will be in 2022.

Recommendations

Accelerated procedure online: Currently at Stratford Housing Centre for example it is taking 75 days for claims to be considered by the court which means from service of the notice the claim will not be considered by the court for about 150 days. With a two months' notice period for a s21 to expire and six months shelf life there is a total of about 180 days before the notice lapses. This therefore requires the claim to be prepared quickly.

Further, there is a requirement for the claim form to include all tenancy agreements and all gas safety certificates for example, this can amount to a lot of paperwork. Landlord Action had a case with 15 tenancy agreements recently. If the paperwork could be scanned in and filed online this would speed up the process that demands a fast turnaround. Alternatively, with less time and more paperwork, the recommendation is to enable accelerated claims to be issued online.

Reduce the listing of PRS claims to no later than four weeks: Research shows that broadly tenants do not engage in the possession process, and that social tenants do not do so because they do not believe they will in fact be evicted whereas private tenants' non-engagement is seen to be a tactic of playing the system. To recognise the apparent differences between the sectors, if a public sector claim is defended say within seven days of service of the claim, then it should be listed no earlier than 12 weeks as it will inevitably be a lengthy matter and will not benefit from being listed quickly. This would free up some court time and enable private sector claims to be listed no later than four weeks thus prioritising private sector cases that could be disposed of and taken out of the system without delay.

Automatically transfer up to the High Court rent arrears cases with more than six months arrears: This is an initiative that was introduced during the pandemic and appears to have had measurable benefits not least to landlords who in such cases are unlikely to ever recover any arrears accrued before or after the Possession Order.

Approval of an affordability assessment when making a Possession Order: Councils broadly do not accept a duty to rehouse tenants who apply following a Possession Order being made until the day of the eviction which maybe many months after the Possession Order is made. As a result for cases based on rent arrears the indebtedness is made worse. If, however, the parties agreed an income and expenditure statement and included this in the court bundle the court, as part of the hearing, could consider the question of affordability recording the same on the Possession Order. Thereafter the council would be able to easily determine those applicants that are homeless based on residing in unsuitable accommodation by reason of unaffordability and offer accommodation immediately after the Possession Order is made. Removing these cases earlier from the court system would avoid the need to appoint a bailiff.

Abandonment cases to be determined without recourse to the court: (as with s220 of the Renting Homes (Wales) Act 2016), the landlord can "give" notice to the tenant which effectively requires him or her to contact the landlord within four weeks to confirm that he or she has not abandoned the dwelling, meanwhile, the landlord must make "enquiries" as to whether the property has been abandoned. At the end of the process, the landlord can recover possession. If the tenant wishes to contest this, they can apply to the court and seek compensation i.e. if they can show they had a good reason for failing to respond to the notice. However we recommend that:

- the grounds for giving notice of abandonment must be defined with more certainty,
- before recovering possession, landlords should be encouraged to approach a person other than the tenant who may be able to assist with the tenant's whereabouts e.g. family member, next of kin, guarantors,
- the time limit for tenants to challenge the recovery of possession should be no more than 3 months.

Other reforms needed:

- drop review hearings
- more judges
- mobile/remote hearings
- better prioritisation of cases
- better telephone access to court officers
- get rid of PD55C notices (effect of Covid on tenant)
- priority hearings for high rent arrears (and similar approach for local authorities to focus on mitigating increasing rent arrears)
- register money orders as a CCJ immediately (Section 21 possession orders do not show rent arrears on the order)
- bailiffs – some courts are up to date, others aren't – make it easier to use high court enforcement officer

BAILIFF REFORM

Observations

- Record amount of rent arrears since covid, it can take up to 6 months for rent arrears cases to be reviewed and processed.
- There is a demand for bailiffs, however the salary is low, as the salary of one bailiff spoken to was £21,000pa.
- There is an increase of instructions with wait times being lengthy. Every Court is different on wait times.
- Section 42 Claiming to be able to use a High Court Enforcement Officer to carry out eviction, needs to be applied more by the court.
- Landlord Action's stats show maybe 1-2 out of 10 hearings, leave is granted by a Judge.
- What are the current waiting times with County Court Bailiffs?
- Evictions will ramp up in 22/23.

Recommendations

- County Court bailiffs should be paid a salary that more appropriately reflects the demands of their role.
- If rent arrears are over 6 months at the hearing date, transfer automatically to the High Court so that landlords can use High Court enforcement officers.

MEDIATION

Observations

An overview of the Property Redress Scheme (PRS) Mediation Service follows:

- PRS Mediation dealt with over 700 mediation cases since its service was launched during lockdown.
- Since April 2021, they had 224 mediation requests, and encouraged tenants to agree to take part in mediation in over 120 cases. This shows with a scheme that is not currently mandatory, they are more likely than not to be able to start mediation.
- Of the cases that progress to mediation, outcomes vary. Success rates exceeded 80% at times. In overall terms, they generally find that cases reach a successful outcome as a result of mediation in over 50% of cases. A scheme that is not currently mandatory, the findings show that they are more likely than not to be able to solve the dispute to both parties' satisfaction.
- Taken together this suggests that as many as 25% of the cases seen did not need to involve the courts. With a mandatory scheme offered much earlier in the process than the MoJ pilot, this can only increase.

The Ministry of Justice pilot for mediation in housing cases was not successful. The requirement for mediation was set too late in the process, and at a stage when the parties are entrenched in their positions.

Recommendations

Mediation should be a recommendation in all cases, other than where there is evidence the tenant cannot afford to pay the rent. This can be set out in a pre-action protocol. Not all attempts to mediate will be successful, but landlords should be able to demonstrate that their tenant has been invited to mediate by an independent third-party.

Mediation is more successful when:

- It is available as early in the course of a dispute as possible (ideally before serving notice or immediately after, and certainly before issuing court proceedings).
- Overall costs are kept at a modest level and no costs are payable by the tenant (the service should be free of charge in its initial stages, and costs to landlords are only raised more substantively where tenants agree to take part in mediation. Even at this stage, the vast majority of mediations cost less than £200 plus VAT).
- The parties do not need to be legally represented or produce detailed evidence – our experience shows that early contact with the parties, by telephone, is vital. The mediator gains their understanding of the dispute, and what the parties hope to achieve as an outcome, by speaking with them and listening. This builds trust and understanding amongst combative parties and helps create a space where the mediator can work with them not against them.
- The parties understand both sides of the story, are listened to and the mediator does not act for one party vs the other.
- The parties understand that the mediator is not there to impose a solution: they guide both parties on what might be a reasonable settlement to their dispute – but they can't tell the parties what to do.
- Any settlement that is reached is one that is consensual as opposed to a mandatory or imposed decision. Both parties are advised from the outset that neither of them will be required to accept a settlement or decision that they do not like.
- Mediators may be legally qualified but have extensive practical experience of the private rented sector, the causes of tenancy disputes, and practical solutions (as well as strict legal outcomes) to resolve them. This can include highlighting, and signposting to, other sources of advice and assistance if settlement is not possible. They are not limited to the same solutions that a court has available to it.

FURTHER INFORMATION

Please also see the attached detailed submission that PRS previously made to the MoJ call for evidence on dispute resolution in England & Wales: https://www.theprs.co.uk/Resource/ConsumerResource/17

Section 3
Lifetime deposits

In recent years we have seen tenants, who previously would have been housed in the social housing sector, increasingly having to resort to the private rented sector for housing. This has meant that more and more low income households are entering the PRS, many of whom struggle to find both the initial deposit and the second deposit when they move.

There have been concerns for some time about the difficulties which some tenants – particularly the above - have in funding the second deposit when they are moving homes in the private rented sector. Whilst the concept of "passporting" sounds easy [the idea that a tenant could essentially use the first deposit to pay for the next deposit], it has never been possible to come up with a workable solution.

Indeed, this was one of the reasons why the MHCLG rushed out a "Call for Evidence" in June 2019 asking for industry views on the issue of passporting. The concept is difficult to implement because the second landlord will only accept the risk of a shortfall on a deposit that will be passported if the tenant is able to guarantee that the shortfall is met by either having some form of shortfall funding or insurance in place. The Government has not published the results of the Call for Evidence but instead added a 2019 election manifesto commitment, followed up in the 2020 Queens Speech and repeated subsequently, to introduce a Lifetime Deposit, to address the issue of tenants having to finance two deposits when moving.

It is evident that the Government did not have any pre-defined model in place when these commitments were made and has since engaged PriceWaterhouseCoopers to assist in drawing up options. Over time there has been a move away from "passporting" to a model to better address the affordability of transitions from one tenancy to another. For example, where the tenant's initial deposit can in some way assist them to obtain a bridging facility to cover the period from the payment of the second deposit and the return of the first one. This sits alongside other ideas for helping to speed up the return of the initial deposit [to minimise the bridging gap and therefore the costs of bridging solutions].

As changes are being contemplated, the Government must recognise that the concept of a security deposit is well understood by both tenants and landlords and there are always dangers about introducing new models into the mix that may generate potential for consumer detriment. All options and proposals need to be assessed to ensure that this consumer detriment does not crystallise.

TLIC has reviewed the options and has recognised three key points:

- **The problem faced by some tenants in bridging the deposits between two tenancies is not universal and government should avoid seeking to impose universal solutions.**

  For many tenants and landlords the current system works well and it is important that this is not lost as new solutions emerge. For some households moving home within the PRS is undoubtedly a financial strain and this is where Government solutions are best targeted.

- **Low income households may require more active support by government.**

  Loans or insurance may not work for very low-income households in the private rented sector, due to the criteria required by the insurer or lender being impossible to fulfil. Government should consider its own bond/loan solution [as happens in parts of Australia] or finance local authorities to issue their own bond guarantees. This option could be available solely for tenants on Universal Credit and/or in receipt of specified benefits to ensure that the deposit problem is specifically targeted to the right demographic. Any claims could be recouped over time from benefits.

- **Some of the solutions may require legislative requirements/changes to be imposed on landlords to ensure widespread adoption but this may be unpopular with landlords.**

  For example, if Government decides to support products such as insurance backed deposit bridging solutions, then landlords may need to be mandated to accept them if they are to secure widespread adoption by landlords. TLIC recognises that many landlords are sceptical of insurance products, and without such products being mandated the take-up by landlords may be low. We must not lose more landlords from the sector by introducing blanket changes across the board where these are not necessary.

Section 4

Property mot and unique property reference numbers (UPRN)

Introduction

The Renter's Reform Bill provides a once in a generation opportunity to improve the lives of millions of renters.

The current process is broken. Property safety is handled through cure rather than prevention and relies on tenants raising ad hoc disrepair (or similar) complaints under a myriad of existing regulations and legislation.

By consolidating existing information and surfacing it for rental properties at the marketing stage via a "Property MOT" consumers can be better informed and protected. Those properties without appropriate certification will not be rented unless and until they meet the required standards.

By embedding use of the Unique Property Reference Number (UPRN) within the Renter's Reform Bill discrete data points across different existing public and private databases can be joined together to deliver the Property MOT at low cost and support delivery and enforcement of a Landlord Register.

The current position

The Levelling Up White Paper highlights the Government's desire to ensure PRS properties are maintained to a specific standard, with a consultation promised on introducing a PRS Decent Homes Standard[1]. At the same time, the UK Government is already undertaking a review of the HHSRS (Housing Health and Safety Rating System) and proposing the introduction of minimum standards, to make it easier for landlords and tenants to use[2].

The Lettings Industry Council (TLIC) shares the Government's desire to establish and maintain a minimum property safety standard within the PRS, for the benefit and protection of tenants. However, there is great concern that introduction of further regulation or adoption of a social sector standard (the social sector operates differently to the PRS) will only convolute further the wide-ranging raft of legislation that exists and already causes confusion for both tenants and landlords.

Due to the challenges faced by a lack of transparency within the sector, there is currently reliance upon tenants to report rogue behaviour. This is ineffective as the industry depends on the 'least educated' party, in terms of tenancy rights, to identify and report non-compliance, which therefore often only happens once a safety risk has already occurred.

To further improve industry standards and protect the most vulnerable, TLIC is calling upon the Government to commit to mandating a Property MOT that would align the numerous items of existing property safety legislation, create transparency for authorities and provide automatic protection to tenants, with the opportunity to identify rogue behaviour quickly and effectively from the outset.

What property safety measures currently exist?

Energy efficiency
HHSRS (in review)
Gas safety
Homes for fitness and human habitation
Electrical safety
Legionella
Smoke and carbon monoxide alarms
Furniture, furnishings and fire safety
Landlord licensing
Landlord repairing obligations

In addition to the above safety measures, tenants are also protected by deposit protection regulations, the tenant fee ban and mandatory agent redress, where an agent has facilitated the tenancy.

Consumer education

The reality is that many tenants do not read tenancy information or even tenancy agreements in advance of moving into a property. They will often only seek advice once an issue has arisen. Furthermore, as mentioned above, even those landlords with good intentions can find the raft of legislation confusing and inadvertently fail to comply with a particular item. TLIC is urging Government to mandate a system which would prevent the problem occurring in the first instance or highlight those properties – and therefore landlords and agents acting illegally – which are not compliant. This would ultimately protect tenants at all levels, raising the standards in the PRS and create a level playing field for all landlords and agents.

Why a property MOT?

A Property MOT, in its simplest form, is a declaration that a property meets a minimum safety standard. Ideally, the ultimate MOT model would incorporate both the collation of property safety results, such as gas and electric checks, as well as a basic visual inspection to ensure the property is free from core hazards, such as damp or mould.

This is not about creating something new but establishing a mechanism to pull together all strands of legislation which currently exist piecemeal. The Property MOT could also be known as a 'PRS Decent Homes Assessment' or similar, providing a singular view that demonstrates compliance and helps tenants and enforcement agencies to differentiate a good landlord or agent from a rogue one. By default, the introduction of a Property MOT would improve housing standards and provide evidence that the property is fit for habitation.

Sources: 1. Levelling Up the United Kingdom Executive Summary, P.15
2. NRLA news: The Housing Health and Safety System Review

Tenants should not be relied upon to determine the safety of a property or report non-compliance. A Property MOT could be granted before access is gained to the property and renewed periodically thereafter, giving a tenant absolute assurance from the outset. When using the analogy of a car MOT, a driver would not be expected to determine independently the status of the brakes, lights and so on. Instead, they receive one certification, which confirms all safety measures are in place. Homes should be treated in the same way.

As well as this organically creating a minimum standard, a Property MOT would offer a transparent tool for enforcement authorities. With the adoption of digital safety certifications, authorities would be able to establish immediately which properties have not met the appropriate standard and better target their enforcement action. Such properties would also be prevented from being listed on the open market, until a Property MOT certification is in place.

The property UPRN

TLIC calls for the Government to mandate the use of the UPRN (unique property reference number) for all core property safety records, as a national property identification tool. All properties benefit from a UPRN, which enables each property to be uniquely identified and has potential to form the basis of a national property register. Data systems already exist through which UPRNs have been organised, managed by Geoplace[3]. Furthermore, organisations such as Openbrix[4] have also developed ways to provide property identification data.

The UPRN is therefore a simple, readily available and cost-effective way to achieve transparent reporting within the PRS. If all landlords and safety checks are associated with the UPRN, with gas and electrical safety records as a starting point, the results of safety inspections can be captured and accessed by the relevant authorities. This would mean simpler enforcement, as authorities would be able to simply establish where compliance is missing.

Expanding on this, TLIC is also calling for the Government to link the UPRN with other regulatory schemes such as deposit protection and landlord licensing.

Such a register has already been achieved for EPCs, which works around the UPRN, and TLIC therefore urges the Government to expand on this for other property safety records as a first step towards achieving a Property MOT. Once in place for the existing property safety records, the UPRN could also be used to link to redress scheme membership and a Property MOT certification, creating an all-encompassing logbook, which could be hosted on a central Government-owned portal in a similar way to the EPC, of all tenancy regulatory requirements.

Landlord licensing

Landlord licensing was created to address fire safety in the PRS as well as improve general property standards in higher risk regions and tackle anti-social behaviour[5]. However, local authority licensing schemes vary considerably. This inconsistency causes confusion for landlords and agents, who operate across different boundaries, as well as tenants who have experience of schemes in different areas.

Most schemes require submission of the various property safety records as a minimum. Using the UPRN as the unique property identifier, bringing all core safety records together, the Property MOT could then become an automated part of the licensing application, creating a standardised and more efficient way for a local authority to capture essential property safety information all in one place, as well as tackling some of the issues that licensing is intended to address by raising property standards. This could reduce the overall administrative process relating to licensing and make the system more effective for landlords and local authorities who otherwise must check each safety record manually.

The Property MOT could easily be incorporated into all selective, additional and mandatory licensing schemes, creating a level of consistency. Relieving this administrative burden will also aid enforcement, as local authorities will be able to more easily identify those landlords or agents, who have not complied with the relevant licensing requirements.

A landlord register

TLIC have always maintained that it should be all about the property. Mandating the use of the UPRN in the PRS on a property portal would automatically create a landlord register, as the proprietor of each property will be identifiable. The Property MOT could be incorporated into this, demonstrating that the specific property also meets the minimum safety criteria, meaning the register is not just a list of landlord names but an overview of each property associated with the landlord.

The register could also be used as an effective communication tool for landlords and provide access to an information website, like the New Zealand Tenancy Services. Professional bodies could also help enforce sign up to the landlord register, by making it a requirement in order to become a member of the professional body.

Sources: 3. https://www.geoplace.co.uk/
4. https://www.openbrix.co.uk/home
5. Housing Act 2004 part 3, 80

In essence, the landlord register could incorporate the following, giving a holistic view of the property and enforcing compliance across all the below areas:

1. The property UPRN / property details
2. Landlord details
3. Landlord redress scheme membership
4. Deposit scheme membership

Property MOT certificate (either standalone or part of a landlord licence)

Mortgage lenders

TLIC believes that there are a number of sectors that would be interested in the introduction of a Property MOT, such as mortgage lenders and insurers. Buy-to-let mortgage lenders have a vested interest in ensuring that PRS properties meet a basic standard. A Property MOT support lenders in ensuring risk mitigation in terms of the property asset. Accordingly, lenders such as Lloyds Bank and Nationwide have been openly supportive in their reports of the introduction of a mandatory Property MOT.

Lenders could support the mandating of a Property MOT by making this a condition of lending for any buy-to-let mortgage, meaning property is correctly assessed and meets a specific standard from the outset.

Insurance

Where the standards of a property are high, this reduces the level of risk for insurers. In a post-pandemic world, insurers are reported to be seeking new, innovative products and if risk can be reduced in PRS properties, insurers may be willing to offer incentives to landlords who can demonstrate a high level of compliance via a Property MOT.

Furthermore, on a practical note, the insurance sector also utilises firms such as WeGoLook, which offer a vast network of 'Lookers': vetted and verified individuals employed to investigate claims. Looker reports are relied upon to aid the investigation of claims. Examples include, but are not limited to, photography services, real property inspection services, personal property inspection services, information gathering services, accident scene diagram and measurement services, document retrieval services and others.

A similar role could be created for the Property MOT assessment, utilising someone such as a Looker to assess the condition of the property, which is in line with the work a Looker already carries out for insurers. Similarly, other professionals such as inventory clerks and domestic energy assessors, who are already employed to document the condition of a property, could undertake such training to be able to provide a full property assessment for the purposes of an MOT.

We do not consider it to be a significant challenge to mandate a property inspection, given that properties must already be accessed routinely by individuals. An EPC is obtained by having a property inspected by a Domestic Energy Assessor, therefore there is already a situation whereby every single private rental property must be inspected by a professional. If this can be extended to include the condition of a property, tenants can move into homes with greater reassurance.

Decent homes standard

TLIC has concerns that introducing a blanket set of standards, similar to the Decent Homes Standard in the Social Sector, is not practical considering the wide-ranging types of properties in the PRS. By introducing a 'one size fits all' standard within the PRS, there is a risk of alienating landlords and driving them out of the market where requirements not suitable for a property are imposed across the board.

TLIC considers the Property MOT to be a practical alternative solution, allowing for an assessment of each individual property to ensure it meets a 'decent' standard. The Property MOT would also ensure that compliance relating to items such as smoke and carbon monoxide alarms, legionella risks, damp and so on is improved across the sector. Furthermore, we would call for the Property MOT to be renewed periodically, for example in the way that an electrical safety inspection is required every 5 years.

Summary

A Property MOT is an achievable objective, which will have a significantly positive impact on the PRS, ensuring safe homes for tenants. TLIC proposes a regulatory impact assessment be carried out, considering how this could be achieved through the use of the already available UPRN. If results of property safety records can be captured and collated to form one comprehensive safety record, hosted within a portal, tenants would have instant reassurance that their home is safe. Most importantly, enforcement authorities will have immediate visibility of non-compliance, targeting and driving out the standards that have no place within the PRS.

Below is a visual representation of how this might be achieved. To further support this, we have created a very basic mock webpage with very limited functionality, however which easily demonstrates the concept. A desktop version can be seen by visiting: https://bit.ly/3vjJAsN.

Secton 4 cont.

Roadmap to achieving the Property MOT

STEP 1

Pilot the UPRN as an EPC unique identifier

STEP 2

Mandate the UPRN on PRS property records

- EPC
- Gas safety records
- Electrical safety reports
- Landlord licences
- Gas safety record
- Deposite scheme membership
- Landlord registration and redress scheme membership

STEP 3

Digitalise PRS property safety records

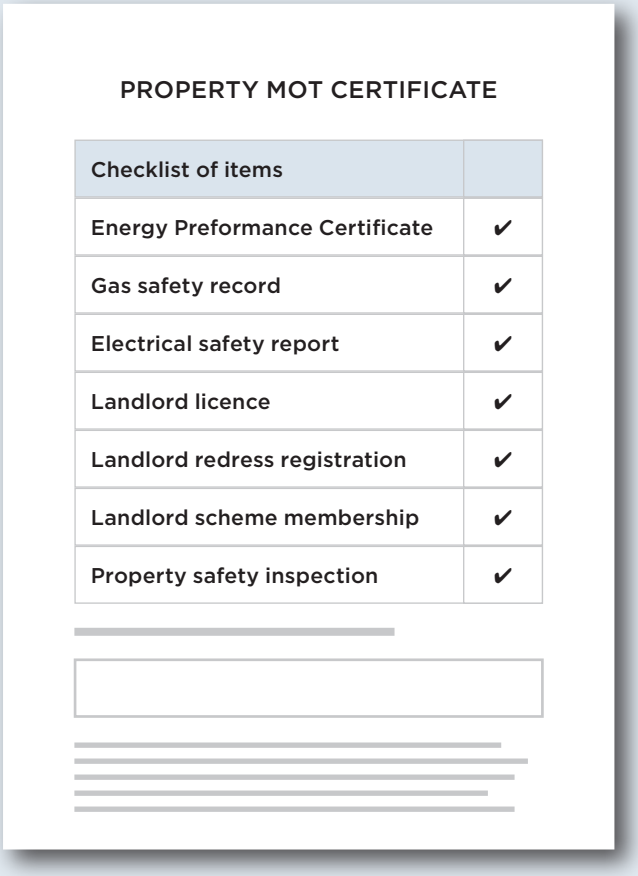
STEP 4

Create an online MOT record for each PRS property scraping results from property safety records (pass/fail and expire date)

STEP 5

Introduce a physical property inspection to assess for a 'decent' standard

Property MOT certificate to be displayed on all property listings and provided before a tenancy commences:



PROPERTY MOT CERTIFICATE

Checklist of items	
Energy Preformance Certificate	✔
Gas safety record	✔
Electrical safety report	✔
Landlord licence	✔
Landlord redress registration	✔
Landlord scheme membership	✔
Property safety inspection	✔

Section 5

Registration, redress, enforcement, education and regulation

Introduction

For the PRS to provide safe housing that reaches a minimum standard it will require various steps to be taken which we have explored below. Taking one of the steps in isolation will not meet the objective.

4.4 million households in the PRS.

71% of properties are owned by individuals.

43% of landlords use a letting agent.

TLIC believe the sector needs the following:

- **A regulator** - regulate agents to ensure a consistent minimum standard of knowledge is provided through their services to landlords and when dealing with tenants.
- **A landlord register** - so those landlords who don't use an agent can be kept up to date with their legal obligations and any changes in legislation.
- **A property register** - so every rental property is registered so that checks can easily be made to ensure the property reaches a minimum standard and enable easy data sharing.

The sector requires ongoing education and we can only educate when we can reach every landlord, tenant and agent.

Landlord registration

We considered that a scheme like Rent Smart Wales (RSW) of landlord registration would not be expensive (could be zero direct cost to the Government), would be easy and quick to implement. This would ensure all landlords were known and information about being a landlord could easily be distributed. Landlords should be registered whether they use an agent of not. Agents should be prohibited letting properties for unregistered landlords and possession etc. could be linked to being registered. This registration could provide a unique landlord identifier i.e. their tax reference which could then be searched by HMRC and could be used in other contexts, like deposit protection, court work etc. to link up the different systems and reduce non-compliance. Each landlord would also register the properties they own on a property register and each property's UPRN could be linked to it during registration, giving a local authority simple access from a property address back to the owner.

Landlord redress

The question of landlord redress is generally supported, though if the landlord uses an agent, who already has to be part of redress, duplication needs to be avoided. We therefore suggest that redress could be restricted initially to self-managing landlords, somewhat like RSW licensing only applies to self-managing landlords. The agent redress scheme could be used for managed landlords. The registration process could be linked to redress with each property identified if it is under the landlord's redress or an agent's redress. If the agent dis-instructs (which they should be able to) this could flag up to the local authority/regulator for checking. We presumed redress would be funded though landlord membership, as we currently have with agents.

Neither of these proposals will stop criminal landlords being criminals but by having linked systems, it should reduce the places to hide.

Regulator

All of this links into the proposal for a single regulator. This should be the front door of any enforcement issues and complaints. Consumers do not currently know if they should speak to the deposit adjudication, redress for agents, local authority, trading standards, a professional body etc. depending on the problem. A single regulator could help and direct issues to the appropriate sub body. The register, redress, deposits etc. should effectively then exist within the regulator and this would help ensure landlords and agents were compliant with CMP, redress etc as they would all join up.

Secton 5 cont.

Regulation

Regulation can be broken into steps. Currently there is no list of who even needs to be regulated.

STEP 1

- A simple, light touch, registration, much like the landlord registration above. Make the process simple and cheap to encourage large scale compliance, self-funding through online processing and a simple web site.
- This step could be self-funding from the Government's point of view and brought in with relatively little notice, an "easy win" if you like, but forming a valuable basis on which to build a new system.
- The system will need to be designed to allow for one company to have multiple offices.

STEP 2

- Introduce minimum criteria for registration. There are already things like CMP, redress, deposits that could easily be brought in to ensure compliance. Ensuring higher standards by making it harder to engage with services without the correct registration.
- For example portals could only advertise for registered landlords or agents, and the system would only allow the registration if the applicant had any necessary Client Money Protection, redress etc.
- The current fragmented system enables agents to get away without having all the elements of the puzzle in place as there is no effective way of checking. Any system should be designed from the ground up with automated checking in mind.

STEP 3

This step which might be started from the outset but only become mandatory later, would be for those working in lettings to have a basic qualification. It is suggested the regulator could decide the qualification but there are some key considerations:

a. The qualification should not be a significant barrier to people working in the industry.

b. Enough time should be provided for people to achieve such a qualification.

c. Many areas of property business (for example sales and lettings,) will have overlapping elements and credit should be given without the need to study the same material or prove competence.

Education

There will be a lot of people to get qualified. "Fast access" should be allowed for experienced practitioners. This is not grandfathering them in without assessment, rather a simple system of testing where they could show they have the requisite knowledge. To be effective there will need to be some form of verification of both any testing system but also who is actually doing the test. It is suggested this role could be handled by the regulator, who would own the qualification and the testing process. This would have the advantage that they could ensure suitably rigorous testing was in place and ensure the qualification is universally recognised across the industry (and is owned by the employee ensuring free movement of labour). If the regulator controls that testing process it should allow the fast access for experience agents and set the minimum standard people would have to be trained to.

Careful consideration needs to be given to who needs to hold what qualification. This is particularly true for large organisations where you will have increased functional speciality and at a director level, your role is about running the business not dealing with landlords and tenants. If 100 hours study are needed for level 3 this will be a significant cost in time and money (nearly 3 weeks work) for employers. Therefore as a very minimum sufficient time should be given to finance and achieve this. This also gives an idea of the implementation period for an agency to get all the staff through training, whilst still running their day to day business. RSW allowed 12 months for far fewer staff to complete a one day course. Consideration also needs to be given to new staff starting after commencement and how long they would reasonable need to get any qualification. RSW allows three months which is probably about right.

Any qualifications could have different steps involved. For example, like in Wales, every member of staff who deals with consumers should have a basic training course, within three months of working in the industry, with those responsible for each office needing to have a level 3 within 6 months of taking on that responsibility. Longer time scales would probably be needed for the transition as there will be tens of thousands of staff to get through any system and it is important that staff being trained does not result in a drop in standards for consumers as the staff are away getting qualified.

Any qualification system needs to be linked to a CPD system. This should require a minimal annual CPD. The qualification should be kept "live" for the employee as long as they do the required CPD. There is no real value limiting the life span of the qualification if you have CPD, it should last as long as the CPD is completed. All staff, qualification details and CPD could all be part of the online system held by the regulator so that those not shown to be complying can easily be identified. Failure to register CPD could trigger investigation and some random audits could be used to ensure greater genuine compliance.

The RSW learning would indicate that there needs to be some incentive to register and qualify early if you are to avoid a last minute rush, which may cause problems managing the work load.

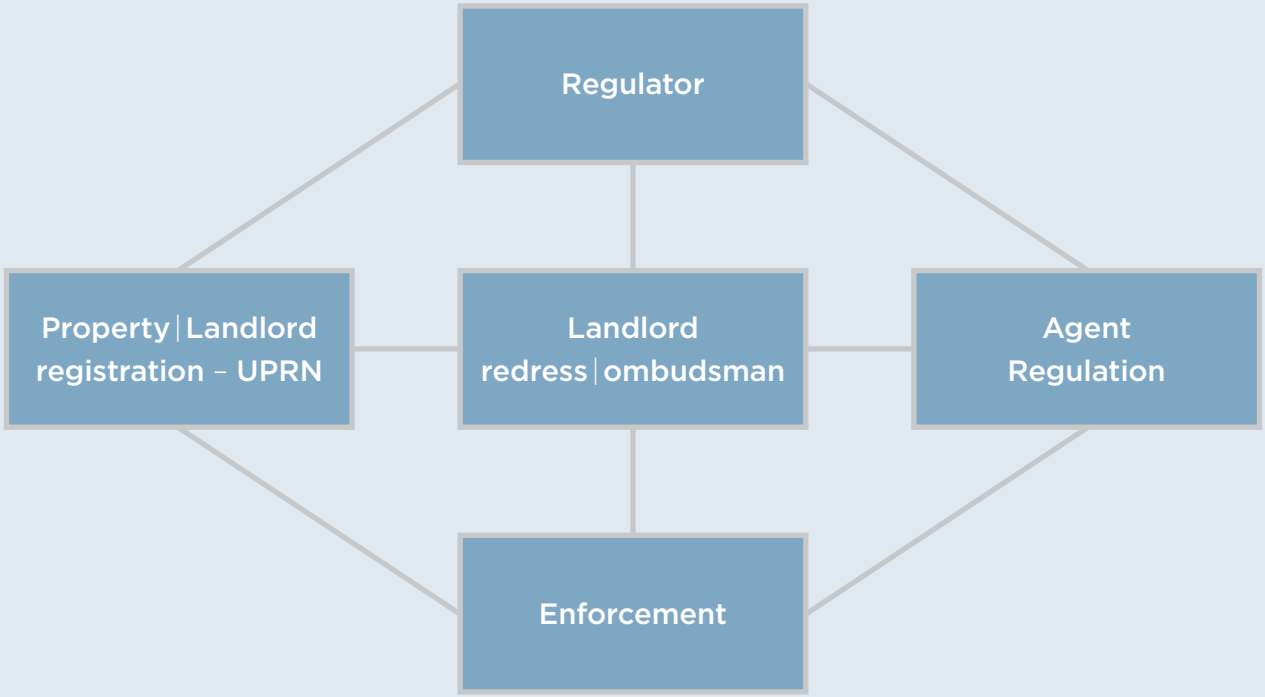
Enforcement

Central to many proposals is the idea of using technology and unique references to link up disparate data sets. The UPRN could link lots of property requirements like electrical safety checks, gas safety checks, EPC etc. Likewise landlord or agent (and any staff) identifiers could very easily and quickly link up the different people involved and help ensure that it is difficult to function without being properly set up and regulated. Doing this through the design of online systems would enable a large amount of compliance to be automated with human intervention only needed by exception.

If the different data sets start to get linked up then system starts to be more self-enforcing. For example, you could not get a court order if you could not provide the landlord registration and the property registration and the court systems should be able to check that data (indeed with an online form elements could even be imported from another data set). This would force compliance on the vast majority of the market but we recognise that there will be a criminal elements that will remain outside the scheme. However, some loop holes would be easy to close (like requiring the UPRN and tenure on council tax forms so it could check if the property was registered as rented) but others would be more resistant. If the vast majority of the compliance can be checked it would A) make it a more hostile environment for the criminals to work in and B) it would allow very limited local authority resources to be targeted much more tightly.

Conclusion

A system of registration should be at the heart of this area of development. Registration of landlords and their properties and registration of agents and their staff. This system should be designed with it being seen as the central spine to compliance, linking different elements together. For example, it could easily be a requirement that to advertise someone had to prove their registration (as a landlord or agent and the property). Using the UPRN for council tax and landlord registration of property would enable disparate data sets to work together to ensure it is much harder to operate under the radar. As we are in the 21st century any system should have a strong digital focus to minimise costly human input and help create a hostile environment for those seeking to avoid compliance.



Section 6

Short Term Lets and Rent to Rent

Future proofing for unintended consequences of regulation

We consider below, the implications of the core sections of the Renter's Reform Bill, (Court reform, abolition of S21, Landlord registration, regulation and qualifications, lifetime deposits, property MOT's, and health and safety), in the context of short term lets and rent to rent schemes and how those may affect the aims and considerations of the planned reform and any unintended consequences of the same.

Rent to rent schemes considerations in regards to renters reform

Introduction

There are 3 main silos of rent to rent (Guaranteed rent schemes)

- Council providing a scheme of guaranteed rent for landlords to bring more housing into the affordable sector.
- Reputable agents running a secure scheme, offering the guaranteed rent model as a choice against a managed service.
- Individuals setting up companies to make their fortune in the property industry without paying for a brick e.g. https://multiletcashflowsystem.com/

Clearly, the priority is to ensure all of the above groups are properly regulated and eventually qualified.

With the abolition of Section 21, the modifications to section 8 notices to facilitate the Landlord moving back into the property will need to be carefully drafted to include the owner Landlord in the rent to rent scenario. This can be done in a number of ways:

1. Carefully adding the owner landlord in a rent to rent scenario into the drafting, this may risk bringing in some leasehold landlords you do not wish to include.
2. Although pre-notices are not generally favoured in this instance serve a pre-notice with the AST to the sub tenant, naming the individuals who have an ownership right who can serve the notice on these grounds.
3. Allow anyone named on the land registry to serve the notice on these grounds.

We believe option 2 may be the most straightforward, to negate the Freeholder issues in leasehold.

Landlord registration and licensing

- Both the owner landlord of the head tenancy and the landlord of the AST should be registered as landlords.
- There should be a concept of a responsible person which should be inputted into the landlord's registration, this person/entity would then be the person responsible for the licensing and conditions. In the guaranteed rent scenario, the landlord of the AST would be the responsible person.

Qualification & training

- Clearly the AST landlord will need to be fully qualified and trained as the responsible person. The owner landlord should not require any training, as long they are registered, so are contactable.

Client money protection (CMP)

- It is a weakness that the rent to rent scheme does not require CMP insurance as it would not pay out as there is no client money. There should be a separate specialist insurance required, or at least a requirement that all deposits are placed in a custodial scheme.

Insurances

- There should be a minimum requirement of PL and PI insurance for rent to rent schemes, with the appropriate endorsements. Building insurances should be checked to ensure the landlord has cover that will protect them.

Points of note

- The contractual tenancy agreement between the agent tenant and the owner landlord will be outside of the 1988 Housing Act. The agent tenant needs the ability to end the sub-tenancy within the terms of the contractual relationship.
- Alternatively, where the agent is undertaking a rent to rent contract, there could be a surrender clause to allow them to terminate the contractual head tenancy, but this is not ideal and would not be necessary if the s8 is drafted to include this scenario.
- Head agreements will need to be altered in line with the new rules, with length of time to serve notice. This may provide a problem with some current 3 year long agreements if the agent can no longer gain possession in the time frame in the head contract for notice.
- We could not think of any lifetime deposit implication in the rent to rent scheme that are specific to the rent to rent scheme.
- Rent to rent agents are going bankrupt as they do not understand the taxation. There are professional rent to rent schemes - we should ensure all are within the legislation and they should be brought into line with this or expelled from the market.

Short-term lets: key considerations and recommendations

The short-term letting industry can produce local economic benefits, but we are at a crossroads for policy development, as the needs of local communities, including the provision of long-term housing options, must be balanced with the supply of short-term let property.

Areas for consideration

THE PRIVATE RENTED SECTOR REPORTEDLY PROVIDES HOMES FOR 4.4 MILLION HOUSEHOLDS (19 PER CENT) IN ENGLAND AND REMAINS THE ONLY VIABLE OPTION FOR MANY PEOPLE LOCKED OUT OF HOMEOWNERSHIP AND SOCIAL HOUSING. HOWEVER, RESIDENTIAL HOUSING SUPPLY IS BEING LOST TO THE COMMERCIAL TOURISM MARKET ON A DAMAGING SCALE IN AREAS WITNESSING AN INCREASE IN CONCENTRATIONS OF SECOND HOMES BEING LET ON THE SHORT-TERM MARKET.

- An increased reliance on a limited supply of homes in the private rented sector is being driven by the mismatch between affordable supply and demand, and the increased expectations of local authorities to rely on private renting options to help meet local housing need.
- Propertymark monthly Private Rented Sector report highlights a growth in demand against a backdrop of undersupply in the lettings market, albeit to different extents across the country. Our insight is corroborated by other industry commentators pointing to a decline in the number of homes available to rent against a backdrop of strong demand.
- There is evidence that areas experiencing an increase in the availability of short-term rentals will see a contemporaneous decrease in supply of homes to rent on the longer-term market. It serves to reallocate housing supply from one part of the market to another, limiting the pool of homes to rent, leaving fewer homes for people who need them.

Key statistics

- Propertymark research, carried out via a member survey in October 2021, revealed that almost one quarter of members have lost private rented sector properties due to landlords deciding to let on the short-term market in the last 12 months.
- The private rented sector has lost over 250,000 households since 2017, and Propertymark monthly Private Rented Sector Reports illustrate a sustained rate of sale of buy-to-let property since 2018. Homes are being removed from residential use at a higher rate than delivery of new supply of comparable homes can keep up with.
- There has been a marked decline in buy-to-let investment, especially in areas where housing costs are highest, in the last five years, with 250,000 fewer properties purchased by landlords since 2015. This decline in investment has taken place alongside an increase in new holiday let companies being registered over the same period.
- The recent growth in the short-term letting market corroborates Propertymark's 2019 research, which warned that up to half a million properties were at risk of being displaced into the short-term lets market. This phenomenon is also noted by the Office for National Statistics in their recent report exploring house prices in tourist hotspots.

IT IS VITAL THAT POLICY MAKERS UNDERSTAND HOW THE SHORT-TERM RENTAL MARKET PRESENTS AS A MORE TAX AND REGULATORY FAVOURABLE OPTION FOR EXISTING AND POTENTIALLY NEW PORTFOLIO LANDLORDS. INCREASING COSTS IN THE PRIVATE RENTED SECTOR IS AN INEVITABLE OUTCOME IN AREAS WHERE TENANT DEMAND OUTSTRIPS LONG-TERM RENTAL SUPPLY.

- The restriction of tax relief on mortgage interest payments to the basic rate of income tax makes returns on buy-to-let investments less attractive.
- Landlords renting their homes in the holiday letting market in 'hotspot' areas can make substantial annual revenue, between £30-40,000 each year.
- The additional 3% Stamp Duty Land Tax on additional residential property dis-incentivises buy-to-let investment as it diminishes returns.
- Local tax policies should not incentivise one use over another, and there must be greater parity between the long-term private rented and short-term holiday let sectors. Small Business Rates Relief (SBRR) on non-domestic rates (NDRs) should not enable a short-term let business that meets the threshold for NDRs to pay neither council tax nor business rates.
- The Tenant Fees Act is making it more difficult for landlords to mitigate the financial risk associated with letting their properties.
- There is a considerable range of additional requirements landlords in the private rented sector must comply with including (but not limited to), gas/electrical safety, deposit protection, energy efficiency and licensing requirements.

WE DO NOT HAVE A CLEAR FRAMEWORK FOR DEFINING THE DIFFERENT CATEGORIES OF SECOND HOMES, WHICH MEANS THERE IS A SIGNIFICANT GAP IN THE DATA AVAILABLE TO HELP INFORM AN ACCURATE PICTURE OF THE TRUE SCALE AND IMPACT OF SECOND HOME-OWNERSHIP IN ENGLAND.

- We note that there is already data available for the number of second homes registered for Council Tax in each local authority across the country, but we have very limited understanding of how many second homes are being let in the short-term/holiday letting industry.
- We propose that reliable data can only be captured once the UK Government have developed a robust typology that sets out definitions of each type of second home based on use. By defining each type of second home the UK Government can ensure its data provides a more reliable picture of housing use, at both a national and local level, which can lay the foundations for smart policy making in this area, minimising the risk of unintended consequences.
- We recommend that property use be broadly categorised across the following three types, to help differentiate primary homes from the two main types of second homes:

Primary homes are occupied by the owner or let to tenants as their main and principal homes – these are 'homes'. This includes homes being let in the privately rented sector and whose landlords are required to register with Rent Smart Wales. Buy-to-let properties provide rented accommodation to be occupied as a main residence, so they are primary homes for that reason.

Second homes are properties that are not lived in by their owners as their main and principal abode but are used by the owners on an ad-hoc basis for private enjoyment of the property throughout the year i.e., they are not occupied full time by someone who lives their permanently.

Short term or holiday lets are properties that are used for commercial purpose through letting to people on a short-term basis throughout the year – they are properties registered for non-domestic business rates.

- There is potential for properties to fit into any of these categories at any given point, punctuating the need to create a typology that can account for all possible nuances. We have merely proposed a solid foundation upon which the UK Government can build a framework for second homes policy development, based on data it can rely on.

Recommendations

The UK Government should carefully consider measures that will help level the playing field between a more tax favourable and unregulated short-term letting industry and the less tax favourable and intensely regulated private rented sector (long-term letting industry). To achieve this, we make the following recommendations to the UK Government:

- Ensure that tax policies do not disincentivise investment in the private rented sector. The impact of the additional 3% Stamp Duty Land Tax on buy-to-let investment should be reviewed and short-term let businesses that meet the criteria for NDRs should be excluded from Small Business Rates Relief (SBRR).
- Significantly increase the delivery of social rented housing in the areas where it is most needed, and ensure that housing supply is increased across all tenures, including affordable rent.
- Explore ways to redress the balance of regulatory obligations across the two industries, to prevent poor practice and safety standards and to ensure local authorities have appropriate powers to balance the needs and concerns of their communities with wider economic and tourism interests. There should be a mandatory level of compliance for Fire Safety, EICRs GSC, etc and how to police anti-social behaviour in short lets.
- Develop a robust typology for defining the different categories of second homes to enable collection of reliable data, upon which to based policy developments in this area.
- Pilot the introduction of a short-term rental registration scheme using the proposals set out by Airbnb in their White Paper, to help capture valuable data about use of property in the industry.
- Any landlord, with sole possession, renting a residential property of any form, to the public, should be registered, to avoid creating loopholes. It would be ideal to align short term lets to the UPRN project.
- Lets for under 14 days in a calendar year should perhaps be outside of the definition of short term / holiday lets and outside of the legislative requirements.
- House swaps should be left outside of the scope.

WE SHOULD NOT BE ENCOURAGING SHORT TERM LETS - THEY UNDERMINE THE LEVEL OF GOOD HOUSING REQUIRED FOR LONG-TERM RENTERS, WHICH IS EXACTLY WHAT THE REFORM BILL IS TRYING TO PROTECT. WE SHOULD ENSURE THIS LOOPHOLE IS CLOSED OFF BY MAKING THE STANDARDS AND TAXATION FOR SHORT TERM LETS IN LINE WITH THOSE IN THE PRS.

Conclusion

The Renter's Reform Bill provides a once in a generation opportunity to improve the lives of renters. However, in order to achieve maximum impact and create true strategic change, we believe it is crucial to phase in these significant changes in a considered manner over a period of time, avoiding unexpected unintended consequences which only hurt those we are seeking to protect the most - tenants.

This reports seeks to find a balance between encouraging investment in the sector to increase available homes and ensure they are of consistent good quality through natural supply and demand competition.

Importantly, we call for the regulation of agents, creating a level playing field for those acting in a professional capacity. It is essential that agents can demonstrate an appropriate standard of legal knowledge when dealing with landlords and tenants, especially concerning the safety of tenants.

However, as finances get tighter, more landlords are looking for cheaper agent services, sometimes electing to self-manage or to even let the property independently which poses a risk within an unregulated sector. A property register will therefore provide many benefits not least offering a tool for education. There will be an easier and more direct route for communication, providing landlords with access to essential information, helping them understand their obligations and keeping them updated regarding key changes in the sector.

In addition, landlord redress will give consumers an alternative to the court route which many cannot afford. At the same time, this will relieve the burden on the courts to be able to deal with the most serious of matters more quickly. We also call for urgent court and bailiff reform to deal efficiently with the very serious issue of a tenant losing their home. Better use of low cost mediation early on in the process could attain over a 50% success rate reducing the strain on the courts by up to 25%.

We believe that every tenancy should have a written tenancy agreement or statement of terms and every property in the PRS must meet, by law, a minimum standard and be fit for purpose. The only way to achieve this is to first embrace digitalisation, starting by mandating the use of the UPRN. Learning from the way that EPCs are registered, next steps would be to mandate the UPRN on gas and electrical safety reports along with a national register for each, through the creation of a Property Portal, which would produce a property MOT certificate (also known as a Property Passport or PRS Decent Homes Assessment). This way properties can be declared safe from the outset, giving tenants reassurance that their home is free from hazards and enabling targeted enforcement, which is not solely reliant on tenants reporting problems.

Lifetime deposits should also be targeted where they are needed and we urge Government to reconsider offering bonds or individual cash deposits to those in receipt of benefits, supporting them with a lifetime deposit solution while they are dependent on state financial support.

Lastly, short term letting and rent to rent must be considered when planning PRS reforms to avoid any unintended consequences. The needs of local communities, including the provision of long-term housing options, must be balanced with the supply of short-term let property.

It is clear that all sectors of the Private Rental Sector are united in their desire to bring about reform. We urge the Government to adopt the above proposals, deliver real workable solutions, raise standards for all and provide genuine protection for consumers in the PRS.

Acknowledgements

The Lettings Industry Council (TLIC)

Chair: **Theresa Wallace**

WORKING GROUPS

Group 1 Loss of Section 21 and changes to Section 8 grounds	Group 2 Court reform, bailiff reform, mediation, written tenancy agreements	Group 3 Lifetime Deposits
Chair: **David D'Orton-Gibson** Training for Professionals	Chair: **Paul Shamplina** Hamilton Fraser	Chair: **Steve Harriott** Tenancy Deposit Scheme
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