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

27th May 2015

Dear Christine,

Please find below the further information requested by the committee and our response to the written questions the committee requested. If we can be of any further assistance please advise.

Yours Sincerely,

Douglas Haig

Vice-Chair and Director for Wales, Residential Landlords Association

Requested further information:

Enforcement

The RLA strongly believes that the best way to improve the Private Rented Sector (PRS) is to have better enforcement, rather than establishing more legislation. At

present there are over 100 pieces of legislation and over 400 individual regulations governing the PRS. These regulations cover each and every landlord in the PRS and do not apply, nor should they, on an individual basis.

Many of the problems associated with the PRS occur with criminal landlords, who exploit current regulations to the determent of tenants. Criminal landlords are not criminals because they do not know or understand the law, they are criminals because they choose not to follow it, knowing that the rules won't be enforced on them. No amount of extra legislation will change this fact, only enforcement of the rules and regulations that every other landlord strives to uphold.

Increasing the levels of regulation will not bring criminal landlords up to standard. Instead it will simply demotivate those landlords who have always strived to do things 'by the book', who now find this book getting ever heavier with the further pages of regulation.

Many of the areas that the Renting Homes (Wales) Bill seeks to improve or alter are already covered by some form of legislation. For example, both retaliatory eviction and fitness for human habitation are already addressed by existing legislation, consumer rights and the Housing Health and Safety Rating System respectively. Had these regulation been properly enforced we may not see the need for these new regulations. Furthermore is it reasonable to expect these new regulations to succeed where previous regulations have failed, considering that they may be no better enforced?

Recent research conducted by the Local Government Information Unit and Management Journal, has also found that 54% of local authorities believe that they are in danger of being unable to fund their statutory services which include Environmental Health Services. Furthermore in 2013, the House of Commons Communities and Local Government Select Committee report on the private rented sector warned that it was *"concerned about reports of reductions in staff who have responsibility for enforcement and tenancy relations and who have an important role in making approaches to raising standards successful."* The same report also raised concerns that *"the police are sometimes unaware of their responsibilities in dealing with reports of illegal eviction"*.

Enforcement is the key to making sure that the provisions in the Renting Homes Bill clear out the criminal landlords who actively avoid complying with the regulations. However, good enforcement and responsible governance should not seek to punish those landlords who, in an honest and open way attempt to comply with a plethora of regulations, make a mistake.

<u>Rent increases and rent control</u>

The imposition of rent controls in Wales is entirely unjustified, especially when PRS housing in Wales is needed to expand to meet the increasing demand.

In a survey to over 1,000 RLA members, over 75% of landlords either froze or cut their rents in 2014 and over 65% intend to do so again. Furthermore three out of five

landlords said they would leave, or consider leaving the PRS is rent controls were introduced1. This would have a dramatic impact on the availability and standard of PRS accommodation in Wales, untimely offering tenants less choice and poorer standards.

The Residential Landlords Association (RLA) is deeply concerned that such a policy would leave many tenants worse off and would stifle investment in new rented homes at just the time that more is needed to boost supply and increase the housing options and choices available to tenants. I am therefore writing to all parties represented in the Assembly to seek assurances that this is not a policy that would be pursued in Wales.

As figures from the Office for National Statistics (ONS) show (see table below), average rents across Wales have actually fallen in real terms over the last 5 years.

	12 months to March 2014	5 yrs March 2009 - 2014
% rent increase across Wales	0.6%	3%
RPI over the period	2.5%	20.6%
CPI over the period	1.7%	16.3%

Source: Index of Private Housing Rental Prices (ONS, Published 25th April 2014)

More recent figures also support this trend in falling rents. The most recent index of private sector rents show that in Wales, rents increased by just 0.8% in the 12 months to March 2015. Over the same period, inflation as measured by RPI was 0.9%.

Research published in 2011 by the OECD has shown that rent controls lead to greatly reduced quality and quantity of new homes. It concludes: “an illustrative correlation shows that across countries, stricter rent control tends to be associated with lower quantity and quality of rental housing, as measured by the share of tenants who lack space and who have a leaking roof.” Likewise, the last time that rent controls were in place in the UK it led to the proportion of privately owned rental properties falling from 53% in 1950 to 8% in 1986.
As nearly 90% of landlords are individuals with only one or two properties who rent them out to supplement their income, this is hardly an industry where a few companies are profiteering at the expense of their customers.

More recent research published in 2015 by the OECD has again come out against rent controls. It is contained on page 48 of its annual Economic Policy Reforms document, “Going for Growth”[2].

"Excessive rent regulations result in under-developed rental markets (e.g Sweden). This hinders labour mobility and reallocation, reducing in turn matching between workers and jobs. The consequence is lower productivity and higher unemployment."

[1] http://news.rla.org.uk/wp-content/uploads/Member-Survey2014_Data_All_150202.pdf
[2] http://www.keepeek.com/Digital-Asset-Management/oecd/economics/economic-policy-reforms-2015_growth-2015-en#page49

Furthermore, in February the Minister for Communities and Tackling Poverty, Lesley Griffiths AM said:
"In relation to rent controls, I do recognise that rent control can look attractive initially, but I think previous experience shows that rent controls reduce the incentive for landlords to invest and can then lead to a reduction in quality housing… Again, I think that could give possible unintended consequences to the supply of private rented properties."

Clearly, given all the evidence above, rent controls are unjustified for the PRS in Wales as in reality rents have been falling, even throughout the financial crisis. Secondly rent controls would have a dramatic impact on the standard and quality of PRS homes in Wales, as tenant choice reduces along with supply, and those landlords who remain lose the incentive to continue investing in property. The impact that rent controls would have on the Welsh PRS would be catastrophic, crippling a sector and stunting economic growth across Wales.

Written Questions

Q1) whether the proposals for landlord's notice are an improvement on the current arrangements for Section 21 notices?

The new provisions for a landlord's notice (section 172) keeps with it the same principle as the previous Section 21 notices in the Housing Act of 1988, that of the "no fault eviction". It is important that this tool is retained in the Renting Homes (Wales) Bill as the Section 21 / 172 notices are often the landlord's last line of defence, after all other measures have failed.

We are pleased to see the removal of S21(4a) which states that

"That the landlord, or in the case of joint landlords at least one of them, has given to the tenant a notice in writing stating that after a date specified in the notice being the last day of a period of the tenancy and not earlier than two months after the date the notice was given, possession of the dwelling house is required by virtue of this section"

This section had previously implied that the date specified in the landlords notice must be the last day of the period of the tenancy and not earlier than two months after the date the notice was given. However, in the case of Spencer Vs Taylor 2013 the Court of Appeal decided that where an AST had a fixed term followed by a periodic contract, there is no need to use a S.21(4)(a) as a S.21(1)(b) would suffice. This decision was largely taken because of the wording in S.21(2) which stated that

"A notice under paragraph (b) of sub-section (1) above may be given before or on the day on which the tenancy comes to an end and that sub-section shall have effect notwithstanding that on the coming to an end of the fixed term tenancy a statutory periodic tenancy arises"

The Court of Appeals determined that the use of the word "may" in S21(2) is permissive rather than restrictive.

Our reading of the Renting Homes (Wales) Bill keeps what was established in the case of Spencer Vs Taylor, as there is no part of the bill which would raise the same implications as S.21(4)a and S.21(2). Therefore under this Bill the date specified in a landlord's notice need not be the last day of the period of the tenancy, however it must still not be earlier than two months after the date the notice was given.

This change is a large improvement on the previous Section 21 notices, as it keeps the same principle without landlords needing innate knowledge of case law. The process for issuing a landlord's notice is relatively clear.

Our one concern regarding the landlord's notice, as prescribed in the Renting Homes (Wales) Bill, as that at present we see no provision for issuing a landlord's notice electronically. This would benefit both landlords and tenants, as it would be clear exactly when the notice was issued and if that notice had been properly received and understood. We do however acknowledge that in some parts of Wales, or for certain demographics, this may not be an option. We would ask for the ability, where agreed with the tenant in the contract and geographically suitable, for all notices to be issued electronically.

Q2) whether you have any concerns that proceedings for possession will have to be issues within two months of the notice expiring?

At present a S21 notice is a tool used by landlords for more than simply claiming possession back on a rented property. Often if a tenant is building up rent arrears, communication between tenant and landlord can be difficult to establish. This could be for a number of reasons, however a S21 notice is sometimes used to establish a dialogue with the tenant around the issues they may be facing. In cases where a S21 notice does re-establish communication with the tenant, often the landlord and tenant can work out a payment plan to resolve the outstanding rent arrears and assess future rents. This process helps to keep the tenant in the property and encourages the landlord and the tenant to work together to maintain a successful tenancy.

Where this occurs, a landlord would need time to ensure that the tenant is able to meet this new payment plan. Under the new requirements, that a notice would expire after two months, the landlord would not be able to ensure that the tenant can meet the new plan. This is because, assuming rents are paid monthly, the tenant would only need to meet this new plan once, before the notice expires. At which point the landlord would then need to seek another possession order, taking a minimum of 2 months.

Although we understand that a landlord's notice must expire, we would ask that this time be extended from two to six months. This would allow for the mechanism (as mentioned above) to remain in place and give tenants the chance to prove they can meet new payment plans. It would also give landlords reassurance and the confidence to offer tenants these second chances.

Q3) 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. How big a problem is abandonment for private landlords and how so they currently deal with it?

Abandonment procedure is, at present, one of the most difficult situations a landlord can find themselves in, lease not because of the penalties if they get things wrong. The first sign given to a landlord that a property has been abandoned is the build up of rent arrears and no communication from the tenant. Typically a landlord would wait up to two months of no rent before escalating any procedures, as a tenant may have a valid reason for missing a month and the lack of communication. Upon two months outstanding arrears and still without communication from the tenant, a landlord may, following correct procedure, visit the property upon which they discover it has been abandoned. Often signs would include the full removal of the tenant's belongings, a build up of post, electrics and gas turned off, or the worst case scenario where a property may be completely ruined. At this point the landlord would formally suspect abandonment and begin following the formal procedure as well as enquiring with neighbours and contacts as to the whereabouts of the tenant. In this process it could be 3 or 4 months before the landlord begins formal abandonment proceedings.

The current formal procedure for abandonment is at best unclear and at worst misleading. The new proposals do simplify abandonment procedure, however we would still ask that the Welsh Government produce very strong guidance (almost a tick-box exercise) that a landlord can follow, to avoid any unnecessary court visits.

Thankfully abandonment does not make up a huge percentage of overall tenancies, however it does make up a large percentage of those tenancies that end in rent arrears. Presumably this is because tenants believe they can avoid any debts or arrears by simply abandoning the property. At present very little exists to protect landlords from these types of abandonment cases; often they find themselves struggling to follow formal abandonment preceding, as well as recovering a large loss of earnings, which for some smaller landlord can be fatal.

Q5) what risks do the abandonment proposals in the Bill present to private landlords?

The problems lie with Section 218(2)(b) in particular in that the contract holder can claim that he/she has not abandoned the dwelling and there has been good reason for his/her failure to respond or respond adequately. This is beyond the control of the landlord and these circumstances will be unknown to the landlord at the time. We would ask for further guidance as to what "good reason" would mean in practice, so that a landlord may not be caught out. We would also stress that a tenants should have the responsibility to inform the landlord when they are away for a prolonged period of time. To avoid the risk of unnecessary court visits we would ask for strong guidance as to what "good reason" would actually constitute so that a landlord may be absolutely clear in what is expected.

Secondly section 218(2)(c) says that a tenant, before the end of the period or within six months, apply to the court on the grounds that the landlord did not have reasonable grounds for being satisfied of abandonment. Landlords do not actively seek out to declare abandonment on rented properties and many would, through fear, look for every sign and indication that a tenant may be intending to return. However what may be deemed reasonable by the court may have simply slipped through the mind of the landlord, and thus they then incur the following penalties. To avoid this situation we

would ask the very strong guidance be produced on exactly what a landlord would need to do in order to satisfy this requirement of "reasonable grounds". We would also argue that where a landlord has done everything they possibly could to establish will all certainty that a property has been abandoned, and a tenant returns six months later, the landlord should not be held entirely responsible for following the letter of the law. Instead the onus of responsibility should fall on the tenant, who throughout all of this procedure, has failed to establish any type of contact with the landlord. Although perhaps this point may be somewhat sensitive, we would ask what limitations, conditions and cost a landlord may be expected to comply with in re-housing in this circumstance.

Q6) Do you have a view on whether the proposals in the Bill relating to abandonment could be improved, particularly in relation to ensuring that vulnerable people are not exploited?

We consider that at the very least paragraph (b) ought to be removed and that the question as to the reasonable grounds on the part of the landlord should explicitly be judged at the time and in the light of the information reasonably available to the landlord. The power to reinstate should be subject to availability of accommodation.

Q7) finally, you will have noticed that the Bill used the county court (or High court) for a number of purposes. A number of responses to the public consultation proposed alternative bodies and processes to settle disputes that arise under the Bill. Do you have a view on whether some disputes (other than possession claims) would be better dealt with by the Residential property tribunal rather than the courts?

As the Renting Homes Bill has been considered by the Welsh Assembly there have been suggestions that the jurisdiction in residential landlord and tenant disputes should be transferred to the Residential Property Tribunal away from the County Courts. In principle, the Residential Landlords Association (RLA) has not objected to suggestions that Residential Property Tribunals should assume at least some jurisdiction over these cases. We have, however, been very concerned about the practicalities. We have supported the transfer of contested disrepair cases but consider that the Council Courts have the necessary infrastructure in place to deal with the majority of cases. We believe that this approach coupled with the transfer of defended disrepair claims to the RPT, is the better solution. The ticketing of Judges already takes place in family cases. As residential landlord and tenant law is complex you certainly need judges with the requisite knowledge and experience.

The essential problem at the moment is that most District Judges have a very extensive workload, including debt collection, personal injury claims, contract disputes and a very heavy workload of family related matters. Over time District Judges have been given much more jurisdiction to deal with cases than they have had in the past and they also have to undertaken extensive case management responsibilities even for those claims that are ultimately dealt with by Circuit Judges or High Court Judges. Greater specialism would therefore be the way forward in our view.

"The status of the Tribunal"

Unlike in England, the RPT is a stand alone Tribunal. In England RPTs have been assimilated into the Courts and Tribunal Service. This has led to the provision of additional back up resources, such as use of Tribunal rooms for hearings, which is not necessarily always available in Wales.

Practicalities

Our major concern has been that RPTs do not have the necessary resources, structures or, indeed, experience. Despite their shortcomings, at least, there is an extant Court system throughout Wales. It is geared up in many respects to deal with the volume of claims relating to residential landlord and tenant matters, many of which are undefended or at least even if they are defended matters can be disposed of more easily. The Tribunals most certainly could not take on this volume of work. Currently the RPT is being expanded to deal with work under the Housing (Wales) Act and a further substantial transfer of jurisdiction would, we believe, overwhelm the Tribunal.

The importance of speedy resolution of claims

Of paramount importance to landlords is to ensure that claims, especially straight forward claims are dealt with expeditiously. Whilst we have concerns at times about delay, at the moment the Courts do have the basic structures in place to enable, at least undefended claims, to pass through the system relatively quickly. Tribunal members are often part time and they simply do not have the resources to take over this work load. With the current climate affecting public expenditure, it is unrealistic to think that this is a priority to which resources could be devoted.

Claims in the County Court

Claims in the County Court relating to residential landlord and tenant matters can be broken down into three broad categories. Firstly, there are those that are undefended altogether; where frequently the defendant/tenant does not even turn up let alone enter into any kind of response. Secondly, you have cases which, in reality, are to all intents and purposes undefended but where issues may arise, e.g. an application for an extension of time to allow payment of arrears by instalments or to defer possession. There may be arguments about the amount of arrears or other matters that can be disposed of quite speedily. Often it turns out that there is no substance in these so called defences anyway.

Thirdly, you have the more serious matter where is it genuinely defended, e.g. disrepair or claims of harassment. Claims relating to retaliatory eviction will come into this category where they are defended as well.

The normal process is for any claim which is defended, at least where there is substance to the defence, to be "tracked" by a District Judge. The main exception is possession claims which are automatically listed for hearing although they can be subsequently tracked, e.g. if there was a disputed defence over disrepair, seeking to set off damage for disrepair against rent arrears. An additional option could be given

in suitable cases which are defended for the determination by the Tribunal. A precedent already exists for this when the Tribunal is exercising its function as leasehold valuation tribunal. Service charges can and are normally referred to a Tribunal for determination.

Expertise of a Tribunal

The Tribunal can be expected to have particular expertise in relation to property condition based on its existing jurisdiction. Beyond that, however, issues such as harassment, anti social behaviour, or breach of contract terms, are essentially often issues of fact where they are defended. These can be dealt with just as well in a Court and indeed, arguably are more suited for Court where cross examination to ascertain the truth is very important.

The role of experts

One argument that has been advanced as to why it would not be appropriate to transfer cases to the Tribunal is in relation to expert witnesses. Expert evidence is particularly relevant in the case of disrepair cases but if anything a reference to the Tribunal would be advantageous because there there is a specialist member, the surveyor member, who may be better placed to weigh up the evidence given by experts. It is acknowledged that legal aid may not be available but that is going to apply equally in the Court system in many cases unless it can be said that the tenant's home is at risk as a result of the proceedings. Indeed, there may be further legal aid cut backs which will further circumscribe the availability of legal aid in any case.

Costs

There is a no cost jurisdiction in the Tribunal. Arguably, this can encourage litigation in certain instances because the lack of sanction of costs for wrongly pursuing a case may ironically mean that there are likely to be more litigation before the Tribunal, if the RPT were to assume jurisdiction. There is, of course, power for the Tribunal to order costs if a party acts unreasonably, which if judiciously used might well prevent actual misuse of the Tribunal process, but it is unusual for this jurisdiction to be exercised, especially in relation to unreasonably bringing of defending proceedings. In any case, where matters are dealt with on the small claims track the rules mean that costs orders are rarely made, beyond the specified matters such as fees and expert evidence, as well as the cost of witnesses attending.

Conclusion

As indicated at the outset, whilst the RLA is not wedded to the idea of cases being dealt with in Court, as opposed to a Tribunal, we still believe that there are many practical reasons why the bulk of cases should remain in the Court system. This is particularly true of those cases which can be dealt with usually summarily because they are undefended with no substantial defences raised. We do, however, accept that where an issue arises regarding property condition and the case is defended then a reference of the issue to the Tribunal could be advantageous because of its specialist nature.