



All Party Parliamentary Group for the **Private Rented Sector**

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## **TACKLING RETALIATORY EVICTIONS**

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### ***REPORT AND ORAL EVIDENCE***

**15<sup>th</sup> December 2014**

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This Report was researched by The Public Affairs Company on behalf of its client, the Residential Landlords Association and was funded by the Residential Landlords Association.

## **The APPG for the Private Rented Sector**

The purpose of the APPG is to raise awareness of the private rented housing sector in Parliament; to provide a forum for parliamentarians to discuss issues pertinent to the sector and engage with landlords, tenants and other interested parties; and to hold inquiries into policy and operational issues relevant to the sector and produce reports.

### **Officers of the Group during the Inquiry**

- ❑ Oliver Colvile MP (Conservative, Plymouth Sutton and Devonport) – Chair
- ❑ Karen Buck MP (Labour, Westminster North) – Vice Chair
- ❑ David Ward MP (Liberal Democrat, Bradford East) – Vice Chair

### **Secretariat**

The Public Affairs Company (a consultancy) acts as the Group's secretariat on behalf of the Residential Landlords Association, and is funded by them.

### **Contact**

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## 1.0 ABOUT THE INQUIRY

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- 1.1 On 16<sup>th</sup> October 2014 the Group formally launched its inquiry, with a call for evidence, on Sarah Teather MP's Tenancies (Reform) Bill. Whilst this Bill has since fallen, the content of it has never the less been included in an amendment to the Deregulation Bill to be debated at report stage in the Lords. The Group understands that this will be sometime in January.
- 1.2 The Inquiry launched with the following terms of evidence:
- What constitutes a retaliatory eviction?
  - How extensive is the problem of retaliatory evictions?
  - Is there is already sufficient protection for tenants from existing legislation
  - Is this Bill needed?
  - What impact would it have on tenants, landlords and lenders' readiness to lend landlords the finance needed for new homes to rent?
  - Could the Bill be improved, and if so, how?
- 1.3 Thirty three items of written evidence were submitted to the Inquiry and these are listed in Appendix 1 of this report and can be viewed in full online at <http://www.rla.org.uk/documents/download.shtml?pid=2372>.
- 1.4 Two oral evidence sessions were held.
- 1.5 On the 27<sup>th</sup> October 2014 the Group took evidence from:
- Jason Freeman** – Director of Consumer Law at the Competition and Markets Authority
  - David Cox** – Managing Director of the Association of Residential Letting Agents
  - Paul Shamplina** – Founder of Landlord Action
- 1.6 On the 3<sup>rd</sup> November 2014 the Group took evidence from:
- Sarah Teather MP** – Member of Parliament for Brent Central and promoter of the original Bill
  - John Gallagher** – Principal Solicitor at Shelter
  - Dave Princep** – Residential Landlords Association
- 1.7 The Group would like to thank all those individuals and organisations that provided both written and oral evidence which has been invaluable in preparing this report and for the constructive way in which all witnesses have engaged with the Group's work.

## 2.0 SUMMARY AND RECOMMENDATIONS

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- 2.1 We recommend that the definition of a retaliatory eviction be adopted for the amendment to the effect that it is a practice whereby a landlord evicts or seeks to evict a tenant because they have raised a complaint about standards in the property. This would avoid any misunderstanding about whether it would provide excuses for tenants not paying rent or committing anti-social behaviour.
- 2.2 The volume and differing array of statistics on evictions and more especially 'retaliatory evictions' provided to the Group was bewildering. Obtaining objective data that hasn't been collected by a particular Group with a vested interest was impossible.
- 2.3 Whilst we recognise Sarah Teather MP's and other's passion before the Group in arguing that whatever the levels of retaliatory evictions might be, legislation is needed to protect even a small number of tenants who face problems, evidence is nevertheless crucial to ensure good policy. If, for example, the number of retaliatory evictions is proportionally as low as some witnesses suggested, then both Houses of Parliament should consider if legislation is necessarily the best tool. Given that Jason Freeman, Director of Consumer Law at the Competition and Markets Authority, told the Group that the Consumer Protection from Unfair Trading Regulations 2008 already provide some protection from retaliatory evictions, Parliament might want to consider if making tenants better aware of their existing rights might be a better course of action.
- 2.4 Without data, we would question how Parliament can measure the success of any legislation passed. Too often on private rented housing it has become very easy to call for greater regulations here or there without a proper assessment of what is and isn't working.
- 2.5 In light of this, the Group strongly recommends that the Government includes, as part of its English Housing Survey, more detailed information on the reasons for tenants leaving their homes. Such an addition should, be part of a much broader discussion about the nature and scope of data related to private rented housing within the Survey. We call on the Department for Communities and Local Government and Office for National Statistics to convene a steering group, in partnership with interested organisations, to undertake a full review of what should be measured concerning private rented housing.
- 2.6 Whilst it is always impossible to be completely certain about the specific impact that legislation would have the Group is never the less assured by the Council of Mortgage Lender's statement that the measures contained firstly within the Bill and as such the amendment to the Deregulation Bill as it stands will not adversely impact the industry's willingness to finance the buy-to-let sector.
- 2.7 That said, given that the vast majority of landlords provide a good service and are individuals renting out just one or two properties, it is vital that if the amendment is passed its effects are kept under continued review to ensure that landlords are not put off from investing in the new homes to rent the country needs.
- 2.8 Good legislation requires good enforcement to avoid a mockery being made of laws passed by Parliament.
- 2.9 In light of the contradicting remarks we heard on enforcement, we would urge the Department for Communities and Local Government to work with the Local Government Association and Chartered Institute of Environmental Health to study trends in the number of Environmental Health Officers across the country to better understand their ability and capacity to enforce the provisions not just of this amendment but all legislation and regulations affecting the private rented sector for which they have responsibility.

- 2.10 For the legislation to be enforced properly requires tenants to understand their rights and use them. In line with the Government's amendment to the Consumer Rights Bill making it a legal requirement for letting agents to let tenants know what fees they charge, the Group believes that it should also be a statutory requirement for tenants to be given details of both their rights and responsibilities as tenants prior to moving into a property.
- 2.11 Under the terms of the amendment, provided a Section 21 notice hasn't already been served by the landlord, a tenant can raise a concern about the condition of the property with their local authority. Subject to an inspection by the authority, if the tenant's complaint is upheld a notice to improve the property will then be served on the landlord. The landlord will not be able to serve a Section 21 notice for six months from the point at which they are issued with the notice. This gives rise to a number of potential concerns which must be addressed for the legislation to work properly.
- 2.12 First of all it would be grossly unfair to a landlord if a tenant went automatically to the local authority to complain and a local authority investigated and served a notice to improve on the landlord without the landlord having been given an opportunity first to address the problem themselves. A number of witnesses noted that under the terms of Tenancy Deposit legislation landlords are barred from issuing a Section 21 notice where they have not protected the deposit. We recommend that the same procedure used for deposit disputes be adopted for this amendment. Under this model, the following would have to take place:
- The tenant would need to raise their concerns with the landlord about a particular problem.
  - Where there is a dispute about who is responsible, the nature of the problem and when and if it will be resolved, either party can take the matter to dispute resolution, as is used with the tenancy deposit schemes.
  - If no resolution can then be found, the local authority would step in to investigate the problem.
- 2.13 In order to maintain the confidence of the landlord during the period of a dispute the amendment should make clear that the tenant should continue to pay rent to the landlord.
- 2.14 Where the local authority decides that it needs to inspect the property on receipt of a complaint from a tenant, we would advise that a time frame should be set in which an Environmental Health Officer would need to visit to avoid a prolonged period of uncertainty for both the tenant and landlord.
- 2.15 We believe that the six month moratorium on issuing a Section 21 notice where a notice to improve has been issued to the landlord is not helpful as it does not incentivise the landlord to carry out the work swiftly. Section 21 notices should, the Group believes, be able to be used again once the local authority has agreed that the work to rectify the original problem has been completed. Again, follow up inspections should happen swiftly.

## 3.0 BACKGROUND

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3.1 On 12<sup>th</sup> June 2014, Sarah Teather MP was drawn seventh in the ballot for Private Members Bills.

3.2 On 1<sup>st</sup> July, Sarah Teather announced her intention to introduce a Bill to outlaw the practice known as retaliatory evictions in the private rented sector. In her press release announcing the decision<sup>1</sup> she noted that the housing charity, Shelter, has long campaigned for this measure. She explained also that in the last year, 213,000 people *“have been evicted or served with an eviction notice after complaining to their landlord about a problem that was not their responsibility. 12 per cent of tenants have not asked for repairs because they fear eviction.”*

3.3 Announcing the move, Sarah Teather was quoted as saying:

*“It’s completely wrong that some rogue landlords evict tenants simply because they ask for repairs to be carried out.*

*“Everyone should have somewhere comfortable and safe to live. But all too often, tenants put up with things like damp, dangerous electrical fittings and mould because they are too scared to complain.*

*“This bill could make a real difference to 1.3 million renting families in England. I hope my colleagues in Parliament get behind it and turn it into law.”*

3.4 The Bill was named the Tenancies (Reform) Bill.

3.5 On 11<sup>th</sup> September 2014, the Government announced that it intended to support the Bill. Outlining the Government’s reasoning as he received a petition on the issue from Shelter, the Parliamentary Under-Secretary of State for Communities and Local Government, Stephen Williams MP explained<sup>2</sup>:

*“Our private rental sector is a vital asset, providing a home to 9 million people across the country. So I’m determined to root out the minority of rogue landlords that give it a bad name.*

*“That’s why we’re backing Sarah Teather’s Bill to outlaw revenge evictions once and for all - ensuring tenants do not face the prospect of losing their home simply because they’ve asked for essential repairs to be made.”*

3.6 Whilst at the time of writing the Bill hadn’t yet been published, the Group was told that the Bill would work as follows:

- ❑ A tenant raises a concern with their local authority about a problem in the property.
- ❑ The local authority would then be required to verify, through inspection, the problem and where responsibility lies.
- ❑ Where the landlord is deemed to be responsible, they would be served with a notice to take action to remedy the period.
- ❑ If a no fault notice to evict the property had not already been issued, the landlord would be prevented from doing so for six months after receiving the notice to improve.

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<sup>1</sup> Website of Sarah Teather MP. *Sarah takes action to protect private renters*. 1<sup>st</sup> July 2014.

<sup>2</sup> Department for Communities and Local Government Press Release. *Stephen Williams vows to outlaw revenge evictions*. 11<sup>th</sup> September 2014

3.7 On Friday 28<sup>th</sup> November 2014 the Bill failed to pass its second reading owing to too few MPs being present to vote on it. The measures within it however have been contained within an amendment to the Deregulation Bill which the Group understands is likely to be debated in the Lords in January.

### 3.7 Legal Background on Evictions

3.7.1 Ahead of the inquiry, the Group's Chairman, Oliver Colvile MP, sought a note from the House of Commons Library to understand the legal background on evictions<sup>3</sup>. This note explained:

- ❑ The majority of private sector tenants in England are on assured short hold tenancies lasting usually six months or a year. Landlords can't regain possession of the property during the length of the contract, unless a tenant has breached the terms of the tenancy. The landlord can regain possession provided the correct notice to evict procedures are followed.
- ❑ If a landlord wants to regain possession of the property at the end of the fixed term of the tenancy they can serve a Section 21 Notice (under the terms of the Housing Act 1988) on the tenant at least 2 months prior to the end of the tenancies. Where this happens and the tenant does not move out, the landlord must seek a court order to evict the tenant. A landlord does not need to provide grounds for serving such a notice.
- ❑ Alternatively, a landlord can serve a Section 8 Notice at any point during the course of a tenancies on the basis of the tenant breaching all or part of their contractual obligations. The notice period using a Section 8 Notice varies from 2 weeks to 2 months depending on the ground being used.
- ❑ Alternatively, a landlord can let a tenancy continue past the fixed term on a period basis. In such a situation Section 21 Notice again require 2 months' notice when served on a tenant.

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<sup>3</sup> House of Commons Library. *Retaliatory Evictions*. Ref: 14/10/15SP



## 4.0 DEFINITION AND EXTENT OF THE PROBLEM

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### 4.1 Definition of Retaliatory Eviction

- 4.1.1 A clear explanation within the amendment of what constitutes a retaliatory eviction is crucial to ensuring that there is no room for misinterpretation and misrepresentation.
- 4.1.2 A number of landlords and lettings agents raised concerns about the law of unintended consequences raising fears that tenants could make spurious accusations simply to prevent a legitimate eviction.
- 4.1.3 In our first oral evidence session, Earl Cathcart stated that the term retaliatory or ‘revenge’ evictions could encompass anything, including evicting tenants because they aren’t paying their rent or were committing anti-social behaviour.
- 4.1.4 For the Association of Residential Letting Agents, David Cox warned that whatever the intentions of parliament, there nevertheless remains a danger of the courts interpreting legislation differently unless it is absolutely clear what it should and should not cover. The Residential Landlords Association warned of the possibility of the Bill leading to a significant number of unintended consequences. The British Property Federation warned also that the Bill needed to be clear about the grounds upon which Section 21 rights would and would not be suspended.
- 4.1.5 It was helpful that as the original Bill’s promoter, Sarah Teather MP made clear to the Group that her intention was for it to be modest in its scope to give tenants greater confidence to raise concerns and not thwart efforts by landlords to evict tenants for legitimate reasons such as in the event of them committing anti-social behaviour or failing to pay their rents.
- 4.1.6 Whilst such words provide clarity, it is nevertheless crucial that for landlord confidence and to prevent misinterpretation, the definition of retaliatory eviction is crystal clear within the amendment.
- 4.1.7 **We would therefore recommend that the definition of a retaliatory eviction be adopted that notes that it is a practice whereby a landlord evicts or seeks to evict a tenant because they have raised a complaint about standards in the property. This would avoid any misunderstanding about whether it would provide excuses for tenants not paying rent or committing anti-social behaviour.**

### 4.2 Extent of the Problem

- 4.2.1 Throughout the course of the inquiry, the Group sought to gain clarification and understanding from witnesses of the extent of the problem of retaliatory evictions. Such efforts ultimately proved unsuccessful.
- 4.2.2 Evidence provided to the Group was frankly bewildering, with witnesses providing often contradictory statistics depending on what position they took on the issue.
- 4.2.3 For the benefit of members, we outline the main sources of statistics provided to the Group and the arguments used by those opposed to them:
- 4.2.4 Shelter:
- For the overwhelming majority of those witnesses in favour of legislative action, the statistics compiled by Shelter were the source of their information on the problem of

retaliatory evictions. Indeed, it is their statistics that Sarah Teather MP cited in her press release announcing her Bill.

- ❑ In January 2012, Shelter, along with British Gas, commissioned the polling company, YouGov to undertake a survey of private sector tenants. The results were based on a sample of 4,544 tenants in England, configured by YouGov from their panel of 300,000 people in the UK. Data from the English Housing Survey and the 2011 Census was then used to weight the sample to be representative of all tenants by geography, household composition and age.
- ❑ The survey results found:
  - One in eight tenants (12%) have not asked for repairs to be carried out in their home, or challenged a rent increase in the last year because they fear eviction.
  - One in 50 tenants (2%) have been evicted or served with notice in the past year because they complained to their local council or their landlord about a problem in their home. This is equivalent to 90,000 cases, affecting 213,000 tenants – everyone in the home is affected by this practice.
  - Certain groups are more likely to suffer retaliatory eviction – particularly those living in high demand areas such as London. In the past year the incidence of retaliatory eviction increases to:
    - 14% for families living in London.
    - 10% for BME households – and 17% for BME households living in London.
    - 5% for households in receipt of Housing Benefit – and 7% for families in receipt of Housing Benefit.
- ❑ In response to these figures, Paul Shamplina of Landlord Action argued that Shelter is engaging in what he described as a lot of “guess work” around the figures they have provided. He told the Group that Government statistics show that last year there were 170,000 possession claims issued, of which 113,000 were for the social sector, leaving 57,000 in the private rented sector. 23,000 were through a hearing route (Section 8) and 34,000 were the accelerated possession route. Most of the time, he said, a tenant will not know the reasons why a Section 21 notice is issued because it is the landlords prerogative. That is why, he said, he was astounded at Shelter’s figures given that we don’t know the reasons why Section 21 notices are given as landlords don’t have to say. Looking at Shelter’s 60,000 figures however, would mean there were fewer court cases compared to the number of notices served which, he said, doesn’t really tally. 60% of the time, he said, landlords will do a deal, pay up or leave.
- ❑ For ARLA, David Cox argued that Shelter extrapolate their figures but don’t take into account that the vast majority of tenancies are ended by tenants rather than landlords. Dave Princep for the RLA meanwhile concluded that the tenants surveyed for Shelter were not ‘average’ as they had rates of dampness in their property four and a half times the national average, problems with carbon monoxide two thousand times the national average and one in eight of them had been flooded.

#### 4.2.5 Citizens Advice Bureau:

- ❑ The CAB have told the Group that it's members have consistently reported cases of "revenge" evictions since our 2007 report *The Tenants Dilemma* first brought the issue to light.
- ❑ According to the data provided to us from CAB, between April and September 2014 3,710 clients sought advice from a Citizens Advice Bureau about possession action from a private landlord not relating to arrears. Of these:
  - 262 (7%) also sought advice about repairs and maintenance.
  - 302 (8%) also sought advice about their security of tenure.
- ❑ Between April and September 2014 5,237 tenants of private landlords sought advice from a Citizens Advice Bureau because they had a problem relating to threatened homelessness. Of these:
  - 859 (16%) also sought advice about possession action not for arrears.
  - 246 (5%) also sought advice about repairs and maintenance.
- ❑ In the past year Citizens Advice Bureau have seen a 38% increase in enquiries about eviction problems in cases where people were up to date on their rent.

#### 4.2.6 Landlord Action:

- ❑ Earlier this year, Landlord Action undertook a telephone survey of 100 landlords that had instructed it to serve a Section 21 notice on a tenant.
- ❑ This Group was asked:
  - What is the reason you have served a Section 21 Notice on your tenant?
  - Why do you need possession?
- ❑ 28% of landlords said they served a Section 21 notice because their tenant was in rent arrears. 2% advised that their tenant had asked for repairs to be carried out, so they served a Section 21, i.e a retaliatory eviction.
- ❑ In response to this survey, Shelter argues that Landlord Action's research is based on a small, unrepresentative sample of 100 landlords. It argues also that the starting point for this calculation is not correct – it assumes, they conclude, that retaliatory eviction can only occur when a Section 21 notice is issued, whereas evictions in the private rental market is, Shelter concludes, more nebulous and is often carried out verbally, or in other informal ways.

#### 4.2.7 English Housing Survey:

- ❑ The most recent English Housing Survey for 2012-13<sup>4</sup> contains a number of statistics on the reasons for tenancies coming to an end.
- ❑ The survey asking private sector tenants who had moved in the last three years why their tenancies had ended. The results show:
  - 81.2% said their tenancies had ended because they had wanted to move.
  - 9.9% said the tenancy was ended by mutual agreement.

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<sup>4</sup> Department for Communities and Local Government. *English Housing Survey – Households 2012-13*. (July 2014). Pages 85-86.

- 7.2% (179,000 households) said that their tenancies had ended because they had been asked to leave by their landlord or letting agent.
  - 2.8% said that they had ended their tenancy because their accommodation was tied to their job and their job had ended.
  - Of those respondents who said they were asked to leave their previous accommodation by their landlord or letting agent, 57% said this was because the landlord wanted to sell or use the property.
  - 10% of respondents were asked to leave because they had not paid their rent.
- Dave Princep from the RLA told the Group that the English Housing Survey was the only unbiased statistics that could be relied upon and both ARLA and the Leader's Group also cited the Housing Survey as the basis of evidence they prefer to us.
  - Shelter however have argued in written evidence that there is no certainty that cases of retaliatory eviction are not occurring in the wider rental population outside the 7% figure and suggest that 10% who say that their tenancy was ended by mutual agreement *"could easily include a retaliatory eviction situation – the tenant was told they would be evicted if they carried on complaining, so they decided to leave."*

#### 4.3.8 Competition and Markets Authority:

- In its written evidence the CMA told the Group that it was unable to confirm how extensive the problem of retaliatory evictions is. It did however note that the database it has analysed in preparing its review of the lettings market *"did not identify this as a problem of any significance."*
- The main theme of the 5194 issues, that people complaining to the Consumer Direct helpline (now run by Citizens Advice) in 2011 raised, related to fees and charges (30%), agents' poor work (23%), disputes about the security deposit (20%), delayed or substandard repairs (13%), and unfair business practice generally (11%).
- This broad analysis was confirmed, the CMA say, as being representative of the issues also seen by other key industry stakeholders including RICS, TPO, Citizens Advice and Which?.
- Retaliatory eviction does however appear to be a problem among tenants who do not complain to Consumer Direct.
- Since producing its Lettings Market Review, the CMA worked with Local Authority Trading Standards Services and Housing Officers to develop a strategic approach to the problems in the private rental sector. As part of this, officers were surveyed to identify what areas they saw as the highest priorities. Retaliatory Eviction was not identified by TSS as a significant problem, but it was by Local Authority Housing Officers, being cited by 90.32% of the 62 officers who responded to our survey as a problematic business practice. This was, the CMA told us, *"by far the most common practice referred to (the next being failing to carry out services with reasonable care and skill at 74.19% of responses)."*

4.3.9 In light of the confused picture, the Group's Chairman tabled two written parliamentary questions to establish from the Government the statistical basis upon which it has decided to support the Bill. The questions and answers in full can be found below:

- **Oliver Colvile MP:** To ask the Secretary of State for Communities and Local Government, how many Section 21 notices were served in each of the last (a) 12 months and (b) five years<sup>5</sup>.

<sup>5</sup> HC Deb, 5 November 2014, cW

- **Brandon Lewis MP** (Minister of State for Housing and Planning): The Government does not collect this information.

A Section 21 notice is a notice served under Section 21 of the Housing Act 1988 by a landlord on their tenant which informs the tenant that the landlord requires possession of the property and that it must be vacated by the tenant.

The service of a Section 21 notice, like any other termination of a contract, is a private matter between the landlord and tenant.

- **Oliver Colvile MP**: To ask the Secretary of State for Communities and Local Government, what records his Department keeps of the number of retaliatory evictions; what criteria he uses to define retaliatory eviction; and how many retaliatory evictions took place in the last (a) 12 months and (b) five years<sup>6</sup>.

- **Brandon Lewis MP**: This information is not centrally recorded.

**4.3.10 The volume and differing array of statistics on evictions and more especially ‘retaliatory evictions’ provided to the Group was bewildering. Obtaining objective data that hasn’t been collected by a particular Group with a vested interest was impossible.**

**4.3.11 Whilst we recognise Sarah Teather MP’s and other’s passion before the Group in arguing that whatever the levels of retaliatory evictions might be, legislation is needed to protect even a small number of tenants who face problems, evidence is nevertheless crucial to ensure good policy. If, for example, the number of retaliatory evictions is proportionally as low as some witnesses suggested, then both Houses of Parliament should consider if legislation is necessarily the best tool. Given that Jason Freeman, Director of Consumer Law at the Competition and Markets Authority, told the Group that the Consumer Protection from Unfair Trading Regulations 2008 already provide some protection from retaliatory evictions, Parliament might want to consider if making tenants better aware of their existing rights might be a better course of action.**

**4.3.12 Without data, we would question how Parliament can measure the success of any legislation passed. Too often in private rented housing it has become very easy to call for greater regulations here or there without a proper assessment of what is and isn’t working.**

**4.3.13 In light of this, the Group strongly recommends that the Government includes, as part of its English Housing Survey, more detailed information on the reasons for tenants being leaving their homes. Such an addition should, the Group believes, be part of a much broader discussion about the nature and scope of data related to private rented housing within the Survey. We call on the Department for Communities and Local Government and Office for National Statistics to convene a steering group, in partnership with interested organisations, to undertake a full review of what should be measured concerning private rented housing.**

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<sup>6</sup> HC Deb, 11 November 2014, cW

## 5.0 IMPACT ON INVESTMENT IN THE SECTOR

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- 5.1 With all political parties committed to boosting the supply of homes, encouraging growth in the private rented sector will be a key part of this. Increasing supply provides greater choice for tenants and would lead landlords to be forced to compete with one another for tenants based on the cost and quality of their properties.
- 5.2 Key to this will be to ensure the policy framework on private rented housing is supports the provision of responsible buy-to-let mortgages to the vast majority of landlords who are private individuals. In written evidence to the Group, Crystal Horwood, Managing Director of lettings agency Pace PLC noted clearly that *“the landlords right to reclaim their property without proofing fault is vital to most investors.”*
- 5.3 As with the differences over the statistics used, on investment, there was no clear consensus between those supporting the proposed legislation and those opposed to it on the likely impact that the measures would have on investment.
- 5.4 Concerns about impact on investment:
- ❑ David Cox from ARLA told the Group that regulatory certainty is needed to encourage the kind of institutional investment in the private rented sector that the Government and Opposition are committee to. Amending fundamental principles upon which the sector is based, he warned, could put the sector back by ten years.
  - ❑ Dave Princep from the RLA argued also that these measures had the potential to “undermine” institutional investment in the sector.
  - ❑ The Leaders’ Group used its written evidence to explain that removing the ability of investor landlords to rightfully gain possession of his property within the law via a Section 21 Notice *“is likely to cause mortgage lenders to adjust their products, lending terms, security requirements or even their willingness to lend. This will further limit rental property supply.”*
  - ❑ Margaret Collier, Vice Chair of the North West Landlords Association warned that the original Bill could lead to a *“shrinkage of PRS, particularly for families, where repossession is already difficult, and investors will shy away from the increased risk that a family presents.”*
- 5.5 Those supporting the measures:
- ❑ The institutional investor, Essential Living, told the Group that provided the legislation can be seen to *“assist in removing the risks associated with renting to both tenant and landlord the overall reputation of the rental sector would be improved.”* He continued, *“if landlords feel they have redress then they will be encouraged to invest or keep renting.”*
  - ❑ CAB argued that the proposals would *“increase the competitive advantage of good landlords who invest in and maintain their properties.”*
  - ❑ Electrical Safety First meanwhile argued that the measures contained within the legislation, *“would benefit the responsible landlord by ensuring that conditions are not allowed to deteriorate, helping to maintain the value of their investment, and in doing so encouraging standards in the sector to rise.”*
- 5.6 In order to better understand the likely impact on investment, the Group approached the Council of Mortgage Lenders for its view on the Bill. In a short statement, the CML

told us that the Bill *“does not prevent a mortgage lender's ability to gain legitimate possession of a property should this be necessary and, as such, will not impact on the industry's willingness to continue to finance the buy-to-let sector.”*

- 5.7 **Whilst it is always impossible to be completely certain about the specific impact that legislation would have, the Group is nevertheless reassured by the Council of Mortgage Lender’s statement that the Bill and as such the amendment to the Deregulation Bill as it stands will not adversely impact the industry’s willingness to finance the buy-to-let sector.**
- 5.8 **That said, given that the vast majority of landlords provide a good service and are individuals renting out just one or two properties, it is vital that if the amendment is passed its effects are kept under continued review to ensure that landlords are not put off from investing in the new homes to rent the country needs.**

## 6.0 ENFORCEMENT

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- 6.1 In our report published earlier in the year on how the sector should be regulated we noted figures provided by the Residential Landlords Association that there are 100 pieces of legislation and over 400 regulations affecting the sector.
- 6.2 Given the sheer volume of legislation and regulations that Environmental Health Departments have to enforce on the private rented sector we must question whether they would have the capacity to enforce this legislation during a period of budgetary constraint. Failing to properly enforce legislation makes a mockery of laws passed by Parliament.
- 6.3 Whilst witnesses noted that the Chartered Institute of Environmental Health supported the measures continued within the Bill and believes local authorities have the ability to enforce it, a recent snap shot survey for the CIEH's magazine, *Environmental Health News* found that 83% of Environmental Health Practitioners believed that cuts to environmental health services have reached 'crisis point'.
- 6.4 Concerns were expressed about enforcement from a number of witnesses:
- ❑ The South West Landlords Association argued in its written evidence that local authorities *"can and should use the powers that they already have, ranging from improvement orders through to taking over the management of the property."* *"What is lacking"* they argued *"is the will and resources to enforce their current powers."*
  - ❑ Terry Lucking, Managing Director of Belvoir Peterborough and Cambridge outlined his concerns that this legislation will simply *"overload"* enforcement officers.
  - ❑ Essential Living argued that sufficient legislation is available and that what is needed is *"better enforcement"*.
  - ❑ Paul Shamplina from Landlord Action also raised concerns about a lack of EHOs to enforce new laws, a view shared by Dave Princep from the RLA.
- 6.5 In stark contrast, the Competition and Markets Authority concluded that the Bill's measures would serve to simplify enforcement by housing officers.
- 6.6 Sarah Teather MP argued also to the Group that her Bill would in fact empower local authorities by addressing the fear they have about the potential to provoke an eviction and lead a tenant to become homeless where they call for action by a landlord. This was a point agreed by Shelter.
- 6.7 **In light of the contradicting remarks on enforcement, we would urge the Department for Communities and Local Government to work with the Local Government Association and Chartered Institute of Environmental Health to study trends in the number of Environmental Health Officers across the country to better understand their ability and capacity to enforce the provisions not just of this Bill but all legislation and regulations affecting the private rented sector for which they have responsibility.**
- 6.8 **For the legislation to be enforced properly requires tenants to understand their rights and use them. In line with the Government's amendment to the Consumer Rights Bill making it a legal requirement for letting agents to let tenants know what fees they charge, the Group believes that it should also be a statutory requirement for tenants to be given details of both their rights and responsibilities as tenants prior to moving into a property.**



## 7.0 RECOMMENDED IMPROVEMENTS

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- 7.1 At the time of writing the Bill had not yet been published. However, based on what the Group learnt about its intentions and how it would work (and as a result the amendment to the Deregulation Bill) we have nevertheless prepared a series of recommended improvements for members of both Houses to consider.
- 7.2 Under the terms of the amendment, provided a Section 21 notice hasn't already been served by the landlord, a tenant can raise a concern about the condition of the property with their local authority. Subject to an inspection by the authority, if the tenant's complaint is upheld, a notice to improve the property will then be served on the landlord. The landlord will not be able to serve a Section 21 notice for six months from the point at which they are issued with the notice. This gives rise to a number of potential concerns which must be addressed for the legislation to work properly.
- 7.3 **It would be grossly unfair to a landlord if a tenant went automatically to the local authority to complain and a local authority investigated and served a notice to improve on the landlord without the landlord having been given an opportunity first to address the problem themselves. A number of witnesses noted that under the terms of Tenancy Deposit legislation landlords are barred from issuing a Section 21 notice where they have not protected the deposit. We recommend that the same procedure used for deposit disputes be adopted for this amendment. Under this model, the following would have to take place:**
- First the tenant would need to raise their concerns with the landlord about a particular problem.**
  - Where there is a dispute about who is responsible, the nature of the problem and when and if it will be resolved, either party can take the matter to dispute resolution, as is used with the tenancy deposit schemes.**
  - If no resolution can then be found, the local authority would step in to investigate the problem.**
- 7.4 **In order to maintain the confidence of the landlord during the period of a dispute the amendment should make clear that the tenant should continue to pay rent to the landlord.**
- 7.5 **Where the local authority decides that it needs to inspect the property on receipt of a complaint from a tenant, we would advise that a time frame should be set in which an Environmental Health Officer would need to visit to avoid a prolonged period of uncertainty for both the tenant and landlord.**
- 7.6 **We believe that the six month moratorium on issuing a Section 21 notice where a notice to improve has been issued to the landlord is not helpful as it does not incentivise the landlord to carry out the work swiftly. Section 21 notices should, the Group believes, be able to be used again once the local authority has agreed that the work to rectify the original problem has been completed. Again, follow up inspections should happen swiftly.**

## ORAL EVIDENCE SESSION 1: Tenancies (Reform) Bill

Monday 27<sup>th</sup> October 2014, 5pm – Committee Room 7

### Members in Attendance

- ❑ Oliver Colvile MP (Conservative, Plymouth Sutton and Devonport) – Chairman
- ❑ Andy Love MP (Labour, Edmonton)
- ❑ Teresa Pearce MP (Labour, Erith and Thamesmead)
- ❑ Baroness Maddock of Christchurch (Liberal Democrat)
- ❑ Earl of Lytton (Crossbench)
- ❑ Earl Cathcart (Conservative)

### Witnesses

- ❑ **Jason Freeman** – Director of Consumer Law at the Competition and Markets Authority
- ❑ **David Cox** – Managing Director of the Association of Residential Letting Agents
- ❑ **Paul Shamplina** – Founder of Landlord Action

### Opening Remarks

#### ❑ **David Cox**

- The first question that needs to be asked is what a retaliatory eviction is. ARLA's view is that it is where a landlord issues possession proceedings against a tenant who has raised a complaint, generally about the state of the accommodation they are living in as well as about poor management standards.
- What level of incidence of this type of occurrence is there? Some have argued in the range of 213,000 a year. ARLA believes it to be much, much lower.
- ARLA has undertaken some basic mathematics based on figures in the 2010 English Housing Survey which, he said, was the last one to ask why tenants left their properties. This showed that 9% of tenancy ended at the request of the landlord. He also cited figures compiled by landlord action suggesting that 2% of cases where the landlord ends the agreement are where tenants have made a complaint and where the issue of retaliatory evictions come into play. 2% of 9% he said is 0.18% which equates to about 7,120 tenancies a year of the 4 million tenancies in the country. That said, he noted that this was still an unacceptable situation.
- The Bill, he said, proposes changes to Section 21 of the Housing Act 1988 – no fault dismissals – which, he said, was a bedrock for the private rented sector. This deregulation, he argued, has led to the rapid growth in the number of homes to rent in the private sector over the last year, now larger than the social rented sector. It is important therefore to question whether changes to this fundamental basis for the sector is needed.
- On average it takes 6 months to regain possession of a property using Section 21, which can be a costly experience for landlords given rent is unlikely to be paid during this period. The landlord then has to re-market the property and refurbish it, at which point, he said, it is probably cheaper for the landlord not to serve the Section 21 notice.
- He questioned whether the focus of the Bill should be concentrated on Section 21 given that retaliatory evictions take place only in a minority of cases.
- This Government, he said, has looked for a legislative solution to the problem, rather than it's root cause which he said was the under regulation of the letting industry. He especially highlighted ARLA's concerns that being a letting agent requires no formal qualifications or knowledge at all. There is, he said, a higher requirement of estate agents who only sell homes rather than managing them as letting agents do. Greater regulation of the letting agent sector is needed.
- It is positive that the Bill seeks to put the issue of retaliatory evictions to bed once and for all. However, he warned of the need to avoid unintended consequences.

- He said curtailing Section 21 would be a fundamental change to the way the law stands at the moment and there is a need to ensure that it doesn't frustrate legitimate efforts by landlords to repossess their properties and give rise to tenants to cause malicious damage as a viable defence against having Section 21 notices issued.
- Regulatory certainty is also needed to encourage institutional investment in the private rented sector. Amending fundamental principles upon which the sector is based could put the sector back by ten years.
- When we need more rented housing – Savills suggest that by 2018, 23% of the population will be living in private rented accommodation – do we want to be damaging that fundamental principle?

#### □ **Jason Freeman**

- The Competition and Markets Authority (CMA) has only existed since April but one of its predecessor bodies, the Office of Fair Trading, undertook work around the private rented sector in the form of an intelligence review and subsequent market review; a document which outlines a number of the problems in the sector with potential solutions. The CMA subsequently produced Guidance to explain how consumer law is able to address many of the problems identified
- Subsequent work was also carried out with Trading Standards and local authority housing departments to establish what they saw the problems to be in the sector.
- The CMA doesn't have any strong views on retaliatory evictions given that the Consumer Direct information that we analysed did not show it to be a particularly major issue. It has, however, been raised by other stakeholders, especially local authority housing services. 90% of officers responding to a CMA survey identified it as a problem. Trading Standards didn't identify it as a major concern.
- He said that the 'Consumer Protection from Unfair Trading Regulations 2008' implements an EU Directive which provides some protection from retaliatory evictions. This was outlined in the CMA guidance document published on these regulations earlier this year. However, the degree of protection varies depending on the exact circumstances of the alleged retaliatory eviction.
- It is easier to prove that consumer law has been broken where there is a threat by the landlord to use eviction as a means of preventing the tenant from complaining. The difficulty comes where there is no obvious causal connection between the tenant complaining and a Section 21 notice being served.
- The CMA believes the law can be deployed to protect tenants but, he argued, it may be difficult to show in some cases.
- The CMA understands the aims of the Bill and believes that it would simplify enforcement by housing officers, enabling them to do their job effectively which they are currently finding difficult to carry out.
- The CMA hasn't seen a full copy of the Bill as yet but has said that it would be more than happy to work with colleagues in Government to improve the Bill if requested.

#### □ **Paul Shamplina**

- Has been dealing with problem tenants since 1990 and his business has dealt with over 30,000 instructions on behalf of landlords seeking possession of their properties.
- The term 'retaliatory evictions' has only over the last year or so become prominent. Very rarely, he said, will landlords evict for no reason. There are usually very varied reasons for the breakdown of relationships between landlords and tenants.
- 3 weeks ago landlord action surveyed 100 landlords on its databases. This found that just 2% out of the 100 said they were serving a Section 21 notice because the tenant had reported a disrepair problem with the property. The biggest reason for Section 21 notices being served was because of rent arrears or landlords wanting to re-sell their properties because they were now in positive, rather than negative, equity. Another big issue is tenants refusing to leave a property because they want to wait to be re-housed by the local authority.

- The need for the private rented sector in the social housing sector is needed more than ever.
- Retaliatory evictions he said, has just not been a major issue.
- He admitted that there are rogue landlords out there that need to be dealt with but called for more of a naming and shaming policy for such landlords.
- Last year there were 34,000 accelerated possession claims issued, which, he said, basically relate to Section 21 notices and no fault dismissals. 2% of this, he said, equals 681 cases go down the no fault dismissal route.
- Believes that Shelter is engaging in a lot of guess work around the figures they have produced on evictions.
- There is a problem of abuses of the law by tenants putting in vexatious complaints designed deliberately to hold up eviction proceedings as the legal system considers such complaints. This, he said, will be exacerbated by the provisions of this Bill which place much greater pressure on the courts. He also believes there aren't enough Environmental Health Officers to enforce the new laws.

## Questions

- **Andy Love MP** said that there was a pressing need to reconcile what the best evidence available is on the scale of retaliatory evictions. He asked David Cox, given the certainty of the figures that he quoted in his evidence, if ARLA could see any case for the statistics that Shelter has produced.
- **David Cox** responded by saying the issue is around interpretation of data. Shelter's figures, he says, are based on the total number of tenancies. That's why ARLA tries to separate out tenancies ended by the landlord, by the tenant or by mutual agreement. The English Housing Survey 2010, he said, showed that over 75% of tenants end their tenancies. Shelter, he argued, extrapolate their figures but don't take into account that the vast majority of tenancies are ended by tenants rather than landlords.
- **Paul Shamplina** briefly repeated his opening presentation after Peers returned to the meeting following a vote.
- **Andy Love MP** asked Paul Shamplina if Landlord Action used a survey organisation to carry out its survey and asked how he ensured that the landlords surveyed were representative of landlords as a whole. It is unlikely, he said, that landlords would admit to evicting a tenant just because they raised a complaint about the state of the property.
- **Paul Shamplina** said that Landlord Action carried out the survey on its own and asked landlords on their database why they served notices to regain possession of the property.
- **Teresa Pearce MP** asked why landlords would tell surveys the truth as to why they have evicted a tenant.
- **Paul Shamplina** said that those landlords responding had to be taken at their word and that there wasn't really any way of knowing if landlords were telling the truth or not.
- **Teresa Pearce MP** asked if Landlord Action supported reforms but not necessarily the reforms within this Bill.
- **Paul Shamplina** the Bill could do more harm than good for the private rented sector and serve only to exacerbate the housing crisis the country already faces.
- **Earl Cathcart** asked if the Bill applied to the whole of the rented sector – both private and social sector.
- **Oliver Colvile MP** said that it was an interesting point and said that the Group would find out.

- **Paul Shamplina** said that social housing tenancies are surely not on an Assured Shorthold Tenancy and as such are unlikely to be affected by the provisions of the Bill.
- **David Cox** said that Section 21 of the Housing Act 1988 doesn't apply to the vast majority of social housing tenancies. He cited an example however that when the Energy Act completed its passage through Parliament and the Department for Energy and Climate Change (DECC) was establishing the Energy Efficiency Obligations to be imposed on landlords come 2016-2018, work was undertaken on prospects for retaliatory evictions where tenants asked for energy efficiency improvements to be made to their properties. The conclusions from a working group that look at this did not find that retaliatory evictions were a potential problem that needed addressing in conjunction with the Act.
- **Earl Cathcart** said that tenants can get energy efficiency improvements undertaken on their properties for free.
- **David Cox** said the landlord would still need to give permission for such work. The National Housing Federation, he said, sat on the DECC working group and pointed out that many social sector tenants are concerned about being evicted when they raise concerns about the standard of accommodation.
- **The Earl of Lytton** declared his interest as a landlord and, from time to time, a tenant. He is also a qualified Chartered Surveyor. He noted that the lack of concrete information on the issues the Bill covers is a problem. One of the things, he found, is that we are dealing with not very well constructed property with tenant lifestyles also which don't reflect the limitations of the property. For example, tenants hanging washing out to dry in a house causes damp and condensation problems. He asked if this is a problem of tenant behaviour or deficiencies with the housing stock. When tenants ring tenant advice organisations, he said that he suspects there is often an unquestioning response to them and the causes of problems are usually much less obvious. Do we suffer, he asked, from a lack of good, raw data.
- **Paul Shamplina** said that a lot of the time, where cases go to court, tenants can lodge spurious concerns at the last minute just to hold proceedings up. A big issue is condensation in private rented properties – is it a landlord or a tenant problem? He also asked how quickly Environmental Health Officers assess such problems and how long rent would not be paid in the meantime.
- **David Cox** said that the Earl of Lytton raised a powerful point, agreeing that there simply isn't enough, and robust data on the private rented sector. At the moment, he said, data amounts to a 'stab in the wind'. Robust data, he said, doesn't exist for policy makers to establish evidence based policy.
- **Oliver Colvile MP** said that he would table a parliamentary question to establish the data on which the Government is basing these decisions.
- **Andy Love MP** agreed that this would be a good idea, noting the gap between what Shelter and other organisations are saying on the levels of retaliatory evictions and that there is a need to establish what the true picture is. He asked how scientific ARLA's data is.
- **David Cox** replied by saying that the figures he provided are Government data from the English Housing Survey. He then went through the methodology as to how he got the data outlined in ARLA's written submission to the Group. He reiterated his calls for greater regulation of the lettings agent sector noting that legislation has been too slow in professionalising the sector, citing how long it took to establish the re-dressing scheme that came into force on 1<sup>st</sup> October 2014.

- ❑ **Andy Love MP** noted that if 9% of tenancies are ended by a landlord, of the almost 4 million tenancies in England this would be potentially 400,000 evictions compared to Shelter's figures of 60,000.
- ❑ **David Cox** said the vast majority of tenancies are ended because of tenant rent arrears.
- ❑ **Andy Love MP** accepted that and recognised that there are bad tenants, with some of the more difficult ones in the private rented sector. He again reiterated the need for credible data on the issue.
- ❑ **David Cox** said that Shelter's 60,000 figure is probably quite a long way on the high side. Landlords, he said, are business people. He noted also that the number of new instructions to letting agents is going down as a result of homes no longer being negative equity and landlords therefore selling their properties on. The vast majority of private rented properties at the moment, he said, are therefore because landlords specifically want it to be rented out. He reiterated the point as well that often the more costly option for landlords is evicting a tenant; leaving the house empty or trying to re-let it.
- ❑ **Andy Love MP** said that in his experience in London, the process for regaining possession of a property through the courts is a long and difficult one. Tenants, he said, when threatened with evictions will generally stop paying rent and won't look after their property. He asked Paul Shamplina how he would explain the contradiction between his figures and Shelter's.
- ❑ **Paul Shamplina** responded by saying that Government statistics show that last year there were 170,000 possession claims issued, of which 113,000 were for the social sector, leaving 57,000 in the private rented sector. 23,000 were through a hearing route (Section 8) and 34,000 were the accelerated possession route. Most of the time, a tenant will not know the reasons why a Section 21 notice is issued because it is the landlord prerogative. That is why, he said, he was astounded at Shelter's figures given that we don't know the reasons why Section 21 notices are given as landlords don't have to say. Looking at Shelter's 60,000 figures however, would mean there were fewer court cases compared to the number of notices served which, he said, doesn't really tally. 60% of the time, he said, landlords will do a deal, pay up or leave.
- ❑ **Oliver Colvile MP** said that there were two types of landlords – the decent ones and the rogues simply wanting to make a quick, easy buck.
- ❑ **Paul Shamplina** said that there are four brackets of landlords – amateurs who have come into the market in the last few years who need educating to improve awareness of their responsibilities (ill informed) which is different from rogue landlords.
- ❑ **Oliver Colvile MP** said that landlords should be given much greater education on their responsibilities, potentially in the form of a booklet detailing this.
- ❑ **Paul Shamplina** suggested that this could be achieved via buy-to-let mortgage providers.
- ❑ **Oliver Colvile MP** said that this is something that could and should be encouraged. He said also that a number of social tenants in his constituency complain of damp problems leading to disputes between them and the landlord as to who is responsible for it. He argued that there was a need for arbitration to resolve such disputes.
- ❑ **Earl Cathcart** said that he is a landlord renting a number of properties on his farm. He said that he wants to swiftly repair any problems in the property to maintain its value and avoid greater costs later on. He noted that revenge evictions could encompass anything, including evicting a tenants because they aren't paying their rent or are committing anti-social behaviour. He therefore said the Bill needs to target the problem of landlords not looking after their properties

and not situations where the tenant is failing to abide by their contractual commitments and responsibilities.

- ❑ **Jason Freeman** said that he has seen a Tenancies (Reform) Bill FAQs from the Department for Communities and Local Government and said that the Bill is seeking to cover situations where a tenant makes a complaint to a local authority housing department and the department has decided to act on it. That is the situation in which restrictions on serving a section 21 notice would kick in.
- ❑ **David Cox** said that the problem is the law of unintended consequences and the dangers of the Bill covering areas that it was not aimed at. If, he said, the Bill is targeted at the 2% mentioned by Landlord Action then ARLA would support it. His concern is that it could end up being wider than that.
- ❑ **Oliver Colvile MP** asked if the Bill would encourage or dampen the private rented sector, arguing that the sector is an important part of solving the housing challenges the country faces such as the need for more one bedroom properties.
- ❑ **Earl Cathcart** said that it is important that the Bill doesn't end up penalising landlords when tenants are causing the problem.
- ❑ **Andy Love MP** asked about definitions of retaliatory evictions noting that the lawyers would want it clear, simple and water tight. He suggested that only where a complaint is made to the local authority and they've investigated a property and they accept that improvements are needed that the restrictions in issuing Section 21 notices will kick in.
- ❑ **Jason Freeman** said that this is his understanding of how the Bill would work, noting that a tenant would have to have made a complaint to the local authority before the landlord served an eviction notice. The landlord would be restrained, he said, if the landlord had already served the notice. The authority, he said, would have to act on the complaint by the tenant before the Bill kicked in.
- ❑ **Andy Love MP** said that this seemed to him to be fairly restrictive conditions.
- ❑ **Paul Shamplina** said the problem is how quickly a local authority will look at a complaint raised with them. Is there a paper chain before the complaint is made to the authority? A reasonable landlord, he said, would try to remedy problems raised by tenants. Also, he asked if rent would be being paid in the meantime as landlord and tenant wait for Environmental Health Officers to inspect the property.
- ❑ **Andy Love MP** wondered if the Bill could include provisions to require tenants to raise concerns about property conditions with their landlord before they go to the local authority.
- ❑ **Oliver Colvile MP** mentioned that Environmental Health Departments also do not have the budget and resources to do an effective job in inspecting private rented properties where tenants have made a complaint. He finished off by asking witnesses if they thought the Bill was a hit or a miss.
- ❑ **David Cox** said that it has the potential to be a hit; provided it doesn't create unintended consequences and only targets the worst landlords it could work.
- ❑ **Jason Freeman** whilst the CMA doesn't have a position he did say that they can see that there is a need for this legislation and provided it isn't poorly drafted it is potentially a hit.
- ❑ **Paul Shamplina** said that he thinks the Bill could be a miss in that it could open the system up to abuse by tenants.

- **Andy Love MP** asked if witnesses could let the Group know their views about Shelter's accusation that a lot of tenants are influenced not to complain because of fear of eviction.



## ORAL EVIDENCE SESSION 2: Tenancies (Reform) Bill

Monday 3<sup>rd</sup> November 2014, 5pm – Committee Room 17

### Members in Attendance

- Oliver Colvile MP (Conservative, Plymouth Sutton and Devonport) – Chairman
- Andy Love MP (Labour, Edmonton)

### Witnesses

- **Sarah Teather MP** – Member of Parliament for Brent Central and promoter of the Bill
- **John Gallagher** – Principal Solicitor at Shelter
- **Dave Princep** – Residential Landlords Association

### Opening Remarks

#### □ **Sarah Teather MP**

- The constituency that Sarah Teather represents has some of the largest proportions of private rented accommodation of anywhere in the country.
- She has seen a number of cases in her constituency surgeries of tenants who have raised complaints with their landlords and then gone on to face retaliatory eviction and even more who live in fear of it.
- The impact is felt not just by tenants but by local authorities as well who are frightened of issuing improvement notices to landlords because they worry about the potential to provoke an eviction where they are served. This then subsequently leads to tenants being made homeless that the local authority then needs to cater for.
- The system doesn't work at the moment and although the problem affects only a minority of tenants, it skews the behaviour of the whole sector because a lot of people live in fear, especially those who have struggled to rent in the first place.
- Sarah Teather said that her Bill tries to introduce moderate change that might hopefully change behaviour by giving tenants greater confidence to complain; supporting local authorities to know that they have the powers they need to take action; and to help landlords by enabling them to gain early warning of problems in a property rather than letting them fester and only find out about once a tenant has left the property.
- This is not, she argued, a huge change aimed at addressing every problem in the private rented sector. It is, she said, a small and narrow change.

#### □ **John Gallagher**

- The Bill is very much based on frontline experiences of Shelter and other advice bodies.
- In 2007, Citizens Advice published a report on retaliatory eviction which identified it as a major problem affecting a number of vulnerable tenants. Their evidence came from Environmental Health and Tenancy Relations Officers but it chimes well with Shelter's own experience.
- Shelter's own advisers are conscious that when they received complaints from tenants about the condition of their properties, they have to warn the client that submitting a complaint could result in a no fault Section 21 notice being issued to get them to leave the property.

- The purpose of the Bill is a moderate response to this problem, and is based on an objectively provable situation of their being a hazard awareness or improvement notice being issued to a landlord with no Section 21 notice being able to be issued within six months of such a notice being given to a landlord.
- There is also protection within the Bill which means that tenants will not be able to be served with a Section 21 notice where they have made a complaint to a landlord or local authority and a notice of improvement has been issued to the landlord.
- The Bill will also prevent landlords from being able to serve a Section 21 notice where landlords haven't provided a gas safety or Energy Performance Certificate and there is provision for the Secretary of State to issue a prescribed form for Section 21 notices and for such notices to have a life span of just 6 months. Both these measures were contained within the Government's review of the private rented sector which concluded its deliberations earlier this year.

#### □ Sarah Teather MP

- Intervened to add that the prescribed form is partly aimed at helping landlords to better protect them and make things much simpler for them when issuing a Section 21 notice.

#### □ Dave Princep

- The RLA doesn't think that the changes are moderate at all and will have quite serve implications for the private rented sector and contain a significant numbers of unintended consequences.
- The RLA is concerned about the criteria for suspending Section 21 and they don't believe that the evidence suggests that the problem is as bad as has been alleged.
- Concerned that although retaliatory eviction does occur, a pinch of salt needs to be taken when using data based on survey's purely of tenants who have had problems.
- In effect the Bill could have the opposite effect of what is hoped, penalising good landlords by enabling tenants to come up with spurious reasons to prevent a Section 21 notice being issued.
- The level of disrepairs could increase as once the 6 month moratorium kicks in there is not incentive for landlords to undertake the repairs quickly.
- A lot of landlords use Section 21 because of the vagaries of Section 8 which means that often there is a reason for using a Section 21 notice, usually around issues concerning rents not being paid.
- On the issue of gas safety certificates, there is a problem about social and private sector landlords having difficult gaining access to undertake the annual checks and it would be perverse that a landlord couldn't issue a Section 21 notice simply because the tenant refused access to a property in this way.
- In relation to anti-social behaviour, Section 21 is the only way to get anti-social tenants out as it is very difficult to prove such behaviour and gain possession under Section 8.
- Local authorities don't have the resources to cope with potential increases in workload.

## Questions

- **Andy Love MP** raised questions about the stark differences between various organisations about the extent of retaliatory evictions. The law, he said, needs to address significant problems.
- **Sarah Teather MP** responded by saying that this isn't necessarily the case. There are many things, she argued that are legislated on not because they are major problems statistically but because they remain serious issues. Furthermore, taking Landlord Action's figures of 2% of evictions being revenge evictions, she argued that out of 9 million tenants this was quite a big number making the Bill worth pursue. She said that she was reluctant to get into a detailed debate about the extent of the problem. What she did say however was that she, as a constituency MP along with a number of other advice organisations and other MPs have encountered it and can identify the problem of retaliatory evictions as being a serious problem requiring action. Surveys of most young professionals in London, she said, would find that many are nervous about raising complaints about their property. However, she noted that the Bill is as much about behaviour change to give tenants the confidence they need to raise concerns without fear of eviction. She disagreed with a number of the points made by the RLA, stating that the Bill will not get rid of Section 21 notices, and will restrict their use in very certain circumstances where the local authority has inspected the property and demonstrated that there is a serious problem. Similarly, it will not prevent tenants being evicted for rent arrears or for anti-social behaviour. The complaint by a tenant would also have to be made prior to a Section 21 notice being served. She therefore doesn't accept that the Bill will remove protections for landlords and said that it isn't in hers or her constituents' interest to undermine the importance the sector plays in providing housing. Part of having a flourishing private rented sector is about both sides having confidence and basic levels of protection.
- **Oliver Colvile MP** asked the witnesses if anyone had undertaken any assessment of the impact the Bill would have on the ability of the private rented sector to flourish.
- **Dave Princep** responded by saying that whilst the proposals haven't been published in detail, what could happen is that good landlords could face spurious complaints made by tenants at the last minute.
- **Sarah Teather MP** intervened to say that this wouldn't happen as her Bill would require tenants to raise the complaint before the Section 21 notice was served. She said that the Bill is not seeking to frustrate landlords, except where a landlord is failing to keep a property to a decent standard.
- **Oliver Colvile MP** asked when the Bill is likely to be published.
- **Sarah Teather MP** responded by saying "very soon" and that they were in the final stages of looking at the detail.
- **John Gallagher** said that on the issue is about the statistics since even though revenge evictions happen only in a small number of cases, it is usually vulnerable tenants who face the problem and do not have the confidence to complain and are most likely to have a landlord who would use Section 21 notices in response to a complaint. The Bill, he said, will not impact on good landlords and will, if anything, improve the profile of the private rented sector.
- **Oliver Colvile MP** asked what impact the Bill might have on the number of landlords willing to rent property out.
- **Dave Princep** said that the working group that looked at issues around retaliatory evictions as it applied to the Green Deal, established by DECC, found that there was no clear, unbiased evidence to suggest that this was an issue. The only unbiased statistics, he said, was the English Housing Survey which showed that only 7% of all tenancies have been ended by the

landlord asking the tenant to leave. Of those, he said, the majority was where the landlord either wanted to move back into the property or sell it. As such, 3% of tenancies were ended by landlord for all reasons. The 2% figure from LandlordAction, he said, was 2% of the landlords who have taken action to regain possession. As such, it is actually 2% of the 7% of tenancies ended by a landlord, which works out at about 36,000. It's not, he said, 2% of all landlords.

- ❑ **Sarah Teather MP** said that 36,000 was still a significant number that should bother people.
- ❑ **Dave Princep** said the correct figure was actually 3,600 not 36,000. And added that a majority of good landlord don't go for possession and instead deal with their tenants on a voluntary basis.
- ❑ **Oliver Colvile MP** said that there is a problem of some landlords who own just a couple of properties who don't quite understand what being a landlord entails and what they are expected to do.
- ❑ **Sarah Teather MP** said that these kinds of issues should be addressed by organisations such as the RLA. Reputation of the sector, she said, matters to landlords.
- ❑ **John Gallagher** returned to the statistics citing a survey carried out by Shelter in January of 4,500 private tenants, authenticated by YouGov. This showed that 1 in 8 tenants, 12%, had not asked for repairs to be carried out on their homes or challenged a rent increase because they feared evictions. 1 in 50 (2%) had been evicted or served notice because they had raised a complaint with the local authority or the landlord. Whilst he accepted the 2%, he said that meant 90,000 households and 200,000 individuals.
- ❑ **Dave Princep** said that the figures are at odds with what the English Housing Survey and said that the tenants surveyed for Shelter were not 'average' as they had rates of dampness four and a half times the national average, problems with carbon monoxide two thousand times the national average and one in eight of them had been flooded. They were, he said, very poor properties compared to the English Housing Survey statistics. The RLA is proposing that tenants should have the right to challenge a Section 21 notice where they feel it is retaliatory in nature meaning a landlord would then have to prove and explain why they had issued the notice. He can imagine tenants making complaints to stymie a Section 21 notice. Local authorities, he said, are introducing triage systems to prevent the need to inspect all complaints. A recent survey of environmental health officers, he said, showed 83% of them think that funding cuts in the sector are critical. Also said that anecdotally he had heard that several councils are simply getting rid of their regulatory teams because they do not have the funding to provide this function, putting landlord in difficult positions if a tenant makes a spurious complaint. He also said that he was concerned that Hazard Awareness Notices were mentioned as no appeals can be made against these. As such, even if the procedures are undertaken incorrectly, it would stymie the landlord from being able to issue a Section 21 notice.
- ❑ **John Gallagher** said that Shelter has spoken to the Chartered Institute of Environmental Health who support the Bill because, he said, their members will be able to cope and welcome the protection for tenants to come forward and make complaints. He said also that Environmental Health Officers are not easily taken in by spurious complaints. EHOs, he said don't and won't issue notices to improve to landlords lightly.
- ❑ **Andy Love MP** said that the meeting had gone full circle and went back to the issue around quantifying the extent of the problem saying that the Group needs some authoritative figures. He asked Shelter if its survey data had been independently validated by YouGov.
- ❑ **John Gallagher** confirmed that it had been.

- ❑ **Andy Love MP** said that therefore the sample is representative as such there can be confidence in these statistics. He said that he was worried about LandlordAction's 'off the cuff' study which only questioned its clients. As such, he pressed the RLA as to how much confidence it should have in the figures it was quoting.
- ❑ **Dave Princep** said that English Housing Survey statistics can be relied upon. He said that the total number of possessions in their survey is the same as the number for just retaliatory evictions in the Shelter survey. He explained that the 7% of tenants in the English Housing Survey who said that their contracts had been ended by the landlord is taken from a survey of those tenants who have moved from rented properties in the last three years and refers to the action of previous landlords.
- ❑ **Sarah Teather MP** asked if this figure was for those landlords who sought possession.
- ❑ **Dave Princep** said that it was the total proportion of those landlords who had asked the tenant to leave, not seeking possession. The numbers of landlords seeking possession, he said, are much lower.
- ❑ **Sarah Teather MP** said that whilst statistics can be traded it will not move the debate forward and argued that her experience as a constituency MP persuaded her that this legislation was needed irrespective of the number of cases involved because of the vulnerability of the tenants. She argued that the lack of legislation to protect them "stinks".
- ❑ **Andy Love MP** said that he accepted this point that the Bill is a rational response. The problem, he said, is that if the figures are low, then the argument will be used that the problem could be resolved through other means rather than legislation.
- ❑ **Sarah Teather MP** said that it can't be dealt with through means other than legislation. She questioned also why good landlords would be frightened of the proposals.
- ❑ **Oliver Colvile MP** said that whilst Ms Teather might not intend the Bill to abolish Section 21 whether she felt that there are people out there who might look at the Bill as an opportunity to do so.
- ❑ **Dave Princep** said that there are some people who object fundamentally to the concept of no fault dismissals and want to see Section 21 notices done away with altogether which, he said, would undermine institutional investment in the private rented sector. The RLA, he said, believes it to be very dangerous to proceed with legislation that could have a number of unintended consequences without the statistics to back it up. He suggested that the English Housing Survey needed to investigate in more detail why evictions take place. He noted that the 'fear' of retaliatory evictions is another thing, noting that in the social sector there are fears of such evictions despite this not affecting them.
- ❑ **Sarah Teather MP** said she can't see how the Bill could be used to get rid of Section 21 notices.
- ❑ **Andy Love MP** agreed that he didn't believe Section 21 was under any threat at all. He went on to ask Dave Princep with the protections in place that mean a local authority has to properly investigate a complaint before Section 21 rights are suspended, does this not satisfy the RLA about avoiding spurious complaints being made by tenants.
- ❑ **Dave Princep** said that the problem is the length of time between a tenant complaining and the council official inspecting a property.
- ❑ **Andy Love MP** asked John Gallagher whether, as lawyer, he believed a tenant could use the legislation to make spurious complaints to hold up evictions.

- ❑ **John Gallagher** said that there are adequate protections to prevent vexatious complaints. He noted that Section 21 notices are restricted from being served where a landlord has failed to protect a tenant's deposit and that this hasn't destroyed the private rented sector.
- ❑ **Sarah Teather MP** agreed.
- ❑ **Oliver Colvile MP** asked if the Bill would cover social rented housing.
- ❑ **John Gallagher** said it could apply to the social sector where assured short hold tenancies are used.
- ❑ **Sarah Teather MP** said that some, but not all socials sector tenancies are assured short hold tenancies. She said also that it is often easier to bring pressure to bear on housing associations failing to look after their properties than individual private sector landlords.

## APPENDIX 1: WRITTEN EVIDENCE

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The Group received 33 individual items of written evidence to assist with the inquiry, all of which can be found online at <http://www.rla.org.uk/documents/download.shtml?pid=2372>. A list of those who provided evidence can be found below:

1. Council of Mortgage Lenders
2. Generation Rent
3. North West Landlords Association
4. South West Landlords Association
5. Landlord Action
6. Shelter
7. Residential Landlords Association
8. Belvoir Peterborough and Cambridge
9. Portsmouth and District Private Landlords Association
10. Association of Residential Letting Agents
11. Essential Living
12. Exeter Properties
13. Rajinder Nijjhar
14. Competition and Markets Authority
15. British Property Federation
16. Citizens Advice Bureau
17. Crisis
18. Legal for Landlords
19. Tactile Limited
20. Alena Breckova
21. Cooper Lets
22. Race Equality Foundation
23. Lynne Zilkha
24. Edward Leetham
25. Pace PLC
26. Consider-Rate Ltd
27. Landlord Zone
28. The Leader's Group
29. Sara Gee
30. Electrical Safety First
31. Belvoir Lettings
32. Shelter – Supplementary Evidence
33. Harry Dhariwal