Supplementary Evidence to the National Assembly for Wales'

Communities, Equalities and Local Government Committee

On the Renting Homes (Wales) Bill

From the Association of Residential Letting Agents (ARLA)

May 2015

Background:

1. The Association of Residential Lettings Agents (ARLA) was formed in 1981 as the professional and regulatory body for letting agents in the UK. Today ARLA is recognised by government, local authorities, consumer interest groups and the media as the leading professional body in the private rented sector.

2. In May 2009 ARLA became the first body in the letting and property management industry to introduce a licensing scheme for all members to promote the highest standards of practice in this important and growing sector of the property market.

3. ARLA members are governed by a Code of Practice providing a framework of ethical and professional standards, at a level far higher than the law demands. The Association has its own complaints and disciplinary procedures so that any dispute is dealt with efficiently and fairly. Members are also required to have Client Money Protection and belong to an independent redress scheme which can award financial redress for consumers where a member has failed to provide a service to the level required.

Request for Additional Information:

Question 1: Whether the Bill does anything to help letting agents deal with antisocial behaviour

4. ARLA is content with the provisions in clauses 55 and 56 of Chapter 7, Part 3 of the Bill. However, we note there is no specific Ground for Possession on the basis of anti-social behaviour within the Bill.

5. At present, landlords will have to use the discretionary Ground of breach of contract outlined at clause 156. It is exceptionally difficult for landlords to demonstrate anti-social behaviour. This is why, in cases of anti-social behaviour today, landlords generally use the no-fault possession Ground. In most cases, neighbours and/or other tenants living in the property do not wish to testify for fear of the anti-social tenant and therefore, landlords have little or no evidence to support a claim for anti-social behaviour. If the Ground was mandatory, landlords would find it easier to persuade neighbours / other tenants to testify. If there is the possibility that the anti-social tenant may return, then neighbours or other tenants are highly unlikely to offer to testify

for the landlord. Leaving the only route to possession a discretionary Ground under clause 156 will render clauses 55 and 56 unenforceable in practice.

Question 2: 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 letting agents and how do they currently deal with it?

6. Abandonment poses a significant problem for landlords and letting agents as it can take a long time to lawfully regain possession of an abandoned property; all whilst no rent is being paid by the abandoning tenant and the landlord cannot re-let as they may be prosecuted for illegal eviction. In turn, this causes the landlord significant financial hardship and can put a mortgaged property at risk of repossession.

7. Generally, landlords and letting agents currently use the no-fault possession Ground to recover possession of a property that has been abandoned. ARLA therefore welcomes the approach contained within the Bill to allow recovery of possession without the need for Court intervention.

Question 3: What risks do the abandonment proposals in the Bill present to agents, and in particular how would they serve notice on the contract-holder?

Question 4: Do you have a view on whether the proposals in the Bill relating to abandonment could be improved, particularly in relation to ensuring vulnerable people are not exploited?

8. ARLA welcomes the principles behind clause 216 relating to repossession of abandoned dwellings; however the measure has an obvious flaw. It would be impossible for a landlord to serve a tenant with a notice of repossession on the basis of abandonment, by simple virtue of the fact that the tenant would not be at the property to receive it.

9. Confusingly however, clause 243(3)(c), which defines a dwelling as subject to a contract, seems to offer a solution to this, while, conversely, clause 218(2), on contact-holder remedies, provides the tenant with the grounds for defence. Therefore it is clear that further clarification is needed on this matter.

10. We believe that the provision affording tenants six months to set aside an abandonment claim, afforded via clauses 218(1) and 224(1), is too long and should be shortened to eight weeks. We believe it is reasonable to expect a tenant to reply within two months if they have not abandoned a property, while six months allows people enough time to move properties, end that subsequent tenancy before demanding their original tenancy back.

11. Schedule 10 makes frequent reference to the “contract-holder and his or her family”. ARLA believes that this could be misinterpreted that a landlord would need to accommodate both the

tenant and the tenant's family (regardless of whether the family actually lived with the tenant during the tenancy). In particular, clause 4(4) indicates that a private landlord would have to provide alternative accommodation capable of meeting social housing standards. Such a provision leaves open the possibility of a tenant demanding that the landlord replace his or her studio flat with a four bedroom house in order to accommodate his family, which is neither right nor fair.

12. We recommend that this Schedule be amended to state that only the original tenant and other permitted occupiers have a right to suitable alternative accommodation. Clause 4(4) should also be reworded to say that the landlord is obligated to only provide a property similar in both size and rental value to that which was abandoned.

Question 5: Finally, you will have noted that the Bill uses 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 the Residential Property Tribunal, or an alternative body, could be developed to reduce the need to go to court to resolve disputes?

13. ARLA would argue the current County Court (or High Court) process for possession proceedings is inefficient and fails to adequately serve either landlords or tenants. As stated in our evidence session, County Court Judges must adjudicate across the whole span of civil law cases. This prevents them from being specialists in any one field. Therefore, they are not always up-to-date on the law and lawyers acting on behalf of the parties often have to explain recent legislative changes and new precedents before judges can make their determinations.

14. Creating a specialist Housing Court (which could perhaps sit in the County Court one day per week and only hear landlord and tenant law claims; including possession proceedings) or moving such cases to the Residential Property Tribunal will overcome this problem as judges will be appointed for their knowledge and expertise in the field. This will both expedite cases (as judges will be experts in their field and therefore Court time and resources will not be wasted explaining new legislation or case law) and also improve consistency in judgments across the Welsh Court.

Question 6: Whether this would allow contract-holder to exercise their rights more effectively?

15. It is also important to factor in the distress going to court places on all parties. As explained above, it is a time-consuming, usually expensive and difficult process to understand. Therefore, we believe that taking landlord and tenant cases out of the County Court system will benefit the whole sector as drawn out possession proceedings and inconsistent application of precedent causes misery and uncertainty for tenants, landlords and letting agents.

16. It is ARLA's firm opinion that when combining the proposals outlined in the Bill to simplify the tenancy regime as well as creating an efficient Court process, this Bill would be the most sensible and effective legislative improvement to the private rented sector since the foundation of the modern sector in the Housing Act 1988.

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