



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to the private rented sector: professionalism and quality – the Government response to the Rugg Review consultation

August 2009

About Consumer Focus

Consumer Focus is the independent champion for consumers across England, Wales, Scotland and (for postal consumers) in Northern Ireland. We operate across the whole of the economy, persuading businesses and public services to put consumers at the heart of what they do.

Consumer Focus was formed on 1 October 2008 through the merger of three organisations – energywatch, Postwatch and the National Consumer Council (including the Scottish and Welsh Consumer Councils). We are a statutory organisation that works within a devolved setting, with work priorities varying across different parts of the country, but all working to common strategic goals.

Through campaigning, advocacy and research, we champion consumers' interests in private and public sectors by working to secure fairer markets, greater value for money and improved customer service. We have a particular focus on the interests of consumers in markets that are 'designated' by Government as requiring additional consumer advocacy.

Consumer Focus also has a commitment to work on behalf of vulnerable and disadvantaged consumers, and a duty to work on issues of sustainable development.

Introduction

Consumer Focus welcomes the opportunity to comment on the Government's proposals which are intended to strengthen and improve the private rented sector.

We are looking into this sector to uncover issues affecting private tenants. It is apparent that there are some clear areas of detriment, particularly in relation to security of tenure, property condition, and access to and choice of decent accommodation for tenants who are vulnerable and/or on low incomes. There is little information available about landlords, so prospective tenants are able to make an informed choice before entering into a tenancy agreement.

Due to our limited experience in the sector, we have chosen to focus on specific aspects of the proposals. It is in these areas where we feel a difference could be made and where Consumer Focus will aim to focus any campaigning work.

A national register of private landlords

Consumer Focus supports the Government's proposals to introduce a form of registration for private landlords. However, considering the proposed 'light touch' licensing approach, thought needs to be given to the specific aims of the register; what the register will mean to both landlords and tenants and how it will ultimately drive up standards, promote good practice and expose rogue landlords.

Unlike the Landlord Registration Scheme in Scotland, there would be no criteria a landlord has to meet before signing up to the register, or any assessment made of the behaviour of a landlord in relation to the letting of a property. As a result, any landlord, good or bad, could sign up to the register.

With this in mind, there must be clear measures for enforcement so that landlords operating illegally are identified and removed from the register as quickly as possible.

It would be vital for the register to have a public-facing element. This would provide landlords with an avenue for marketing, allowing them to demonstrate that they are operating professionally. This, in turn, would provide tenants with access to vital information about landlords and their credentials, and empower them in their choice before entering into a tenancy agreement. The public-facing element would be a key driver to improving standards in the sector and rooting out rogue landlords.

As such, tenant awareness of the national register will be an important ingredient to its success, and both tenants and landlords will need to be made aware of how the national register would benefit them.

However, as the proposals stand, little regard has been given to tenants and the information and benefits that the register could provide. There will be a need to involve tenants in the design of the register in order to ensure that a fair balance is struck between tenants' and landlords' interests.

We will examine these issues in greater detail as we answer some of the specific questions raised in the consultation paper.

Responses to specific consultation questions

Are there any other services (for landlords) which could be linked to the register?

Legal obligations

The proposals state that one of the key roles of the national register will be to disseminate information to landlords. Consumer Focus agrees that this is an important element of the register. It is essential that landlords become aware of their legal obligations and have the necessary information and support to manage their tenancies professionally, as well as providing safe, decent homes for their tenants. This is vital given that many landlords appear to be unaware of their legal obligations. Research by Gumtree in the first three months of this year found that 46 per cent of landlords are failing to provide a gas safety certificate and only 47 per cent are installing a smoke alarm. Half of landlords did not draw up a legal contract with their tenants, only 46 per cent requested references, and just 42 per cent took out home insurance¹.

The register should also provide notifications and advice to landlords when there are any changes to their legal obligations. For example, the requirement of an Energy Performance Certificate (EPC) whenever a property is let to a new tenant is a new obligation which came into force on 1 October last year. In addition, on 1 April 2009, the Gas Safe Register replaced the CORGI gas registration scheme.

In line with the provision of information and support relating to the different legal obligations that landlords must conform to, it may also be useful to provide information on the three different types of tenancy deposit schemes. Landlords can then make an informed choice of which scheme to sign up to, so that they are able to explain the nature of the scheme to tenants.

Tenancy agreements

Providing access to standard tenancy agreements will be an important aspect of the register. A tenancy agreement is a written legal document which sets out the rights and responsibilities for both tenant and landlord. Tenants and landlords are often unaware of their rights and responsibilities, so the tenancy agreement is a key document for both parties.

However, legal documents such as tenancy agreements can be confusing and difficult to understand. The British Property Federation has launched an Assured Shorthold Tenancy agreement, which has been endorsed by the Plain English Campaign so that it is clear and transparent for both tenants and landlords. Something similar should be considered for the register.

Energy efficiency

A report by the Energy Efficiency Partnership for Homes (EEPH) on improving energy efficiency in private rented housing highlights the need to provide basic information to landlords about the types of energy saving measures, the costs and savings².

¹ <http://www.which.co.uk/news/2009/03/average-cost-of-renting-falls-by-more-than-2-171904.jsp>

² Improving energy efficiency in private rented housing: issues and opportunities, *A report from the Energy Efficiency Partnership for Homes Private Rented Sector Group*, March 2009

Awareness of the Landlords' Energy Saving Allowance (LESA), which allows private landlords to claim back up to £1,500 for the installation of energy saving measures in a property, is low. Energy efficiency is not necessarily a priority for landlords and they tend to be more interested in measures which add value to their property rather than measures aimed at improving the energy efficiency of the property.

The register could act as an information resource for landlords on energy efficiency measures and provide information about the different funding and support available to them, for example, LESA and the Carbon Emissions Reduction Target (CERT).

This information and advice should help landlords to act on the recommendations for improving the energy efficiency of a property emerging from the Energy Performance Certificate.

Financial assistance

As a result of the economic crisis, the Council of Mortgage Lenders (CML) predicts that 75,000 properties will be repossessed this year, including approximately 8,000 buy-to-let repossessions, many of which could result in tenant evictions.

The national register could provide useful signposting to initiatives that have been set up to assist home owners and landlords who are having problems paying their mortgage. The Northampton Borough Council's Mortgage Rescue Scheme is one example of such an initiative.

Would a public facing element of the register be a helpful service for landlords?

A public facing element of the register would encourage landlords to sign up and provide an avenue for landlords to market and differentiate themselves to tenants. It would also demonstrate that they are operating professionally. One of the means of exhibiting this could be for landlords to promote that they belong to a landlord association or they are a member of a private landlord accreditation scheme.

The main advantage of a public facing element of the register would be in providing potential tenants with valuable, upfront information about landlords. Despite a tenancy agreement being a significant and financial commitment for the majority of tenants, there is a lack of information available on private landlords and the underlying state of the properties being considered. This can make it difficult for tenants to make a choice between the different landlords and properties available to them. For example, if a tenant searched for private rented accommodation on the website Gumtree, through which at least 10,000 rooms are rented a month³, the only information provided about the landlord would be their name and telephone number.

Even if a landlord's details are provided, there is no source of independent information against which the landlord's or property's credentials can be checked. A tenant is only able to make a decision whether to enter into a tenancy based on their intuition about the landlord's character and following a brief, largely subjective viewing of a property.

This is in contrast to social housing where a charter has been introduced for tenants which sets out exactly what tenants can expect from their landlord, the Housing

³ http://www.gumtree.com/about_us.html

Association. If agreed standards are not met, social housing tenants have access to the Housing Ombudsman Service which will independently investigate a tenant's complaints.

Providing greater and more comprehensive information on landlords will empower tenants to make informed choices before signing up to a tenancy agreement, so they avoid rogue landlords and are confident of a good standard of service. This will reward good landlords, drive out rogue operators, and deliver improvements across the sector.

What information should the public facing element of the register contain in order to make it as attractive as possible to potential tenants while not overburdening landlords?

References

As previously stated, tenants should be able to make an informed choice before signing up to a tenancy agreement based on both the landlord's and property's credentials.

Prior to a tenancy agreement being reached, the landlord can reasonably expect the prospective occupant to provide a reference to determine whether they would make a trustworthy tenant. However, this does not work in reverse and the tenant is left to enter into a costly and legally binding agreement with a landlord who they know little about.

One means by which the register could generate equality, thus giving the tenant more information, would be to allow prospective tenants to view landlord references from past and present tenants. Websites such as TripAdvisor, Amazon, and eBay provide unbiased user's reviews of products to help enable customers to weigh up the product before making a purchase.

References would have to be provided through an impartial third party, independent of a landlord, if this process is to generate tenant confidence in the sector.

Accreditation schemes/landlord associations

Landlords who are part of a private landlord accreditation scheme or members of a landlord association should be able to promote this on the register. This will signal to a potential tenant that a landlord has made a commitment to perform to certain standards in relation to the management or physical condition of the properties they let. However, differences exist in standards across the various private landlord accreditation schemes. We will examine this in more detail later.

Energy Performance Certificates

The register should state whether there is an Energy Performance Certificate for the property that is to be let, with its main purpose to demonstrate the energy performance of the building the tenant is planning to occupy, giving an indication of the condition of the property. New research by the EEPH shows that EPC's have become a vital part of the decision making process for tenants and landlords. When selecting a new property to rent, 32 per cent of tenants who moved after October 2008 claim they used one⁴.

Information on any Housing Health and Safety Rating System would also provide the tenant with an indication of the condition of properties on offer for let.

⁴ Private Landlords Research, *A report prepared for the Energy Efficiency Partnership for Homes (Private Rented Sector Group)*, February 2009

Housing Benefit

It would be beneficial if the register could state whether landlords will rent to tenants on Housing Benefit or the Local Housing Allowance. Many landlords are reluctant to rent to such tenants because of problems with the benefits process and the negative perception of tenants on benefit. As a result, there is a significantly reduced choice of decent accommodation for these tenants. Provision of this information on the register would offer greater choice and transparency to tenants who are in receipt of Housing Benefit or Local Housing Allowance.

What sort of activities should be linked to removal from the register?

A landlord should be removed from the register if they persistently provide a poor service to tenants. This would include failing to carry out essential repairs that may be impacting on a tenant's health and safety, failing to comply with legal obligations or ignoring terms set out in the tenancy agreement, such as failing to undertake annual gas safety checks or withholding tenants' deposits.

Should only enforcement agencies and advice services run by the voluntary sector be able to lodge complaints against a landlord within the context of this process?

Complaints against landlords from enforcement agencies and advice services will provide some evidence of bad practice by landlords and assist in the enforcement of the register. However, it will also be vital to obtain evidence about landlord bad practice from tenants to enable proper enforcement of the register. Consideration should be given to how tenant's experiences can be logged and whether tenants are able to file complaints as part of the process.

The Communities and Local Government press release on 13 May 2009 stated that proposals going to consultation on improving the private rented sector included an improved complaints and redress procedure for tenants, whereby tenants would be able to register official complaints about landlords. If these complaints were substantial and proven, then landlords could be removed from the register. These proposals, however, have not been included within the consultation.

In addition, the section on improved redress for tenants and landlords only focuses on landlords and the time they have to make a possession claim.

There is no mention of an effective redress mechanism for tenants, despite there being limited means by which private rented tenants can seek redress. Local Authorities employ tenancy relations officers who try to resolve complaints arising between tenants and private landlords. If the landlord is a member of the Housing Ombudsman Scheme, the tenant may refer their complaint for independent investigation. However, if a tenant is unaware of the options open to them or their landlord is not a member of the Housing Ombudsman Scheme, they may have to consider taking their landlord to court or finding alternative accommodation.

In fact, nearly a million tenants fear eviction if they make a complaint to their landlord⁵. In some instances, a landlord may choose to evict a tenant in retaliation for the tenant making a complaint, or may decide to evict the tenant rather than deal with the underlying problem relating to the complaint.

⁵ The Tenant's Dilemma, Warning: your home is at risk if you dare to complain, Citizens Advice Bureaux

We think that current and potential tenants should also have access to the register – how can this be managed?

A public-facing element of the register will be a vital element in informing and empowering tenants, enabling them to avoid rogue landlords and demand a good service. This could alter the dynamic of the private rented sector, put pressure on landlords to deliver a better service and be more responsive to the needs of tenants.

Is the time right to establish a basic standard for accreditation? What should a basic standard for accreditation cover?

Consumer Focus has undertaken a brief review of the different private landlord accreditation schemes in operation. According to the UK Accreditation Network (ANUK) there are at least 80 different types of scheme operating in Great Britain.

These schemes have either been set up individually, for example, by a local authority or landlord association, or have been set up in partnership. For example, the London Landlord Accreditation Scheme has been developed in partnership with landlord organisations, London councils and university accommodation units.

These schemes generally require landlords to sign up to a voluntary code of practice. Those who conform to the code are provided with an accreditation logo to use to promote their property. The codes of practice generally require the landlord to be a 'fit and proper person', that the tenancy is managed appropriately with a written tenancy agreement, and that the property is in a good condition and maintained to a satisfactory standard.

These schemes provide tenants with confidence that a landlord will manage a tenancy professionally. In turn, a landlord can benefit from belonging to an accreditation scheme. By demonstrating they are meeting set standards for the management and condition of the accommodation they let, they receive free advertising and other benefits. For example, landlords who sign up to an accreditation scheme in North Staffordshire receive cheaper deals from local companies such as builders or plumbers.

It remains unclear how many landlords have signed up to the different accreditation schemes in operation, how the schemes are run and marketed, the levels of information provided to tenants and whether tenants have access to any form of redress.

There is also a lack of consistency across the schemes, with different accreditation logos, variations in standards and differing levels of credibility. This could lead to confusion for both tenants and landlords.

In light of this, Consumer Focus believes that work is needed to examine the accreditation schemes in detail. Areas that require investigation include best practice, how the schemes are set up and by whom, codes of practice, marketing, and the levels and accuracy of information on offer to private tenants.

Summary

- The register should provide potential tenants with valuable, upfront information about landlords which will empower them to make informed choices before signing up to a tenancy agreement, so they avoid rogue landlords and receive good standards of service. In turn, this will reward good landlords, drive out sharp practice and deliver improvements across the sector.
- The register will provide services to landlords so they are aware of their legal obligations and have the necessary information and support to manage their tenancies professionally, thus providing safe and decent homes for their tenants.
- There will need to be clear measures of enforcement of the register, with consideration given to how tenant complaints and experiences are logged. Thought must also be given into improved redress for private tenants.

Consumer Focus will continue to examine areas the consultation has focused on and their impact from the consumer perspective.

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If you have any questions or would like further information about our response please contact Claire McAnulty, Senior Policy Advocate, by telephone on 0207 799 8023 or via email: claire.mcanulty@consumerfocus.org.uk.

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