



Crisis' response to the Ministry of Housing, Communities and Local Government consultation on strengthening consumer redress in the housing market

April 2018

Crisis is the national charity for homeless people. We are dedicated to ending homelessness by delivering life-changing services and campaigning for change.

Our innovative education, employment, housing and well-being services address individual needs and help homeless people to transform their lives. Our eleven UK Skylight Centres offer holistic support across a whole range of issues, including support to secure access to adequate and affordable housing and employment support to help people prepare for, find, sustain and progress in work. Ensuring that homeless people can get access to affordable, decent, secure housing is central to our services for homeless people.

Our response to this consultation focuses primarily on strengthening consumer redress in the private rented sector. The private rented sector is playing an increasingly important role in helping to end homelessness and is often the only viable housing option available to single homeless people. It is also an area where consumer redress is currently very weak, and as is highlighted in the consultation document, most tenants of private landlords do not currently have access to a consumer redress scheme. Unless otherwise stated all responses to the consultation questions are answered in relation to consumer redress for tenants in the private rented sector.

Conditions in the private rented sector are worse than all other tenures, and poor conditions tend to be concentrated at the lower end of the market. Research carried out by Shelter and Crisis exploring the long term outcomes and wellbeing for households in England who had previously been homeless and had subsequently been housed in the private rented sector found that every home had a problem with poor conditions. The study found that landlords were often reluctant to act to address issues with property conditions or infestations. Tenants in the private rented sector must have access to an effective, independent redress scheme to ensure they are able to resolve problems that their landlord or letting agent has failed to address.

How things work now

Tenants in the private rented sector have limited means of seeking redress when landlords fail to address poor conditions or carry out repairs. If the property conditions are very poor then the tenant can report this to their local authority, who have the responsibility to inspect the property and, where necessary, serve a Hazard Awareness Notice or an Improvement Notice requiring works to be carried out. However, in many areas local authorities do not have the capacity to effectively enforce standards in the private rented sector. Local authority environmental health teams are significantly under resourced. Average budgets allocated to environmental health services per head of the population has fallen by 8% in two years and 1,272 jobs were lost in environmental health

offices between 2010–12¹. In 2005, over half of all local housing authorities in England employed fewer than five full-time members of staff on private sector housing renewal activity².

The potential for tenants to achieve redress for disrepair through the legal system is also very limited. The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) (2012) severely limited the availability of legal aid for cases of disrepair, meaning that legal aid is now only available where there is deemed to be a 'serious risk' to health and safety and the tenant is seeking an injunction to address this. This means that tenants on a low income have very little opportunity to take action to require their landlord to address issues with disrepair or poor conditions.

Many tenants may also lack awareness of how to raise a complaint in the first place, and what rights they have if the problem isn't addressed. The Sustain research, which looked at the long-term outcomes and wellbeing for vulnerable homeless households who moved into the private rented sector, found that participants who had not previously lived in private rented sector accommodation often lacked basic knowledge about tenant and landlord rights and responsibilities. People needed support with their tenancies when they had problems and their landlords were unresponsive and failed to take action to address repairs or conditions issues.³

Improving 'in house' complaints handling

Professional standards in the private rented sector are low. It is a largely unregulated sector and while some landlords wilfully flout regulations, many more are simply ignorant of their responsibilities. In England, only 4% of landlords describe being a landlord as their full-time job and the majority are letting out a small number of homes (92% are letting less than five, 59% just one). A quarter are 'accidental' landlords in that they are letting out a property they inherited or somewhere they ideally wanted to sell.⁴ As highlighted above, many tenants also lack awareness of their rights and responsibilities as tenants, as well as an understanding of what they should expect from their landlord.

The government's 'how to rent' guide⁵ provides an overview of tenant and landlord responsibilities in the private rented sector, however this does not give any indication of how quickly tenants should expect repairs to be carried out. The guide does not provide any advice about what to do if the landlord does not resolve a repair or conditions issue, unless the problem is so severe that the property is in an unsafe condition.

Q10: Could more be done to improve in house complaint handling for housing consumers?

¹ Unison (2012) Environmental Health: how cuts are putting individuals and communities at risk and damaging local businesses and economies.

² Local Government Association (2013) Future funding outlook for council from 2010/11 to 2019/20.

³ Smith, M., Albanese, F. and Truder, J (2014) A Roof Over My Head: Sustain: A longitudinal study of housing outcomes and wellbeing in the private rented accommodation. Crisis and Shelter: Big Lottery Funded.

⁴ Shelter (2016) Survey of private landlords, February 2016

⁵ MHCLG, [How to rent: The checklist for renting in England](#), updated January 2018

- Yes.

There should be a clearly defined process for reporting and addressing complaints in the private rented sector. This should apply to both landlords and managing agents, and tenants should expect to receive the same level of service regardless of whether their property is managed by an individual landlord or a letting agent. This must include timeframes setting out how quickly a landlord should respond to a complaint or reported problem, and what the tenant can do if their landlord does not respond within this timeframe or does not provide an adequate response or resolution to the problem. This process should be simple and transparent, and should not include numerous lengthy stages that would unnecessarily delay tenants' access to appropriate redress and a resolution to the issue. The process should be clearly set out in the government's 'how to rent' guide. If the in house complaints process was exhausted and a satisfactory resolution had not been reached then the tenant would be able to take their complaint to the consumer redress scheme.

In many cases, the introduction of a clearly defined process setting out the rights and responsibilities of both tenants and landlords may be sufficient to enable a successful resolution to be reached. However, in a significant minority of cases additional support will be needed to improve the in house complaints process for tenants and maximise the chance of a successful resolution being reached that removes the need for the tenant to approach an independent redress scheme. The Sustain research highlights that this is likely to be particularly important for tenants who have experienced homelessness and those who have little or no experience of managing a home or have not previously lived in the private rented sector. The research found that tenants often needed support with their tenancies when they had problems and their landlords were unresponsive and failed to take action to address repairs or conditions issues. When people were able to access support it made a considerable difference.⁶

Every local authority should be required to provide a tenancy relations service, whose role is to help mediate between tenants and landlords when problems arise. This would allow renters to seek advice and support to resolve problems with poor conditions, repairs or other disputes that may arise at an early stage. A tenancy relations service would also play a key role in homelessness prevention, by helping to resolve issues that may otherwise escalate to the point where the tenant chooses to leave or the landlord serves notice. The tenancy relations service should be integrated within Housing Options to ensure the local authority is working in an effective, joined up way to prevent homelessness for as many households as possible. They should also work closely with environmental health teams to make sure that any issues with poor conditions are addressed quickly and appropriate enforcement action is taken if necessary.

Help to Rent projects have also proven to be a very effective way of supporting people who are homeless, threatened with homelessness or vulnerably housed to create and sustain tenancies in the private rented sector. Help to Rent projects de-risk the private rented sector and make it a viable option for both landlords and vulnerable tenants. They work with local landlords to set up a tenancy and ensure it is sustainable for the tenant by providing ongoing support. A key part of their role is ensuring that both landlords and

⁶ Smith, M., Albanese, F. and Truder, J (2014) A Roof Over My Head: Sustain: A longitudinal study of housing outcomes and wellbeing in the private rented accommodation. Crisis and Shelter: Big Lottery Funded.

tenants understand their rights and responsibilities, helping to reduce the likelihood of problems occurring. Support services for landlords and tenants are provided as needed to help resolve any problems that do arise during the course of the tenancy. This helps to mitigate the risks for landlords that might otherwise be associated with letting to a tenant who has experience of homelessness and is on a low income, and evidence from existing Help to Rent projects indicates that this support is the service most valued by landlords⁷.

The schemes have been shown to be very successful for helping homeless people to access a home in the private sector and sustain their tenancy. From 2010 to 2014 Crisis ran the Private Rented Sector Access Development Programme, a £10.8m government funded programme that saw the set up of 153 Help to Rent projects across England. More than 8,000 tenancies were created through the programme and they had a 90% sustainment rate of tenancies at the six month point and made over £13.5m savings in one quarter through their intervention.⁸

The government committed in the Autumn Statement 2017 to providing £20m to fund private rented sector access schemes. This will help to ensure that homeless households and those threatened with homelessness can access vital support to help them access and sustain private rented accommodation, including support managing and resolving complaints if needed. The Government's Homelessness and Rough Sleeping Implementation Taskforce must set out how this funding will be spent to ensure that it provides sufficient funding for both Help to Rent projects and a national rent deposit guarantee scheme. Access to a rent deposit guarantee is essential for clients who have been homeless and cannot afford to pay a cash deposit, and to reduce the financial risk to the landlord in case of any damage to the property. A national deposit scheme guaranteed by the government would reduce the burden on individual schemes and provide Help to Rent projects with greater financial security so they can support more people.

Practices and powers

Accessibility

A consumer redress scheme for the private rented sector must be easy to access and free to the consumer. Tenants should not be disadvantaged or unable to access redress because of their level of income. Poor conditions tend to be concentrated at the lower end of the market and these will often be the only properties that are affordable and accessible for people on low incomes. This is supported by the Sustain research, which found that tenants in the private rented sector who have experienced homelessness and are on a low income are very likely to experience problems with poor property conditions and inadequate repairs.⁹ Access to consumer redress will be particularly important for this cohort of tenants, and any charge for accessing the scheme could prevent vulnerable tenants who need redress the most from accessing it.

It is also crucial that tenants are aware that the redress scheme exists. Information about how to access the redress scheme should be included in the government's 'how to rent'

⁷ Gousy, H (2016) Home: No less will do. London: Crisis.

⁸ Gousy, H (2016) Home: No less will do. London: Crisis.

⁹ Smith, M., Albanese, F. and Truder, J (2014) A Roof Over My Head: Sustain: A longitudinal study of housing outcomes and wellbeing in the private rented accommodation. Crisis and Shelter: Big Lottery Funded.

guide, in a prominent position in every tenancy agreement and as part of the standard notice form that landlords must use to seek possession of a property under section 21 (form 6A, notice seeking possession of a property let on an Assured Shorthold Tenancy). Letting agents are required to display the name of their redress scheme prominently in their offices and face up to a £5,000 fine if they do not. Similar obligations should apply to both landlords and letting agents to display the name of their redress scheme and how to access it prominently on the front of the tenancy agreement. A widespread advertising campaign when the scheme was introduced would help to ensure that tenants are aware of the consumer redress scheme and how they can access it, as well as helping to ensure landlords understand their responsibilities to join the scheme.

Tenants should not be required to go through a lengthy or unnecessarily complex procedure before being able to access the redress scheme. As outlined above, there should be a clearly defined process for reporting and addressing complaints in the private rented sector and if this in house complaints process is exhausted and a satisfactory resolution is not reached then the tenant should be able to submit their complaint to the consumer redress scheme.

Powers and enforcement

It is essential that any consumer redress scheme has the capacity and the power to effectively enforce the decisions it makes. Consumers should not be required to pursue their case through the courts if their landlord, letting agent or managing agent does not comply with the decision reached through the redress scheme. This would greatly increase the time taken for the tenant to access redress and a resolution to the problem, and in some cases the cost of pursuing court proceedings may prohibit tenants from receiving the redress they are entitled to.

Where necessary, for example if the problem relates to property conditions, the redress scheme should be able to make an order for compensation and refer the case to the relevant local authority team to take action to address the problem. For example, where the complaint concerns property conditions this would be dealt with by the environmental health team. It is therefore essential that local authorities have the capacity to effectively enforce standards in the private rented sector. As highlighted earlier in this response, many local authorities do not currently have sufficient capacity to do this and environmental health teams are often significantly under resourced.

Addressing the gaps

Coverage

Crisis supports the government's commitment to require all landlords to join a redress scheme to ensure that every tenant has access to effective dispute resolution. The redress available should be consistent across the sector, regardless of whether the property is managed by an individual landlord or an agent. To ensure this is the case and there are no gaps in coverage, all landlords, including those who employ an agent to let and manage all of their properties should be required to join the redress scheme. Although a managing agent will be able to resolve most problems, there could be circumstances where the agent requires consent from the landlord to take action. If the landlord is not also subject to the redress scheme then the tenant will be unable to access the redress they would otherwise be entitled to.

Monitoring and enforcement

We recommend that the government introduce a national register of landlords for England, which all private landlords and letting agencies would be required to join. To register landlords would have to demonstrate that their properties meet basic safety requirements, they have completed basic training on their rights and responsibilities as a landlord, that they pass a 'fit and proper person' check and that they are a member of the relevant consumer redress scheme. This would make it easier to identify any landlords or letting agents who are not members of a redress scheme. It would also make it easier for landlords to understand what is required of them, as this would all be built into the process of joining the register. Local authorities are likely to be best placed to enforce the requirement for landlords to be a member of a consumer redress scheme as they already play a central role in enforcing standards in the private rented sector.

A national, centrally managed register would reduce the administrative burden for local authorities and landlords, allowing local authorities to focus on enforcing standards in the sector. The register would provide local authorities with basic information on the distribution of private rented housing stock in their area and private residential landlords operating locally so they have the information they need to proactively manage the private rented sector in their areas. This would enable local authorities to effectively target educational training and resources at amateur and accidental landlords and to effectively target enforcement work. Better data on the size and location of private rented homes would allow local authorities to make more informed and strategic decisions about the best way to tackle poor conditions, including whether or not to implement selective or additional licensing schemes.

Cost

Membership of a consumer redress scheme should be included in the cost to landlords of joining the national register. This would simplify the process for both landlords and the provider of the redress scheme. Fees to join the register could be structured to reflect the number of properties owned by a landlord or managed by a letting agent to help avoid placing an unnecessary burden on smaller landlords.

The consumer redress scheme could have additional 'per complaint' charges to help fund enforcement of standards in the sector and incentivise landlords and letting agents to resolve issues quickly before they reach a stage where redress is needed.

Penalties for non-compliance

Landlord registration and consumer redress will only work effectively if local authorities have the capacity to enforce non-compliance effectively and if the penalties provide a sufficiently strong deterrent. Shelter Scotland's evaluation of the Scottish landlord registration scheme found that some of the potential benefits were limited because local authorities did not always have the resources or the capacity to administer the register and enforce standards effectively¹⁰.

Landlords and letting agents should be subject to financial penalties if they fail to join the register or a consumer redress scheme. Penalties should be in line with those already in place for landlords who fail to obtain a required license or commit other offences under

¹⁰ Shelter Scotland (2009) [Landlord registration in Scotland: Three years on](#)

the Housing Act (2004), which can include civil penalties of up to £30,000. As is the case with existing civil penalties local authorities should be able to retain this money to fund enforcement in the private rented sector.

Landlords should be prevented from serving a section 21 notice if the tenant has made a complaint to a consumer redress scheme. This requirement should be in line with the protections against retaliatory evictions already in place for assured shorthold tenants in the private rented sector.

Creating a single housing ombudsman service

The standard of service provided and the consumer experience for tenants should be central considerations for deciding whether a single housing ombudsman is the best solution to streamline consumer redress in housing. The service provided and the standard of redress available should be consistent across the sector and accessing consumer redress should always be an easy and clear process for tenants.

The level and standard of redress should be consistent across the sector, regardless of whether someone is a tenant of a social or private landlord or if the property is managed by an individual landlord or a letting agent. This could be achieved through the creation of a single housing ombudsman or standardisation of practice among existing and any new schemes.

A central argument for creating a single housing ombudsman is the potential it has to simplify the process of accessing redress for the consumer. Having a single ombudsman would make it easier to create a strong brand and to ensure tenants are aware of the existence of the consumer redress scheme and how they can access it. However, this could potentially also be achieved through the creation of a single ombudsman portal for the housing sector. Regardless of the chosen option, it is essential that there is a single front door for tenants through which all housing related complaints can be channelled. This single portal must signpost tenants to the relevant services dependent on the problem. For example, if a tenant is at risk of homelessness the portal should signpost them to their local authority housing team and advise them of the local authority's duty to work with all eligible households who are threatened with homelessness to help prevent them from becoming homeless. This is essential to ensure that tenants are always directed to the appropriate service, and to ensure people can access support to prevent their homelessness at the earliest possible stage.

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