

# Association of Tenancy Relations Officers

It seems that 2014 will continue the trend of interest by government and other agencies in issues that affect the Private Rented Sector. Following from the promise to establish a Working Party to consider the main issues that were raised by the Select Committee (HoC), the government speedily established it and subsequently launched a Consultation into Standards of Private Rented Housing.

The six week consultation period closed on 21 March 2014 and given the prompt response to the Select Committee last year it is expected that the Department for Communities and Local Government will publish its proposals before the summer recess of Parliament. However given MP, Julian Huppert's Bill (see below) some of the recommendations may be on their way to implementation by that time.

ATROs response to the Consultation is provided below as an appendix.

We will issue a Newsletter following the release of the proposals to ensure that members are fully informed.

## Proposed legislation

On 12 March Julian Huppert MP for Cambridge tabled a Bill to prevent exorbitant fees being charged by Letting Agents and to extend the provisions of the Estate Agents Act

that provides consumer protection for buyers, so that it includes tenants. He is concerned about stories of landlords from hell overcharging for minimal aesthetic damage – and because tenants need the deposit back for a deposit on their new property, they are often forced to take whatever deal they are given in order to secure a prompt return. In a press statement he said

*“Letting agents can be just as bad, (as landlords, our emphasis) charging exorbitant fees. One site I looked at recently charged £50 for a credit check, £250 to change a name on the tenancy, and £16 for any email or letter sent. Small wonder that, according to Shelter, one in seven people who use letting agents spend more than £500 in fees, on top of the rent. These changes, if implemented, would offer renters more assurance that they're getting a good deal and better security for when things go wrong, all for very little extra cost. Good landlords should have nothing to fear – indeed, they would probably gain as the rogues have to change their approach”.*

It seems likely that the government might be inclined to support the Bill at the next stage and allocate time for it to progress to 3<sup>rd</sup> reading and enactment. The Second Reading is set for 6 June. Much of the content is in line with the issues raised by government in the recent consultation.)

## Legislative update

### Regulation of the Private Sector Bill 2013

Meanwhile, Jeremy Corbyn's Bill (MP for Islington North) is timetabled for Second Reading on 16 May. (For some arcane reason although timetabled, parliament is not sitting that day and therefore another day will need to be set). The provisions of this Bill are more in line with the proposals put forward by Shelter including a possible fixed Five Year tenancy to give a tenant some security of tenure and also a method for increasing rent that will provide some solace for landlords. This Bill does not have government support and has united all of the main landlord organisations against it and for those reasons it seems unlikely that it will reach the statute book. A link to the full Shelter Report was given in the previous Newsletter

### Immigration Bill- Private Housing Immigration checks by landlords

The housing issues were debated on 3 April in the Lords when a large number of amendments were tabled. The government has already provided some exemptions in relation to student properties where the occupants are nominated by their institution. Baroness Hamwee: said,

*"It is clear that there is widespread agreement that the provisions dealing with residential tenancies proposed in the Bill are complicated and risky—complicated in their operation and risky in the scope there may be for discrimination".*

The pilot scheme is still set for implementation in October although some Lords are attempting to secure a further debate, assessment and vote

to approve the system before it is introduced nationally.

### Build to Rent (Phase 2)

The first 36 projects were announced on 5 March 2014. These projects are expected to support the construction of up to 6,500 new private rented homes. The proposals are for the construction of properties which will be rented at normal market rates and for which the government will share the risk with a developer. After completion and letting, the developer is expected to sell the housing to other investors, who it is intended will own the stock on a long term basis.

They hope this will bring into the market new large scale landlords who have not previously operated, except in student accommodation and the more exclusive part of the industry. In the early 2000s some Housing Associations let properties on AST contracts and some of the bidders for this phase include former Council Housing organisations and Charities (eg Derwentside Homes; Notting Hill Housing Trust) Moving from provision of affordable to 'unaffordable homes'?

Other new developers in the Build to Rent market include Inland Homes whose recent development experience is for owner occupied apartments in the "exclusive commuter town of Gerrards Cross". Will TROs encounter problems this new part of the market?

Most commentators suggest that more homes are needed with affordable rents not only for people reliant on social security but also for potential tenants with relatively limited incomes even if they are in what may be regarded as reasonably paid professional jobs ---- solicitors who do housing Legal Aid work or local authority staff!

### **The Daily Mail**

The newspaper predicts that following from the relaxation of restrictions on employees cashing in pension funds, many will opt to use the cash to secure a better rate of return in the Buy To Let market releasing more landlords into the field who perhaps will have little knowledge of the area and will not expect to take into account void periods of nil income, tenants with financial problems following redundancy, costs of repairs and renewals.

### **Caselaw update**

#### **Possession proceedings**

**Spencer v Taylor.** The tenant is seeking leave to appeal to the Supreme Court. The landlord is represented by David Smith of Anthony Gold solicitors who host the Nearly Legal blog. Landlord organisations are advising their members to continue to use Section 21(4)(a) notices with a savings clause pending the appeal. TROs who advise colleagues in Homelessness Units should however be careful of suggesting to them that an “old style” Section 21 (4)(a) defence will be successful at County Court if the notice complies with Section 21(1)(b).

#### **Tenancy Deposits**

##### **Tummond v Reading County Court (2014) EWCH 1039**

A few cases are still coming before the courts and this one involves both deposits and possession. The Judicial Review issue concerns the validity of a Section 21 Notice and the date of issue and whether the lower court had acted unreasonably in refusing leave to appeal. The deposit was lawfully protected within the terms of My Deposits regulations, however a Section 21 Notice was issued to the tenant at the same time as the tenancy contract, but before the landlord had had the opportunity to protect it. In an application for possession the tenant

argued that as the Notice was issued before the deposit was protected, it was invalid. The District Judge awarded possession. Subsequently the tenant made various procedural applications that eventually ended up as a JR against the refusal of the Circuit Judge for leave to appeal.

The Court decided that in the period between payment of the deposit and the 30 day grace period that the deposit was being held “in accordance with an authorised scheme” (para 43) and therefore the Notice was validly issued because the landlord was not breaching the deposit regulations at that point. The case report is available on bailii.

#### **Other tenancy enforcement issues**

Councils are increasingly using 2004 Housing Act provisions against landlords in relation to HMO and other licensing requirements. Some TROs have a wider remit than PFEA and related legislation and are involved in prosecutions. For example Warwick recently prosecuted four cases and Magistrates awarded fines of between £2500 and £5000 plus costs. The convictions were reported in the local press and that action helps secure the warning to others that tenancy legislation is important. By contrast the maximum fine for failure to licence a TV is £1000 and it is being proposed that TV licence matters should become civil liability issues.

## **Licensing Schemes**

Across the country local councils are consulting on establishing wider licensing systems, either on area, borough or city wide basis following from the Tower Hamlets scheme introduced 18 months ago that has been subject of much criticism by some landlord organisations. Liverpool Council is consulting on a city wide scheme that closes on 16 June 2104.

## **Local Government Association supports the extension of the use of Rent Repayment Orders for harassment and illegal eviction.**

Extract from LGA response to the government review of conditions in the private sector March 2014.

*“We would also support Rent Repayment Orders being used where a landlord has been convicted for illegally evicting or harassing a tenant and also to fund the cost of works in default, carried out because a landlord has failed to remedy a serious hazard”.*

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## **Working Party on improvement of the operation and speed of Possession Proceedings**

In a Parliamentary question in the House of Lords on 10 March Lord Beecham (Shadow Minister for Justice) asked the government;

*“whether they have discussed plans to make the eviction of tenants of private landlords easier; and, if so, with whom”.*

The minister, Lady Stowell said, perhaps less than transparently,

*“The working group is made up of organisations representing landlords and tenants, as well as other property professionals”.*

Lord Beecham has agreed to put down a further written question for the Minister to provide details of the members of the Working Party and not that just that it includes people with an interest in housing.

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## **Rent to Rent –or how to get rich quick**

Another relatively recent development is that of Rent to Rent (examples abound in the Midlands, Bristol and London) and were subject of a Channel 4 exposure in January. This scheme operates where a person rents a property but does not intend to live in it from a landlord, perhaps on a 1954 Act tenancy or not as the case may be, and then sublets to others either on a room or whole property basis. The link below is to a discussion on Nearly Legal. <http://nearlylegal.co.uk/blog/2014/01/confederacy-of-dunces/>

It is a money spinner for some and a nightmare for others. In one case a three bedroom property was originally let and then sublet to eleven tenants sharing rooms that netted the R2R company, a 150% return. Some head landlords have let properties to a Rent to Rent company on an AST, which it clearly cannot be. Many issues arise from the arrangement including the Management of HMO Regulations 2006 and fire safety.

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## **ATRO Training**

Dave Hickling and Andrew Greathead provided a day long training course to 15 staff of Tendring Council (Clacton) in Essex last November.

The course included

- Examination of the Protection from Eviction Act
- Points to prove for a successful prosecution
- Statement taking & the role of the investigator and
- Interviewing landlords, agents and others, under caution.

The feedback from the participants was positive and rewarding; all responses ranged from good to excellent.

### **County Court Housing Possession Application Fees**

From 22 April the basic fee will be increased from £175 to £280, a 60% increase.

Costs for other Claims will also increase. That will affect tenants applying for Deposit Protection penalties amongst other things.

## **AGM 2014**

The AGM will be held in **Birmingham** for easy access for members from all parts of the country

It will be held in June

If any members have ideas for a potential speaker please contact Andrew at Birmingham asap

[Andrew.greathead@birmingham.gov.uk](mailto:Andrew.greathead@birmingham.gov.uk)

## **[Newsletter 3](#)**

[Items are invited for the next issue. Reports of 150-200 words is standard. Any members who wish to contribute longer items should contact me at](#)

colin5465@hotmail.com

## **APPENDIX**

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### **ATRO Committee Response to government consultation**

#### ***Property Conditions in the Private Rented Sector***

#### ***Introduction***

*The Association of Tenancy Relations Officers (ATRO) represents local government officers across England and Wales who, as part of their work role, investigate allegations from private rented sector tenants of unlawful eviction and harassment. Members also seek to negotiate and mediate to resolve landlord and tenant disputes, and work proactively to encourage and educate landlords in the private rented sector in order to improve management standards, and promote a successful and responsible private rented sector. The Association's members work in the front line of housing advice and enforcement services and have wide experience and knowledge of housing disputes.*

***Question 1:*** *In addition to the production of the Tenant's Charter, is there any further action that could be taken to raise awareness amongst tenants and landlords of their rights and responsibilities? Who needs to take this action?*

*There is already statutory provision for local authorities to do this in Housing Act 1988 (s.43) and Rent Act 1977 (s.149). However, we submit that these provisions need strengthening and refreshing in the light of the increase in importance of the Private Rented Sector.*

***Question 2:*** *What is best practice in raising awareness amongst tenants of their right to seek help and advice from their council and how can this be shared between local authorities.*

*The Association of Tenancy Relations Officers (ATRO) agrees that both private landlords and tenants are sometimes unaware of the Local Authority's role in relation to the private sector. Local Authorities firstly need to make sure that websites and all their local offices, as well as neighbourhood advice centres and Citizens Advice Bureaux have clear information about what the Local authority can do to help.*

*In addition, our experience is that many rank and file Police Officers are not aware of the powers that Local Authorities have in relation to illegal eviction and harassment or of these matters potentially being criminal offences. Police Officers on the ground, will often tell tenants who contact them for assistance, that such problems are a 'civil matter and that the tenant should contact a solicitor. Training, the dissemination of information, and liaison between the Police and Tenancy Relations Services can help in this respect.*

***Question 3:*** *What is best practice in dealing with requests for help and advice from private sector tenants and how can this be shared between local authorities?*

*It is important for there to be a number of different access routes rather than just a website or an email address. Different groups of people are likely to want to access services in different ways. An easily accessible telephone helpline is perhaps the least likely to exclude particular groups of people, especially vulnerable people. Website information enables local agencies and advice centres to easily access information to help their customers, but limiting help and advice to website information only, is likely to disadvantage e.g. the elderly or vulnerable*

**Question 4:** *Should the guidance for landlords be updated and widened to include information for tenants, to help them understand whether a property contains hazards?*

*Yes, the focus of tenants tends to be on issues of disrepair rather than hazards eg. the absence of stair rails or smoke and fire detection.*

**Question 5:** *Do you think restrictions should be introduced on the ability of a landlord to issue or rely on a section 21 possession notice in circumstances where a property is in serious disrepair or needs major improvements?*

*Yes.*

*ATRO members continue to see examples of 'retaliatory eviction' on a regular basis but we believe any attempts to measure the number of evictions, are bound to underestimate the problem because the unfettered, 'no fault,' section 21 ground, as it currently stands, deters some tenants from ever reporting dangerous conditions in the first place.*

*Any responsible housing adviser is duty bound to make private tenants aware that a possible consequence of raising a complaint is that the landlord will give a section 21 Notice.*

*What's more, as well as the tenant's fear of eviction acting as a deterrent to reporting poor conditions, it is our experience that there is some 'rationale' behind retaliatory eviction for the irresponsible landlord, especially when shortages of supply means alternative tenants are easy to come by. Tenants differ hugely in terms of the strength and resolve required to make a complaint about disrepair to the Local Authority and they also differ in terms of their likely realistic alternative housing options. The availability of retaliatory eviction therefore encourages unscrupulous landlords to seek out the most vulnerable who are less likely to complain and may also be less able to find alternative accommodation. By evicting a 'troublesome' tenant, a landlord may well find a more compliant tenant who is far less likely to raise issues about standards of management.*

*Also, where a hard pressed Local Authority is dealing with a complaint e.g. about a hazard, realistically, it is probably less likely that any action will be followed through where the complainant leaves and the landlords future intentions for the property, in terms of re-letting, are unclear.*

**Question 6:** *What would be an appropriate trigger point for introducing such a restriction?*

*We would suggest there should be a restriction on the use of section 21 where Health and Safety Rating Hazards have been assessed as being present or where Notices have been served by the local authority.*

**Question 7:** *How could we prevent spurious or vexatious complaints?*

*Hazards would have to have been held to be present by the local authority or by a qualified HHSRS inspector.*

***Question 8:** Do you think Government should introduce Rent Repayment Orders where a landlord has been convicted of illegally evicting a tenant?*

*8.1*

*We believe that unlawful eviction, or the threat of it, and harassment and intimidation from landlords are at the very worst end of the scale of bad experiences that a private tenant can have and, that on balance, Rent Repayment Orders (RROs) would be a step in the right direction.*

*8.2*

*However, there is a significant, potential downside to RROs which should be considered. PfEA cases can often be challenging evidentially, and very much reliant on the evidence of prosecution witnesses. Where there is clear financial gain to a witness (victim) by way of a RRO, directly from a successful prosecution, then the evidence of that witness is likely to be all the more open to challenge.*

*8.3*

*ATRO believes that the more fundamental problem here, is the lack of consistent enforcement of the Protection from Eviction Act 1977 (PfEA) across the country. While the incidence of harassment and illegal eviction may vary in different parts of the country, ATRO can see no justification for local authorities not dealing with it where it occurs. RROs will not greatly help if only a small proportion of cases are prosecuted.*

*8.4*

*ATRO considers that the obligation of public authorities under Article 8 of the Human Rights Act should in itself lead Local Authorities (LAs) to use their powers under PfEA where complaints are made to them, but there are also many more reasons why these enforcement powers should be more consistently applied.*

*8.5*

*The experience of our members, who deal with cases of harassment and illegal eviction daily, is that a lack of encouragement over the past 20 years or so, has led to a tendency for LAs to neglect the investigation and enforcement of offences of illegal eviction and harassment. This is at a time when more and more vulnerable tenants find themselves reliant on the private sector.*

*8.6*

*Some LAs regularly and effectively enforce PfEA, however, we have little doubt that other LAs have now lost the confidence and expertise to effectively enforce PfEA, and the lack of consistency across regions can have a negative effect, even on those LAs who do take their powers seriously.*

*8.7*

*Equally, it seems that LAs who do little to deter harassment and illegal eviction, benefit from the efforts of those who do, with well-publicised prosecutions having a national impact as they are usually featured widely on blogs and forums, and are brought to the attention of letting agents and landlord associations across the country.*

#### 8.8

*ATRO believes that this lack of consistency in enforcement of the PFEA is unfair to tenants, is unfair to those LAs who devote the resources to taking this work seriously, and leads to confusion and mixed messages for landlords. ATRO sees no more reason for inconsistency in LAs' enforcement of PFEA crimes (as a result of which after all, tenants lose their homes) than for enforcement of crimes relating to licensing or housing conditions, which are mandatory to enforce.*

#### 8.9

*It is perhaps also worth questioning the consistency and logic of a LA strategy which sets out to protect the health and safety of occupiers in relation to hazards around the home, but then makes no provision for addressing the sudden and traumatic loss of the entire home through illegal eviction, which we would suggest is equally likely to have a significant impact on the physical and mental health and well-being of the tenant and their family.*

#### 8.10

*For the vast majority of responsible landlords the possibility of prosecution under PEA should not be an issue, but it is a sharp edged tool for confronting and deterring the worst kind of rogue landlord who is prepared to bully or unlawfully evict a tenant from their home.*

#### 8.11

*We believe that, without investigation of PEA offences, there is also a danger of undermining the credibility of landlord accreditation schemes and mandatory and selective licensing schemes, as, without a conviction, there may not be any, or insufficient, evidence for LAs to sustain a decision to exclude landlords from these schemes. This will have a detrimental effect on good landlords who may be aware that others who flout the law are still able to use the badge of accreditation, or, as the case may be, their status of being approved as a fit and proper person.*

#### 8.12

*Effective deterrence of unlawful eviction is also an important tool in preventing homelessness. Where there is no enforcement of PEA, Housing Solutions or Homelessness Officers are hamstrung in their attempts to warn landlords against illegal eviction. If the law is not taken seriously enough by the LA, it is not likely to be taken seriously by an irresponsible landlord.*

#### 8.13

*Recently, there have been a number of cases of custodial sentences for PEA offences, showing that when cases are well put together, the Courts are willing to pass sentences which are credible deterrents.*

#### 8.14

*However, it's not just the penalty, or even the prosecution that has deterrent value. Engaging a suspected landlord in a criminal investigation process is itself, a deterrent. In our experience, making an alleged eviction or incident subject to a serious, credible investigation, carries weight, all the more so when this is followed up by a formal interview under caution. Following a process itself, in our experience, acts as a deterrent and sends the message that the alleged criminal conduct is being taken seriously. Even if the evidence falls short of what is required for a prosecution, a possibly errant landlord has met a response and has got a message that the Local Authority cares about what happens.*

8.15

*ATRO believes that it is right for it to be the Local Authority that is seen to be taking effective action in these cases. It is reassuring for tenants to know that there is a highly visible, very well known organisation, with an established private housing sector policing role, which is prepared to take action.*

8.16

*Our experience is that the vast majority of landlords generally don't want to get into trouble with the Council, especially where there is a generally positive relationship between landlords and the authority, and where of course, the landlord is immediately aware that the Council is the licensing authority for Houses in Multiple Occupation.*

8.17

*In the light of public authorities obligations under the Human Rights Act, in order to bolster the credibility and reliability of the Private Rented Sector, and as a contribution to homelessness prevention, ATRO would therefore like to see it become mandatory for LAs to investigate alleged PfEA offences, and to prosecute cases where there is sufficient evidence, and it is in the public interest to do so.*

8.18

*We believe that this would entail minimal legislative or regulatory change and would place no extra burden on the vast majority of responsible, law abiding landlords. We would then have a firm basis for considering appropriate further penalties such as Rent Repayment Orders.*

**Question 9:** *Should this be in addition to, or instead of, any damages the tenant may have received, or action taken by the local authority, for example a prohibition on renting out the property?*

*Any extra deterrent value would be reduced if a RRO was not in addition to other penalties.*

**Question 11:** *Should a Rent Repayment Order be issued automatically where a landlord has illegally evicted a tenant?*

*Yes, on balance, though see response to Question 8 (8.2 above)*

**Question 12:** *Do you think a landlord should be subject to a Rent Repayment Order if they rent out a property that contains serious hazards?*

*Yes, if that hazard is not rectified within the time scales of, either formal Notice or other notification from the Local Authority. As the beneficiary of the RRO would not be so crucial to the evidence of the existence of the hazard (the lead evidence being that of the Local Authority Officer) then the drawbacks of RROs in relation to PfEA, would not apply.*

**Question 14:** *Should a Rent Repayment Order be in addition to, or instead of, any damages that the tenant may also be awarded, or other action taken by the local authority, for example a prohibition on renting out the property?*

*Any extra deterrent value would be reduced if a RRO was not in addition to other penalties.*

**Question 19:** *How effective is voluntary accreditation as a way of driving up standards?*

*Voluntary accreditation is undoubtedly a useful tool for tackling some issues in some areas.*

*However, unless tenants have real market choice about being able to rule out renting from landlords who are not accredited, it is likely that accreditation schemes will be of limited value in affecting the worst conditions towards the bottom end of the rental market. The Chair of the Select Committee commented that landlords who maintain their properties to a reasonable standard are inclined to become accredited but unscrupulous landlords are less likely to do so, although some small area schemes have proved partially successful. (Letter from Clive Betts MP to LGA 13 December 2103). Newham LB reported that only 600 of a possible 15,000 landlords had joined their voluntary scheme. (Select Comm.para 53)*

*ATRO is also concerned that if enforcement is not consistent and effective, especially in relation to the enforcement of PfEA (see 8.11 above), then there is a danger that the credibility and value of accreditation schemes is much reduced and that they can become meaningless for landlords and even misleading, for tenants. Landlords who harass or illegally evict their tenants must be excluded from such schemes and this can not be done without the proper investigation of allegations.*

***Question 20:*** *Should we consider introducing tighter restrictions on the use of selective licensing to avoid putting unnecessary burdens on good landlords?*

*We believe that it is useful for LAs to have the option of Selective Licensing available and that the balance as to when LAs can introduce Selective Licensing is about right. However, as with accreditation schemes, the value of Selective Licensing is much reduced without consistent investigation and enforcement of PfEA.*

***Question 21:*** *Should we consider introducing an approach which would enable local authorities to focus any licensing scheme solely on rogue landlords?*

*Whilst ATRO recognises the benefits of sharp edged tools in dealing with rogue landlords, we do not think there would be significant benefit from this measure and would prefer to see the tightening and strengthening of existing legislation as outlined in the answer to question 8 above. Our experience is that there is huge overlap between those landlords who flout the law in relation to unlawful eviction and the bullying of tenants, and those who act unlawfully and irresponsibly in other*