

## WRITTEN VIEWS ON THE RENTERS' RIGHTS BILL 2024

by Patricia Ogunfeibo, a non-practicing solicitor portfolio landlord

### **Executive Summary**

There is no denying that radical reform of the Private Rented Sector ("PRS") is necessary, and the Bill tries to achieve this. However, in its current form, it risks undermining the sector rather than strengthening it. It is a crucial economic truth: **reforms that harm responsible landlords (or which landlords perceive as harming them) will ultimately harm tenants as well**, and as drafted, the Bill has the potential to harm responsible landlords.

A lot of the Bill's proposals are excellent, in particular, the establishment of an Ombudsman and the outlawing of discrimination. Yet, some proposals give rise to concern including unfair tenant accountability measures (at the landlord's financial expense) and gross imbalanced rights between landlords and tenants. To create a truly robust PRS, I believe further refinements are essential.

### **Introduction**

1. I am a 60-year-old female Black British non-practicing solicitor and non-practicing Chartered Tax Adviser with a predominately London portfolio which is the sole means of my pension provision.
2. I qualified as a solicitor in 1991, and so studied the effects of rent controls at the time.
3. I first received rental income in 1986 when I took in lodgers, and from 1996 started to let self contained properties.
4. Since retiring from professional practice in 2015, I have worked full time in activities involving renovating neglected empty properties for rental and sale purposes.
5. Having been a landlord for nearly four decades, I coach other property entrepreneurs. I run a once a week, free of charge session on social media, publish a once a month free-to-access podcast show, and update my few thousands of followers about my views on the property industry. I am also a guest speaker at some property networking events, the last one being this week, where more than 200 people attended.
6. I make this submission based on my professional background (but not as an expert) as well as my practical and overall experience in and of the PRS, believing this gives me a unique perspective on the complexities involved.
7. I list my concerns about aspects of the Bill in Part A; explain why I am concerned in Part B; and set out my recommendations in Part C.

### **Part A**

In the order that my main concerns arise in the Bill, they are:

- a. Possession Grounds
  - (i) All the grounds without effective Court reform are merely a play on words.
  - (ii) Were the Courts properly reformed however, Grounds 1A and 8 as drafted could nevertheless result in more landlord insolvency.
  - (iii) Ground 1A is also likely to result in a devaluation of the property, and asking landlords to bear the financial risk of possible Local Housing Authority ("LHA") inefficiency under Ground 8 seems unfair.
  - (iv) Ground 6A should require minimal notice.
  - (v) Ground 14 remains a discretionary ground when it should be a mandatory one.
- b. Setting Rents (proposed Section 14(A1) of the Housing Act 1988 ("HA"))
  - (i) The Bill proposes that for 6 months, tenants be able to challenge their rents from the very day that they move in, thus ignoring the sanctity of contract.
  - (ii) This could lead to a disregard of the true value of unique lettings which have no local comparables, eventually leading to less choice in the PRS. No reasonable person would compare the price of food in say, Fortnum & Mason's to that in stores that pride themselves on selling the cheapest food;

you wouldn't even compare such prices with those charged in 'mid-market' stores. Yet this clause (as amended from what currently is), will aim to do the equivalent in the PRS.

- c. Rent Increase Challenges (proposed Section 14(A3) HA)
  - (i) The proposals will make landlords bear the cost of Court delays.
  - (ii) Allowing a Tribunal to decrease a current rent (if market rents have fallen), but not increase it (if market rents have risen) demonstrates unfairness.
- d. Decent Homes Standards
  - (i) Not providing for the cause of issues to be ascertained in order to decide where responsibility should properly lie (especially where the tenant is a capable adult), could be unfair to responsible landlords.
- e. Investigatory Powers
  - (i) These give the impression that landlords are being 'criminalised'.
- f. LHAs Are Ill Equipped To Deal With The Duties To Be Imposed On Them
  - (i) The investigation proposals are likely to result in increased legal challenges because LHAs are not properly trained or equipped to deal with the duties imposed on them.
- g. Inherent Unfairness/Unclear
  - (i) Some proposals expose the unfairness in the Bill, and some might make some landlords breach other legislation; a few parts are unclear.

## **Part B**

- a. Possession Grounds
  - (i) The Bill proposes that tenants be offered a level of security of tenure akin to that which adversely affected the PRS pre 15/1/89. Will history therefore repeat itself?

### **Net Worth Reduction (Ground 1A)**

- (ii) If a landlord isn't suffering 'serious' arrears but wishes/needs to sell, he will have to rely on Ground 1A.
- (iii) Once the tenant leaves (assuming they continue paying rent until they do - many stop on being given notice), the landlord will not be able to lawfully earn money from that property during the restricted period of 12 months after the 4-month notice period expires.
- (iv) There might be a mortgage to pay, there will be utilities standing charges and council tax to pay.
- (v) In London, the likely costs will be at least £20,000, making the landlord a 'motivated seller' which professional buyers will sense and exploit. Either way, the landlord's worth (and therefore tax revenues) will reduce.

### **Ground 6A**

- (vii) If the accommodation is as substandard as to require an improvement or other compliance notice, an up to £40,000 fine and a Rent Repayment Order, it is perhaps dangerous that the tenant be allowed to remain in the premises for another 4 months (minimum notice period) plus any court proceedings time.

### **Ground 8**

- (vii) Tenant responsibility should be encouraged, not discouraged.
- (viii) As the nonpayment period will be increased to 3 months and the notice period doubled to 4 weeks, the landlord will be without rent for 4 months before being able to commence proceedings.
- (ix) I had a rent arrears eviction recently; it took nearly 8 months to conclude uncontested. Under the Bill's proposals, this would have meant c. 1 year's worth of no rent. Landlords were already selling up because of Court delays, and this might make more do so.

- (x) In my worst performing flat the mortgage is £1325.75 pcm. Service charges are £221 pcm. Bank charges are £8.50 pcm. Accountancy fees are £50 pcm. The rent is £1595 pcm. It is in a selective licensing area, costing another £970 over 5 years. There is gas safety compliance @ £70 pa. Then there's actual maintenance costs and unseen wear and tear ones. When the tenant moved in at a rent of £1495 in 2022, the mortgage was £687.86 (risen from £555.21 a few months earlier). This reflects a reality for many landlords.
- which (xi) It mustn't be forgotten that the delays here, where relevant, will be extended by periods during a LHA is assessing a tenant's claim.
- b. Setting Rents
- (i) Legislation that encourages a contractual party to undermine that which they had previously agreed to, is storing up future societal problems.
- c. Rent Increases
- (i) In my opinion, the damage to the PRS pre 1989 was not only due to overt rent controls, but because the control of the rented property was effectively taken away from the owner, which then had a detrimental effect on the value of the property. This discouraged investment in the sector.
- (ii) Regardless of what the government says, the proposals will control rents, and only time will tell how landlords react to this.
- (iii) Further, in this regard, Parliament might want to consider how this will affect landlords' ability to borrow, and the effect on their mortgage covenants; resulting in more landlords selling up.
- d. Decent Homes Standards
- (i) The proposals don't consider tenant-caused problems either by allowing a landlord defence and/or making such a mandatory eviction ground.
- (ii) Whilst this could be atypical, I once had a tenant who cooked a lot without opening the windows. Invariably, black mould manifested in the flat as a result of condensation. She then left within weeks of informing me. After she left, I treated the mould, and since then (c. 2012), it hasn't reoccurred.
- (iii) Due to the high cost of living, I also have tenants who insist on drying their clothes indoors despite dryers being provided for their use. Once, I even bought a clothes drying dehumidifier for a tenant who refused to use the dryer because dryers "shrank" her clothes!
- (iv) It is unfair to make a landlord responsible for something that has nothing to do with the property, nor the landlord's actions, or inaction, especially if it is due to a tenant's lifestyle choices.
- e. Investigatory Powers
- (i) These proposals seem to have been drafted to combat a perceived need to deal with "criminals and disorder," or the Criminal Justice and Police Act 2001 (see clause 130 of the Bill) would not be relevant.
- (ii) Further, untrained LHA personnel will be allowed to enter premises without a warrant on a suspicion of a housing offence thus using powers given to the Police under Section 17 of the Police and Criminal Evidence Act 1984, which I understand is only used for very serious offences.
- (iii) I have a tenant, Sean, who was made redundant earlier in the year. He is looking for work but finding it difficult. He is 58. He rang me last month to say this month's rent might be late because whilst he had applied to cash in his £12000 pension, he didn't know how long it would take to get the money. I advised him to apply to the LHA for assistance instead. His fixed term tenancy had expired and his tenancy was a statutory periodic one. The LHA staff didn't understand this and said he didn't "have a tenancy". I am therefore supporting him through his dealings with the LHA.
- f. LHAs Are Ill Equipped To Fairly Deal With The Duties They Will Face
- (i) The Bill proposes fines and offences, which LHA staff will have to determine based on different technical legal standards, and it is unclear how a "Lead Enforcement Agency" will ensure justice.
- (ii) Where education would do more to achieve an improvement in the PRS, fines are being justified as the means of achieving this whilst many suspect that landlords are simply being targeted to fill LHA

financial 'black holes', thus eroding trust in the proposals and Parliament which wishes to maintain that tenant welfare is the driving force behind the proposals.

- (iii) An offence will be committed if, 28 days after an initial fine is confirmed with finality, the offending conduct continues. The offence can be prosecuted, and if convicted, the landlord could be liable to an unlimited fine. The LHA might however, choose not to prosecute, and fine instead. This fine can be up to £40000 for each offence, and all fines would need to be paid within 28 days.
- (iv) If a fine that is disagreed with is not appealed within 28 days, it will become 'confirmed'. What if the landlord is unaware of the notices to fine?
- (v) Often, I don't receive Council Tax bills, and the first I know of an issue, is after a liability order has been secured - worryingly, the liability orders are always posted to me, but in the instances I refer to, not the underlying bills.
- (vi) I recently had a LHA looking to enforce a bill raised in a name unknown to me.

g. Inherent Unfairness/Unclear

**Proposed Section 16E(1)(d)**

- (i) This says a "relevant person" must not serve on a tenant a purported notice of possession. This means 'anything other than a 'valid Section 8 HA notice'.
- (ii) The validity of notices, or otherwise, is a very technical aspect that sometimes results in litigation. In *Northwood (Solihull) Limited v Fearn & Others*. 2022 EWCA Civ 40, the matter of the validity of the notice in question was decided in the Court of Appeal, and turned on Company Law!
- (iii) 16E(1)(d) drafted as widely as it is, is too high a bar to ask of landlords, and will trap many or increase their costs by sending out the message 'use an expert, or else'.

**Proposed Section 16E(1)(e)**

- (ii) Another example says a "relevant person" must not rely on an eviction ground where the "person does not reasonably believe that the landlord is, will, or may be able to obtain an order for possession on that ground".
- (iii) Whilst this proposal hopes to 'catch all' it seems poorly drafted because it will invite litigation about what is "reasonable". Further, as drafted, it would require that landlords know what a Judge might decide.

**Offences**

- (iv) There appears to be at least one offence trap in the proposals. If a landlord is served with a compliance notice and doesn't carry out the repairs within the stated time frame, he will be subject to a fine.
- (v) If a landlord doesn't dispute a fine, it could be confirmed before the proposed notice period to the tenant expires. As such, as proposed, the landlord could be committing an offence before the Ground 6A notice of eviction period expires, and definitely would be before any court proceedings are in order to get a possession order and bailiff in order to stop committing the offence.

**Others**

- (vi) "Any superior landlord" will equally be liable to Rent Repayment Orders. As drafted, this could catch freeholders and result in subletting clauses becoming more uncommon, the effect of which will be that that new lease premises are kept out of the PRS.
- (vii) Where Directors or Members are found culpable, and therefore liable under the proposals, it seems that they each could be responsible for paying the assessed penalty, as opposed to being jointly and severally liable. Is this intended?
- (viii) As drafted, London landlords could find themselves breaching Section 44 Deregulation Act 2015 (90 day rule).

**Part C**

a. Possession Grounds

- (i) Ground 1A might benefit from a leeway of perhaps 3-4 months of short letting during the “restricted period”. Landlord insolvency in this situation would be counterproductive.
  - (ii) Ground 6A, for the tenant’s well being, should carry a maximum 2 week notice period.
  - (iii) Ground 8 provisions should be radically changed in recognition that the ground is symptomatic of a fundamental breach of the tenancy agreement. Once the ground is made out, the landlord should perhaps be allowed to peaceably gain entry without the need for a possession order or Bailiff (with sanctions if proven otherwise). If so, many landlords would undoubtedly reconsider staying in the PRS.
  - (iv) Such a change would also alleviate Court pressures and further, encourage tenants to be responsible with their commitments.
- b. Setting Rents
- (i) The country, tenants, and landlords alike, would be better served by the government encouraging adults to honour their agreements. Unlike what the detailed explanatory notes produced by the Ministry of Housing, Communities and Local Government say, the proposal is very different to the current law (s22 HA).
- c. Rent Increases
- (i) A level playing field is likely to serve the PRS better in the long term. Whilst the Courts are being reformed, a clause such as “the rent applied for by the landlord will become payable from the first rent period 3 months after the date in the notice, or a Tribunal determination (whichever the earlier)” will also ensure that landlords are not unduly bearing the burdens of Court delays.
  - (ii) In addition, it will allow the parties certainty, and also discourage a deluge of clever opportunistic Tribunal applications that the current provisions will encourage. This will also decrease the burden on the Tribunals.
- d. Decent Homes Standards
- (i) Allowing a defence by the landlord would be helpful and fair, and likely to increase landlord confidence in the proposals.
- e. Investigatory Powers
- (i) I feel that in the context of citizens carrying out a lawful taxable activity, they have no place.
- f. LHAs Are Ill Equipped To Fairly Deal With The Duties They Will Face
- (i) LHAs should perhaps be left to administer their core duties, and Parliament should trust law enforcement agencies like Trading Standards and the Police to administer theirs.
  - (ii) The time for paying fines (28 days) is very short; a 6-month period might be more helpful to the LHA in collecting the fines. On average, remortgages take 4 months, and sales, 8 - 12 months.
- g. Inherent Unfairness/Traps
- (i) Proposed Sections 16E(1)(d) and 16E(1)(e) should be removed, or sufficiently tightened up.
  - (ii) The offences should not be strict liability offences in order to preserve democratic co-existence between State and citizen.
  - (iii) For the reforms to be effective, they should be carefully considered as unintended consequences of the reforms will not be in the country’s best interests (reduced tax if rental units are lost to the market), the tenants’ best interests (a poor reception of the resulting Act will likely result in less tenant choice and possibly higher rents), nor landlords’ best interests (for the reasons set out above).

## **Conclusion**

- 8. A more balanced, further thought through Bill might better serve the PRS to stop responsible landlords from leaving the sector, especially if the Chancellor’s increase in SDLT succeeds in her aim to stem future investment by new and existing landlords.

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