



HOUSE OF COMMONS SELECT COMMITTEE:

# REFORMING THE PRIVATE RENTED SECTOR:

FIFTH REPORT OF SESSION 2022-23



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On 9 February 2023 the House of Commons published a report on the Governments 2022 White Paper, **A Fairer Private Rented Sector**. This document provides a reflection of that document and **TDS' Policy Positioning**

### KEY POINTS:

- Improving court processes will be key to the reform's success.
- Adequate assessment and consideration should be given to the new burdens placed on local councils.
- More attention should be given to issues relating to landlord and tenants understanding and awareness.
- Reflecting on registration schemes in the devolved nations highlights policy key issues associated with the property portal including data gaps, identifying non-compliance and its use as a communication device.

## REFORMING THE COURT PROCESS

- We agree with the Select Committee that improving the courts' ability to process possession claims quickly and effectively in a way that is fair to both landlords and tenants is key to the reform's success.
- Recent research suggests that for many landlords, operating in the private rented sector is seen as a high-risk activity. This is associated with the difficulties of regaining possession through the courts and the costs that this process incurs.
- That research also indicated that due to feeling at risk, landlords may introduce stricter tenant-selection criteria. Stricter screening practices can make it more difficult for certain groups of tenants to access housing, for example, those living on lower incomes or those in receipt of welfare benefits.



- Reforming court processes and reassuring landlords that it will be possible to recover possession swiftly when necessary is an important aspect of addressing landlords' perceptions of risk and is fundamental to building support for the reforms.
- The Select Committee's preferred position is a specialist housing court. However, The Government has already rejected this. The Government needs to clarify how the court's capacity to process cases will be addressed.

### **TDS POLICY POSITION:**

1. TDS supports reforms to the current court systems to improve efficiency and make it easier for landlords and tenants to go to court.
2. We support further digitisation of the Court process, building on our own work of digitising tenancy deposit disputes.

## **ENFORCEMENT OF TENANCY LEGISLATION AND REGULATION**

- We agree with the Select Committee that formal enforcement rates among local authorities will need to significantly improve if the proposals are to raise standards in the sector.
- Research shows there is significant variation in local authority enforcement and regulation:
  - It is now generally acknowledged that resources are a key factor influencing enforcement, not just funds but also the availability of staff with the necessary skills.
  - Different approaches to enforcement are also shaped by the level of political support locally, leadership, how the problem is understood and defined, geographical factors, the way in which housing teams are organised and cultural factors associated with how the local authority views itself in relation to the private rented sector.<sup>2</sup>



- Whilst we agree with the Select Committee that The Government should consult with local authorities about the resource implications of the new requirements, we believe that their suggestion that short-term funding allocations from central government will be sufficient is problematic.
- Research suggests that short-term funding allocations are not the most effective way to assist local authorities to develop the longer-term strategies which are needed to regulate the sector effectively.<sup>3</sup>
- We agree that The Government should consult with local authorities on how to improve the civil penalty regime to make it easier for local authorities to retain the financial penalties levied. This review should also address how wider use of Civil Penalty Notices (CPN) can be encouraged. In 2019/20 just over two fifths of local authority survey respondents collected revenue through CPNs.<sup>4</sup>
- The Government must carry out the new burdens assessment outlined in the White Paper to assess the impact on local authorities, and where necessary, fully fund the net additional cost of all new burdens placed on local councils

## TDS POLICY POSITION:

1. TDS supports enforcement but considers that government must ensure that enforcement is properly resourced, not simply pass the burden to local authorities.
2. TDS would welcome wider dissemination about “what works best” in terms of enforcement across the UK.

<sup>2</sup>Harris, J., Cowan, D., and Marsh, (2020) *Improving compliance with private rented sector legislation* (Accessed: 20/2/23)

<sup>3</sup>Harris, J., Cowan, D., and Marsh, (2020) *Improving compliance with private rented sector legislation* (Accessed: 20/2/23)

<sup>4</sup>Reeve, K. (2022) *Local authority enforcement in the private rented sector: headline report* (Accessed: 20/2/23)



## EDUCATION AND AWARENESS

- In the report, the Select Committee states that “the most repeated overarching observation on the White Paper proposals” is that an effective communication and education campaign is needed to ensure landlords and tenants understand their rights and responsibilities.
- We believe that the Select Committee has awarded insufficient attention to this issue.
- Low levels of understanding and awareness of the law and regulation among landlords and tenants has been confirmed in several sector-based reports.<sup>5</sup> Addressing this issue will be key to the reform’s success.
- The Select Committee’s recommendation that The Government updates the How to Rent guide as a means of educating tenants and landlords is unlikely to provide a satisfactory solution. In recent research with a representative sample of over 2000 tenants in England, only 35% of participating tenants reported being given/sent this document.<sup>6</sup>
- Information provision on the new regulation must be designed with a clear understanding of patterns in use and trust of different sources of information and must be provided through routes that landlords and tenants are likely to access.
- Whilst the Select Committee states that most consultation responses focus on the issue of tenant understanding, we believe that landlord awareness is also a significant issue that needs to be addressed.
  - In a recent survey with landlords, 70% said they felt changes in the laws and regulations were not clearly communicated and 70% also felt it was difficult to keep up with changes to the regulation.<sup>7</sup>
  - In a qualitative study with local authorities, several councils felt that the largest proportion of non-compliance was among landlords that were ‘well-intentioned but ill-informed’.<sup>8</sup>
- The Government needs to clarify where responsibility will sit for ensuring that landlords are properly educated on the new and changing requirements; be it with local authorities, the new ombudsman or another third party or organisation.



- If this responsibility is to sit with local authorities, then the new burdens assessment promised in the White Paper should consider the need for information, advice and educational based activities and make adequate funding available.
- We believe that The Government should think more expansively about the different organisations that could play a more active role in communicating and utilise existing interfaces and interactions by working more extensively with those organisations that already provide information to landlords. This includes letting agents, tenancy deposit schemes, landlord membership bodies and other voluntary organisations.
- Within the Select Committee report, the Property Portal is discussed almost exclusively in terms of the role it will play in improving data on the sector and facilitating enforcement. We believe the portal can also play a role in communicating and upskilling the sector and that this dual role must be made explicit during the design stage (see below).

### TDS POLICY POSITION:

1. TDS supports the need for wider dissemination of information to tenants and landlords.
2. We believe consideration should be given to the range of organisations that could play a more active role in communicating with the sector (e.g., TDPs, letting agents, tradespersons, mortgage providers).

<sup>5</sup>Foster, D. and Bellis, A. (2019) Right to Rent: private landlords' duty to carry out immigration status checks (House of Commons Library) (Accessed: 4/2/22); Scanlon and Whitehead, The profile of UK landlords; Shelter (2016) Survey of private landlords (Accessed: 29/09/22); Scotland (2016); Housing Executive, Survey of private landlords; Which? (2018) Reform of the private rented sector: the consumer view, Policy Report, London

<sup>6</sup>TDS Charitable Foundation Tenant Tracker Wave 1

<sup>7</sup>Harris, J. and Marsh, A. (2022) Understanding landlord behaviour in the private rented sector in the UK (Accessed: 20/2/23)

<sup>8</sup>Harris, J., Cowan, D., and Marsh, (2020) *Improving compliance with private rented sector legislation* (Access: 20/2/23)



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## PROPERTY PORTAL

- There is currently a lack of knowledge about the private rented sector at a local level. Disaggregated data and granular geographical information are key if local authorities are to develop effective strategies.
- We therefore agree with the proposal to introduce a new property portal on which landlords will be expected to enter information about every property they let.
- This proposal provides an opportunity to reflect on how registration schemes are currently operating in the other nations of the UK and what some of the key policy issues are:
  - **Wales:** The Housing (Wales) Act 2014 requires all landlords in Wales to be registered, and landlords and lettings agents must be licensed for that purpose. Licensing is based on the fit and proper person test and completion of an approved training course delivered by an authorised training provider. Failure to be registered or licensed is a criminal offence, but this can be discharged by payment of a fixed penalty notice of £150. The licensing authority is Cardiff County Council for the whole of Wales. Tenants can check if the landlord or agent is compliant anonymously by using the public register.
  - **Scotland:** All landlords must be registered (Anti-Social Behaviour etc (Scotland) Act 2004, Part 8), which requires that they be a fit and proper person. The landlord register is a national scheme but is maintained by local authorities. The fee for a single property is £66. Landlords may be refused registration, or their registration may be revoked. In Scotland, the register is fully accessible: the public can search the register for registered landlords.
  - **Northern Ireland:** There is a mandatory registration scheme for landlords in Northern Ireland but no fit and proper person requirement. Registration contains basic information about the landlord and the property let. There is a fee of £70 payable for online registration and registration lasts for three years. Registration is through NI Direct. Tenants can search the register to see if a landlord is registered by entering the landlord's name or information about the property in NIdirect.



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## KEY POLICY ISSUES

- **Data gaps and non-compliance**

- Registration and licensing schemes can be used as a device to monitor growth and decline in the sector and to provide information to local authorities.
- An accurate view of the sector can, however, only be obtained if all qualifying landlords sign up to the portal. However, across the devolved nations there are gaps within the registration schemes with reports that a significant proportion of landlords have failed to register.
- If non-compliance with the licensing/registration scheme also occurs with other administration systems, e.g., (requirement to obtain an EPC certificate) then there are limitations to how cross-referencing between the systems can be used to identify non-compliance.
- These observations suggest that The Government should clarify how non-compliance with the portal will be monitored and enforced.
- If compliance with the portal is not properly enforced, feedback from Scotland suggests that this may impact on trust and respect among the wider landlord community.

- **Educating and upskilling the sector**

- The UK government has stressed that the portal will also be used to educate landlords about their rights and responsibilities. However, it is currently not clear if the portal will operate “passively” (e.g., will provide information on a website that requires landlords to actively seek out the information when registering) or “proactively” (e.g., communicates with the sector through regular emails).





- In Scotland, a key motivation underpinning the development of the national registration was to provide a means to proactively communicate with the sector. However, research shows it is not used properly for that purpose by many local authorities.<sup>9</sup> In Northern Ireland, current data sharing restrictions are significantly limiting the usefulness of the national registration scheme as a means of communicating with the sector at a local level.
- These reflections suggest the UK government should clarify how the portal will be used as a means of upskilling and educating the sector.

- **Self-verification and enforcement**

- In most Scottish councils, the national registration essentially operates as a self-certification exercise which, at least in principle, is also used to educate landlords.
- Whilst their scheme also allows for landlords to be refused registration or deregistered if they do not meet the criteria of being a fit and proper person. However, previous evaluations show unevenness in the enforcement of such criteria.
- The select committee report also warns that without proper enforcement or assurances that properties on the portal meet the minimum standards, the portal may not be trusted by landlords and tenants. This is important because The Government hopes the Portal will be used to better inform tenants before they agree a tenancy.
- The new burdens assessment must consider the implications for proper enforcement of the portal (e.g., through random inspections).

<sup>9</sup>Harris, J. and Marsh, A. (2022) *Understanding landlord behaviour in the private rented sector in the UK* (Accessed: 20/2/23)



## TDS POLICY POSITION:

- 1.** TDS believes the Portal should be underpinned by a user-focused approach. We would welcome evidence on what tenants would like to see on the portal, the barriers to use and how these will be addressed.
- 2.** As a key user and the main enforcement authority for the Portal, we would also welcome evidence of local authorities views on the Portal (e.g., what issues are they concerned about and how they would use it).
- 3.** TDS would like to see further detail on how non-compliance with the portal will be enforced.
- 4.** Detail is also required on how the portal will be financed and how it will be kept up to date.
- 5.** Clarity is also required regarding how the portal will interact with other parts of the regulatory framework. Strong information-sharing practices between the ombudsman, local authorities, the justice system and the property portal are likely to be required.



## DISPUTE RESOLUTION

- To minimise confusion, the Select Committee recommends that The Government introduce a single ombudsman for the whole of the private rented sector and that mediation be firmly embedded within its remit.
- The Government has already announced its intention to introduce a Landlord Ombudsman for the private rented sector that would operate in addition to the existing redress providers. It would however be helpful for The Government to clarify its overarching vision for dispute resolution in the private rented sector and how the requirement and key objectives for the new PRS Landlord Ombudsman fits within this.
- We agree with the Select Committee that the existing dispute resolution landscape for the private rented sector is complex and confusing. It would be helpful for The Government to clarify how simplicity and a streamlined service can be achieved.
- For the Ombudsman to work, tenants will need to be able to make a complaint against their landlord. Many tenants do not make use of existing redress options (i.e., local authority, county court). The reluctance of tenants to complain about their landlords, due to concerns of jeopardising the tenancy, is generally well recognised within the sector. There is a risk even with the removal of Section 21 tenants will be reluctant to raise complaints about their landlord.
- Being aware of rights and entitlements is a necessary precursor to being able to judge whether these rights have been violated and whether a resolution should be sought by accessing an ombudsman. As discussed above, tenants' awareness of their rights and responsibilities and access to advice and information are key issues that require further attention.
- It is not clear, what powers, if any, the Ombudsman will have if landlords are not compliant with the scheme. For example, will there be provisions made for it to be recommended that landlords are removed from the Portal?
- The success of the Ombudsman will be closely related to how quickly landlords will come under the jurisdiction of the scheme. In our view the Landlord Portal should be established first as this will capture details of landlords, and this data could then be transferred to the PRS Ombudsman.



## TDS POLICY POSITION:

- 1.** TDS welcomes the move to reform dispute resolution in the private rented sector.
- 2.** We believe an overarching vision for reforming dispute resolution in the sector should be designed with a focus on minimising confusion and complexity for consumers.
- 3.** TDS agrees that the focus should be on early resolution and informal techniques and that these should be the default mechanism for the new Ombudsman.
- 4.** We should welcome further clarification on the following key issues associated with the introduction of a new PRS landlord Ombudsman.
  - a.** Powers if landlords are non-compliant.
  - b.** Encouraging tenants to access the Ombudsman.
  - c.** Types of disputes the Ombudsman can handle.
  - d.** How the fee will be collected.
  - e.** How the sign-up processes for the new Ombudsman and Property Portal will be aligned to ensure that the same information is held in both.



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