Private rented sector review – submission from the National Landlords Association and the National Federation of Residential Landlords

March 2008

General – standards in the Private Rented Sector

- The private-rented sector covers a wide cross-section of housing from luxury flats and houses through middle-market homes and good quality student accommodation, to cheaper properties at the lower end of the market.

- Landlords providing tenancies in the private rented sector range from those with large portfolios to those holding only one property, often as 'buy to let' investors.

- Cheaper properties do not have to be of bad quality. However, it is mainly the small percentage of badly-managed properties at the lower end of the market which arouse most public interest and cause problems to tenants and the community, creating negative perceptions of the private rented sector.

- The NLA and NFRL believe there should be no place in the private rented sector for badly managed properties or badly managing landlords ("rogue operators").

- Appropriate, focussed, and effective regulation of the private rented sector is vital and supported by us as a means of raising standards; improving the management of properties and cracking down on rogue operators.

- Unless regulation is implemented by local authorities squarely against rogue operators there is a high risk that an unfair burden will be placed on those reputable landlords who already comply with best practice and the rogues will face no deterrent to continuing to operate.

- If local authorities, with the wide range of powers and resources available to them, are unable to grapple effectively with the problem of rogue operators then it is local authority practice, procedures and resource allocation that needs to be looked at and rectified.

Self-regulation

- As responsible landlord associations with mandatory codes of practice for our members, both NFRL and NLA recognise that we have a continuing role to play in self-regulation of the private rented sector.

- We recognise that the burden of driving up standards and driving out rogue operators does not reside with local authorities alone.

- In order to work, self-regulation would have to be properly structured and resourced. We doubt there is a 'quick fix' and/or an 'off- the shelf" solution for immediate implementation.

- If self-regulation is recommended by the Rugg report much further work would be needed to determine the details.

- We believe that consideration might usefully be given as to how our role in driving up standards could be enhanced. In this connection, if enforced self-regulation were recommended we would welcome an opportunity to discuss our role in this with the government.

Housing the Vulnerable

- Landlords regard the vulnerable as being high-risk tenants owing to two factors: low incomes of the tenants and the high safety net preventing the landlord taking swift, effective, action when problems with the tenancy occur.

- Vulnerable tenants should not be 'abandoned' into the private-rented sector as they, and their landlord might need help to manage the tenancy. A number of schemes are operating in various parts of the country to provide a 'safety net' to help the tenancy to succeed.

- There are three main factors limiting the supply of housing for the vulnerable:

    - Economic: low incomes, problems with admin of housing benefit, risks associated with direct LHA payment to tenants

    - Anti-social behaviour: perception, based on anecdotal evidence rather than solid evidence, that HB tenants are **more** likely than other tenant groups to be anti-social. Some low-income vulnerable tenants do present an increased risk eg people with drug and alcohol problems, people who have previously been evicted from social housing for ASB, and ex-offenders (for whom there is rising demand for PRS housing)

    - Demand from other tenant groups: In areas of high to medium housing demand vulnerable tenants are competing against a number of other tenant groups whose circumstances make them less of a perceived risk to the landlord and therefore more attractive as tenants. It is easier for HB tenants to find accommodation in areas of low housing demand.

- Anti-social tenants do not just cause a problem to the landlord but also other neighbouring tenants and the rest of the local community.

- NLA and NFRL believe that there needs to be better coordination between departments at the local-authority level across the country of 'safety net' best practice in order to house the vulnerable.

- A 'safety net' should include:

    - Rent and deposit guarantee schemes, whereby the local authority guarantees payment of rent or provides a deposit upfront for low-income households.

    - Support and advice for both tenant *and landlord* as the tenancy progresses and problems arise so that they can be dealt with before escalating to the point where the tenancy breaks down.

    - Local authorities should be required – or at least encouraged - to invest in the role of a tenancy relations officer: in some or many areas this role has been the victim of budget cuts.

    - Consideration should be given to housing particularly vulnerable tenants (such as ex-offenders) on a licence rather than a tenancy. At the first sign of problems the authority can step in and remove the tenant to another location (where they can be taught tenancy management skills) without having to give two months notice.

    - Private sector leasing is another way forward so the local authority is responsible for the tenancy. If accommodation leased under private sector leasing arrangements were re-classified as non-temporary, such schemes might be more attractive to local authorities.

- Anecdotal reports suggest that where a local authority's property-finding service has been out-sourced to an RSL, the RSL is selecting the better tenants to take up tenancies with them, leaving the problem tenants to private landlords. More work needs to be done to identify the extent of this problem, but the practice should be discouraged.

- The change to direct payments for LHA should apply equally to the social and private-rented sectors, since considerations of personal responsibility apply equally to HB claimants in both sectors.

- Alternatively, and ideally, this legislative change should be subject to immediate review and the reinstatement of the automatic right for private rented sector tenants who are housing benefits claimants to have their housing benefit paid direct to landlords without having to state their reason(s).

- As an immediate step, local authorities should be encouraged to use as flexibly as possible the discretionary powers available to them under the legislation for allowing the rental component of the allowance to be paid directly to the landlord.

Possession and the Existing Regulatory Environment

- The accelerated possession procedure is no longer as quick as it was intended to be and needs to be brought back to that status, whether that is through use of the courts or by transferring possession cases to the Residential Property Tribunal.

- There is a case for transferring jurisdiction for possession to the Residential Property Tribunal Service (RPTS). Given that cases brought by private landlords have to compete for court time with other cases, resolution of cases by a specialist body could be quicker. But without sufficient financial and staffing resources the specialist body will continue to be as sclerotic as the courts.

- In response to a survey in April 2005, members reported that, where they had had to apply to the courts for an eviction order using the Section 21 so-called fast-track procedure, the process took, on average, 6.1 months, cost £828 and resulted in tenants leaving owing 5.1 months' rent.

Security of Tenure

- Landlords *want* to be able to award longer tenancies. It makes good commercial sense to avoid changing tenants. But landlords must have the assurance that, should a tenant fail to pay the rent, or cause damage, or exhibit anti-social behaviour towards other tenants, or other residents, there is a swift and guaranteed means of recovering possession of the property.

- There is a barrier to the granting of longer tenancies in that buy-to-let mortgage providers typically insist, as a condition of the loan to the landlord, on a maximum 12-month assured shorthold tenancy (AST).

- Landlords borrowing commercially or with other sources of funding may not be restricted in this way. However there will still be reluctance to grant an AST of longer than 6 months, at least initially because of:

    - financial risk: If the tenant gives notice and moves out before the end of the fixed term then s/he has an obligation to pay the rent for the remainder of the fixed period signed up for, or until the landlord is able to find a new tenant. In practice this rarely happens and the landlord is left out of pocket.

    - Risk of problem tenant: If a tenant turns out to be anti-social, or a persistent late payer, or is in arrears, the landlord can solve the problem most easily by serving a Section 21 notice and getting possession at the end of the initial 6 month fixed period.

- A landlord <u>cannot</u> apply to the court for possession under Section 21 whilst the fixed term is in force. Thus, the longer the fixed term, the greater the difficulty for the landlord if the tenant turns out to be problematic. (The landlord would have to rely on the grounds for possession under the Housing Act 1988 and would have to provide evidence to support his application to the court. This process would take time. There is also a risk – particularly with anti-social behaviour – that the court would only issue a suspended possession order allowing the tenant to continue in occupation.

Retaliatory Eviction

- S21 usage should not be reduced or curtailed for the following reasons:

    - There is, at present, only anecdotal evidence that a problem exists (retaliatory eviction).

    - This problem should be addressed by local authorities through better enforcement using the extensive powers that are currently available to them

requiring property owners to keep their properties in a habitable condition and manage them correctly.

- Placing restriction(s) on the use of Section 21 notice, and doing so without with out better enforcement by local authorities, would simply serve to encourage rogue operators to harass and evict illegally, and then let the property again to another vulnerable member of the community.

- Placing restriction(s) on the use of Section 21 notice, and to do so without better enforcement by local authorities of their (extensive) powers, would also mean that the overwhelming majority of responsible landlords would face a higher barrier to gaining possession in genuine cases.

- There may be rogue operators who evict tenants simply because they have asked for repairs to be made. But such operators, if they do so, are proceeding against the spirit of the law. In law there is no such thing as 'retaliatory eviction'. There is only legal, or illegal, eviction.

- Our Codes of Practice require our members to respond to genuine complaints about repairs from tenants and carry out any necessary work, as well as keeping the property in a good state of repair.

- The experience of our members is overwhelmingly that they seek a possession order only as a last resort and that they do so for genuine reasons, such as anti-social behaviour or non-payment of rent. We believe some individuals are pre-disposed to complain about repairs in an attempt to delay possession or to justify withholding rent.

HMO Licensing and HHSRS

- The implementation of the Housing Act 2004 is variable across the country.

- The extent to which local authorities are coping may be attributable to a variety of factors, such as whether or not they operated registration schemes before the Act came into force, the number of HMOs they have to licence in their area, and the extent to which they have devoted resources to managing the introduction of HMO licensing and HHSRS.

- Local authorities should ensure that all mandatory-licensable HMOs (higher-risk) are licensed before making any move to introduce additional licensing for smaller HMOs. Diverting resources to cover other HMOs will only serve to increase the likelihood that licensing will fail to catch the rogue operators (its purpose) in the highest risk properties whilst responsible landlords face an increased regulatory burden.

- Local authorities should not be given additional powers to licence every private landlord. Experience in Scotland, where all landlords have to be licensed by the local authority, is that it has failed owing to the complexity of the system and a lack of resources in local authorities to deal with the workload.

- Owing to the uneven implementation of HMO licensing and HHSRS, no further regulation of the sector or extension of the powers in the Housing Act 2004 should be considered until the new régime has settled down.

- The Government gave an undertaking to review progress of licensing three years after it was introduced. The purpose of any such review should be to identify the

extent to which licensing has been implemented properly and has contributed to an improvement in standards in HMOs. Until that review takes place, and unless/until there is evidence that licensing has failed to work (together with the reason(s) for any such failure), there is a risk that any further regulation would overload the sector.

- Many local authorities have introduced additional licensing where there previously existed a registration scheme. The old registration scheme will have included buildings which housed three sharers however the local authority did not, in practice, enforce registration against these properties as they presented a low overall risk to tenants and the wider community. What we find, however, is that the authorities are using the additional licensing scheme to enforce more heavily against these properties. This generates income for local authorities, but does not tackle or solve any problem(s). Local authorities are focussing on these low-risk HMOs at the expense of tackling the serious problems in higher-risk HMOs which licensing was intended to target. In addition this is having an adverse impact upon the housing of low paid – and in some cases, key, - workers. Where, for example, a landlord might previously have permitted three police officers, or three nurses, to share a three bedroom house, they are now less inclined to do so owing to the burden and cost of licensing.]

Student Housing/'Studentification'

- The overall provision of student housing is unlikely to decrease in the forseeable future, given that the UK is still trying to achieve a target for 50% of young people to go to university.

- The key issue is the balance in the provision of student housing and the extent to which traditional private landlords will be able to compete against large-scale developments, built and managed by specialist developers.

- Large-scale developments can, in some circumstances, be popular with the local community owing to the perception that they reduce the 'studentification' of an area. However, the problems of 'studentification' can still remain with large-scale developments: a large community of students will still lead to the same problems eg:

    - no demand for local schools, post offices and other community facilities,
    - movement en masse at certain points in the year,
    - possible problems with anti-social behaviour by certain students.

- Not all students will want to live in halls. There are a variety of students and the needs of undergraduates will differ from those of mature students, postgraduates and overseas students. Private-rented housing might be more acceptable to these categories of student than purpose-built developments, (especially if the students have families or partners to house).

- Even for undergraduates, there are cases where purpose-built developments are too expensive and therefore unaffordable. These students will also want to look to good-quality private rented housing to provide for their needs in a more cost-effective way.

- Students now expect a better quality of property than formerly. Among the facilities expected as standard are central heating, phone line, broadband and digital TV. University accommodation offices will often use their own accreditation schemes to ensure that properties offered by private landlords meet legal requirements and have the facilities that students expect.

- Under current planning law HMOs only need planning permission if there are more than 6 people living in the property or if fewer than 6 people but not as a single household. Calls for all HMOs (ie any property with 3 or more unrelated tenants) to require planning permission must be rejected so that an unfair burden is not placed on landlords. Any change(s) might also result in unintended consequences on the housing market in certain areas of the country, particularly in London, for the following reasons:

    - If planning law were changed then local authorities across the country would have to consider change of use applications for all HMOs within their boundaries, presenting an immense regulatory burden on planning departments in many areas of the country.

    - In London, particularly central areas, HMOs are seen as an essential source of affordable accommodation for a mix of tenant groups, not just students. Local authorities such as Camden and Westminster are keen to hold onto them within the overall housing mix and will easily grant planning permission but then refuse any subsequent application by a new owner to change the property back to single dwelling status so that it can be converted back into a single house. Applying planning status to all HMOs would lock houses and flats housing 3 or more tenants in these areas into permanent HMO status.

    - Locking properties in high-demand areas into HMO status would significantly devalue those properties (as they could only be sold on as HMOs which would limit interested buyers) and the reduced value would disincentivise landlords. HMO owners would also seek to avoid the need for planning consent by selling the properties at the earliest opportunity or converting them into single houses or flats before the change in planning law took effect. The result would be that an already limited source of essential cheap accommodation would reduce still further.

Taxation

- Taxation policy should be consistent with the goal of developing a healthy private rented sector. The NLA and NFRL believe that taxation of the sector should incentivise investment in residential property to rent.

- We consider that the tax regime in relation to the letting of private residential property is generally sensible and workable. There are, nevertheless, anomalies that can distort supply and act as a disincentive to investment, potentially reducing the availability of affordable accommodation and impeding progress towards a diverse housing mix.

- There is merit in recognising the work done by portfolio landlords, just as work put into any other business activity is recognised. While we consider the range of provisions to be relatively comprehensive and fair, there is a case for making allowances currently available to other types of businesses also available to residential landlords.

- An allowable tax deduction for 'landlord's time' could encourage better standards of management. If a landlord elects to manage their property personally they are not entitled to claim any relief for their time whereas if they pay a third party for services rendered this can be deducted from a landlord's taxable income as a business expense.

- We cautiously welcome the Government's announcement of their intention to reform capital gains tax (CGT). The Treasury's proposals on rate changes will simplify the system making it more attractive for landlords to adapt their portfolio in response to changing demand for housing.We think that extending eligibility for some form of CGT roll-over relief to individual residential landlords would incentivise responsible long-term investment and benefit the sector. Currently any capital gain realised following the disposal of a rental property - above the prevailing allowance - is taxable, even if the funds released are reinvested in another property that is offered for rent. In other industries taxation of gains generated by the sale of business assets may be deferred until a later time provided the gains are reinvested in the business. NLA and NFRL recognise that this is a complex subject and the NLA has committed to commission an economic assessment study to examine the possibilities.

- Despite constituting the sole or principal income for a significant number of private residential landlords, rental income is classified by the HMRC as unearned income. We believe that rental income should remain classified as unearned income but would like to see the some relief extended to afford private residential landlords as an incentive to save for retirement.

- Currently a person in receipt of a salary, or wage, who chooses to invest part of this income in a pension fund is entitled to income tax relief on the sum invested. This provision applies only to income falling into the earned income category and as such excludes rental income generated from private residential property. This reduces the ability of landlords to save for retirement if their income is derived exclusively, or in the main, from rental income.

- The Government should consider the benefits of encouraging landlords to continually embark upon a programme of refurbishment by changing the VAT rules on building repairs and improvements, and review the rental income tax concessions on building improvements.

Council Tax

- We would like to see consistency in the interpretation of the rules relating to council tax banding, and consistency in eligibility for council tax benefit. We believe the rules should be harmonised across local authorities to improve clarity and provide peace of mind for residents of HMOs.

- We believe that the Valuation Office Agency should review their guidance on what constitutes a dwelling for the purpose of banding council tax, enabling local authorities to take a consistent approach in the way this tax is administered.

- Around 20% of the private rented sector comprises HMOs, for which the landlord is responsible for paying council tax. Although subject to a number of differing definitions, HMOs are generally accepted to be properties occupied by two or more households sharing facilities. For the purposes of council tax banding, an HMO may be considered a single dwelling house or to comprise a number of smaller units, making it subject either to a single tax demand at a relatively high band, or to several separate demands at a lower banding. The status of such properties is based on guidance issued by the Valuation Office Agency (an executive office of HMRC).

- There is a growing problem in some areas whereby the Valuation Office Agency is beginning to band individual rooms in an HMO rather than assess a single banding

for the whole building. This has a detrimental impact upon the low paid employment sector. Traditionally, this kind of accommodation is often the only ‘affordable’ housing in areas of high demand. By banding individual rooms, the occupant becomes responsible for the council tax and has an increase in his/her weekly outgoings of some £15 per week.

ENDS