

**NEW**

# SPOTLIGHT ON THE PRIVATE RENTED SECTOR IN SCOTLAND

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Briefing from **CIH Scotland**



## The Chartered Institute of Housing

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple – to provide housing professionals with the advice, support and knowledge they need to be brilliant. We have a diverse and growing membership of over 22,000 people who work in both of public and private sectors.

CIH Scotland has more than 2,500 members working in local authorities, housing associations, housing co-operatives, Scottish Government and Government agencies, voluntary organisations, the private sector, and educational institutions.

CIH aims to ensure members are equipped to do their job by working to improve practice and delivery. We also represent the interests of our members in the development of strategic and national housing policy.

CIH Scotland works closely with the Scottish Government and the private rented sector to support positive change and sits on the Scottish Government Private Rented Sector Strategy Group and the Private Rented Sector Tenancy Regime Review Group.



## Citylets

Citylets is Scotland's premier portal for property to rent with over 4 million annual site visitors and advertises over 70,000 properties per year from over 500 agents. Established in 1999, Citylets is the original Scottish lettings portal and is fully independent.

Citylets also publish quarterly market reports and, now in its 7th year, are widely acknowledged as the most authoritative and detailed barometer of the Scottish rental market. Founding upon this expertise, Citylets recently launched OptiletPro, a decision support tool for Scottish property professionals seeking a detailed understanding of local sales and letting markets.

Based in the West End of Edinburgh, the company is managed by the original founding team providing clients with experience of online property advertising and information services which is second to none.

# Spotlight on the private rented sector in Scotland

## Introduction

This briefing is aimed primarily at landlords, letting agents and other housing professionals who work closely with the private rented sector.

The private rented sector plays an important role in providing homes for a growing proportion of people in Scotland. Despite this it has also achieved a level of notoriety, often unfairly, through portrayal in the press. 'Rogue landlords' who exist solely to generate income and carry out as little in the way of improvements as possible, often harassing tenants in the process, will be a description many will recognise. But for the majority of landlords and tenants the reality is far less remarkable and does not reflect this populist negative image.

Private rented sector homes are an increasingly important element of the Scottish housing system. This negative portrayal does little to encourage good landlords and letting agents to see their role as valued or as that of a professional. Nor does it encourage prospective tenants to consider renting privately as something to aspire to. This is not a helpful perception. CIH Scotland is not complacent about the need to see the sector cleared of landlords that do operate outside the law, and works closely with Scottish Government and others to help to achieve this. But these are the exception and not the rule.

This document aims to help counter the common, negative stereotyping of the growing private rented sector in Scotland and highlight its positive attributes. It will look at the main features of the legal framework, identify key elements of various voluntary codes of practice that are followed by some landlords and letting agents, and share practice examples and stories of what the private rented sector really looks like from both the landlord and tenant perspective.

Whilst there are similarities in the private rented sector across the whole of the UK this is not intended to be a comparative study. The current direction of travel, in England and Wales in particular, is diverging<sup>1</sup>, but there are shared learning opportunities and some are referenced later in the document in the practice examples.

<sup>1</sup> <http://www.insidehousing.co.uk/regulation/package-of-measures-to-encourage-improved-prs-standards-announced/6528842.article>

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## PRACTICE EXAMPLE

### Private sector leasing schemes in England

Norwich City Council has established a private sector leasing scheme which means a landlord can lease property to the Council for a period of four years during which time the Council then guarantees to pay the rent to the landlord whether or not the property is let.

Similarly, Exeter City Council has established a private sector leasing scheme whereby a landlord leases their property to the Council, which then sub-lets to a tenant, guaranteeing the landlord a monthly income. As a requirement of joining the scheme, the landlord must bring their property up to the Decent Homes Standard.

## What does the private rented sector in Scotland look like?

We have seen houses rented from a private landlord or letting agent grow from around 5.8 % of the total housing stock in Scotland in 2001 to around 11.1%<sup>2</sup> in 2011. This is a steady increase and shows no sign of stabilising or declining anytime soon. It continues to mirror the growth in the number of households living in the registered social landlord sector, whilst the numbers renting council housing and owning with a mortgage or loan are on the decline.

## Tenure of households, Scotland, 2001 and 2011

	2001		2011		Change in number: 2001 to 2011
	Number	Percentage	Number	Percentage	
<b>All households</b>	<b>2,192,000</b>	<b>100.0</b>	<b>2,373,000</b>	<b>100.0</b>	<b>181,000</b>
<b>Owned</b>	<b>1,372,000</b>	<b>62.6</b>	<b>1,471,000</b>	<b>62.0</b>	<b>99,000</b>
Owned outright	514,000	23.4	661,000	27.8	147,000
Owned with a mortgage or loan	846,000	38.6	800,000	33.7	-46,000
Shared ownership	12,000	0.6	10,000	0.4	-2,000
<b>Social rented</b>	<b>645,000</b>	<b>29.4</b>	<b>576,000</b>	<b>24.3</b>	<b>-68,000</b>
Rented from council (Local Authority)	515,000	23.5	313,000	13.2	-202,000
Other social rented	130,000	5.9	264,000	11.1	134,000
<b>Other</b>	<b>175,000</b>	<b>8.0</b>	<b>325,000</b>	<b>13.7</b>	<b>150,000</b>
Rented from private landlord or letting agency	127,000	5.8	263,000	11.1	137,000
Other	49,000	2.2	62,000	2.6	13,000

Source: National Records of Scotland © Crown copyright 2013

The drivers for this growth in the private rented sector are well rehearsed - the increased demand and, in former years at least, a buoyant housing market which led to potential high capital returns on investment for buy to let landlords.

According to the data from the 2011 Census the growing demand appears to have come, in part

at least, as a consequence of the reduction in both access to mortgages and to council lets over the corresponding period. This means that the demographic of those who are now accessing, or seeking to access, the private rented sector is changing. Traditionally students, younger people and transient workers would be those most likely to choose a private tenancy.

<sup>2</sup> <http://www.scotlandscensus.gov.uk/en/censusresults/downloadablefilesr2.html#censusprofiles>



These households are now being joined by a growing band of people who in former times would be housed in a council property, taking the first steps on the property ownership ladder, downsizing or selling and purchasing a larger family home. This latter group of people are often referred to as 'double renters', because being unable to sell their existing home they rent it out instead and become the tenant of another larger or more suitable property.

The pressure on social lets, and in particular on local authority lets, continues unabated, with the recent removal of priority need assessments for homeless applicants placing unprecedented demand on homeless accommodation and ultimately social housing more widely. Local authorities do have the power under Section 32a of the Housing (Scotland) Act 1987 to discharge duty towards homeless applicants by finding them accommodation in the private rented sector. However, this is a little used power because in practice it can be challenging to adhere to the criteria which must be met, for example the requirement for a minimum 12 month Short Assured Tenancy to be available and for the applicant to be in agreement with the discharge of duty into the PRS.

However, the Housing Options approach, which both local authorities and RSLs can use to help respond to homelessness and housing need more broadly, can lead to more targeting of the PRS as a pragmatic alternative to social housing and to help manage waiting lists. This can be particularly suitable for people who are not claiming welfare benefits and for whom Local Housing Allowance is not an issue.

Whilst tenants are a diverse mix of consumers, landlords are equally diverse. Alongside those who operate as a full time business are landlords who have only one or two properties. The financial climate has contributed to the number of those landlords who are operating by default whilst they wait for recovery in the market. These include buy to let landlords, those who have inherited property and those who have experienced a relationship breakdown.

It is estimated that 75%<sup>3</sup> of landlords in Scotland have only one property and in some areas this is thought to be as high as 90%. Indeed, the vast majority of the 263,000 private tenancies in Scotland are let by landlords with five or fewer properties. These landlords are likely to have very different motivations for being a landlord than

those of the larger portfolio landlords and will carry a greater business and financial risk.

In 2009, research<sup>4</sup> carried out into the private rented sector on behalf of the Scottish Government highlighted a number of features of the sector, including, of the 1,500 dwellings surveyed:

- Half were managed wholly by the landlords themselves
- 1 in 7 landlords did not know what type of tenancy they had issued
- 8 out of 10 tenancies were brought to an end by tenants, with only 1 in 100 being subject to a possession order.

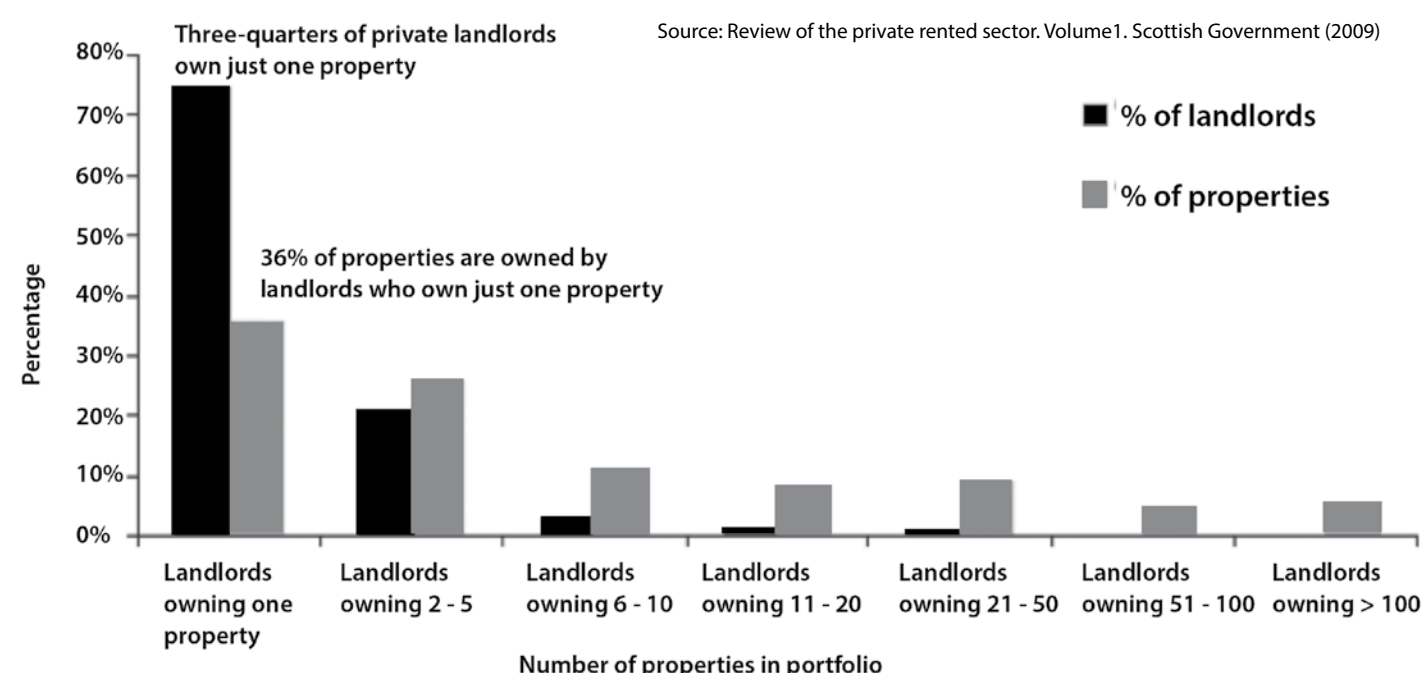
In the same year Consumer Focus Scotland and Shelter reported on a study<sup>5</sup> of consumers in the sector and, as would be expected, focused on the challenges tenants and prospective tenants were facing. These included difficulties in recovering deposits, tenants' knowledge of their rights and responsibilities appearing to be very low and access to the sector, particularly by vulnerable people, being a major challenge.

The data does not tell the whole story though and the picture across Scotland is not uniform. For example, there is a far greater prevalence of Houses in Multiple Occupation (HMO), where three or more unrelated people share a property, in

the urban centres of Aberdeen, Dundee, Edinburgh and Glasgow. The picture becomes even hazier if some reports from England are to be believed, with even letting agents being uncertain about who is living in the tenancies they manage<sup>6</sup>.

Following closely on from the research in 2009, the Scottish Government established a group of key stakeholders and began to develop its first national strategy for the sector, which was finally published in May 2013<sup>7</sup>. Most of the drivers for this focus have been about addressing poor practice and protecting consumer interests. In addition to seeking improvements in the quality of the sector, the Government is grappling with the current mismatch between housing and need in Scotland, with the private rented sector often being cited as an important housing option which needs to grow.

This leaves the Scottish Government on the horns of a dilemma. How can it encourage the best performing landlords to thrive and the worst to either improve or leave the sector? This chimes with the cry from the vast majority of landlords and letting agents that do take their responsibilities seriously. Their argument is that every hoop they jump through has a resource implication, so why should those who are not fulfilling the legal requirements be allowed to continue to operate and compete against them?



<sup>3</sup> <http://www.scotland.gov.uk/Publications/2009/03/23153136/4>

<sup>4</sup> <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/government/prsreview>

<sup>5</sup> <http://www.consumerfocus.org.uk/scotland/files/2009/12/CFS-Shelter-Report-Policy-Paper1.pdf>

<sup>6</sup> [http://www.24dash.com/news/housing/2013-09-27-Millions-of-ghosts-in-UKs-rented-properties?utm\\_source=24dash+newsletter+subscribers&utm\\_campaign=3b62077897-UA-31909-1&utm\\_medium=email&utm\\_term=0\\_8420f27959-3b62077897-412474](http://www.24dash.com/news/housing/2013-09-27-Millions-of-ghosts-in-UKs-rented-properties?utm_source=24dash+newsletter+subscribers&utm_campaign=3b62077897-UA-31909-1&utm_medium=email&utm_term=0_8420f27959-3b62077897-412474)

<sup>7</sup> <http://www.scotland.gov.uk/Resource/0042/00423336.pdf>



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## PRACTICE EXAMPLE:

### Local authority analysis of the private rented market

In October 2012, Argyll and Bute Council commissioned Arneil Johnston to perform an extensive research study into the current and future role of the private rented sector. As well as detailed desk-based analysis and consultation with local stakeholders, a comprehensive landlord and tenant survey was carried out. The aim of this survey was to build sound intelligence on the population profile of private tenants, the private rented sector housing stock, the profile of landlords operating in the sector and the quality of both tenancy management and physical condition.

A census of private tenants was held, with all registered addresses receiving a postal survey to complete. In total, 968 private tenants responded, providing detailed information on their households, homes and future intentions. In addition, 350 local landlords completed a 30 minute telephone interview on their property portfolio.

This level of response has enabled the Council to build a robust evidence base to inform decision making at a local level on how the growth and improvement of the private rented sector can be supported. Informed by an assessment of strengths and weaknesses in the operation of the sector, stakeholders defined four strategic objectives (see diagram) that the Council and partners should pursue through the Local Housing Strategy framework to promote the growth and operation of the sector locally.



## The legal framework

So what is it that private landlords in Scotland have to comply with to meet the basic legal requirements? There is a huge range of legislation that touches upon the sector, not all of it with housing as its origin. The law that underpins the tenancy regime itself is the Housing (Scotland) Act 1988. Whilst this does allow for both Assured and Short Assured Tenancies (SAT), by far the most common type of tenancy in the sector is the SAT, which allows a landlord to recover the tenancy after a fixed minimum period, so long as certain criteria are met. Aside from the 'no fault' route to ending a SAT they can also take legal action where a tenant has breached the tenancy agreement. The majority of tenants in the private rented sector cannot be evicted without a court order. The bulk of these tenancies are ended by the tenant, with only a small handful of cases annually being ended by the landlord via the court.

Alongside the security of tenure itself which provides the framework to the tenancy, there are other statutory requirements that can be broadly split into those affecting the physical or the management standards. The following is not an exhaustive list, but highlights some of the key legislation.

An important point here is that the legal duties apply to the landlord. Even where a landlord has appointed an agent to act on their behalf, the responsibilities lie with them and cannot be 'passed over' to the letting agent. It is the landlord who

will face the consequences of any failure to comply with the relevant legislation. However, it would seem reasonable for a landlord paying a management fee to expect the letting agent to be able to deal with most, if not all, aspects of the tenancy management and act on behalf of the landlord.

## Physical standards

### The Repairing Standard - Housing (Scotland) Act 2006

Landlords must ensure the property meets minimum physical standards by carrying out a check before the tenancy starts and making good any repairs. This duty to repair and maintain continues throughout the tenancy. The Repairing Standard<sup>8</sup> itself is a fairly basic standard designed to make sure that the property is habitable and that both the property and any fixtures and fittings are fit for purpose. A critical element of the Standard is that hard wired smoke alarms must be fitted. Where the tenant is unhappy and a repair request is not complied with they can make an application to the Private Rented Housing Panel, which then has the power to require a landlord to carry out the work.

### Energy Performance Certificates - Energy Performance of Buildings (recast) Directive 2010/31/EU

Prior to the start of a tenancy most landlords must provide prospective tenants with a copy of an Energy Performance Certificate (EPC), which shows a property's energy efficiency and flags up ways in which improvements could save energy. They must also state the energy efficiency rating in advertisements. Failure to do this can lead to a landlord being fined.

### Gas Safety - Gas Safety (Installation and Use) Regulations 1994 (Amended 1996)

If there is a gas supply at the tenancy the landlord must arrange for an annual gas safety check by a properly validated gas safety engineer and leave a copy of the certificate in the property. If a landlord fails to comply the tenant can complain to the Health and Safety Executive, who can prosecute the landlord.

### Houses in Multiple Occupation (HMO) licensing - the Housing (Scotland) Act 2006, Part 5

Tenancies that are let to three or more unrelated people are classed as HMOs and these landlords have a further set of standards to meet. The tenancies that fall under this legislation include not only those let by private landlords but by others including registered social landlords. The owner must obtain a license from the local authority where the property is based, and before one is granted it must meet physical standards set by the local authority. The owner and any managing agent must meet the fit and proper person test and the council must be satisfied that the property is suitable for use as an HMO. Any landlord that fails to obtain a license can be fined up to £50,000.

### Carbon Monoxide - Review of the Building (Scotland) Regulations 2004: Technical Handbooks - Section 3 (Environment) and Section 4 (Safety)

Landlords letting a property with a fuel burning appliance must fit a battery powered carbon monoxide detector in each room this

<sup>8</sup> <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/landlords/repairing-standard>



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## PRACTICE EXAMPLE:

Working with the private rented sector to improve access and standards

South Lanarkshire Council works with local private landlords and letting agents to help improve management standards and access to the sector.

To support homeless applicants the Council provides a local private sector leasing scheme (PSL) through which local landlords work with the Council to provide suitable temporary accommodation to those in acute housing need. Landlords participating in the scheme are provided with security of income over the course of their agreement, with leases of between 2-5 years in duration. Currently 150 landlords participate in the scheme accounting for around 250 properties.

The Council also works with the sector to support those at risk of homelessness. Working with the charity Y-People the Council encourages access to the private sector for those at risk of homelessness and who cannot afford a rental deposit. Landlords working with the scheme support tenants to pay the cost of their deposit over the duration of their tenancy agreement.

Landlord best practice is promoted locally through a bi-annual landlord forum. The forum promotes the work of Landlord Accreditation Scotland (LAS) and facilitates the provision of LAS training to local landlords.

This positive engagement alongside the housing options approach has also led to the process of developing a referral system which would link accredited landlords with potentially homeless households by advertising suitable properties with the Council's options team.

applies to and position it in such a way that the tenant can hear the alarm. This law has applied from October 2013 and at the point when a new or replacement boiler or other heating appliance is to be installed after that date.

### Legionnaires Disease – The control of legionella bacteria in water systems. Approved Code of Practice and guidance

Legionnaires Disease can be life threatening and is caused by a bacteria linked with man made water systems such as tanks, pipes and showers and where the water is subject to particular conditions of temperature and irregular use. Landlords have a duty<sup>9</sup> to carry out a risk assessment of the water systems in the tenancy and are required to abide by the Health and Safety Executive code of practice to identify any risks and a course of action to manage the risk. The assessment must be carried out regularly.

## Management standards

It is understandable that there has been a focus on raising physical standards in the sector as these are the ones that can impact most directly on the health and well being of the tenant, but there is a growing push towards improved management standards too. Key amongst these are the following:

### Landlord registration – Antisocial Behaviour etc. (Scotland) Act 2004

The origins and purpose of landlord registration are linked to the perception that

landlords were not doing enough to manage the antisocial behaviour in their tenancies. All private landlords must register with their local authority and meet a fit and proper person test. Landlords who fail to register, or who fail the test, and continue to operate can be subject to a fine of up to £50,000. They can also be prevented from operating as a landlord for up to five years. If a tenant applies to the PRHP on a failure to meet the Repairing Standard the PRHP must let the local authority know. Landlords must also provide their registration number on all written advertisement of their properties to be let.

### Tenancy Deposit Schemes - The Tenancy Deposit Schemes (Scotland) Regulations 2011

The Tenancy Deposit Schemes<sup>10</sup> in Scotland regulations place a statutory requirement on the landlord to protect a deposit in a Scottish Government approved scheme and provide a mechanism for dispute resolution where the landlord and tenant disagree on whether all or some of the deposit is retained by the landlord. Failure to comply with both protecting the deposit and giving the tenant details of which scheme has been used can result in the tenant taking the landlord to court and a possible fine of up to three times the value of the deposit held.<sup>11</sup>

### The Tenant Information Pack<sup>12</sup> - The Tenant Information Packs (Assured Tenancies) (Scotland) Order 2013

All new tenants from 1 May 2013 must receive the statutory information in the pack which

is designed to help both landlord and tenant understand the contractual arrangement they are embarking on and each others roles and responsibilities in it. The penalty for not providing the pack is a fine of up to £500.

The Scottish Government clarified in 2012 that it is unlawful for letting agents to charge fees of any kind to tenants. Some in the sector consider this as a recent development but in fact the legislation this refers to (the Rent (Scotland) Act 1984) has long been in place. A prevalence of letting agents charging tenants fees prompted the need for the clarification, possibly spurred in part by the Shelter 'reclaim your fees'<sup>13</sup> campaign.

So, far from being a sector allowed to operate unregulated and without much external control, there is a great deal that landlords must comply with. As with most legislation, that which is governing the private rented sector has grown organically and in response to particular pressures. For smaller landlords in particular this can be a daunting landscape to navigate. When this is coupled with criticism levelled at the Scottish Government for generating legislation without a corresponding focus on providing information to either the consumer or the landlord, the circumstances are even more challenging.

The Scottish Government has made moves to address this and is supporting the Renting Scotland website which is for both landlords and tenants<sup>14</sup> and gives them access to accurate, trustworthy and neutral information about all aspects of being a landlord or tenant.

<sup>9</sup> <http://www.hse.gov.uk/legionnaires/what-you-must-do.htm>

<sup>10</sup> <http://www.legislation.gov.uk/sdsi/2011/9780111011850/contents>

<sup>11</sup> <http://www.bbc.co.uk/news/uk-scotland-edinburgh-east-fife-23930567>

<sup>12</sup> <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/tenants/tip>

<sup>13</sup> <http://www.reclaimyourfees.com/>

<sup>14</sup> <https://rentingscotland.org/>



<div> <div>GLASGOW</div> <div>Maisie</div> <div>Unfurnished</div> <div>Landlord</div> <div>Letting</div> </div>	<div> <div>PRICE £1800</div> </div>	<div> <div>GRANGEMOUTH</div> <div>4 Bed</div> <div>4 Beds</div> </div>	<div> <div>PRICE £280</div> </div>	<div> <div>AIRDRIE</div> <div>Maisonette</div> </div>	<div> <div>PRICE £1600</div> </div>	<div> <div>AIRDRIE</div> <div>Maisonette</div> </div>	<div> <div>PRICE £1600</div> </div>	<div> <div>AIRDRIE</div> <div>Maisonette</div> </div>	<div> <div>PRICE £1600</div> </div>
<div> <div>PRACTICE EXAMPLE</div> </div>									
<div> <div>Who wants to be a private tenant?</div> </div>									
<div> <div>It is sometimes argued that many private tenants only fall into the sector as a default because other housing (i.e. social or owner occupied) is out of their reach. In reality this is far from the truth for many. The following sample of comments was provided by tenants in response to a questionnaire survey sent out by CIH Scotland:</div> </div>									
<div> <div> <div>“</div> <div>I enjoy having what is essentially my own home without committing to buying my own house/flat. In my current situation I am free to do almost anything to my room, such as putting pictures up, etc. It's also pet friendly and things get fixed/replaced almost instantly. I also believe that my landlord would be very amiable if I was ever struggling with money or something else.” (tenant for over 7 years, time with current landlord 2 years).</div> </div> </div>									
<div> <div> <div>“I like where I live; I like the hassle free part. I pay the rent and council tax and everything else is someone else's problem. Where repairs are needed to cooker, boiler, washing machine I contact the letting agent and leave them to get on with it. The same is true for the building generally as a factor undertakes the maintenance around the property. The company undertaking that maintenance has changed several times but I don't need to concern myself with that as I just contact the letting agent, for example when water is pouring out of blocked drains and they locate the factor. I've been a tenant here for 9 years, so they must be doing something right!” (tenant for over 9 years).</div> </div> </div>									
<div> <div> <div>“From the tenant perspective there is a welcome level of security being a customer of a professionally-run letting agent.” (tenant for over 2 years).</div> </div> </div>									
<div> <div> <div>“I am really happy with the way my letting agency processed my application, carried out all reference checks and had me moved in to my property within a week of my application. They have been very prompt in responding to any concerns I had and sent out joiners to complete works etc. when required.” (tenant of 3 years).</div> </div> </div>									
<div> <div> <div>“As a 60 year old that has lived in rented accommodation most of my working life, I personally find it very reassuring that I have a very professional company not only looking after my wife and me but also as a mediator with the property owner whom I have never met.” (tenant for over 20 years).</div> </div> </div>									
<div> <div>”</div> </div>									
<div> <div>What motivates private landlords?</div> </div>									
<div> <div>Ultimately all private landlords are operating as a business that must generate an income. But what else do landlords say about what they enjoy about being a landlord? The following quotes originate from responses to a CIH questionnaire and face to face discussion. They are provided here to illustrate the variety of motivations landlords have in letting property.</div> </div>									
<div> <div> <div>“</div> <div>I'm in it to make a positive difference to the way people live. I hope that by providing good homes for people who are renting, I can make a bit of difference in the sector. I offer my tenants the option to take their property over a longer term than the usual 6/12 month short assured tenancy which doesn't give them much housing security. I started doing this with my own property and have now set up my business on the same basis. I've decided to do this because there are lots of people renting who want to have much more security and the ability to truly make a home somewhere without needing to buy.” (landlord operating for 4 years with a single property).</div> </div> </div>									
<div> <div> <div>“We created a flat in our home and in finding a tenant for the property, they also became a good friend.” (landlord operating for over 10 years with 13 properties).</div> </div> </div>									
<div> <div> <div>“I like running a business but as both landlord and letting agent I also like providing a good home for someone to live in, matching up tenants with properties and looking at their individual and varying needs, doing things to a high standard and meeting or exceeding expectations and getting positive feedback from tenants and clients.” (landlord operating for 15 years, letting agent for 9 years with 100 properties)</div> </div> </div>									
<div> <div> <div>“We want to develop best practice in all that we do. We are now working towards our Landlord Accreditation Scotland accredited agent status offering tenants and landlords alike a great service to recognised industry standards. We really value access to continuous training of our staff through LAS training. We are in exciting times for a developing agency which wishes to offer a personal service.” (landlord and letting agent for 7 years with 100 properties).</div> </div> </div>									
<div> <div> <div>“I like to feel that I am contributing to society by providing homes and I enjoy seeing my tenants safe and warm.” (landlord operating for 10 years with 8 properties).</div> </div> </div>									
<div> <div> <div>“I like the financial stability I get from being a resident landlord, but also the social aspects and the friendships I've made. I like to make sure we have a mutual trust and respect. (resident landlord operating for 4 years with 1 property).”</div> </div> </div>									
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## NEW PRACTICE EXAMPLE:

### Private landlord operating as a social enterprise

Homes for Good is the first property management company in Scotland to be run as a social business. It has been founded by Susan Aktemel and is her second social enterprise business. The social enterprise element means all trading profits will be reinvested directly in growing the business, developing services to further supporting tenants and landlords, and in time, investing in other charities working to help eradicate homelessness.

Their aim is to provide an excellent customer experience for both tenants and landlords in the private rented sector and influence policy in the private rented sector through innovation, improvement and ethical practice. They work to support tenants to create homes which reflect their needs and life aspirations and to enable landlords to rent successfully in the private sector, maximising rental income and minimising voids and reactive maintenance. They offer support to those tenants who need it, including financial inclusion, health and wellbeing, homemaking, and employability, and maximise trading links with social enterprises.

## Voluntary regulation

Whilst there is no statutory code of practice or conduct in existence as yet in Scotland for letting agents or landlords to follow, there are a number of voluntary ones. The exception to this is where the landlord or letting agent is a member of the Royal Institute of Chartered Surveyors (RICS) and is regulated by them in order to retain chartered status.

Despite this lack of compulsion, many reputable letting agents are members of at least one representative or industry body and advertise the fact widely. Landlords too have a number of options to demonstrate their good practice. The fact that there are so many different organisations vying with each other to support the sector shows a strong appetite from landlords and letting agents to demonstrate their worth and improve and learn.

Landlord Accreditation Scotland (LAS) is a Scottish Government supported voluntary scheme which aims to improve standards in the private rented sector. Voluntary accreditation provides landlords and letting agents with a framework of standards for them to adhere to and complements this with training and support. Those that choose to become accredited are then able to highlight to prospective tenants that they are operating above and beyond what the law says. They must comply with the set of core standards<sup>15</sup> covering:

- Communication with the Tenant
- Equality Issues, Complaints And Disputes
- Management of the Tenancy
- Minimum Property Condition

<sup>15</sup> <http://www.landlordaccreditationscotland.com/Files/File/Core%20Standards%2026%20Sept.pdf>

- Repairing Standard
- Repairs and Maintenance
- Facilities and Fittings
- Energy Efficiency, Insulation and Heating
- Health, Safety and Home Security

Tenants can use the LAS complaints process if they feel a landlord or letting agent has fallen short of these standards. The Scottish Association of Landlords is a representative body looking after the interests of landlords and acting as a campaigner and lobbyist alongside providing training, a support network for landlords, fact sheets and news updates. They link their membership closely with landlord accreditation via LAS. Their advice to landlords often exceeds the legal minimum.

Landlord and letting agents also have access to UK wide representative bodies such as the Association of Residential Letting Agents (ARLA), the National Landlord Association (NLA) and The Property Ombudsman (TPO).

## PRACTICE EXAMPLE

### Meeting the needs of more vulnerable people

Orchard and Shipman have joined forces with Carr Gomm to provide accommodation for people with mental health issues and learning disabilities leaving long term hospital care. The five year contract (with the local authority) and partnership will result in a Core and Cluster model of housing and support, with Orchard and Shipman providing and managing 16 units of accommodation sourced from the private rented market, and Carr Gomm delivering personalised support to help people move into and sustain their tenancies. The service user benefits from the specialism each partner brings: housing management and support. As well as the accommodation there will be a provision for 24 hour support for those with the greatest needs.



ARLA too is a self regulatory body. Members are expected to abide by its Code of Practice<sup>16</sup> which lays down what it considers to be good practice in key areas of the letting business, such as:

- Data protection
- Money laundering
- Market appraisal
- Terms of business
- Terminations of instructions
- Marketing and advertising
- Viewings and access to property
- Offers – clients and applicants
- References – applicants and clients
- Letting – clients and tenants
- Rent collection – clients and tenants
- Management – clients and tenants
- Termination of a tenancy
- Tenancy deposits disputes and damages
- Clients' money
- Complaints

ARLA does offer a complaints mechanism if tenants are unhappy and believe the landlord has breached the Code. These include a requirement to “help to maintain and enhance the reputation, standing and good name of ARLA and its membership by protecting the public against fraud, misrepresentation and malpractice in the lettings industry”. They also operate as a representative body for the sector.

The National Landlord Association offers landlords access to information, support and advice and again acts as a conduit for the sector on matters affecting the private rented sector. They offer members access to an accreditation

scheme based on core foundations of landlord development, the code of practice<sup>17</sup> and a complaints process. The code of practice aims to raise standards of service and promote good relations between landlord and tenant. It covers the main areas of:

- Creating a Tenancy
- Maintaining a Tenancy
- Determination of a Tenancy
- Complaints

It includes various specific requirements, such as “*The landlord will inform the tenant in writing of any additional charges, utility bills, ground rent or maintenance charges that the tenant will be required to pay during the tenancy, stating where possible the amounts for each and the frequency and method of payment*”.

The role of the Property Ombudsman (TPO) is to resolve disputes between letting agents, or estate agents, and their tenants. Whilst membership of the scheme is voluntary, once a letting agent is a member, adhering to its Code of Conduct<sup>18</sup> is not, the main of which are:

- Market appraisal
- Instructions, terms of business, fees, charges and termination of client agreement
- Marketing and advertising
- Viewing and access to premises
- Offers – clients and applicants
- References – clients and applicants
- Letting – the tenancy agreement, inventories and deposits
- Rent collection
- Management

- Termination of a tenancy
- End of Tenancy – deposits, disputes and damages
- Clients' money
- Duty of care and conflict of interest
- In-house complaints handling
- Referrals to the ombudsman
- Compliance monitoring
- Non-compliance with the code.

Whilst the TPO is there to help to resolve disputes between letting agents who have joined the scheme and their tenants in a fair, free and independent manner he can also recommend member agents to pay compensation of up to £25,000 in any one case.

Until very recently there had been no Scotland-specific bodies specialising in representing Scottish letting agents. Both the Council of Letting Agents<sup>19</sup> and LetScotland<sup>20</sup> have grown out of the desire of Scottish letting agents to have a place at the national policy table and to share their own good practices more widely, raising standards in the process.

## What does the future hold?

### Housing specific changes

It is very easy to criticise what is wrong in the sector but much more challenging to clearly articulate what the sector should aspire to be. The Scottish Government has focused much attention on the private rented sector over the past few years and this has manifested itself in a variety of pieces of legislation. Much of it

to date has been consumer focused, with less apparent emphasis on identifying what a well functioning private rented sector should look like and then supporting landlords and letting agents to deliver it.

But this emphasis is shifting. Within the Scottish Government strategy on the private rented sector there is a commitment to regulate letting agents, but this is much more focused on doing things *with* the sector, rather than to it. There is strong support from professional letting agents (i.e. those who charge a fee to manage a property on behalf of a landlord) and their representative bodies<sup>21</sup> for a form of regulation, with many voicing frustration at those poor quality, ill informed letting agents that blight the sector. A clear code of conduct which is enforceable in law and will help to create the benchmark for good practice is to be much welcomed.

There is no doubt that there is a great deal of misinformation about where the lines of responsibility fall between landlords and letting agents, and both landlords and tenants can become understandably confused about the role the letting agent has in the management of the property. Some agents see themselves as providing a service to tenants, but agents' primary customer will always be the landlord, and a conflict of interest can arise. The new regulation of letting agents may seek to clarify these issues.

The preferred way forward for both Government and the sector is to develop a statutory code of conduct or practice, similar to that which applies to factors<sup>22</sup> and which uses a tribunal model for adjudication. The existing voluntary codes provide a good starting point. The voluntary codes referenced earlier in this document shows that there are certainly common features

<sup>16</sup> [http://www.arla.co.uk/media/37411/appendix\\_b\\_arla\\_code\\_of\\_practice.pdf](http://www.arla.co.uk/media/37411/appendix_b_arla_code_of_practice.pdf)

<sup>17</sup> <http://www.landlords.org.uk/about-nla/code-practice>

<sup>18</sup> <http://www.tpos.co.uk/downloads/IEL02-3%20Code%20of%20Practice%20for%20Residential%20Letting%20Agents.pdf>

<sup>19</sup> <http://www.property118.com/council-of-letting-agents-scotland-announcement/40681/>

<sup>20</sup> <http://www.letscotland.org/news/launch9913/>

<sup>21</sup> <http://www.rics.org/uk/knowledge/news-insight/press-releases/rics-scotland-calls-for-more-regulation-in-the-private-rented-sector/>

<sup>22</sup> <http://www.scotland.gov.uk/Publications/2012/07/6791>

amongst them that should also feature in any new statutory code, for example, how complaints are handled or how clients' money is protected (this latter point would provide much needed protection to both landlord and tenant as there is currently no legal requirement for letting agents to have either professional indemnity insurance or client money protection in place).

In addition to the regulation of letting agents, further changes are expected to the way in which disrepair is reported to the PRHP, with a third party (most likely to be the local authority) being given the power to raise cases. It is hoped that this will support local authorities' strategic approach to managing disrepair in the private rented sector and take the burden from tenants, who may feel disempowered and less comfortable raising the case themselves.

This sits alongside the development of a housing tribunal<sup>23</sup> for the private rented sector, which will provide a better and more accessible route to achieving justice in housing cases. The very low numbers of private rented sector cases that currently make it into the courts suggest that landlords and tenants alike do not feel able to access the existing system, which is recognised by many as being clogged and rife with inconsistent decision making, costly processes and overly formal settings.

The Scottish Government has also stated its intention to review the mediation services available to landlords and tenants. The private rented sector in particular could benefit the greatest from access to this type of support, which has hitherto tended to focus on the social rented sector.

A Scottish Government-led review of the whole private rented sector tenancy regime in Scotland

is also under way. What this may translate into in the future is yet to be seen. Some want to see wholesale change, whilst others favour something that builds on the existing regime.

There are strong views on either side of the debate on the Short Assured Tenancy in particular. The perception that the SAT helped to stimulate the growth of the sector at a time when it was stagnating, and provides the flexibility that landlords and tenants alike are seeking, is countered by the view that it discourages long termism and feeds the perception that the PRS is not a sector that provides homes for families. Whilst a review is welcomed by many, it is also important to look to those living and working in the sector to get a sense of whether there is a problem with the existing regime, what that is and how best to fix it. After all, some research suggests a high degree of tenant satisfaction with the sector<sup>24</sup>.

An additional dynamic to the already mixed bag of private rented housing is the relatively quiet growth of portfolios that are either managed or owned by local authorities or registered social landlords through their subsidiary arms. Some local authorities are using their housing management skills to promote better practice and standards and providing a letting agent service direct to landlords. Others are (jointly with private developers) funding the building of specific mid-market rent new build properties.

### Broader policy changes

In amongst the potential housing-specific changes aimed at the PRS there are, as always, those that are a by-product of other broader policy issues. Prominent amongst these is the

welfare reform agenda. The greatest impact on PRS landlords and tenants is likely to be:

- The inclusion of tenants under 35 in the shared accommodation rate of Local Housing Allowance. This means that those claimants under 35 now no longer receive the benefit equivalent of the Local Housing Allowance for a one bedroom property and are expected to share accommodation (or pay the difference). Over time this seems likely to bring a greater demand for shared accommodation options
- Universal Credit, which will see all benefit rolled up into one payment and paid directly into the claimant's bank account, changing the way in which tenants are expected to manage their rent payments. Direct payment of benefit to tenants was of course introduced to the PRS some years ago, but the Universal Credit regime will bring new challenges such as the focus on making online applications and the absence of local authority management of LHA claims.

In addition to the welfare reform changes, the UK Government looks set to demand that private landlords carry out immigration checks<sup>25</sup> on potential tenants. This means that landlords or letting agents would have to seek evidence from a prospective tenant of their entitlement to be in the UK. If this were not to be forthcoming then they would not be allowed to let to that person or would face a civil penalty.

Whatever the outcome of the current period of change and

indeed of all future private rented sector changes, both planned and as yet unknown, they should help foster the view that the sector is a tenure of choice and bring greater recognition of the importance and value of this sector to a well functioning housing system in Scotland.

Through this publication we have tried to show the many positive features of the PRS in Scotland. CIH Scotland is confident that whilst measures to tackle poor practice will always be important, the sector can expand whilst providing a good quality and much needed housing option for an increasing proportion of households in Scotland. Learning from what works well in local authority enforcement across Scotland will support the continued drive to improve standards. This in turn will help to further marginalise landlords who provide poor standards of accommodation and service, leaving the way clear for those many responsible landlords and letting agents.

<sup>25</sup> <http://www.parliament.uk/briefing-papers/RP13-59/immigration-bill>

<sup>23</sup> <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/tenants/tip/landlords#Can%20a%20landlord>

<sup>24</sup> 87% of tenants in the Scottish PRS are happy with their agents (source: George Street Research, 2011). <http://www.citylets.co.uk/blog/may-day-may-day> The 2008 Tenants Survey found that most tenants were satisfied with their home (85%) <http://www.scotland.gov.uk/Publications/2009/03/23153325/1>





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