

Response to Consultation Document:

BUILDING SOUND FOUNDATIONS

**A Strategy for the Private Rented Sector
in Northern Ireland**

Issued by the Department for Social Development

July 2009

1.0 Introduction

Established in 1964, Housing Rights Service has 45 years experience of providing legal advice and representation to people in Northern Ireland with housing problems. We also assist frontline agencies and housing/legal professionals to meet the housing advice needs of people who contact them through training, legal information and advice consultancy.

A significant proportion of our housing advice work concentrates on dealing with legal issues in the private rented sector. Consequently, we have built up considerable expertise in this area. This, coupled with a client centred approach to our work, enables Housing Rights Service to provide informed comment on current issues and potential policy solutions for the sector.

Housing Rights Service welcomes this opportunity to respond to the Department for Social Development's (DSD's) consultation 'A Strategy for the Private Rented Sector in Northern Ireland'. In particular, Housing Rights Service is supportive of the DSD's vision and with the goal of establishing a longer term strategic approach for the development, management and support of the sector.

2.0 Context

The private rented sector has an important role to play in meeting housing need in Northern Ireland. It offers flexibility as people's circumstances change, and choice with regard to location, size and price. Generally, private rented accommodation is of good quality and managed professionally. In today's housing market, where homeownership for many is unobtainable and social housing is scarce, there is increasing reliance on the private rented market from groups of people who would not necessarily view it as their tenure of preference. It is likely that demand for this form of tenure will continue to grow for the foreseeable future. Therefore it is pertinent that the Northern Ireland Executive is developing a strategy with a longer term view.

As part of this development we believe it will be important for the government to consider the following strategic issues:

- how to deliver a new and affordable housing supply in the sector; and
- the impact of potential disinvestment from the market as a result of economic conditions.

The 'cottage industry' nature of the sector is volatile and often tied to the mortgage market. However, that is not to say that this segment of the market should not be supported or encouraged. It is nonetheless important for the Northern Ireland Executive to encourage higher levels of institutional investment to bring about affordable and well managed private properties to rent.

It is difficult to predict the reaction of the market to changing economics, particularly amongst recent buy to let investors. Limited security of tenure and the ability of landlords to sell their properties with relative ease (even during a contractual tenancy period) could potentially mean significant numbers of tenants losing their accommodation. It is therefore important the strategy considers whether the current safety nets in place would be adequate to cope with such circumstances.

3.0 Experience of Housing Rights Service Clients

The private rented market is complex and, because of the general transient nature of the sector, it can be extremely difficult to collate relevant data for analysis and policy development purposes. Research commissioned by the Housing Executive has been very helpful in terms of collating qualitative information on tenants' and landlords' experiences and opinions. It showed that 89% of tenants surveyed had a good relationship with their landlord/agent. This supports our experience that it is a minority of private landlords and agents who, often through ignorance rather than malice,

operate outside of the legal framework or on the margins of unacceptable practice. We acknowledge the difficulty in determining how widespread this practice is, however, in the absence of any other evidence Housing Rights Service experience shows that it is significant enough to warrant government intervention.

The consultation document attempts to contextualise the problem of bad practice however we feel the method used is misleading. The DSD indicates that of the estimated 80,000 private tenancies in Northern Ireland, Housing Rights Service received 3900 enquiries from private tenants in 2007/08 "reflecting a small proportion". We have concerns about this point and would like to clarify that this fails to take into account the numbers of enquiries to other agencies (e.g. Citizens' Advice, independent advice agencies, councils and constituency advice centres). Housing Rights Service is keen to acknowledge that the majority of landlords do act within the law; however, the problems which private tenants face are likely to be more wide spread than is portrayed in this document.

In 2008/09, Housing Rights Service dealt with almost 4000 enquiries in the private rented sector which represents 30.5% of our total advice work. This, we believe, is disproportionately high given that the sector itself represents only 11.5% of all housing stock (81,000 properties)¹. The vast majority of clients who contact us have a complaint about their landlord's practice and are normally unaware of the legal position. They are usually renting at the lower or slum end of the market, in receipt of benefits or on low incomes and a significant number would be considered as 'vulnerable'. Our housing advisers have noted that these clients are more likely to experience issues such as:

- literacy problems;
- language barriers;
- mental ill health;
- addiction and dependency issues (alcohol & illegal drugs); and
- financial exclusion.

¹ 2006 House Condition Survey, NIHE

The main problems faced by our clients are:

- lack of awareness of legal rights (e.g. no rent books; statement of tenancy terms; unfair terms; use of English tenancy agreements)
- affordability (e.g. housing benefit shortfalls; landlords/agents overcharging even when housing benefit covers full rent; upfront letting charges; deposit retention)
- eviction (e.g. arrears; retaliatory; illegal notice periods, unlawful eviction)
- harassment (e.g. landlord/agent entering without permission)
- disrepair (e.g. delays; disputes; lack of enforcement action).

In our experience, landlords/agents with the worst practices are more likely to let to vulnerable tenants. These tenants are least likely to be able to exercise their rights. It is for this reason that Housing Rights Service supports the need for regulation of the sector. This view is also supported by the vast majority of private rented sector tenants. Housing Executive research also showed that 84% of tenants were in favour of increased regulation (i.e. similar initiatives to those operating in other jurisdictions).²

4.0 Developing a Strategic Response

The draft proposals fall into the five broad themes of: knowledge and awareness, tenancy management, security of tenure, fitness standards and improving accessibility. In addition to responding to the specific questions raised in relation to the draft proposals, Housing Rights Service has also offered a number of other related comments which we believe are important for the DSD to consider. Overall, we are very much in favour of the DSD bringing a new strategic focus to developing the private rented sector and believe the proposed approach and content are broadly correct.

² NI Housing Market Review and Perspectives 2009-12, NIHE

Housing Rights Service accepts that the sector will be subject to ongoing development and that this stage a firm foundation is required to facilitate this process. However, we believe that the foundation is missing from this consultation. It has been Housing Rights Service stated view that the starting point for a better regulatory framework is the establishment of a Northern Ireland register of landlords/agents. In our opinion, this is vital in enabling Councils to better target enforcement at the worse cases. Housing Rights Service is very much in favour of a 'light touch' approach which will allow the vast majority of well intentioned landlords to carry on with their business without interference. This would be in contrast to the current Houses in Multiple Occupation (HMO) licensing based approach. In our view a register should impose no barriers to entry. In other words, landlords/agents would not have to show compliance to be registered and enforcement would only be initiated on a complaints basis. A further benefit of registration would be better communication with landlords/agents, for example, to disseminate information and offer training to assist them in carrying out their business. We have listed below what we see to be the main characteristics of a Northern Ireland Landlord Register:

- the register would be run by one independent organisation (procured by government)
- landlords and agents would be required to register annually and pay a small fee (per landlord) to cover administration costs
- minimal information would be required: name, address, contact number and property address(es)
- upon registration landlords/agents would be given:
 - a registration/license number which they would then use in all relevant correspondence (e.g. tenancy agreements; housing benefit applications etc)
 - an information pack containing standard forms and information for tenants, as well as a professional code of conduct setting out their basic legal requirements and where to go to if a problem or dispute arises.

Housing Rights Service is greatly disappointed that the DSD could not see beyond the costly experiences in the Republic of Ireland and Scotland. We are aware that the DSD's consultation document was drawn up prior to the proposals being put forward by the Department for Communities and Local Government (DCLG) in England and Wales. These proposals have been developed in response to independent, evidence based research which recommends light touch mandatory registration for private landlords. DCLG views the introduction of a national register as vital way of communicating that being a landlord is an important activity in itself with linked responsibilities and skills. The suggested light touch approach to registration would recognise that the vast majority of landlords are well intentioned and offer a good service to tenants. Housing Rights Service strongly supports DCLG's view and recommends that the DSD seriously considers adopting a similar strategic approach locally. (Further detail on our views is included under the section 'Tenancy Management Issues' from page 12.)

5.0 Specific Responses

Knowledge and Awareness

The consultation document highlights the general lack of awareness amongst landlords and tenants of the current legislation and acknowledges that more needs to be done urgently to address this problem. It suggests bringing forward a programme of work covering the implications of the Private Tenancies (Northern Ireland) Order 2006.

Q1 Do these proposals address the key points adequately?

Since the implementation of the Private Tenancies Order, the types of enquiries that Housing Rights Service receives remain unchanged, indicating that the impact of this legislation has been minimal for most of our clients. We agree that this, in part, is due to lack of awareness. With regard to

enforcement, we believe that some Councils need to be more proactive and that their role in relation to the private rented sector needs to be promoted.

Housing Rights Service welcomes the programme of works the DSD is proposing to bring forward. We would encourage the DSD to ensure that the communication methods and information sources cater for the diversity of private rented sector tenants and landlords.

For the purposes of ensuring a more proactive approach to monitoring and compliance, Housing Rights Service would also recommend that the proposals provide for appropriate advice and guidance by the DSD to local Councils. Raising the profile of the current legislation and clarifying the Councils' requirements in terms of monitoring and enforcement should help address concerns regarding inactivity by some.

Q2 What further action is needed?

It is important that the programme of works is carried out in conjunction with relevant training, advice and information providers. Housing Rights Service produces a wide range of information materials on Northern Ireland housing law and practice. The 'Housing Rights Manual' is the most established of our resources. This legal reference resource is used by advisers and housing/legal professionals, is regularly updated, and contains a detailed section on the private rented sector. We also have an advice website for the public, www.housingadviceNI.org, (supported by the NI Housing Executive) which contains comprehensive advice on renting privately. Other information produced by Housing Rights Service relating specifically to the private rented sector includes:

- a detailed Guide and summary Fact File on the Private Tenancies Order;

- a Fact File on the Ombudsman for Estate Agents;
- a Fact File on Local Housing Allowance; and
- a Housing Advice Tool Kit.

Housing Rights Service also has an established training service. Between 2008/2009, representatives from 95 organisations attended courses including district councils, the Housing Executive, housing associations as well as voluntary and community agencies. We have also assisted in the delivery of training to HMO landlords in conjunction with the Housing Executive. Over the years, we have developed a number of courses relating to the private rented sector including the following:

- accredited private rented sector course³
- renting privately in the uncontrolled sector
- Harassment and illegal eviction
- Tenants' rights: a practical guide to security of tenure
- housing debt: rent arrears
- home improvement grants
- housing benefit (introductory and advanced)
- housing benefit appeals
- preventing homelessness.

We recommend that a stakeholder group be set up to take forward the programme of work suggested by the DSD.

Additionally, Housing Rights Service believes that the development of a landlord register would facilitate the dissemination of information in a more targeted and effective manner. This would help address non-compliance where there is genuine lack of awareness and also where ill intentioned landlords operate outside the law and claim they are unaware of their responsibilities.

³ Accredited by the Open College Network

Q3 Should a register of tenancies be developed as the principle means to address the needs of the private rented sector?

Housing Rights Service would not be in favour of a register of tenancies on the basis that it would be more costly to administer than a landlord register due to the transient nature of the sector and larger numbers involved. It is our view that this could prove cumbersome and be wholly reliant on landlords reporting every new tenancy. We do not imagine that this idea would be popular amongst landlords. The experience in the Republic of Ireland confirms our concerns.

In the Republic of Ireland it is a requirement on all landlords to register details of their tenancies within one month of their commencement (at a fee of around €70 per tenancy or €300 for multiple tenancies who moved into one building at the same time). Additionally, landlords are required to notify the Private Residential Tenancies Board of any change to the registered tenancy details such as a replacement tenant. In 2007 the average number of tenancy applications received was 338; a 30% reduction on the daily average for 2006.⁴ The sheer volume requires considerable administration resources and has led to extensive backlogs. It currently takes up to 16 weeks from the date of receipt of registration forms to process a tenancy registration.⁵

⁴ Private Residential Tenancies Board Annual Review & Accounts 2007

⁵ <http://www.prtb.ie/news.htm>, 16 July 2009

Q4 With regards to the impact of the Private Tenancies Order are there any other issues apart from those in Annex 2 which the Department needs to consider (i.e. any other discrepancies / gaps / anomalies?)

There are a few issues we would like to raise:

- Under the Private Tenancies Order powers exist to require landlords to apply to Councils for a fitness inspection to be carried out where a property was constructed before 6th November 1956. However, under the Prescribed Dwellings Regulations the year was lowered allowing properties constructed after 1st January 1945 to be exempt from fitness inspections. Housing Rights Service believes that this date should be removed from the Prescribed Dwellings Regulations to allow pre 1956 properties to come under the scope of the fitness inspection requirements.
- The Private Tenancies Order does not currently provide Councils with powers of entry where an illegal eviction has taken place. There have been cases where tenants have needed access to their property following an illegal eviction to get prescribed medication/medical equipment and the Councils are powerless to assist in these cases. This should be addressed as part of any new legislation.
- There are no written guidelines for the Rent Assessment Committee members when assessing whether repairs carried out by the tenant should be disregarded for rent determination purposes. We recommend that this is addressed.
- There is no second stage appeal system in place after a Rent Assessment Committee hearing. We recommend that this is rectified.

Tenancy Management Issues

Q1 Is voluntary accreditation of landlords the appropriate approach to promoting and supporting good landlord management?

Housing Rights Service is greatly disappointed that the only proposal for promoting good landlord management is voluntary accreditation. This alone will do nothing to improve the situation for the vast majority of private tenants who contact Housing Rights Service for assistance. We believe this is short sighted and out of step with popular opinion locally and in other jurisdictions.

The DSD has ruled out a mandatory registration scheme on the basis that “it would not provide the most cost effective means of targeting those landlords who are not complying with current law” as it is likely that they would continue to evade registration. Housing Rights Service is of the opinion that priority must be given to addressing the bad management practices of landlords who are currently ‘below the radar’. A voluntary system will be unable to provide sufficient incentives to persuade substantial numbers of landlords into self regulation, not least the minority who persist in disregarding their legal obligations.

Housing Rights Service supports the Rugg Review’s recommendation of a light touch approach to a mandatory register for landlords.⁶ (This recommendation has been developed into a government proposal and is being championed by the DCLG as the best means of tackling poor landlord practice.) Indeed there is

⁶ Review of Private Rented Sector Housing, Oct 2008, University of York, <http://www.york.ac.uk/inst/chp/Projects/PRSreview.htm>. The PRS Review included detailed secondary analysis of data on private renting, and an extended series of stakeholder meetings that took place between January and April 2008. The Review covered a number of issues relating to the sector including the impact of buy-to-let, the need for institutional investment, professionalism, property quality, the existing legal structure for tenancies, the use of the PRS to help homeless households, and ‘problem’ private renting. The report concludes with a series of recommended ‘policy directions of travel’.

significant support for this type of approach locally. When Housing Rights Service held a consultation seminar on the DSD's proposals (on 1st July 2009) there was overwhelming support for a compulsory Northern Ireland register of landlords. This received support from representative groups working with tenants and landlords including local councils, the Housing Executive and advice agencies. The merits of having an accreditation scheme were recognised, however, the overwhelming majority of participants agreed that this should be in addition to compulsory registration. Housing Rights Service also supports this view.

Housing Rights Service is aware, through its engagement with the sector, that there is a perception amongst landlords and landlord groups that a registration scheme for the private rented sector would involve the same requirements and costs as those associated with the HMO registration scheme. Housing Rights Service believes that this misconception has been instrumental in creating opposition to a mandatory registration scheme for the sector. As the risks associated with non-HMO properties are much less this needs to be reflected in the registration requirements. Housing Rights Service recommends that upon registration landlords should be issued with a license and a code of practice. The code would set out the current legal obligations which landlords are required to follow. (The idea of a code of practice to complement registration was favourably received by Professor Julie Rugg when Housing Rights Service discussed this with her recently.)

Housing Rights Service appreciates that the DSD produced this document at a time when the English proposals were not available and was very much looking to experiences in the Republic of Ireland and Scotland. Housing Rights Service would recommend that DSD reconsider its position on registration in light of the balanced and considered approach to this that is now being proposed in England and Wales.

Q2 What further action is needed to achieve this?

Housing Rights Service recommends that the DSD set up a group comprising key stakeholders to develop a scheme to promote good landlord practice.

Q3 What further action is need to promote greater tenant responsibility, and address persistent bad behaviour?

The scale and nature of the problem regarding “persistent bad behaviour” amongst tenants is difficult to quantify. This makes it difficult to develop an appropriate policy response. The issue of anti social behaviour is complex. In our experience there can be underlying causes for behaviour which are not always recognised or understood. Housing Rights Service feels that the current powers are sufficient but perhaps not being utilised. Housing Rights Service envisages a role for the body co-coordinating the central register in tackling these issues. Such a scheme could offer/co-ordinate training on how to deal with these issues e.g. through the use of anti-social behaviour contracts and referral to appropriate organisations for advice and support etc.

Security of Tenure

Q1 Do these proposals provide an appropriate response to the issue of security of tenure?

The issue of security of tenure continues to be contentious. Tenants’ representatives argue for longer periods than the 6 month default term whereas landlords say longer security could be detrimental to the market (this fear was raised in the Republic of Ireland and was not realised). Security of tenure needs to be considered having due regard to the various occupants that make up the private rented sector. Many of the uses of the private rented

sector are short term in nature. However, some parts of the sector are more stable than others. Housing Rights Service would reinforce the DSD's aim that over time the sector will offer greater choice in meeting housing need, particularly for those people who traditionally look to the social sector for housing. If the NI Executive wishes to develop the private rented sector as both a long term alternative to social housing and a shorter term option for some, Housing Rights Service recommends that the right balance is struck to cater for the varying needs of the different sub-groups present within the sector.

Housing Rights Service recognises that the DSD is proposing to encourage housing associations involvement in the private rented market and also to extend Notice to Quit (NTQ) periods (currently 28 days for everyone) to two months where the length of tenancy is over five years and to three months for tenancies of over ten years. Housing Rights Service welcomes both the proposed extension of NTQ periods and the greater involvement of social housing providers in the market. We do, however, believe that there is a need for a greater debate around security of tenure in general.

Q2 What further changes to existing security of tenure arrangements are needed?

Through its advice work, Housing Rights Service is aware of and has highlighted the practice of so-called 'retaliatory eviction'; whereby a landlord seeks to evict tenants because they complain or seek to enforce their rights. Housing Rights Service would encourage the DSD to give some focus to this issue in the development of the strategy.

Fitness Standards

Q1 Should current fitness levels in the private rented sector be increased as proposed?

Housing Rights Service is of the view that the current fitness standards in the private rented sector are inadequate. We have long been advocating for the introduction of measures that will update these and address our concerns that the present standard is too basic and has too many loopholes.

The document proposes that from 2015 all private rented property should meet the standards equivalent to the Decent Homes Standard. Housing Rights Service supports this proposal in principle but believes that the Housing Health and Rating System offers a more comprehensive set of standards and should also be considered. We do, however, have concerns about linking the level of Housing Benefit payable to the condition of the property. Local Housing Allowance was introduced to help promote choice. Linking it to property conditions could actually restrict choice and discourage private landlords from letting to Housing Benefit claimants. It could result in the tenant facing significant shortfalls, which could culminate in rent arrears and possibly eviction. The potential impact of this policy could be adverse. Housing Rights Service therefore strongly recommends that a policy impact assessment be carried out on this proposal before pursuing it further.

Q2 What further/alternative requirements are needed to ensure adequate private rented sector fitness standards both now and in the future?

In terms of what is needed immediately to ensure adequate fitness standards, Housing Rights Service recommends updating the current guidance on the

interpretation of the fitness standard to cover shortcomings such as current heating requirements.

In the longer term, Housing Rights Service would be concerned as to the effectiveness of increased standards without to the appropriate monitoring and compliance arrangements in place. Housing Rights Service seeks assurances from the DSD that this will be addressed in the future.

Q3 Should the same fire safety standard which applies to all new build property be applied to all private rented accommodation?

Housing Rights Service is not fully aware of the fire safety requirements of all new build properties and therefore is not in a position to comment on whether it would be practical to apply these to older properties. However we are of the view that it should be compulsory for all private rented properties to be fitted with a hardwired smoke alarm system.

Improving Accessibility the Private Rented Sector

Q1 Do these proposals provide an adequate response to the issues of affordability and dispute resolution?

Housing Rights Services, through the experience of its clients, considers affordability to be the major barrier to accessing and sustaining private rented sector accommodation. As more people are likely to rely on the private rented sector for housing, then government needs to do more to tackle affordability problems. The cost of paying large deposits, rent in advance and other costs for references, credit checks and administration can prevent people from obtaining accommodation in this sector.

The DSD has highlighted the need for specific support for vulnerable tenants to enable access to private rented accommodation. This would take the form of NI wide rent deposit/rent guarantee scheme for people who cannot afford a lump sum upfront. Housing Rights Service fully supports this proposal and would be interested in contributing towards the development of a Northern Ireland specific model.

The document also recommends the development of a tenancy deposit scheme similar to that currently operational in England. Housing Rights Service also supports this proposal which we highlighted in our Policy Briefing 'Promoting Responsible Letting in the Private Sector' (June 2008).⁷ Deposit retention has long been a major problem for many of our clients with small claims court being the only recourse available to tenants. Whilst this can be effective, in many cases tenants are unwilling to pursue court action. A statutory tenancy deposit scheme requiring landlords to pay into a scheme would, in our view, greatly assist in reducing disputes. Where disputes exist, it is important that tenants and landlords have access to an independent body to mediate and ultimately make decisions. Housing Rights Service agrees with the DSD that there should be one disputes resolution service but is not convinced that a tenancy deposit scheme is best placed to offer a comprehensive response to the full range of tenancy disputes, many of which will require interpretation of complex law. Housing Rights Service's Policy Briefing 'Promoting Responsible Letting in the Private Sector' highlights what we see to be the key elements of a disputes resolution service:

- available only to landlords who register
- able to deal with all dispute types
- quick and informal (no legal representation required)

⁷ Available at <http://www.housingrights.org.uk/policy/improving-private-rented-accommodation-and-how-it-is-ma-2.html>

- comprise independent experienced mediators and arbitrators
- landlords prohibited from giving notice to quit when tenant engages with the service
- landlords and tenants should be compelled to use the service before exerting the legal system
- two tier: mediation then arbitration
- council premises/public buildings should be used to reduce costs.

Q2. What additional action is needed?

Housing Rights Service would like to see regulation of tenancy charges including fees for credit checks, landlord references and estate agent/letting agent administration costs. These are becoming more common and can add up to significant amounts in some cases. Clear guidance on charging would be welcome in the interim.

6.0 Equality Impact Assessment

Housing Rights Service would like to highlight concern around the potential negative impact which a specific policy proposal may have on particular client groups. This relates to the proposal of linking the amount of Housing Benefit payable to the condition of a property. The NI House Condition Survey 2006 highlights that the most vulnerable sections of society (i.e. the lone elderly particularly over 75; the unemployed; people who are sick/disabled and households with low income) were living in disproportionately high numbers of unfit housing. Additionally older private rented properties (pre 1919), which tend to be in poorer condition, are more likely to be occupied by older tenants. Non UK nationals are also more likely to rent privately and, in our experience, often in properties with disrepair.

Housing Rights Service would be concerned that impact of linking Housing Benefit to property conditions could adversely affect these vulnerable client groups. We recommend that a full impact assessment of this policy proposal be carried out.

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