

Shelter's response to the Law Commission's Consultation Paper: Encouraging Responsible Letting

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Shelter

Shelter is a national campaigning charity that provides practical advice, support and innovative services to over 170,000 homeless or badly housed people every year. This work gives us direct experience of the various problems caused by the shortage of affordable housing across all tenures. Our services include:

- A national network of over 20 housing aid centres
- Shelter's free housing advice helpline which runs from 8am-midnight
- Shelter's website which provides housing advice online
- The Government-funded National Homelessness Advice Service, which provides specialist housing advice, training, consultancy, referral and information to other voluntary agencies, such as Citizens Advice Bureaux and members of Advice UK, which are approached by people seeking housing advice
- A number of specialist projects promoting innovative solutions to particular homelessness and housing problems. These include 'Homeless to Home' schemes, which work with formerly homeless families, and the Shelter Inclusion Project, which works with families, couples and single people who have had difficulty complying with their tenancy agreements because of alleged anti-social behavior. The aim of these particular projects is to sustain tenancies and ensure people live successfully in the community.
- We also campaign for new laws and policies - as well as more investment - to improve the lives of homeless and badly housed people, now and in the future.

Introduction

Shelter welcomes this opportunity to respond to the Law Commission's consultation paper *Encouraging Responsible Letting*.

We believe that this work is timely and reflects the need for a pro-active approach to developing a more fit for purpose private rented sector (PRS). Shelter shares the Law Commission's overarching objective of encouraging more responsible letting in the PRS so as to ensure that those who make their home in the sector can be assured that they have access to safe and high quality accommodation.

We would note at the outset that our response concentrates specifically on parts 7-9 of this consultation – namely: proposals for change, enforced self-regulation in practice; and home condition certification. For clarity, where we have chosen to comment on a specific aspect of the consultation, we have set out our response under the heading which the Commission has used in its consultation document.

Proposals for change

Scope of regulation

We note the Law Commission's consideration of the appropriate scope for a reformed regulatory regime for the PRS. However, we do not share its assessment that certain categories of landlords should be excluded from regulation, not least because of the difficult issues this raises regarding where and how the 'dividing line' between types of tenants should be drawn. We believe that all tenants should be offered regulatory protection and recourse to the law in the event that these rights are not met.

Shelter has particular concerns about the Commission's analysis of the application of regulation to those in temporary accommodation. We do not believe that the brevity of the relationship involved in temporary accommodation 'brings them outside property management and property condition issues'. Whilst we acknowledge that individual renting relationships may sometimes (though not always) be short, renting itself represents a continuous function for a provider of temporary accommodation and we do not therefore believe that they should be excluded from any regulatory efforts.

Option 1: Enhanced voluntary self-regulation

Shelter shares the concern expressed by the Commission's paper with regard to this option and does not favour its adoption as an approach.

We believe that there are many positive aspects to voluntary self-regulation and that good practice tools such as accreditation schemes and codes of practice can be enormously helpful in encouraging responsible letting. However, we do not think that this approach is sufficiently robust to become the main means of regulating the PRS at a strategic level.

We agree with the Law Commission's analysis that it is difficult to identify sufficiently persuasive levers in a voluntary regulatory environment to encourage landlords to join professional organisations/accreditation schemes. Whilst we welcome the Commission's efforts to identify potential levers which might encourage membership of professional organisations/accreditation

schemes, we remain unconvinced that there is either the capacity or the resources available to sufficiently expand existing voluntary initiatives, thus undermining the basis of this approach.

We also share the Law Commission's concern as to 'who would regulate the regulators' and consider that there would be a significant conflict of interests between professional organisations' reliance on members' fees and their willingness to police these same members effectively in the event that they contravene standards. We believe that this model may encourage 'a race to the bottom' in terms of the standards which each professional organisation would require of its members and consider that the requirement to belong to a professional organisation without centrally agreed and enforced standards is no guarantee of better letting practice.

Overall, we consider that the disadvantages of this approach far outweigh the advantages. The voluntary aspect of the approach means that, from a tenant perspective, it would not be able to provide the desired degree of certainty of improvements to the regulation of the PRS.

Option 2: Enforced self-regulation

We note the Commission's selection of enforced self-regulation as its preferred option. In this regard we welcome a number of elements of this approach, specifically the emphasis on the need for regulation from a central body with oversight of the sector as a whole; the requirement that all landlords (or their agents) participate; and the attempt to build on existing schemes thereby taking account of approaches that are already in operation on the ground. We also welcome the Commission's stated goal of ensuring that day-to-day management of rented accommodation is undertaken by those who have received appropriate training.

However, whilst welcoming certain elements of the approach, we are unable to endorse it as a whole as there are a number of elements which we regard as inherently problematic. In the first instance we are concerned that the preferred option is overly reliant on a re-definition of the role and purpose of landlord organisations in relation to their members.

As the Commission's paper highlights, only around 2.2 per cent of landlords are currently members of landlord organisations. The requirement that all landlords or their agents should join a landlord organisation/accreditation scheme therefore represents a 97.8 per cent increase in uptake of membership thereby immediately raising issues of capacity.

We believe that the proposal that individual landlord organisations should set standards for their members and enforce first level compliance is problematic as an approach. Whilst we recognise the role of the proposed central regulator in ensuring that the standards set by individual organisations are appropriate, we consider that this approach will be time-consuming and confusing and will ultimately lead to organisations competing with each other to lower standards in order to increase their membership. We believe that there should instead be a single code of practice/standards for the sector as a whole so as to facilitate effective monitoring and compliance.

We are also concerned that the enforced self-regulation approach will be unduly burdensome for tenants, landlords and the central oversight body. Monitoring multiple codes of standards and differing professional organisations and accreditation schemes will be time-consuming for a central regulator, whilst shopping around and comparing competing standards/codes of practice will be difficult and time-consuming for landlords. We also believe that tenants would find the system complex and confusing and may find it difficult to raise complaints in a system of multiple and competing professional organisations.

A further difficulty with this approach, is that of identifying landlords and compelling them (or their agents) to join professional organisations/accreditation schemes. With no central register of landlords this would undoubtedly be a difficult job for a central regulator to oversee. As we have already seen with regards to HMO licensing, constraints on time and financial resource often undermines a pro-active approach to tracking down landlords who have chosen not to comply and it would be unfortunate to see these difficulties replicated in these new efforts to encourage responsible letting.

Overall, whilst we welcome certain elements of this approach, we believe that it should be modified to avoid the pitfalls which we have articulated above.

An alternative approach

Shelter therefore proposes a modified version of the enhanced self-regulation approach which we believe would be better able to attain the Law Commission's goal of encouraging more responsible letting in the PRS.

The building blocks of this approach would retain key elements of the enforced self-regulation model – namely, the use of a central regulator, and the requirement that all landlords (or their agents) participate. However, it would differ in two key ways: firstly, it would establish a universal code of standards for all landlords in the PRS; and secondly, it would require national registration for all landlords.

As stated above, we believe that a common code of standards is a vital element of a successful approach to regulating the PRS. This would form the basis of how landlords would be expected to operate in the sector and would be drawn up with input from landlords, tenants, government, local authorities and professional organisations. Such a code would avoid the proliferation of varying standards and approaches, facilitate monitoring and enforcement and enable both tenants and landlords to know their rights and responsibilities with regards to renting property.

In tandem with this universal code, Shelter believes that national registration of landlords should be put in place as the basic means by which enforcement of the code is made possible. We suggest that registration should be simple and either free of charge or perhaps with a small administration fee payable. Registration would confer a professional identification number on the participating landlord, and this ID number would subsequently be used in transactions related to the rental of their property including advertising tenancies, using the tenancy deposit scheme, claiming tax allowances, taking court action and carrying out possession orders.

The central regulator would oversee compliance with the code and monitor any alleged non-compliance which is brought to its attention. This might take the form of complaints from tenants, from third parties such as advice agencies or non-compliance reports from local authorities. Non-compliance could be dealt with by the central regulator through a range of methods starting with drawing the problem to the landlord's attention, through to sanctions such as the withdrawal of the right to registration and/or the imposition of a fine.

Option 3: Licensing

We note the Commission's unfavourable assessment of licensing but consider that the paper's assessment is unduly negative about this approach.

Licensing can provide a tool for ensuring that all those providing one of our most important service industries – i.e. a home – are registered and therefore accountable. It also provides more certainty for tenants with regards to being sure that their landlords are working in accordance with standards and are 'fit and proper' persons to provide this accommodation.

Certification

We welcome the proposal for home condition certification and particularly the suggestion that PRS accommodation could be inspected and certified prior to renting. This would help tenants to make informed choices about their accommodation and would prevent replication of the current problems with HMO licensing where a license can be granted in advance of any inspection taking place.

However, whilst we welcome this approach, we recognise that the costs of implementation could be significant. We would be particularly concerned if these costs were passed on to tenants and welcome the Law Commission's suggestion that there might be scope for the public purse to meet the cost of these certificates for landlords housing those in receipt of housing benefit.

We also recognise that certification would take time to implement and would therefore recommend an incremental approach which would concentrate initially on those sectors of the PRS in which disrepair is a particular problem.

We consider the Commission's suggestion that the certificate should be valid for a set time period to be reasonable. We would, however, highlight the fact that problems of disrepair may not be present at the outset of a tenancy but may develop over time and in this regard we believe that there is still a requirement for the code of standards and national registration approach which we have set out in this paper.

Conclusion

We welcome this consultation paper and particularly the Law Commission's efforts to inject some fresh thinking into the issue of how we can encourage more responsible letting in the PRS.

As the role and function of the PRS evolves with changes in demographics, increasing pressure on the supply of social rented homes and the rising cost of home ownership, Shelter believes that we must act to improve the experience of tenants in the sector. The purpose of the PRS, ultimately, is to provide a home for those who, through choice or otherwise, look to it to meet their housing needs and we therefore have a duty to ensure that the PRS provides safe, high quality and affordable accommodation.

Shelter will shortly publish a discussion paper setting out options for the future of the private rented sector which we would be happy to make available to the Commission in support of our response.

**Shelter Policy Unit
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