Milbourne Chambers
Glebeland street
Merthyr Tydfil

Tenantiaid Cymru Welsh Tenants

Y Pwyllgor Cymunedau,
Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
CELG(4)-14-15 Papur 4 / Paper 4

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Christine Chapman AM, Chair
Communities, equality and Local Government Committee
National Assembly for wales
Cardiff Bay
Cardiff
CF99 1NA

7th May 2015

Dear Christine,

Find attached our response to the written questions the committee requested. If I can be of any further assistance please advise.

Yours sincerely

Steve Clarke CIHM

Managing Director

Communities, equality and Local Government Committee
Renting Homes (Wales) bill

7th May 2015

There were a number of issues that the Committee did not have an opportunity to explore during the session, due to time constraints. Our response to these are set out below:

1. **You will know that the Bill requires landlords to keep their property in good repair and ensure it is fit for human habitation. In your written submission you have called for the Minister to introduce regulations that ensure mandatory protection from carbon monoxide poisoning and 5 year mandatory electrical safety checks to reduce death and serious injury by fire or poisoning. You have also called for prospective renters to have access to any notices served by the local authority in the past 5 years and to make it an offence not to provide such information.**

   Do you have a view on whether the Bill will improve the condition of dwellings in the private rented sector?

   We would also welcome your views on whether it is right that enforcement of these conditions is effectively left to contract-holders taking the matter to court.

Response:

Q1 Will the bill improve the conditions of dwellings in the PRS?

1.1. Part 4, Chap 2 s91-s92 places emphasis on the need to ensure at the '**start of tenancy'** that the property is **fit for human habitation** and '**during the tenancy'** (92) **kept in good repair** (Structure and exterior, pipe etc. upon which most repair problems occur i.e. rising damp, roofing, guttering etcetera.)

1.2. We interpret this as meaning at the start of any New tenancy the landlord will **need to inspect the property and ensure it complies with fitness for human habitation, according to the guidance produced by Welsh Government**. s94 subsection 2 also enables Ministers to make regulations in respect of standards of fitness and provisions in relation to the housing health and safety rating system (Housing Act 2004). s93 also makes provision for making good any damage caused by works or repairs in order to comply with s91-92.

1.3. The bill simply reinstates current provisions. It doesn't repeal the responsibility of the local authority in relation to the Housing Act 2004. But also allows the contract holder to do the following;

a) make a judgment as to whether the landlord is committed to improving the condition, via stating improvements requested and agreed into the contract

b) informs the contract holders of their rights to redress, if they do insert and then don't deliver

1.4. We recognise that it does not for example, set a benchmark standard for the sector in the way WHQS has done for social housing sector. As stated in our evidence session, we see the Renting Homes (Wales) bill and the Housing (Wales) Act 2014 coupled with evolving regulations, as a gradual process towards improving housing in the PRS - and not as a means to improve provisions on its own.

1.5. What the bill does provide is the ability of potential renters to 'take a view as to the condition and cost' and make a judgment as to whether they would want to see conditions improved prior to signing the contract and have these added to the contract as additional terms. This can be an empowering process – provided

1) contract holders are aware of their ability to add terms

2) the landlord would agree to the additional terms

1.6. This process does however have consequences in;

1) the timing of a response from the landlord particularly if the letting agent is handling the process and needs to obtain the consent of the landlord, and

2) whether the landlord will simply choose not to rent the property to the informed tenant as a consequence of their request

1.7. Landlords are required to provide an EPC (Energy Performance Certificate) to give the property an energy rating & provide an in force Gas safety Certificate on let. Although the former provides general information as to the energy consumption (at the point of assessment), it's of little use as a tool to improve energy performance in itself. Tenants may wish to look at the EPC and try and commit the landlord to improve the dwelling through insulation or updating the heating system et cetera over time. However there's nothing to prevent the landlord from saying – we will not let the property on that basis or terminate the fixed term contract before the due date.

1.8. What the Part 2 does do, is seek to empower the consumer to seek improvements and try and commit the landlord to addressing any disrepair or standards. This is why we believe it important to have the full facts about the property and any in-force or satisfied prohibition notices as well as the information available through the landlord registration process.

1.9. The approach used in the bill does rely on the landlord's discretion on whether to improve the property prior to let – and to make it more attractive for renters. However, there is little evidence that empowering consumers in this way will have the desired effect of improving the property prior to let.

1.10. We are therefore of the opinion that using the 'empowered consumer' to ensure improvements or disrepair will not on its own addressed improvements in the

PRS stock. Neither will the introduction of WHQs type standard where properties will often be classed as 'acceptable fails' because of age (pre 1919) or those with heritage status.

1.11. Our view regarding improvements is more progressive. We believe that investment and improvement could only be dealt with via conditionality on taxation allowances, exemption from value added tax on repairs and improvements and incentives to improve, such as grants and regeneration programmes and not through a bill that deals ostensibly with tenancy terms and conditions as presented. **It is our view therefore that Part Four Chapter 2 on its own will not improve the conditions of ALL rented properties**.

Q2 whether it is right that enforcement of these conditions is effectively left to contract-holders taking the matter to court.

1.12. It is our view that while access to justice via the courts should be a route available to contract holders, it should not be the only route to rely upon to resolve disputes, including those related to repair.

1.13. The contract law approach is often a black and white approach with substantial costs incurred defending or enforcing entrenched positions. This route is also becoming more difficult via restrictions on legal aid, stresses on voluntary services and the stresses and strains of self representation.

1.14. We would suggest that matters could be resolved more quickly via an effective complaints process as outlined in 'codes of practice', moving to mediation or onto an independent ombudsman as arbitration services with the power to make awards and for the courts to enforce them if necessary.

1.15. It is our view that the majority of cases can be resolved (with advocacy support) through dialogue and discussion. However, this does involve better education regarding rights and obligations for both landlords and contract holders and a coordinated national approach to tenant support.

1.16. We would wish to see the link made between the Housing (Wales) Act 2014, codes of practice, and a 'charter' that commits landlords (particularly those receiving housing benefit subsidy) to commit to the charter in return for receiving state aid via HB or grants.

1.17. We would also suggest that better 'on line assessment' and dispute resolution processes could be used either as a 'pre-case assessment' before use of the courts or other arbitration services.

2. In your written submission you have stated that you support the removal of ground 8 mandatory eviction, to reflect human rights thinking on issues of proportionality and removing difference on grounds for eviction for those renting from housing associations by bringing them into line with those for local councils.

In response to the consultation, Community Housing Cymru argued that local authorities are not subject to the same lending constraints as housing associations so it is reasonable to retain the ground for serious rent arrears. We would be grateful to know how you would respond to the comments by Community Housing Cymru.

Response

2.1. The primary concern from Community Housing Cymru is that those in receipt of housing benefit are more likely to accumulate rent arrears as a consequence of welfare reforms - and that this could be exacerbated with the introduction of direct payments under Universal Credit.

2.2. The means available to landlords to recover rent arrears include a voluntary payment plan (through exercising Pre Court Action Protocol) or to seek possession through the courts, which is often suspended on condition that the tenant would pay a set amount off the arrears.

2.3. Generally speaking, voluntary agreements are often higher than court determined repayments. The typical amount a court would impose is £3.65 (£14.60 per 4 weeks) as a deduction from welfare payments (for example) in addition to the rent.

2.4. Landlords were naturally worried about arrears increasing sharply with bedroom tax and direct payments and sought to challenge this and find a solution with the DWP who accepted the general argument that arrears would increase due to Universal Credit paid 4 weeks in arrears.

2.5. For existing tenants already in arrears of (*Housing Associations 43,685 (2013) with tenants 13 wks or more in arrears being 2,851 (2013)*[1] there is concern that ground 8 would be used more frequently as a consequence of these risks. Although the figures may seem high, arrears have decreased by -2% since 2010.

2.6. When Universal Credit begins, social tenants will have no benefit income for 5 weeks meaning that the UC system was set up to see all tenants go more than 4 weeks in arrears straight off. Landlords are therefore encouraging tenants to catch up to 4 weeks in advance by paying additional £5 per week.

2.7. However the most significant change is that the Housing Association sector have agreed preferential terms for arrears collection with the DWP under '**The Third Party Deductions Scheme**' (TPDS) to ensure rent arrears are kept under control in the future.

2.8. Lord Freud, the welfare minister, announced that the DWP deductions from tenant benefits would be between 10% and 20%, as opposed to the court average of £3.65 per week, **meaning that up to £80 per month could be deducted at source** thereby enabling the social housing sector to recover significantly more money to

[1] Source: Stats Wales Jan 2015

cover rent arrears and hence mitigate the need to retain ground 8 to halt the escalation of arrears.

2.9. This puts social landlords in a much better position than previously and should also reassure lenders of the ability of social landlords to hold down rent arrears via exercising the TPD rule. *See Appendix 1 FOI DWP request*.

2.10. With the TPD scheme landlords have a better way of enforcing payback for rent arrears directly through the DWP. **So the argument that ground 8 needs to be retained in order to maintain confidence in rent collection is now largely mitigated.**

2.11. We are also concerned that tenants cannot present a defence which is contrary to the principle of justice. The other points have already been well documented i.e. the courts caution as to the proportionality argument while tenants also exposed to the risk that ground 8 can be used for eviction to mask other grounds.

2.12. Ground 8 offers no judicial discretion which is worrying and contrary to the principles of fairness and justice which the Senedd upholds.

ABANDONMENT

3. **In relation to abandonment, you will have noted that the Bill proposes a procedure that will allow a landlord to recover possession of a property without the need to obtain a possession order from the court. Do you have a view on how the proposed abandonment procedure could impact upon vulnerable contract-holders, for example people who may spend prolonged periods in hospital**.

Response:

3.1. As a general principle we do not support eviction of someone's home without recourse to the courts and judicial oversight. The issue as presented by landlords is the fear that tenants will walk away from the property and not make payments of rent; sub-letting or leaving the property unattended and hence potential to cause damage to the property and to possibly neighbouring properties.

3.2. In the first instance, there are already provisions to recover possession under rent arrears where the argument can be put before the courts (with the exception of ground 8).

3.3. Where the contract holder is in receipt of housing benefit the Third Party Deduction Scheme can be initiated to recover arrears at high amounts than previous. There are also mechanisms to recover costs through the county courts if abandonment has caused damage to the property, that includes a claim for rent arrears and other costs. Landlords can also use the accelerated possession process

and obtain a fast track high court writ to obtain possession if they did feel the tenant had absconded and this was proven in court.

3.4. Our concern is that there are many circumstances where 'perceived abandonment' could be used by the landlord, where a person may be held on remand while criminal conviction is being sought, but may prove to be ultimately innocent or where the CPS drops charges. Or when a person has a long stay in hospital, has no friends or relatives or spends extended periods abroad. Or indeed, where their work has taken them abroad, armed forces or extended work contracts. In such circumstances it may not always be possible to inform the landlord in advance or have the ability to defend against landlords actions.

3.5. The bill already provides protect against illegal sub-letting as this would constitute a breach of contract. There is also additional protection for landlords under 'The Prevention of Social Housing Fraud Act 2014' to protect landlords on sub-letting and housing benefit or other fraud.

3.6. Our view is that the security of someone's tenure should never be terminated without recourse to the courts. It is not sufficient to say oh well, we made a mistake, we will offer you somewhere else, where somewhere else may not be appropriate for the tenant, or indeed available from the landlord.

3.7. There is also no protection for existing occupiers, where the tenancy is in the name of the contract holder and the contract holder dies and or leaves their partner and children in the property. If they were unmarried they may not be able to succeed the tenancy or have the agreement of private rented sector landlord to take over the tenancy. We could have situations where death could be interpreted as abandonment leaving existing partners on the street with no defence through the courts. There is no amount of guidance that can be developed to compensate for the use of judicial discretion, this should always be sought on matters of tenure security and is a fundamental principle in human rights conventions.

4. In relation to the new provisions relating to anti-social behaviour, you have stated that you believe the 'prohibitive conduct' clause should be amended to reinstate the requirement to evidence a criminal conviction. We would be grateful if you could expand on these comments.

Response:

4.1. We are concerned that landlords may be misled by potential complainants and inadvertently seek eviction based on bias of neighbours who may be opposed to lifestyle choices or via discrimination. Landlords or small agents who would have this power could be exposed to litigation as a consequence.

4.2. Having the tool of 'proven criminal conviction' in order to evidence anti-social behavior provides a level of certainty and security for both the landlord and the tenant.

4.3. Taking matters to court will also involve substantial costs if defended against. We would not want to encourage an adversarial process that simply increases costs for both sides.

5. Finally, you will have noted that the Bill uses the county court (or High Court) for a number of purposes. In your written submission you suggested that the Residential Property Tribunal could be a suitable body to progress mediation services and that this could avoid costly court action. We would be grateful if you could expand on this point and comment on how you believe the Residential Property Tribunal, or an alternative body, could be developed to reduce the need to go to a court in order to resolve a dispute.

Response

5.1. We would always recommend the use of good complaint processes to enable contract holders to make complaints and have them heard. Good landlords or agents should always adhere to regulations in the social housing sector and or use of codes of practice and other means to ensure that complaints can be resolved quickly and fairly. This however is patchy, particularly for private tenants.

5.2. The Residential Property Tribunal Service is a useful service to obtain independent arbitration of disputes. However, the process does attract fees commensurate to the charges being in dispute, if the claims are substantial, then tenants would want to ensure they have adequate representation which could increase costs even further.

5.3. There is a waiver process for people claiming certain benefits, however again depending on the complexity of the case they may want to engage professional support both to make the case and to defend or enforce a right. The problem is that it is little known about. The service cover rent assessments, leasehold valuation tribunal and general residential property issues such as housing health and safety rating system.

5.4. Welsh Tenants has used the residential property tribunal in the past to achieve recognition for park mobile home residents as a recognised constitutional group following a site owners refusal to recognise the group.

5.5. Although the PST can make orders, it cannot enforce them and may still require the tenant seeking a county court order to enforce their judgement. The pre-trial process also enables the parties to present a case prior to trial which is also useful. One safeguard that could be put in place if the case proceeds, is a guaranteed access to support if economic or social vulnerability was proven.

HMCT

5.6. Other routes that could be considered are extending provisions for use of Her Majesties Court Tribunal Service, via the first and upper tribunals through too the court of appeal. This system could be used as specialized Housing Court Tribunals. The HMCT process already deals with estate agents, information rights et cetera. The first tier tribunal is accessible and relatively straight forward to use with opportunities to take cases to the upper courts. However, the courts look mainly at administrative issues and may not currently have the resources to visit or conduct independent assessments via for example surveyors. The major benefit is that HMCTS is free for people to use, accessible and relatively informal.

5.7. We would welcome better distinction between use of the courts as a final means to enforce contractual obligations and the use of alternative dispute resolution processes. It is our belief that court action should always be a last resort. In this respect we would welcome the consideration of access to the use of Her Majesties Court Tribunal Services as a pre-court action process.

5.8. Disputes regarding defence against section 21 for example where repair obligations, harassment or contractual undertakings in supplementary terms have not been kept may not be idea for HMCTS.

5.9. There are clearly several circumstances where recourse to the courts would be appropriate or indeed where the courts could recommend mediation to resolve a dispute. Again our concern is the accessibility of an experienced solicitor to ensure all the processes of law are complied with.

5.10. Tenants have stated that the danger of having recourse to the courts as the only means will mean that only the most educated consumer would use courts to enforce their rights or defend against the landlords actions. This would only work if there was a national coordinated means of access to advice and support.

Appendix 1.

Central FoI Team
www.dwp.gov.uk
Caxton House
6-12 Tothill Street
London
SW1H 9NA

Email: [DWP request email]
Our Ref: IR 654
Date : 14 January 2015

Dear Glenys Harriman,

Thank you for your Freedom of Information (FoI) internal review request received on 18 December 2014. You asked:

> "Now that third party deductions for rent arrears under Universal Credit are to be taken at a rate of no lower than 10% of the appropriate standard allowance and no higher than 20%, could you point me in the direction of any guidance on when the higher amount should be used in preference to the lower?
>
> I know that the 20% deduction is low priority in the order of which deductions should be taken first when the 40% overall maximum deduction would otherwise be exceeded, but I cannot see any regulation or guidance stipulating when a 20% rate should be applied in preference to a lower rate."

I understand that you would like to clarify your FOI request as: I understand the priority order of deductions but have not seen any guidance etc. which explains whether there is any discretion - and if so on what grounds- to prefer a 10% deduction even where it is possible to take a 20% deduction (possible because any other deductions would not take this over the overall 40% limit.) And, similarly, should the DWP decide to pay at 20%, on what grounds could a claimant request that the lower 10% rate be taken instead (eg if suffering hardship)?

In response to your request, I can confirm that the handling of your original request and response has now been appropriately reviewed and that the official was unconnected with the handling of your original request.

Third party deductions as provided for in The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 are discretionary (i.e. the Secretary of State can require the third party deduction to be made "in such cases and circumstances as he sees fit"), allowing the Department to take relevant factors are taken into account when deciding

whether to order payment of the rent arrears and to what extent. Where the Secretary of State decides that it is in the claimant's best interests to order repayment of the arrears he can do so at an amount equal to between 10% and 20% of the claimant's standard allowance. Where a rent arrears deduction is made, we do so in the claimant's best interest to avoid the severe hardship caused by eviction when all other options for recovering arrears have failed.

In practice, we take a total amount from Universal Credit equal to up to 40% of the claimant's standard allowance for all the deductions that are required, so would take the minimum 10% and up to a further 10% to repay rent arrears depending on other deductions that sit between the minimum and maximum deductions on the priority order. The 40% maximum deduction is the safeguard we have put in place to protect claimants from excessive deductions.

We will consider a claim for hardship to reduce the amount the claimant repays for rent arrears.

The repayment rate will not be reduced to less than the minimum 10% rate under this process. I attach the information note from 19/12/2014 that was sent to staff setting out the guidance for dealing with such requests.

I hope this has answered your question fully. If you have any queries about this letter please contact the Department quoting the reference number above.

Yours sincerely,

WP Strategy FoI Team

Attachment: UC Continuous Improvement Note 325/14
