

Shelter's response to the CLG consultation – The private rented sector: professionalism and quality

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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 advice centres.
- Shelter's free advice helpline which runs from 8am-8pm.
- Shelter's website which provides 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 housing support services, which work with formerly homeless families, and the Shelter Inclusion Project, which works with families, couples and single people who are alleged to have been involved in anti-social behaviour. The aim of these services is to sustain tenancies and ensure people live successfully in the community.
- A number of children's services aimed at preventing child and youth homelessness and mitigating the impacts on children and young people experiencing housing problems. These include pilot support projects, peer education services and specialist training and consultancy aimed at children's service practitioners.
- 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.

Shelter has dealt with nearly **15,000** advice cases relating to the private rented sector over the last year. Over the same time period, our web pages on the private rented sector received **765,000** page views. The level of clients coming to us for advice on private renting issues is higher than would be expected on the basis of the relative size of each tenure. Our experience of the sector provides us with evidence on which to base our policy work.

Summary

- Shelter strongly welcomes the proposals in this consultation paper to help improve standards and professionalism in the private rented sector (PRS). This is timely given the rapid growth in the sector and high levels of inexperienced landlords. However, in our view a much broader vision of the PRS needs to be developed by the Government which goes further in tackling poor property conditions, provides greater security of tenure, addresses PRS affordability issues and tackles the complex legal framework for housing.

National registration

- A national system of landlord registration has the potential to provide wide ranging benefits for landlords, tenants and the taxpayer. These include: improving understanding of landlord and tenant responsibilities; promoting a better reputation and image for the PRS; providing a system of redress for tenants; and improving property standards. The new system could also help save taxpayers money by helping to identify landlords that have not declared property rental income and capital gains to HMRC.
- However, in order for the Government's proposals for landlord registration to deliver on the potential benefits, we believe the Government must considerably strengthen a number of aspects of the proposals. In particular:
 - Potential tenants should be able to check details of their prospective landlord using the registration number, including any offences linked to the registration number.
 - All landlords must abide by a Code of Practice which brings together all relevant statute, good practice and any other mandatory conditions of letting into one place.
 - A proactive enforcement regime should be developed to ensure that landlord registration serves to drive up standards. This should include regular spot checking and cross referencing data between agencies to ensure that landlords that haven't registered are identified.
 - Information from the courts, Ombudsman, local authorities, and tenancy deposit protection schemes should be used to provide the regulator with information about landlord offences from which sanctions can be determined.
 - All private landlords should be required to register with the Housing Ombudsman, giving all tenants access to its conciliation services.
 - The Tenant Services Authority (TSA) should take responsibility for regulating the PRS, building on its knowledge of regulating social housing and creating one cross-domain regulator for rented housing.
 - In order for enforcement to be effective CLG must determine the resources required and ensure these are available. Extra taxation income and savings on court costs resulting from the register will provide resources to ensure this is possible.

Written tenancy agreements

- We strongly support the universal introduction of written tenancy agreements. In our view setting out a model tenancy agreement in legislation to which additional clauses can be added is the best way to introduce written tenancy agreements. We also believe there should be similar requirements for standard model agreements for licences.

Regulation of private sector letting and management agents

- Shelter is strongly supportive of the many calls to regulate private sector letting agents and the work done by the National Approved Lettings Scheme (NALS) to establish a draft regulatory framework.
- We strongly agree with the CLG that full regulation must encompass a Code of Practice, entry requirements and consumer protection measures such as client money protection. We also believe that it is essential to establish a free independent complaints procedure and redress with the ultimate sanction of removal of letting/management agent status.
- In our view a new independent organisation should be established to regulate the sector and letting charges should also be subject to regulation.

Private rented sector and local authorities

- We particularly welcome the emphasis placed on securing a more co-ordinated approach to private rented tenancies for low income groups using the local lettings agency concept. However, for this approach to be successful we believe that:
 - Tenancy sustainment services must be a key aspect of the local lettings agency approach.
 - Homeless households with statutory rights to housing assistance should be able to choose whether or not the PRS offers them a suitable housing solution, and be allowed to make a homeless application.
 - Provision of help with deposits and rent in advance should be available in all local authorities.
 - Local authorities should limit use of the PRS to tenancies where there is no Housing Benefit shortfall or where a sustainable solution exists to cover any shortfall.

Introduction

Shelter has long campaigned for improved regulation in the PRS and this consultation marks a very welcome turning point in the fortunes of the sector. We are pleased that our discussion paper *Fit for Purpose* acted as a catalyst for the Rugg review and that this has helped to move this debate forward.¹

The very limited availability of social housing and the high cost of owner occupation means that the PRS has become the only accommodation option for an increasing number of households. Over the last four years the PRS has grown rapidly from 11% to 14% of all households. While there are professional landlords with a good understanding of their responsibilities, many landlords are inexperienced and relatively new to the sector. There is also a growing number of 'reluctant' landlords such as those letting out property which they are unable to sell in a falling market. This context represents an ideal time to focus on standards and professionalism in the PRS.

We share much of CLG's vision for a more professional, high quality sector and believe that the proposals outlined in this paper will be beneficial to both private sector tenants and landlords. However we would argue that a much broader vision for the PRS needs to be developed by the Government which goes beyond the proposals in this consultation paper. This is because:

- Over 40% of homes in the PRS are non-decent and it is unlikely that the introduction of landlord registration is enough to bring down the high levels of non-decency compared to other tenures.
- The need for greater security of tenure in the PRS remains strong and without this, tenants are often reluctant to complain or exercise their rights because they risk retaliatory eviction from their homes – a reality which our caseworkers frequently report.
- CLG's response does not address PRS affordability yet Shelter's research suggests that private tenants struggle more with affordability than the occupants of other tenures.²
- Housing law remains notoriously complex but CLG has decided against the Law Commission's proposals to simplify the tenancy framework. We believe these proposals have the potential to make the law more accessible, reduce disputes and improve landlord/tenant relations, and we are keen to see them revisited.

However, despite these concerns we believe the current CLG proposals have a great deal to recommend them and would constitute a major step forward. We are keen to work with the Government and other stakeholders to develop the proposals and to help ensure these are implemented effectively.

In this response we consider each of the main themes of the consultation paper. These appear in the order in which they appear in CLG's consultation paper and, for ease, we have included the relevant paragraph references.

¹ Jones E, *Policy: discussion paper, Fit for purpose? Options for the future of the private rented sector*, October 2007

² *Breaking Point: how unaffordable housing is pushing us to the limit*, Shelter 2008

A national register of private landlords (paras 14-18)

Overview

We strongly support the proposal to introduce a registration scheme for private landlords in England. We believe this provides an excellent opportunity to improve standards and professionalism in the sector. In our view a national system of registration has the potential to provide wide ranging benefits for landlords, tenants and the taxpayer as set out in Figure 1.

We very much welcome many of the basic elements of national registration which the Government has set out, particularly:

- Using the register as a means of disseminating information to landlords so they have the basic skills and information to carry out their role effectively.
- No hurdles to entry to ensure the majority of good landlords are not penalised.
- Use of a unique landlord registration number for all aspects of the landlord's business including housing benefit/local housing allowance claims, tenancy agreements, tenancy deposit scheme, tax forms and court processes.
- In the event of persistent abuses and/or failure to comply with the regulatory regime landlords will be removed from the register.
- A system of redress for tenants where substantial and proven complaints against a landlord will result in removal from the register.
- Running the register on a national basis by an independent organisation.

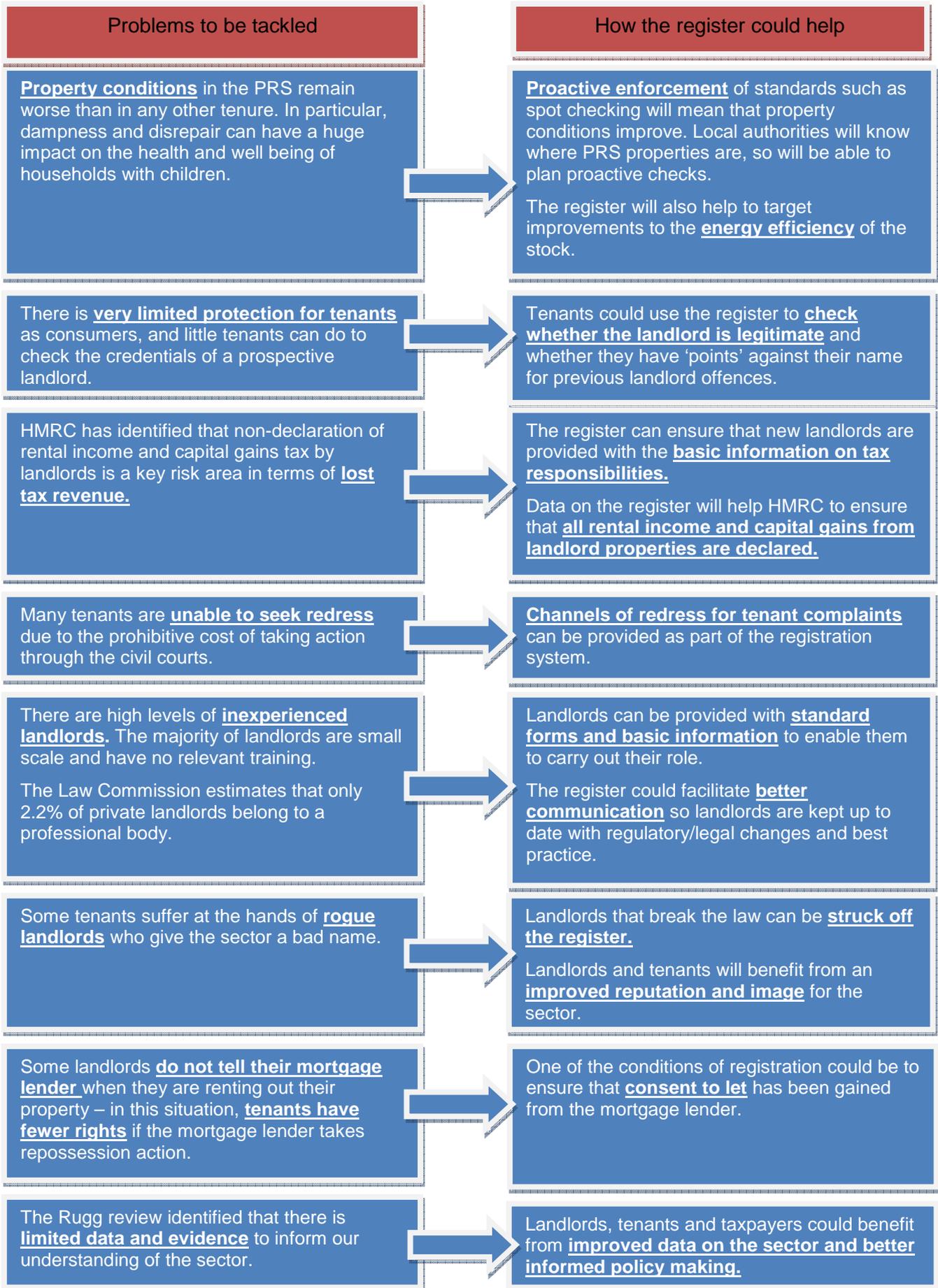
However, clearly there is much to do in developing the detail of these proposals to ensure that landlord registration is meaningful and delivers the potential benefits. No-one in the sector wants a landlord list that fails to improve standards and professionalism in the sector.

There are a number of areas where we believe the Government's proposals should be considerably strengthened. In particular, we believe there is a need for:

- All landlords to sign up to a Code of Practice to ensure there is clarity over minimum standards across the PRS and a clear benchmark against which to assess complaints.
- Well resourced proactive enforcement measures such as regular spot checking.
- Compulsory landlord membership of the Housing Ombudsman scheme so that all tenants have access to a system of direct redress.
- The TSA to take on the role of central regulator for the PRS.

Below, we explain in more detail how we believe the Government's landlord registration proposals should be improved.

Figure 1 – Benefits of landlord registration



Data held on the register

We are supportive of the minimal data which CLG has recommended for inclusion on the register – name, address and the addresses of the property holdings of the landlord at the time of registration. Some landlord groups have expressed concern that capturing landlord property addresses would be overly intrusive. We believe this is essential information for the register to contain as is the case for the Scottish registration system. This is because:

- This would provide local authorities and regulators with the information needed to undertake targeted and effective enforcement. In particular, Environmental Health Officers and Tenancy Relations Officers would have an up to date list of PRS properties and would not have to 'play detective' to find out where private lets are.
- Property addresses would help other Government departments carry out their role – for instance, this data would help HMRC ensure that all rental income and capital gains are declared by landlords. This has been identified as a key risk area by HMRC.³
- Data on the number and location of PRS properties would provide essential information for local authorities, national policymakers and planners in taking a more strategic approach to housing development and need.

Another landlord concern relating to property addresses is that, for larger landlords, providing the information to the regulator could be an onerous task. However, we believe separate arrangements could be set up to allow fast and effective transfer of this information rather than using the channels set up for smaller landlords such as online or paper applications.

Access to data

We agree there is a balance to be struck between the needs of tenants and landlords. For potential tenants it is crucial that the register allows the following functions:

- By entering the landlord registration number the potential tenant could check the registration number was legitimate, the name of the landlord and the property addresses registered under their name.
- It would also be crucial for a potential tenant to be able to check whether the prospective landlord had any points linked to their registration number, and the reasons for these.

Code of Practice

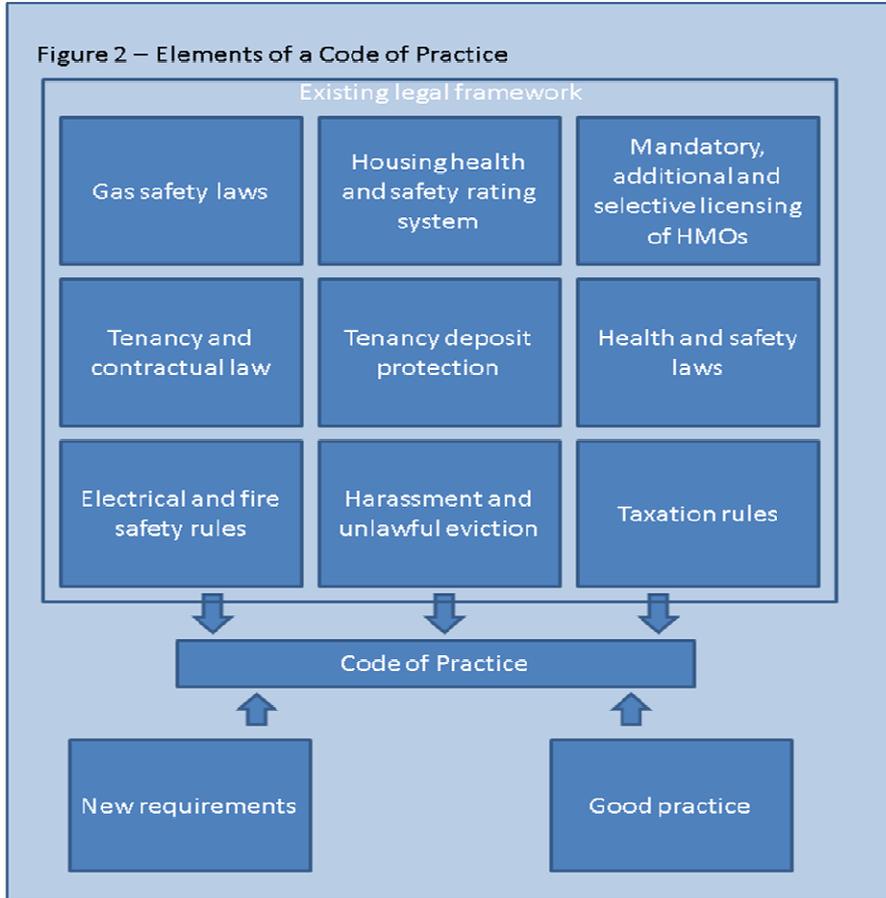
We recommend that alongside signing up to a national register, all landlords should have to sign up to a Code of Practice (see Figure 2). This would help ensure that all landlords were clear about their responsibilities and provide a clear benchmark for assessing complaints. We believe the Code should contain three key elements:

1. Existing legal framework – the Code would be a useful tool in bringing together disparate laws relating to the PRS into one place.
2. New requirements – the Code would incorporate any new legal requirements or mandatory conditions such as:
 - Using a written contract as proposed in CLG's Rugg response.⁴
 - Becoming a member of the Housing Ombudsman Service.

³ HMRC, *Protecting tax revenues*, March 2008

⁴ This idea was raised in the Law Commission report *Renting Homes: the Final Report (Law Com no 297)*, The Law Commission, 2006.

- Gaining consent to let from the mortgage lender.⁵
 - Testing of electrical installations at least every five years as recommended by the Electrical Safety Council.
3. Good practice guidance - this could include appropriate landlord training and development options.



If mandatory aspects of the Code are breached, remedial action should be taken by the regulator, including removal of permission to let where necessary. The Code should clearly set out different levels of sanctions and the situations where these will be applied.

We recommend that a Code of Practice is developed with input from a range of stakeholders, including landlords, tenants, local and central government, regulatory and legal experts, advice agencies and trade bodies. Existing materials could be used as possible starting points - for example the Scottish 'National Core Standards' handbook. Although this operates in a different framework particular to Scottish law, the content could be broadly replicated for an English Code.⁶

Tenant complaints and redress

Over the last year Shelter dealt with nearly 15,000 cases relating to the PRS.⁷ Of these, over 2,000 related to disrepair and nearly 900 related to cases of illegal eviction or harassment by the landlord.

⁵ This would help to ensure that all tenants were better protected from eviction if the landlord defaults on the mortgage, see *A Private Matter?* CAB, Shelter, Crisis & CIH 2009.

⁶ *Scottish National Core Standards and Good Practice Guide for Private Landlords*, Communities Scotland 2006. Another possible model is the Landlord Development Manual developed by ANUK, IDeA and LACORS.

⁷ Shelter client statistics in this response relate to the 12 month period July 2008 – June 2009.

Undoubtedly this is the tip of the iceberg. Our advice pages on repairs in private lets received nearly 50,000 page views and those on harassment/illegal eviction received a further 22,000. More than 60,000 downloaded our advice booklet *Getting repairs done*. In many of the cases we see landlords fail to understand their legal responsibilities or blatantly disregard them.

In some cases local authority Environmental Health Officers will take action under their statutory duties – for instance, where housing conditions constitute a serious hazard. However, many tenants cannot resolve the issue directly with their landlord or the local authority but can't afford to take court action either.

We believe that where landlords repeatedly break serious regulations or a problem cannot be resolved, tenants should have access to a free, alternative dispute resolution system through which they can raise individual complaints. We very much welcome the fact that CLG has recognised the need for such a system of redress.

Shelter believes that all private landlords should be required to register with the Housing Ombudsman, giving all tenants the right to its conciliation services. At present social housing tenants and a small number of private landlords are voluntary members of the Housing Ombudsman Service. The cost of this service to the landlord is around £1.34 per unit per year. The Housing Ombudsman has expressed a significant interest in taking on this PRS redress role.⁸

We note the idea expressed in this consultation that only enforcement agencies and advice services run by the voluntary sector might lodge complaints against the landlord in the context of the redress process. However, in our view all tenants should have direct access to redress and should not have to seek the endorsement of advice agencies first. Such a process would also raise issues of resource capacity for advice agencies.

A further issue is ensuring that all tenants are aware of their rights/responsibilities in the first place. Again, in our experience many tenants are unaware of their basic rights. Over the past year there were 750,000 page views for our private renting advice pages and nearly 225,000 people downloaded our private sector advice publications. We believe that alongside the introduction of landlord registration a new national guide or leaflet should be developed for tenants so that they are universally aware of their rights, responsibilities and what to do when things go wrong.⁹ Landlords should be required to provide this to all tenants at the start of their tenancy.

Regulatory enforcement

Although a system of redress will improve the situation for tenants, a significant problem remains. Private tenants on assured shorthold tenancies (ASTs) – now the majority¹⁰ – have very little security of tenure and can, after six months, be evicted without grounds by use of a Section 21 Notice. Many tenants fear retaliatory eviction¹¹, or do not want to sour relations with their landlord by making complaints. Shelter believes the best way to improve this situation would be to provide increased security of tenure to tenants¹², but in the absence of such reforms Shelter believes

⁸ Housing Ombudsman Service Annual Report and Accounts 2008

⁹ The joint NHAS/CLG leaflet – *Are you worried out about your mortgage?* would be a good working model for this.

¹⁰ 67% of all private renters in 2007/08: *Survey of English Housing Preliminary Report: 2007-08*, Communities and Local Government, January 2009

¹¹ The practice where landlords will evict tenants who have made a complaint, see Crew, D. *The Tenant's Dilemma* Citizen's Advice, 2007

¹² See Jones E, *Policy: discussion paper, Fit for purpose? Options for the future of the private rented sector*, October 2007

enforcement of regulations must be robust in order to ensure that the system of registration serves to drive up standards:

- In the first instance, a significant and sustained publicity campaign will be required to ensure both tenants and landlords understand their new rights and responsibilities. Without an acceptable level of publicity many landlords may fail to register which would make the register ineffective. We envisage an ongoing publicity campaign similar to TV licensing involving both billboard and TV advertising. It is those landlords who don't play by the rules or are ignorant of them that the system hopes to target, yet it is also these landlords who are less likely to register.
- A proactive regulatory regime should include spot checking. For instance, the register would allow a random sample of landlords to be checked to ensure they held a valid gas safety certificate. The risk of being checked would provide incentives for landlords to follow the rules. In addition, the register will empower local authorities to carry out their statutory duties such as proactive inspection programmes.
- Cross-referencing data from taxation returns, housing benefit claims and the tenancy deposit schemes will be essential to seek out landlords who have failed to register or have failed to carry out their other responsibilities. This could also have major additional benefits such as helping to ensure that taxation revenues from rental income and capital gains tax are maximised.

We would also expect the regulator to maintain a healthy dialogue with a variety of organisations in contact with landlords. This would provide data from which landlord offences could be identified. Activities that we believe should be linked to sanctions and ultimately if necessary to removal from the register are illustrated in Figure 3 below.

We believe the various sanctions should be set out in the Code of Practice and we support the idea of a cumulative process akin to the points system for driving offences. In much the same way as for driving, the level of points could vary according to the nature of the offence. For instance, we believe failure to register should result in a heavy fine (up to £5,000) and points on the register. Convictions for illegal eviction or harassment should result in removal from the register. In other instances, such as negative reports from local authorities or the Ombudsman, the regulator might

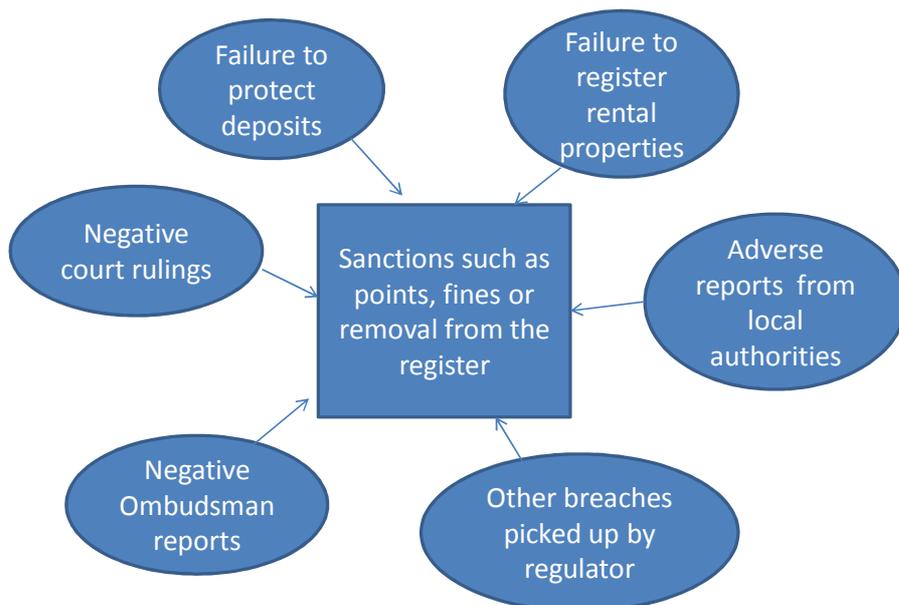


Figure 3 – Activities linked to registration sanctions

have a range of options regarding sanctions depending on the severity of the offence. However, care is needed to ensure that the system is fair and proportionate and to ensure that landlords are only penalised when the evidence is reasonable and substantive.

Other safeguards would also be important. For instance, if landlords were disqualified it would be important to ensure the landlord could not simply re-register. Equally, tenants must not lose out because the landlord has been removed from the register. We support the approach suggested by CLG that the regulator would take over management of the property with the tenants remaining in situ. In addition, where a tenant makes a housing benefit claim but has not been given a landlord registration number we do not believe this should halt or delay the claim. Whilst a claim lacking a registration number would warrant investigation of the landlord we would not want the tenant to lose out through ignorance of the system.

There is real danger that a poorly resourced system could become too light-touch or a box ticking exercise. The Scottish registration system, for example, has lacked resources for rigorous enforcement making good landlords feel the system is futile and that standards at the worst end of the sector are not improving.¹³ CLG must learn from this experience and ensure that the realistic costs of all these aspects of enforcement are met. By notifying HMRC about all landlords, considerable extra taxation income will be generated on top of estimated savings on court costs of around £60 million¹⁴ (shared between landlords, tenants and government). This will provide extra resources, at least some of which could be used to ensure effective resourcing for enforcement.

Who should carry out regulatory functions relating to the PRS?

Shelter believes that the TSA is in an ideal position to take responsibility for regulating the PRS. This would ensure there was one cross-domain regulator for the entire rented sector, which would help bring consistency between the two tenures. While we recognise that very different approaches are needed to regulate private rather than social renting we do believe the TSA will have learnt valuable lessons which are transferable across the sectors. In our view the roles of the central regulator should include:

- Creating, maintaining and publicising the register.
- Applying sanctions such as points and fines based on information from other agencies.
- Producing and updating the Code of Practice.
- Seeking out those landlords that haven't registered.
- Sharing good practice/data on the sector.

We recognise that the TSA still needs time to establish itself and to undertake a large work programme on the new framework for regulation of social housing, but once this has been established we believe it could also take on regulation of the PRS.

In order for national registration to realise the potential benefits, the information gathered on PRS properties must be used by local authorities to boost enforcement activity under their statutory duties to include increased proactive inspections. It is essential that local authorities are adequately

¹³ So far in the three years since the registration scheme has been up and running just five landlords have been refused registration and only one has had registration revoked. Approximately 80% of Scotland's private rented stock is now covered. See Shelter Scotland, *Landlord registration in Scotland: three years on*; June 2009

¹⁴ CLG, *Impact Assessment of a national register for landlords*, June 2009

resourced and incentivised to carry out this role and that this meshes effectively with the role of the central regulator.

To complement the above, the Residential Property Tribunal Service would be in an ideal position to provide the appeals process against decisions of the regulator. In addition, to address collective tenant concerns we believe there is potential for broadening the scope of the National Tenant Voice or creating a private sector equivalent.

Inclusions and exemptions

We propose that some landlords of licensees should also be included on the register. The reason for this is that many occupants of residential accommodation, usually in houses of multiple occupation (HMOs), find themselves categorised as licensees rather than tenants. Examples include a group of students who are collectively given licences to share a property, and so-called 'bed and breakfast annexes', in which landlords provide minimal services such as weekly supplies of cereals. There is no reason in principle why those occupiers should be denied the benefits of landlord registration.

This would have the additional benefit of preventing any loopholes where landlords attempted to evade the obligation to register by issuing 'sham' licence agreements rather than tenancies. We would envisage exemptions for resident landlords who are letting out a room in their own home to a lodger, and lettings on a daily basis such as genuine hotel or bed and breakfast accommodation.

Assessment of existing licensing regimes (paras 19-23)

At the time of writing this response, the research by the Building Research Establishment evaluating the impact of HMO licensing over the last 2-3 years had not been published. However, we are aware that there have been significant issues in ensuring that those landlords with properties which come under the mandatory licensing regime apply for licences. Recent reports suggest that an estimated 35,000 HMOs which fall under the definition of mandatory licensing remain unlicensed.¹⁵ This raises huge concerns and we await the report of the Building Research Establishment with interest.

We are supportive of the use of selective licensing. In the pathfinder areas we have found this to be a useful tool. However, to date only 11 local authorities have designated areas for selective licensing. Given that HMO licensing is still 'bedding in' we would not recommend introducing any new criteria for selective licensing at this time.

Shelter will not be making a separate response to the CLG consultation paper *Houses in multiple occupation and possible planning responses*. However, we would raise one significant concern about the proposals in this paper. One of the main options discussed is the proposal to amend the definition in C3 of the Use Classes Order to provide a lower trigger (three persons) when considering whether planning permission is needed. However, we are concerned that this could have wider implications and unintended consequences for supply of accommodation in the PRS market by bringing a much greater proportion of the PRS into the planning system.

Written tenancy agreements (paras 24-26)

Shelter very much welcomes the proposal that all tenancies should take the form of written agreements. Current tenancy agreements are very confusing for many tenants. This proposal offers the potential to improve landlord and tenant relations by ensuring that each party knows what is

¹⁵ Youde K, *35,000 HMOs still unlicensed*, Inside Housing, 31st July 2009

expected of them. Many of the private sector advice problems that we deal with could have been avoided if the main terms and conditions of the tenancy were clarified at the outset. The Law Commission has completed valuable work in this area including the development of model tenancy agreements.^{16 17}

CLG's consultation sets out two options for delivery of this change. These are: introducing via legislation minimum requirements for a valid tenancy agreement or setting out a model tenancy agreement in legislation to which additional clauses can be added. While there may be practical difficulties to overcome, we believe it would be highly desirable to adopt the latter option. This would provide a simpler and more accessible system for both tenants and landlords as all agreements would have the same format.

However, the new model agreements would most likely apply only to new tenancies or to the renewal of existing tenancies. In this event, we would nevertheless recommend that existing tenancies be made subject to core terms. Core terms are those which are already implied into residential tenancies – such as the right to quiet enjoyment and the landlord's repairing obligations – or are central to the very concept of a tenancy. Many existing tenants do not know what these are and if they were codified in a form that applied to all tenancies, that would have advantages for clarity and understanding.

In addition, if PRS standards are to be improved across the board, Shelter believes there should also be standard model agreements for licences such as where lodgers share living accommodation with a resident landlord. Licensees have very little protection, and are vulnerable to eviction with little or no notice, so it is beneficial to all that the arrangement is clearly set out.

Coverage of legislative framework (paras 27-29)

We believe the reasons for increasing the maximum rent threshold for ASTs are convincing. In particular, the NUS has made a strong case for increasing the threshold given that the aggregate annual rent for some student lets is now above £25,000. This means such households fall outside the protection provided by an AST including tenancy deposit protection. The original rationale for the limits on ASTs was to exclude luxury lets from AST protection but it is clear that some of the lettings above £25,000 could no longer be considered luxury.

One of the options not mentioned in CLG's Rugg response would be to scrap the thresholds altogether. In principle, there does not seem to be a reason to deprive tenants of the limited benefits of an AST purely because they pay more for their tenancy. We recommend that this option is also considered.

However, we believe that the proposal to increase the threshold to £100,000 is reasonable given levels of rental inflation over the last 20 years and the need to ensure that a review of the threshold is not necessary for several years. If this option is pursued, we recommend that reviews of the threshold are then carried out approximately every 5 years.

¹⁶ See in particular the proposals set out in paras 3.34 – 3.45 of *Renting Homes: the Final Report*, Law Com no 297: May 2006

¹⁷ There is a draft of a model tenancy agreement at Appendix B of *Renting Homes*.

Regulation of private sector letting/management agents (paras 30-41)

Shelter is strongly supportive of the many calls to regulate private sector letting agents and management agents including in the Rugg review and from the industry itself.¹⁸ For too long the sector has been unregulated allowing many tenants and landlords to suffer at the hands of unscrupulous operators. The majority of private rented homes are now let through an agent¹⁹ and, whilst many letting and managing agents are members of a professional body, coverage is not universal.²⁰

We are supportive of the work done by the National Approved Lettings Scheme (NALS) to establish a draft regulatory framework. We strongly agree with CLG that full regulation must encompass a Code of Practice, entry requirements and consumer protection measures such as client money protection. We also believe it is essential to establish an independent complaints procedure and free redress with the ultimate sanction of removal of letting/management agent status. In our view a new independent organisation should be established to carry out the regulation, and redress should be provided through an Ombudsman scheme.

We are particularly supportive of the proposal that there should be a requirement on property standards. Ensuring that regulated letting agents are only able to let property that meets the decent homes standard could go a long way in improving tenants' experience of the sector.

A recent Citizens Advice report considered client evidence on charges made by letting agents. This highlighted the difficulty many people had in paying letting charges on top of rents/deposits and the lack of transparency over charges.²¹ We share this concern - in our experience 'hidden' charges for initiating or renewing a tenancy cause anxiety and in many cases affordability issues for tenants.²² We support the recommendation that letting charges should also be subject to regulation and that the vast majority of charges should not be made to the tenant.

Improved redress for tenants and landlords (paras 42-47)

We agree that the current timescales for redress are not unreasonable given the need for due process. We are not aware of cases which typically take much longer. A case which is defended, possibly with a counterclaim such as damages for disrepair will take considerably longer, but such cases are comparatively rare and the time taken reflects the nature of the issues in dispute.

Private rented housing investment fund (paras 50-52)

We welcome current steps by the Homes and Communities Agency to develop a private rented sector initiative (PRSI) to encourage new institutional investment in the PRS. With the costs of homeownership still relatively high and social housing resources under intense pressure, demand

¹⁸ For example, Jones C, *Government review of regulation and redress in the UK housing market*, Herriot Watt University, January 2009; *Carsberg review of residential property, Standards, regulation, redress and competition in the 21st century*, RICS/ARLA/NAEA, June 2008. In addition, ARLA has now developed its own licensing scheme for letting agents.

¹⁹ 60% of private homes are now let through an agent rather than directly from the landlord. See Rugg J and Rhodes D, *The private rented sector: its contribution and potential*, University of York, 2008, Table 3.8

²⁰ There are three principal professional bodies, the Association of Residential Letting Agents, the National Association of Estate Agents and the Royal Institute of Chartered Surveyors. The National Approved Lettings Scheme is the main accreditation body for the sector.

²¹ Phelps L, *Let down: CAB evidence on letting agents and their charges*, Citizens Advice, May 2009

²² Jones E, *Policy: discussion paper, Fit for purpose? Options for the future of the private rented sector*, October 2007

for the PRS remains high. The PRSI offers the potential to increase delivery of new build PRS units despite the economic downturn.

Mortgages for the private rented sector (paras 53-56)

We very much welcome the steps taken by the Government to regulate the sale and rent back market and the introduction of an interim regime by the FSA this summer. We also strongly welcome the action the Government is taking to protect tenants in case of landlord repossessions and hope that legislation to protect tenants will be passed as matter of urgency.

Given the growth in the buy to let market over the past decade, we are keen to work with Government and mortgage lenders to help ensure that those intending to let property have full understanding of the business they are undertaking. In this context, changes to mortgage law could help ensure that tenants are better protected from landlord repossessions.

Improving the evidence base (paras 59-63)

We strongly welcome CLG's commitment to improve the evidence base and to better understand the sector. Shelter's research team is also working hard in this area:

- We are currently undertaking research funded by the Money Advice Trust looking at the financial pressures on landlords/tenants in the PRS in the context of the economic downturn and the role of advice services in responding to these needs. This will involve questionnaire surveys to both landlords and low income tenants.
- As part of our ongoing investigations into the workings of the new local housing allowance regime we are also surveying claimants to better understand the tenant perspective.
- For future work we hope to undertake a longitudinal study to better understand the suitability of the PRS for vulnerable households.

We believe that the development of the new English Housing Survey provides the main opportunity for CLG to improve the evidence base. We are pleased to have been invited onto the advisory board and look forward to contributing to this agenda further. A more nuanced and focused set of questions for private renters is undoubtedly needed to better understand their experiences and motivations. However, there is also a need to boost the PRS sample sizes to allow more detailed analysis. For instance, analysis of PRS overcrowding is difficult using current datasets.

More specific areas where we feel the evidence base could be improved are as follows:

- Better quality data on rental amounts and trends.
- A more regular landlords survey with a larger sample size.
- Development of national datasets to allow longitudinal analysis of housing pathways.
- Improvements to homelessness prevention and housing options statistics.

Finally, we are pleased to note that CLG will be working closely with the DWP to refine the evidence base on the housing benefit segment of the market. One area we believe must be considered closely by CLG/DWP as a matter of priority is the availability of good quality housing stock for housing benefit claimants in the PRS.

Shelter's research has identified that under the new larger broad rental market areas (BRMAs), some areas are very unaffordable to LHA claimants raising questions of the adequacy of the criteria

used to determine the BRMA regulations.²³ For example, in Cambridge city centre only 4% of properties surveyed were at or below the maximum LHA rate. The forthcoming DWP consultation on housing benefit provides an ideal opportunity for joint work with CLG on this point.

Private rented sector and the voluntary sector (paras 64-67)

CLG's Rugg response makes a proposal that staff in voluntary sector organisations should attend training in PRS housing management. The rationale for this isn't clear in the consultation. However, the Rugg report provides more detail suggesting that 'voluntary sector agencies including RSLs could be encouraged to develop housing management skills that *could be sold to private landlords or property investors.*' This is a proposal which we support.

Local authorities and the private rented sector (paras 68-71)

The PRS is playing an increasingly important role in meeting housing need and we welcome the emphasis in CLG's response on developing the local authority role. We particularly welcome the emphasis placed on securing a more co-ordinated approach to private rented tenancies for low income groups via the local lettings agency concept.²⁴ However, in order for this to be successful we believe there are number of areas local authorities must address, most importantly:

- Tenancy sustainment services must be a key aspect of the local lettings approach.
- Homeless households with statutory rights to housing assistance should be able to choose whether or not PRS offers them a suitable housing solution.
- Provision of help with deposits and rent in advance should be universal.
- Accreditation schemes must dovetail effectively with landlord registration in serving to drive up standards.
- Arrangements for fixed terms which go beyond six months should be negotiated with landlords.
- Local authorities should limit use of the PRS to tenancies where there is no housing benefit shortfall or where a sustainable solution exists to cover any shortfall.

Below, we consider some of these aspects in more depth.

Tenancy sustainment

Shelter believes that effective tenancy sustainment services must be a crucial part of the local lettings agency approach. We have developed a good understanding of what works in terms of tenancy sustainment. In particular, our three *homeless to home* projects in Sheffield, Birmingham and Bristol were designed to help formerly homeless households sustain a tenancy and live successfully in the community.

The project evaluation found significant evidence of success with almost nine out of ten families still in permanent housing after their contact with the project had ceased.²⁵ While the project focused on households living in social housing the lessons are transferable to the PRS. Key to the success of

²³ Reynolds L, *Research Briefing – A Postcode Lottery?*, Shelter, January 2009

²⁴ This means local authority managing agencies which broker tenancies between landlords and tenants. This was referred to by Rugg as the social lettings agency concept.

²⁵ Jones A et al, *Firm foundations – an evaluation of the Shelter Homeless to Home service*, Shelter/University of York

this project was a highly flexible service which could help with anything from sourcing basic household goods to dealing with a violent ex-partner. Equally important to the success of the project was joint working with a variety of other agencies such as social services and helping clients to access appropriate services. The value for money of tenancy sustainment services funded through Supporting People has been well demonstrated.²⁶

There is a variety of other good practice to draw on. For instance, Threshold Housing Advice has developed the SmartMove scheme in London. This provides accommodation for single people who are not in priority need. The accommodation is managed by Threshold on behalf of private sector landlords and tenants are provided with tenancy sustainment services.

We also believe that there should be a statutory duty for all local authorities to have a tenancy relations service.

The private rented sector and homelessness

Shelter has done considerable work on the links between homelessness and the PRS including recent research by Julie Rugg.²⁷ As Government initiatives have been developed to make greater use of the private sector in preventing homelessness, use of the sector by local authorities has increased significantly. Our caseworkers frequently report that local authorities are placing disproportionate emphasis on the PRS as a housing solution for those who are homeless or threatened with homelessness. Under Best Value Performance Indicator 213, households that are referred to the PRS instead of making a homelessness application are recorded as successful prevention cases. This increases the pressure on local authorities to use the PRS.

However, given the more limited security of tenure and reduced affordability associated with the PRS it is not clear that such tenancies are sustainable in many instances. For many households approaching local authorities for assistance this will not be the most suitable option, especially where an entitlement to statutory housing assistance exists. We believe such households must be able to make a homelessness application if they would prefer.²⁸

Deposits/rent in advance

Over the last year, Shelter web advice on tenancy deposits received over 110,000 page views, over 155,000 downloaded our tenancy deposit advice booklet and we dealt with 1,210 clients with cases related to private sector tenancy deposits. In particular, we find a high number of clients, particularly those on low incomes, struggle to access the PRS due to difficulty in pulling together the finance for deposits and rents in advance. The Government has chosen not to follow up further on Rugg's recommendation to provide universal assistance with deposits and rent in advance for tenants claiming housing benefit in the PRS. However, we believe such assistance remains essential.

At present 87 per cent of local authorities operate either a rent deposit or guarantee scheme leaving 13 per cent of local authorities without provision.²⁹ In addition, research in London found that those

²⁶ ODPM, *Working Paper 7: Homeless Families*, August 2005; Homeless Link, *Supporting People – a story of success*, July 2006.

²⁷ Rugg J, *A route to homelessness? A study of why private sector tenants become homeless*, Shelter, March 2008

²⁸ For more information see Shelter, *Policy: briefing, Homelessness prevention and the private rented sector*, August 2007

²⁹ ODPM, *Survey of English local authorities about homelessness – policy briefing 13*, December 2005, p 14

schemes that operate are not necessarily available to all those who need help. In particular, single people who are not deemed to be in priority need are not well served by such schemes.³⁰

Accreditation schemes

The number of landlords who have joined accreditation schemes or professional associations is very low covering only a small proportion of the market.³¹ Through training, knowledge sharing and other means both of these options offer opportunities to increase standards in the PRS. We are very supportive of moves to expand availability of accreditation schemes to all local authorities and to introduce a basic standard for accreditation. The Accreditation Network UK has already made significant efforts to promote good practice in this area including a model landlord accreditation scheme. Others such as the London Landlord Accreditation Scheme have developed a Code of Practice. These are good starting points although it is essential that any future accreditation framework dovetails effectively with the proposed landlord registration system in driving up standards. We also believe that any accreditation scheme ought to involve commitments from landlords to go beyond the minimum statutory standards.

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³⁰ Hoffland A, and Watson P, *Private rented sector access schemes in London*, Crisis and the London Housing Foundation, 2007

³¹ Law Commission, *Encouraging Responsible Letting – a Consultation Paper*, 2007