

# **Reform of the private rental sector: the consumer view**



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# Executive summary

*The private rental sector (PRS) in England has changed dramatically in the last few years and now accounts for 20% of households (or 4.7 million). Yet the sector is far from well-functioning when it comes to meeting the needs of consumers. Indeed, it is in vital need of widespread reform.*

*The need for change cannot be overstated. As the second most common tenure type, rented accommodation is no longer solely the choice of young singletons. Rapid rises in property prices, combined with the decline in social housing provision have led to more and more families moving into the sector. Indeed, there are now nearly a million more households in England with dependent children living in private rented property than in 2006-07. And the growth of the PRS is set to continue. Taken together, the evidence suggests that the PRS is no longer a transitional stepping off point, but has become an inescapable destination for many households in England. Therefore, a well-functioning rental sector is a necessary component of a well-functioning housing sector.*

*However, taking a comprehensive look at the experiences of consumers of this sector, we found that the PRS in England is far from being the well-functioning marketplace that consumers should expect. This report challenges the current institutional framework and recommends specific actions that will help modernise the PRS and ensure it's fit for purpose.*

*There needs to be a step change in the quality and choice of accommodation available, and in the service provided by letting agents, supported by meaningful regulation and a system of redress that empowers consumers while providing support to good landlords. A piecemeal approach to reform is not enough. The government must take concerted action to bring the UK rental sector up to the standard that 21st-century consumers should expect.*

Which? undertook a comprehensive research programme covering the tenants' entire consumer journey, from searching for and securing, to living in and subsequently moving out of, private rented accommodation in England. This end-to-end approach provided us with a holistic understanding of the experiences of tenants. We also conducted an online survey with 1,000 private landlords in order to identify solutions that work for the sector as a whole, and understand the challenges faced by landlords.

Our analysis reveals that while the experience of consumers in this sector is varied, with many tenants having positive experiences of renting, there are also a number of common challenges which occur across various stages of the renting process. These include low standards of accommodation; a lack of

understanding of responsibilities and rights; unnecessarily complex or unfair contractual arrangements; a lack of security for some groups of tenants; the frustration and stress experienced when searching for a property with time or budget constraints; and anxiety caused by unresolved maintenance issues and unresponsive agents or landlords.

The government and policy makers have recognised the increasing need to resolve problems in the PRS. However, our project highlights the piecemeal nature of reforms to date, and the absence of a strategy for the sector as a whole. Indeed, it appears that both tenants and landlords have been left badly served by a confusing policy and regulatory landscape and a weak enforcement regime.

**Which? is calling for a comprehensive programme of reform to bring the rental sector up to the standards required in the 21st century. Key recommendations are:**

- The government must introduce a legal requirement for **all landlords to be registered** with the relevant local authority. The registration information should be logged on an online, **publicly available national database** that is linked to the database of rogue landlords and letting agents introduced in April 2018.
- The government must **prioritise the introduction of an independent regulator for the letting and managing agent sector** ensuring a robust mandatory, legally binding code of practice, and a strong enforcement framework.
- **The government must introduce reforms to increase tenure security.** It should look at this as a package that considers both options on contract length and the length of notice period.
- As part of these reforms to tenure security, **it is imperative that the government prioritise looking at court reform** including a specialist Housing Court to enable swifter justice for tenants and landlords.
- The government must provide consumers with an **effective and accountable single-access ADR scheme.**
- There needs to be a **review of tenancy agreements being used by letting agents** to fully understand if there is widespread use of unfair, inaccurate or misleading terms and conditions and see what further action is needed, for example investigation and enforcement action by the CMA.
- The government should commit to a **full review of the Housing Health and Safety Rating System (HHSRS)** and increase the effectiveness of local authority enforcement. The government must consider deterrents, such as increasing the civil penalties that can be imposed on landlords.
- The government **must review the deposit adjudication schemes** to understand the experience of consumers using the adjudication provisions and to introduce **routes for consumers to escalate problems with the adjudication** service provided by these schemes.
- The government should also **review the current cash-based deposit system** to ensure it is operating as efficiently as possible and consider options to avoid tenants having to cover two deposits when moving between properties.

The challenges consumers face in the PRS overlap and interact at varying stages. Our project has identified six common areas where change is needed. We have summarised each of our recommendations under the relevant area below.

### **The right information, easily accessible for landlords and tenants (Chapter 2)**

Clear, accessible information is fundamental to empowering consumers. However, our research identified concerning gaps in tenants' knowledge, as well as difficulties accessing crucial advice and information. For example, only 65% of tenants read their letting contract in full before signing it; and only 31% of tenants confirmed they received a copy of the government's '*How to rent: the checklist for renting in England*' guide. Landlords are also in need of better information. Only 21% of those surveyed were able to correctly identify their legal requirements. Furthermore, 43% of the landlords surveyed stated that they would like more information, training and advice. However, a major challenge to better supporting landlords is the current inability to identify them.

The PRS would better serve consumers if tenants were provided with the necessary information, at the right time, and if landlords were better supported to understand their responsibilities. We are calling for:

- The government to introduce a legal requirement for all landlords to be registered with the relevant local authority. The registration information should be logged on an online, publicly available national database, which is linked to the database of rogue landlords (and letting agents) introduced in April 2018. This will hold less responsible landlords more accountable to tenants and provide a means for local authorities and the government to keep landlords informed about their responsibilities.
- The government to require letting agents and landlords to make the guide '*How to rent: the checklist for renting in England*' available at the start of the searching process. This should include linking it to letting adverts. Provision of the '*How to rent a safe home*' should also be made a mandatory requirement. We also propose a number of additional areas that should be included in the broader '*How to rent*' guide.
- The government to work with Which? and other relevant organisations to raise awareness of the information available to tenants through a proactive communications campaign. In addition, the government should consider how other bodies which have direct contact with prospective and current tenants (eg property portals) can be used to promote helpful sources of information.

### **Professional letting agents (Chapter 3)**

Letting agents play a key role as an intermediary between landlords and tenants. Our review found that many letting agents are performing well. However, it also revealed significant shortcomings that highlight the need for higher standards across the sector and an urgency to drive negligent agents out of the market. Two-thirds (64%) of tenants who used an agent during their searching process experienced problems, such as having to make decisions without enough information. Equally, 59% of landlords stated they had experienced an issue with their letting agent, for example slow service and poor communication.

We asked a housing lawyer to look at a sample of letting contracts used by letting agents, and found that some included complex and/or unclear language and, in some cases, clauses that could be considered unfair for tenants.

Which? supports the government progressing with regulation of letting agents, specifically:

- It must prioritise the introduction of an independent regulator for the letting and managing agent sector, charged with ensuring a robust, mandatory, legally binding code of practice, and a strong enforcement framework.
- It should make the full national database<sup>1</sup> of rogue property agents and landlords publicly available to inform consumers and to better hold negligent letting agents to account.
- It should work with property portals to provide consumers with better upfront information about the letting agents advertising on their sites.
- There needs to be a review of tenancy agreements being used by letting agents to fully understand if there is widespread use of unfair, inaccurate or misleading terms and conditions and see what further action is needed, for example investigation and enforcement action by the CMA.

#### **Adequate property standards (Chapter 4)**

The government's English Housing Survey has consistently shown that while standards in the PRS are improving, it remains the poorest performing tenure in England in terms of meeting the Decent Homes Standard.

We found that 81% of tenants have experienced problems in their current property, with damp or mould being the most common issue. There are many reasons why problems with the standard of private rental properties arise. These can include negligent and unresponsive landlords and letting agents; tenants undertaking maintenance work themselves and not reporting problems; a complex and fragmented regulatory framework; and difficulties for enforcement bodies in tackling poor standards. From our survey, 45% of tenants have ordered or carried out/paid for repairs themselves, with 23% of those who did so saying it was because they didn't want to cause problems with their landlord.

In line with the Housing, Communities and Local Government Committee, Which? is calling for:

- The government to commit to implementing a full review of the HHSRS, to ensure it is an accurate and effective tool, thus allowing local authorities to identify properties in poor condition requiring their intervention.
- The government to take steps to increase the effectiveness of local authority enforcement, including considering increasing the civil penalties that can be imposed on landlords. The government must follow through on their commitment to work with local authorities to understand additional funding needs. This includes funding informal enforcement action, and to convene opportunities for sharing knowledge and disseminating best practice between local authorities.

- Carbon monoxide alarms to be made mandatory in any property with a gas boiler (or fuel burning appliance) and the government should implement requirements for the introduction of mandatory five-yearly checks on electrical installations.

The introduction of mandatory landlord registration through a national database will hold landlords more accountable to tenants and provide a means for local authorities and the government to keep landlords informed about their responsibilities.

Which? welcomes the government's announced review of selective licensing to better understand the impact on the sector and what lessons can be learnt from schemes already in operation.

#### **Clear access to effective redress (Chapter 5)**

The current system of redress in the housing sector is confusing and complex. Our research found that only 44% of tenants who felt like making a complaint about an issue went on to make one, with 58% fearing repercussions with their landlord and 1 in 3 doubting that making a complaint would solve anything

Equally, 59% of landlords reported in our survey that they have experienced issues with their letting agent, however just 12% of those have complained to a redress scheme. Which? strongly supports the government undertaking reform in this area, specifically:

- The government must provide consumers with a comprehensive, effective and accountable Alternative Dispute Resolution (ADR) scheme with a single point of access for consumers. This should include a requirement for all landlords to join an ADR scheme. For ADR to work effectively, the government needs to take the necessary steps to ensure ADR schemes are accountable to competent authorities.
- The government should prioritise looking at a specialist Housing Court. In considering options, the government should seek a system which builds on the best of the Tribunal system, utilising professional expert judgement to improve access to sanctions and resolve disputes swiftly. It must also be a system that does not create undue financial burden on those bringing action forward.

#### **Better tenure security (Chapter 6)**

Around a third (30%) of the tenants we surveyed who knew the length of their tenancy stated they would have preferred a longer tenancy. This increased to 43% amongst households with children. Correspondingly, for tenants whose landlords asked them to move out of their previous accommodation, 64% found that the notice period they were given was too short for them to find new housing that met their needs. In addition, our review has found a lack of tenure security can be a barrier to tenants raising issues and problems.

This suggests that standard practices of 6 to 12 months tenure and a 2 month notice period is not providing sufficient security to all tenants. The government is looking at options to improve tenure security.

Which? is calling on the government to introduce reforms to increase tenure security in the PRS as a matter of priority:

- The government needs to look at this as a package that consider options on contract length and the length of notice period.
- As part of these reforms to tenure security, it is imperative that the government review the current eviction procedures to increase clarity and reduce unnecessary delays where repossession is warranted. In particular, the government should prioritise looking at a specialist Housing Court to enable swifter justice for tenants and landlords.

#### **Efficient and transparent security deposits arrangements (Chapter 7)**

Our review found that, overall, tenants believe the requirement to provide a security deposit is reasonable and, for many, the deposit system is working well. However, problems can arise at the end of the tenancy period. For example, our survey found that 55% of tenants who did not receive their deposit back in full went on to dispute the deduction. This suggests a lack of clarity about what constitutes acceptable deductions from deposits.

Moving between rental properties can place high financial demands on tenants having to cover two deposits. Our survey found that 31% of tenants had to pay a new security deposit before they had received their previous one back. Amongst those who were impacted by moving, 32% covered the cost of moving by borrowing from friends and family, while 9% took out a short-term loan or used a credit card to cover their moving costs and 7% got an overdraft.

Which? is calling on:

- The government to review the deposit adjudication schemes to understand the experience of consumers using the adjudication provisions, and to introduce routes for consumers to escalate problems with the adjudication service provided by these schemes.
- The government to review the current cash-based deposit system to ensure it is operating as efficiently as possible and consider options to avoid tenants having to cover two deposits when moving between properties.

# Introduction

There has been a significant growth in the number of people living in private rented accommodation in England, with proportions having more than doubled since 2002.<sup>2</sup> Private rental is now the second most common tenure type, housing 20% of households (or 4.7 million).<sup>3</sup> While often thought of as a transitional sector occupied by young singletons, this assumption increasingly holds less true; the demographic is changing rapidly with many families and older single-person households priced out of home ownership.

The private rental sector (PRS) is set to continue its growth and play an ever greater role in providing people across society with a home. An effective private rental sector is an essential part of a well-functioning housing sector. We must not think about tenants as a homogenous group, rather it is important to recognise that in this growing market there will be differing needs and expectations. It is for this reason that Which? has undertaken a comprehensive study looking at whether the sector is working for the consumers it serves.

Taking a comprehensive look at the experiences of consumers of this sector, we found that the PRS in England is far from being the well-functioning market the consumer should expect. Which? is calling for a comprehensive programme of reform to bring the rental sector up to the standards required in the 21st century.

The rest of this report is structured as follows:

**Chapter 1** based on the findings of our primary research, looks at the experience of different type of tenants, namely families, young people, mature tenants and housing benefit recipients in the PRS, and the characteristics of the main group of landlords operating in England.

**Chapter 2** looks at the experience of both tenants and landlords in accessing the information that they need, and proposes recommendations to improve access to this provision.

**Chapter 3** reviews the practices of professional letting agents from both the tenants' and landlords' perspectives, and provides recommendations for the regulation of the sector.

**Chapter 4** looks at the experience of tenants with the standards of their properties, and recommends changes to improve the effectiveness of the current legislative framework and enforcement practices.

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2 English Housing Survey Headline Report 2016 to 2017, Ministry of Housing, Communities & Local Government.

3 English Housing Survey Headline Report 2016 to 2017, Ministry of Housing, Communities & Local Government.

**Chapter 5** examines the current redress schemes in the sector and outlines the action required to improve its accessibility and effectiveness.

**Chapter 6** describes the views of both tenants and landlords regarding tenure security and recommends actions to improve tenure security.

**Chapter 7** looks at the experience of tenants with security deposits and calls on the government to review the adjudication system to ensure it delivers for consumers.

**Appendix A** describes our research methodology.

**Appendix B** lists all our recommendations.

# 1 Changes in the private rental sector

The private rental sector is expanding and diversifying, and with it the needs and the expectations of consumers are changing. The scale of the changes should not be underestimated. According to our research, increasing numbers of tenants now see themselves living in private rented accommodation for the long term.

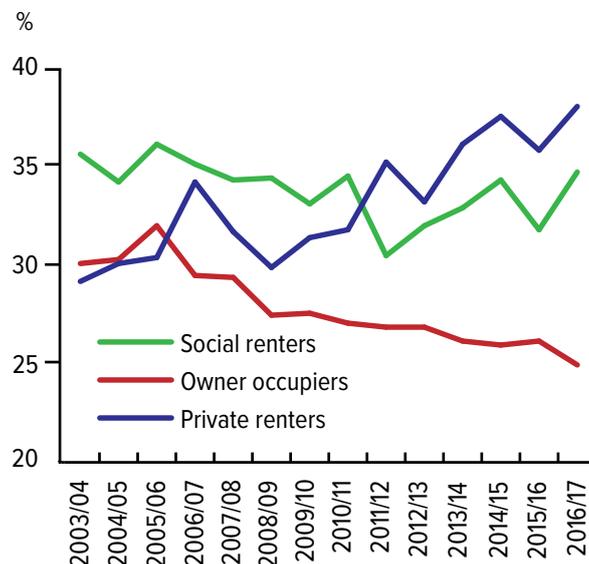
In this chapter we summarise some key findings about the experience of differing groups of tenants. We also provide an overview of some of the key characteristics of landlords operating in the market. Understanding the landlords on whom the sector relies is critical when considering reforms.

## Who are today's tenants?

### Families with children

The number of families with children who are renting has risen dramatically over the last decade. The 2016-17 English Housing Survey data shows that over a third (38%) of private renters have dependent children. This is slightly greater than the proportion of tenants in the social sector where 35% have dependant children (see graph below). Our research identified some clear differences in the needs, experiences and expectations of the PRS for these families, compared to single people or couples without children.

**Figure 1:** Proportion of households with children in different tenures



Source: English Housing Survey, 2016-17

There is a difference in how much families value security. Compared to 51% of *all* tenants, 59% of families stated they were worried about having to leave their property before they wanted to. They are also more likely than single person households/couples to have felt that their previous notice period was too short (37% vs 27%), and were more likely to worry about having to leave their property before they wanted to (59% vs 49%).

More families with children felt finding a landlord that will house them to be the biggest challenge in the PRS than single person households/couples living alone (31% vs 21%). Amongst tenants who found it hard to find a home, families (more frequently than single person households/couples living alone) said it was because of difficulties finding a property that met their needs in terms of size (46% vs 32%).

Our research suggests that, controlling for other factors, families are 1.3 times more likely than single person households/couples living alone to say that the standard of their current accommodation is worse than expected,<sup>4</sup> and 1.5 times more likely than single person households/couples living alone to say that the maintenance has turned out worse than expected.<sup>5</sup> They are 1.3 times more likely than single person households/couples living alone to report paying for or carrying out repairs on their rented properties.<sup>6</sup> This is potentially reflective of families being less willing to compromise on standards when there are children living in the house.

Some families consider renting desirable for the long term. Of those families already renting, 30% stated that they wanted to be in rental accommodation in some capacity (including housing associations, council/local authorities and privately) in 5 years time, with 17% of families currently renting privately wanting to continue renting privately.

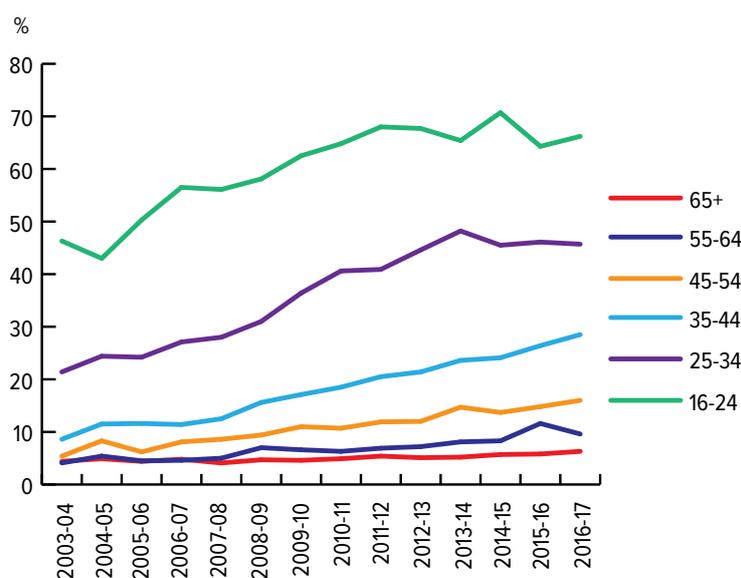
### **Younger people (22-37)**

Younger people still make up a significant proportion of renters in this market and, as the cost of home ownership has climbed, the length of time people stay renting in their 20s and 30s has increased. In 2006-07, 27% of those aged 25 to 34 lived in the private rented sector, but by 2016-17 this number increased to 46% (see graph on p13). Our research explored differences between 'Millennials' (ie those born between 1981 and 1996 – currently aged 22 to 37 and not likely to be students) compared with those aged 38+.

4 A logistic regression was conducted to determine the independent effect of variety of factors included in the survey, on the likelihood of tenants saying the standard of their accommodation was lower than expected. Variables controlled for in the model are 'age', 'household type', 'landlord type', 'working status', 'receiving housing benefits', 'region', 'type of management' and 'being a long-term renter in the PRS'.

5 A logistic regression was conducted to determine the independent effect of variety of factors included in the survey, on the likelihood of tenants saying the maintenance of their accommodation was lower than expected. Variables controlled for in the model are 'household type', 'landlord type', 'being a long-term renter in the PRS', 'working status', 'receiving housing benefits', 'region', 'age' and 'income group'.

6 A logistic regression was conducted to determine the independent effect of variety of factors included in the survey on the likelihood of tenants paying or carrying out repairs themselves. Variables controlled for in the model are 'time in current property', 'income groups', 'landlord type', 'household type', 'age', 'working status', 'receiving housing benefits', 'type of management' and 'being a long-term renter in the PRS'.

**Figure 2:** The proportion of people in the PRS by age group

Source: English Housing Survey, 2016–17

We found that Millennials appreciate the flexibility and choice provided by the private rental sector more than others, but are also more likely to be ‘frustrated aspiring homeowners’. Only 16% of Millennial tenants want to be renting in 5 years time, compared to 43% of older tenants.

Millennials feel less well treated while securing a property. The proportion experiencing problems with lettings agents is higher than other groups in the PRS (68% vs 55%), as is the proportion feeling pressured into making a decision quickly (22% vs 15%), and the proportion likely to be asked to pay a holding deposit (24% vs 13%). Millennials are also somewhat less likely to receive a written tenancy agreement (80% vs 88%).

Once living in a property, Millennials are much more likely to report experiencing lower property standards. We found that, controlling for other factors, they are 1.3 times more likely than tenants aged 38+ to report poor standards of accommodation.<sup>7</sup> And they tend to be less successful in getting problems resolved, including having less clarity on who is responsible for maintenance (86% vs 92%), and being less likely to receive the correct emergency contact details for a landlord or agency (56% vs 68%). Correspondingly, Millennials are more likely to have a current unresolved issue (62% vs 55%).

### **Mature tenants (38+)**

The number of older tenants has risen significantly in the last decade. Notably, the proportion of 35-44 year olds increased by 11% to 29% in the years 2006–07 to 2016–17.<sup>8</sup> Looking to the upper end of this age bracket, 9% of private renters are retired. And as the trend toward ‘life-time renting’

<sup>7</sup> A logistic regression was conducted to determine the independent effect of variety of factors included in the survey on the likelihood of having poor standards of accommodation. Standards were classed as poor if tenants either described the state of repair as ‘poor’ or if they currently faced at least one problem with their accommodation. Variables controlled for in the model are ‘age’, ‘household type’, ‘working status’, ‘management type’, ‘housing benefit status’, ‘landlord type’, ‘region’, ‘income groups’, and ‘being a long-term renter in the PRS’.

<sup>8</sup> English Housing Survey Headline Report 2016 to 2017, Ministry of Housing, Communities & Local Government.

continues, analysts anticipate further growth in the number of pensioners renting privately. Indeed, recent estimates suggest that the number of older households living in the sector is likely to increase in the next 20 years from around 338,000 to 549,000.<sup>9</sup>

The level of worry about having to leave a property before tenants' want to is similar amongst those aged 38+ and those aged 22–37. However, amongst tenants aged 65+, the level of worry drops to 40%. As mentioned in the Millennials section above, older tenants are also less likely to report poor standards of accommodation.

We also found that 43% of tenants aged 38+ wanted to be renting in five years' time (in contrast to 16% of 22–37 year olds). However, 73% expected they *would* be renting in five years, suggesting a sizeable minority who might feel they have no realistic long-term alternative.

### **Housing Benefit recipients**

As reported in the English Housing Survey, in 2016–17, 22% (1 million households) of private renters received Housing Benefits. This is a proportion that increased steadily from 2008–09 to 2014–15; but more recently the proportion has declined reflecting a reduction in the number of recipients.

Only a very limited proportion of properties are available to recipients of Housing Benefits. Two-thirds (65%) of landlords told us they would be unlikely to rent to a recipient of Housing Benefits or local housing allowance (slightly lower than students but higher than any other group). Of this group, the key concerns were about non-payment of rent (62%) and property maintenance (49%). Landlords operating as investors were least likely to rent to this group.

Our research found that tenants receiving Housing Benefits are 1.3 times<sup>10</sup> more likely than tenants not in receipt of Housing Benefits to experience a poor standard of accommodation. They are also 1.4 times more likely to be concerned about their tenure security than tenants not in receipt of Housing Benefits.<sup>11</sup>

Others with low-incomes or uncertain employment also fair poorly in the private rental sector, with 60% of landlords stating they would be unlikely to rent to individuals on zero-hour contracts, due to concerns about prompt rent payment and affordability.

9 Unsuitable, insecure and substandard homes: The barriers faced by older private renters, Independent Age, 2018.

10 A logistic regression was conducted to determine the independent effect of variety of factors included in the survey on the likelihood of having poor standards of accommodation. Standards were classed as poor if tenants either described the state of repair as 'poor' or if they currently faced at least one problem with their accommodation. Variables controlled for in the model are 'age', 'household type', 'working status', 'management type', 'housing benefit status', 'landlord type', 'region', 'income groups', and 'being a long-term renter in the PRS'.

11 A logistic regression was conducted to determine the independent effect of variety of factors included in the survey on the likelihood of tenants being worried about leaving their property before they want to. Variables controlled for in the model are 'age', 'household type', 'landlord type', 'being a long-term renter in the PRS', 'income groups', 'type of management', 'receiving housing benefits', 'tenants paying/carrying out repairs themselves', 'working status' and 'time in the current property'.

### Who are today's landlords?

There is a lack of a comprehensive information about landlords. Therefore, we do not know how many private landlords operate in England or have a full understanding of their characteristics. The Council of Mortgage Lenders survey (2016) found that 95% of landlords were individuals or groups of individuals, with only 3% operating as a limited company (although the proportion of dwellings owned by companies is greater). Most landlords have small property portfolios. Our landlord survey suggests that the vast majority (79%) of landlords let one or two residential units, with one unit being the most common.

According to our survey, landlords tend to fall into a higher income bracket, but most are not 'super rich'. The average income is £64,000. Most operate buy-to-lets as long-term investments, although past research from CML (2016)<sup>12</sup> has found that around 15% are "accidental landlords" who may have inherited a property or have been unable to sell it.

For the majority, being a landlord is a long-term activity, with over two thirds (68%) having spent 3+ years in the industry. Although most landlords feel confident in their understanding of their legal responsibilities – just 21% could correctly identify their responsibilities from a list of options.

There is growing interest in the contribution of commercial landlords within the sector. However, despite the government's efforts to encourage expansion of 'build-to-rent' schemes, to date this covers a small proportion of the total PRS.

Data from the British Property Federation shows that at the the beginning of this year, there were around 100,000 build-to-rent homes (including units in planning or under construction) in England. This compares with 4.8 million of total PRS dwellings in England in 2016. Furthermore, build-to-rent developments are most common in London, which is where 68% of all build-to-rent units were delivered, with the next largest area being the North West, hosting 14%.

Housing associations also play a limited role in private rented provision. The most recent accounts data from the Homes & Communities Agency shows that there were more than 200,000 non-social housing units under Housing association management, which would account for less than 5% of total private rented sector homes.

## 2 Right information for tenants and landlords

- **Tenants can have difficulties accessing necessary information and advice at the different stages in the process. Similarly, landlords can struggle to understand their obligations.**
- **Better information and advice is key to empower tenants to make informed decisions and to enforce their rights.**
- **Landlords must understand their legal duties and to keep up-to-date when obligations change.**
- **We are asking the government to:**
  - **require all landlords to register with the relevant local authority and use this database to share information and advice with landlords. The registration information should be logged on an online, publicly available national database which is linked to the database of rogue landlords and letting agents introduced in April 2018.**
  - **require letting agents and landlords to make available the guide, ‘How to rent: the checklist for renting in England’ at the start of the searching process. The provision of the ‘How to rent a safe home’ should also become a mandatory requirement.**
  - **work with Which? and other relevant organisations to raise awareness of the information available to tenants with a proactive communications campaign. In addition, the government should consider how other bodies which have direct contact with tenants (e.g property portals) can be used to promote sources of information.**

### The problem

#### *Tenant knowledge and access to information*

Our qualitative research revealed that prospective tenants of rental properties tend to ask questions focused on fees and amenities like gas and electricity. Interestingly, tenants tend not to “ask or even consider asking about safety requirements”,<sup>13</sup> either because they trusted that letting agents would check safety requirements before advertising a property and that landlords would keep properties in a good state of repair; or because they simply didn’t know what they should be asking about.

Similarly our survey found that, although tenants have *some* good knowledge of the duties incumbent upon a landlord, there can be significant gaps. We tested tenants on their knowledge of a number of these requirements. Of the 10 statements tested, 71% got between 7 and 10 correct. 87% of respondents correctly identified that landlords must install a working smoke alarm.

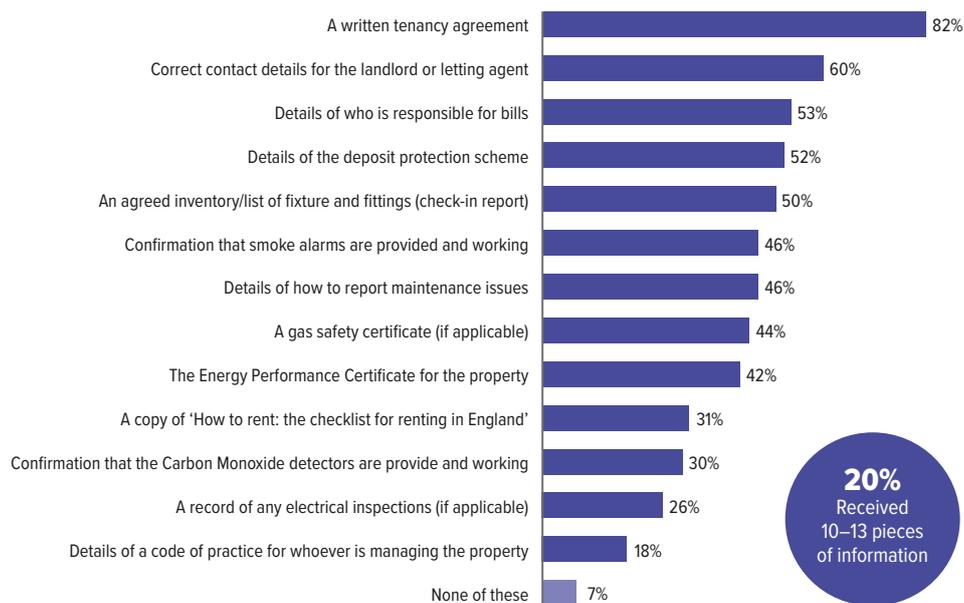
However 1 in 5 (18%) didn't know whether landlords should place the security deposit in a government-approved scheme and only 50% correctly identified the need for the landlord to provide an Energy Performance Certificate. Both the qualitative and quantitative research demonstrates that tenants' knowledge was sometimes insufficient to allow them to make informed and appropriate decisions.

Our survey found that, when searching for a property, tenants encountered a lack of information. For example, 30% said that information on potential fees was missing and/or inaccurate during their most recent property search. Similarly, 32% reported missing or inaccurate details about the condition of the property, fixtures or fittings, and 21% reported that the size of the property/floor plans were missing and/or inaccurate during their most recent search.

In our qualitative research many participants reported that, in the main, they were able to get their questions answered. However, they also reported answers that were vague, or rushed viewings with inadequate time to look around in full or ask questions.

Finally, we found inconsistencies in the information provided to tenants upon moving into properties. Recently moved tenants were presented with a list of 13 pieces of information that they are required to be given or might reasonably expect to receive, for example: a written tenancy agreement, details of how to report maintenance issues, confirmation that smoke alarms are provided and working etc. Only 46% received details of how to report maintenance issues and only 52% received details of the relevant deposit protection scheme (see figure below).

**Figure 3:** Which of the following information did you get at the start of your current tenancy? <sup>14</sup>



Notably, a greater percentage of letting agency-managed tenants than landlord-managed tenants received all of the information, suggesting that landlords need a clearer understanding of the information they should be providing. Indeed, 22% of landlord-managed tenants who had recently moved in did not receive a written copy of their tenancy agreement at the start of their tenancy.

#### **Sources of information and advice**

Our qualitative research revealed that tenants frequently rely on informal networks of friends and family to provide advice. Of those tenants that sought help in checking and understanding the terms and conditions of their rental contract, 63% received help from friends and family members. Correspondingly, only 9% of tenants sought advice from the government or local authority sources, or independent advice organisations such as Citizens Advice or Which?.

Furthermore, tenants often trust their agent to tell them what they need to know. Our research showed that 65% of tenants who recently moved and used a letting agent, were confident they would receive expert advice and guidance. Our qualitative research participants echoed this sentiment, expressing the view that *'utilising a letting agent gives you peace of mind'*.<sup>15</sup>

In principle, there is nothing wrong with tenants using letting agents to help them in the rental process. However, only 26% of recently moved tenants checked whether the agent they consulted was a member of a professional body or redress scheme. This suggests their trust can often be misplaced and based on assumption rather than due diligence, emphasising the need to ensure that *all* letting agents are adequately trained and operating to the highest standards; an issue we explore further in Chapter 3.

It may be that tenants are simply unaware of the reliable sources of information available to them and therefore rely on agents, landlords and informal networks. The 'How to rent: the checklist for renting in England' guide is the government's primary resource for helping tenants in the private rented sector to understand their rights and responsibilities. However our survey data indicates that awareness of this guide is limited. Only 35% of tenants correctly identified that new tenants must be provided with the guide and only 31% of tenants who had recently moved said they received a copy.

#### **Landlords**

Landlords face a complex regulatory landscape. When giving evidence to the Housing, Communities and Local Government Committee the Residential Landlords Association 'explained that there were over 140 Acts of Parliament and more than 400 regulations affecting landlords in the private rented sector.'<sup>16</sup> Furthermore, the regulatory framework is largely fragmented and new legislation has been introduced in a piecemeal fashion. For landlords, this makes understanding the full suite of requirements upon them challenging, in addition to the problem of keeping abreast of any new developments. As a result, some landlords may provide a poorer service to tenants, not necessarily from wilful neglect, but due to knowledge gaps.

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<sup>15</sup> Private Renters' Customer Journey, report for Which? by Ipsos MORI, page 13.

<sup>16</sup> Private rented sector, Fourth Report of Session 2017–19, Housing Communities and Local Government Committee, 2018.

Overall landlords are highly confident in their ability to fulfil their legal requirements. Indeed, 94% of landlords who self-manage their properties state they are confident they are fulfilling their legal obligations. However, our survey tested the knowledge of landlords across a range of obligations and only 21% correctly identified all of the requirements, suggesting that for many, their confidence is overstated.

Similar to our findings for tenants, landlords have good knowledge in some areas. 95% who self-let and manage their property correctly identified that they must provide tenants with a valid gas safety certificate (if applicable) and 94% who self-let and manage correctly identified that they must install working smoke alarms. There remain other areas, however, where some landlords lack knowledge. 13% of landlords who self-let and manage their property did not know whether a carbon monoxide detector had to be installed if solid fuel appliances are in the property. In addition 13% of landlords who self-let and manage their property did not know whether it was a requirement to place the security deposit in a deposit protection scheme, with a further 8% of landlords saying that this wasn't a requirement at all.

Many landlords rely heavily on letting agents for advice and information. Over half (54%) of landlords use letting agents as a source of information to keep up to date with their duties and to provide advice. A quarter (27%) of landlords use letting agents as their *only* source of information and advice. This reliance on letting agents is stronger still (77%) amongst landlords who use agents to manage their property, which was the case for 58% of all the landlords that we surveyed. Of these, 64% stated that they use management services because they help them meet their legal requirements.

We do not believe that, in principle, there is anything wrong with landlords taking this approach. However, letting agents do need to provide a high standard of professional service to meet these expectations. We discuss this issue further in Chapter 3 .

Landlords who only use an agent for the initial letting process (rather than full property management), or who let and manage their properties themselves, are reliant on other sources of advice and information. Just under a quarter use existing professional bodies, with 23% of all landlords being a member of a professional landlords association, and 42% referring to government websites. However, one in eight landlords (12%) use no sources of information to keep up to date with their duties or to access advice on being a landlord. Our evidence clearly suggests that where landlords are not relying on letting agents to ensure obligations are fulfilled, some are not as aware as they need to be of the full range of requirements on them.

### **Areas for reform**

We believe tenants would benefit from a comprehensive guide containing helpful information about their rights and prompting them to act proactively during their search. Many participants in our qualitative research said they would appreciate such a guide. The government has recently revised the 'How

to rent' guide and published a 'How to rent a safe home' guide. This is welcome. However, more improvements can be made to the current available guidance.

The 'How to rent' guide advises what tenants should do before they start their rental search, including suggestions of helpful questions to ask when viewing potential properties, useful checks to make on letting agents and sources of advice about rental agreements. However, the current expectation is that tenants are provided with the 'How to rent' guide at the start of their tenancy (and ultimately before a Section 21 notice can be served). As such, tenants sometimes receive the guide too late in the rental process when much of its advice will be redundant. The guide should be provided to tenants as early as possible in the rental process to equip them with the necessary knowledge to make informed decisions.

**The government should require letting agents and landlords to make the guide 'How to rent: the checklist for renting in England' available at the start of the searching process. This should include linking it to letting adverts. Providing 'How to rent a safe home' should also be made a mandatory requirement. We also identified a number of additional areas that should be included in the broader 'How to rent' guide below.**

#### **How to rent: the checklist for renting in England**

To better inform tenants, we recommend that the government updates the guide in the following ways:

- Add a glossary of key terms to cover the entire document;
- Add information relating to holding deposits, the need to understand the terms under which it will be refunded and highlighting that, by paying this, the tenant is effectively committing to moving in subject to successful checks;
- Include advice to ask the landlord/letting agent for a breakdown of bill providers and permission to change these when you move in (if you are the one paying the bills);
- Include advice to clarify at viewings what appliances are included and who is responsible for maintaining these;
- Specify a checklist of key pieces of information to look out for when reading a written tenancy agreement (for example what the notice period is and what repairs the landlord is responsible for);
- When agreeing the inventory or check-in report, tenants should clarify and ask for proof of whether the property was professionally cleaned at the start of the tenancy and if there is a requirement for the same at the end of tenancy;
- Highlight that if a problem arises at check out which may result in a deposit deduction, tenants should request the opportunity to remedy the problem;
- Provide more detailed information on what tenants should do if the landlord won't return their deposit;
- Include more information relating to house-shares, in particular the difference between joint and single tenants and what happens if one person in a house-share stops paying their share of the rent. The current link relating to this only provides information relating to House of Multiple Occupation licensing requirements for landlords.

Much more needs to be done to raise awareness of the existing guidance to empower tenants to seek out information. The same is true amongst landlords, of whom only 44% of landlords who self-let and manage their property were aware that providing the ‘How to rent’ guide was a requirement.<sup>17</sup> Therefore, the government needs to take proactive steps to build awareness of the guide and its advice.

**The government should work with Which? and other relevant organisations to raise awareness of the information available to tenants with a proactive communications campaign. In addition the government should consider how other bodies which have direct contact with tenants (eg property portals) can be used to promote sources of information.**

Our review highlights the need to empower landlords with information and guidance. Encouragingly, 43% of all landlords in our survey said they would like more information, training and advice. The government has published a ‘How to Let’ guide for current and prospective landlords and must now consider how to raise awareness of this amongst landlords.

Providing landlords with the information they need is greatly hampered by the lack of knowledge about landlords’ identities. Not knowing who landlords are, or having a means to contact them, makes it extremely challenging to provide information.

We believe that establishing a comprehensive national register of private landlords will provide an invaluable means of sharing information (including the ‘How to Let’ guide) and enable signposting for them to sources of information and guidance. The registration scheme could provide landlords with access to standardised forms (such as standard tenancy agreements), and notifications of when new requirements are put in place; hence better enabling them to carry out their roles and meet their legal obligations to consumers.

We are proposing that this database should be linked to the proposed requirement for landlords to join a redress scheme, providing a ‘one-stop shop’ such that landlords were not required to register to multiple different organisations. It should additionally be linked to the rogue landlords and letting agents database which was introduced in April 2018. Making the database publicly available will provide tenants with necessary information to check that their landlord is compliant and to help them to avoid negligent landlords or those continuing to operate illegally. In establishing the database, the government should learn lessons from existing schemes operating in Wales and Scotland.

Three-quarters (77%) of the landlords surveyed in Scotland, Northern Ireland and Wales (where registration in some form is already required) stated they were satisfied with the registration process and scheme.

**The government must introduce a legal requirement for all landlords to be registered with the relevant local authority. The registration information should be logged on an *online, publicly available* national database, which is linked to the database of rogue landlords and letting agents introduced in April 2018. In addition local authority registration should be linked to the proposed requirement for landlords to join a redress scheme, providing a ‘one-stop shop’ to save landlords registering with multiple organisations.**

# 3 Professional letting agents

- **Letting agents play a significant role in the functioning of the sector and can act as key intermediaries across all stages of the rental journey. Of the landlords surveyed, 76% currently use a letting agent, with 58% using them for management services.**
- **Letting agents must provide a consumer-focused, professional service and provide tenants and landlords with the information they need. Bad practice must be driven out of the sector.**
- **Which? supports the government progressing with regulation of letting agents, specifically:**
  - **The government must prioritise the introduction of an independent regulator for the letting and managing agent sector, charged with ensuring a robust mandatory, legally binding code of practice, and a strong enforcement framework.**
  - **The full national database of rogue property agents and landlords should be made publically available to inform consumers and to better hold negligent letting agents to account.**
  - **There needs to be a review of tenancy agreements being used by letting agents to determine if there is widespread use of unfair, inaccurate or misleading terms and conditions and see what further action is needed, for example investigation and enforcement action by the CMA.**
  - **The government should work with property portals to provide consumers with better upfront information about the letting agents advertising on their sites.**

## The problem

We found that 85% of landlords who use an agent are satisfied with the service. Similarly, 67% of tenants who know their home is managed by an agent were satisfied with the way their agent repairs and maintains their home. This suggests there are a number of agents operating to a high level of professional standards, and this is supported by our letting agent mystery shopping exercise, in which 9 of the 30 agents visited received a ‘Good’ rating.

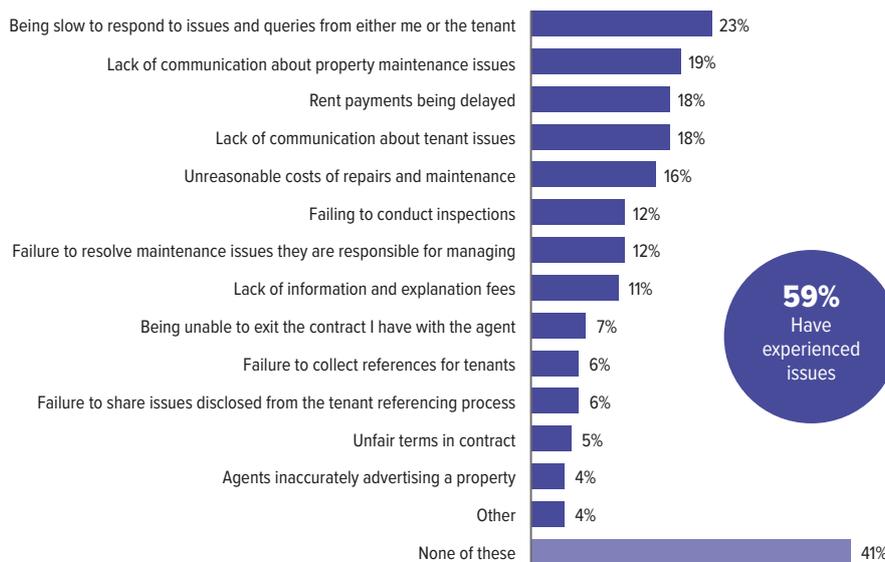
However, our review also suggests a high variance in the standard of practices across the letting agent industry. Of tenants who recently moved and used a letting agent, 64% experienced a problem. Our mystery shopping exercise revealed that some agents were unable to explain how a property would be managed, and possessed inadequate knowledge of requirements regarding carbon monoxide alarms. In a number of cases it was evident that outdated photographs had been used to market properties in a way that was misleading. Indeed, 17% of recently moved tenants in our survey, reported experiencing misleading representation of properties by agents.

A fifth (20%) of tenants living in properties managed by agents reported dissatisfaction with repairs and maintenance and 23% experienced slow response to issues and queries by their agent.

In addition, some of the letting contracts used by letting agents include confusing language as well as unfair clauses. Our qualitative research identified that the “*language of contracts can be overwhelming and confusing for renters*”,<sup>18</sup> and in our survey only 65% of tenants claimed to have read their letting contract in full before signing it. We asked a housing lawyer to look at sample of letting contracts used by letting agents and found that some included complex and/or unclear language and, in some cases, clauses that could be considered unfair for tenants (eg clauses that make tenants liable for costs that rare landlord’s responsibility, that allow landlords to remove appliances from the property, that prohibit tenants to change utility providers).

Landlords, too, can find agents problematic. Indeed, 59% of landlords who use an agent have experienced some form of problem such as poor service (reported by 23%), poor communication (reported by 19%), and delayed rent payments (reported by 18%) (see below). 50% of landlords who had experienced agents being slow to respond to issues and queries, stated that it caused them to feel extreme/quite a lot of stress. Many landlords appear to distrust the letting agent sector, with just 34% not considering the service worth the cost, 14% reporting a bad experience with agents, and 9% stating that they simply do not trust them.

**Figure 4: Which of the following issues, if any, have you experienced with a letting agent?**<sup>19</sup>



18 Private Renters’ Customer Journey, report for Which? by Ipsos MORI, page 27.

19 682 who use letting and/or management agents responded to this question.

Regulation of letting has been long debated. The 2009 Government Response to the Rugg Review Consultation proposed mandatory regulation of private sector letting agents ‘to improve consumer confidence in the sector’. Since that review, the government has introduced a number of changes to solve some of specific problems with letting agents (see box below). However, comprehensive regulation of the sector has been considered only very recently.

#### Key regulations of letting agents

**Requirement to join a redress scheme:** As of 2014, agents must be a member of an approved redress scheme which provides for complaints made against agents to be investigated and determined by an independent body. Agents must publicise details of which scheme they belong to. Local authorities can fine agents up to £5,000 for non-compliance.

**Transparency of fees:** As of 2015, letting agents have been required to publicise details of their fees (that may be charged to either the tenant or the landlord) and whether or not they have Client Money Protection in place. The list of fees must be comprehensive and clearly defined. Local authorities can fine agents up to £5,000 for non-compliance.

**Banning order:** From April 2018, local authorities can apply for landlords and letting agents convicted of specific offences to be banned from letting or managing a property for at least 12 months.

**Civil penalties:** Since April 2017, local authorities have had the power to impose a civil penalty of up to £30,000 on landlords and/or letting agents. Offences liable for a civil penalty include: failure to comply with an Improvement Notice, offences in relation to licensing of HMOs, and failure to comply with management regulations in respect of HMOs

**Database of rogue landlords and letting agents:** From April 2018, letting agents (and landlords) which have received a banning order will be entered onto a database, which is not publicly available.

In addition, the government has announced various changes in legislation which have not yet come into force:

**Tenant fees:** The Tenants Fees Bill 2017-19 is currently before Parliament and would abolish most upfront fees for tenants in England.<sup>20</sup>

**Client Money Protection:** Agents are currently only required to publicise whether or not they are a member of a Client Money Protection (CMP) scheme. However, the government has published regulations to make membership of an approved CMP scheme mandatory. Once the regulations become law, the government intends the requirement to come into force on 1 April 2019 to allow time for CMP providers to be approved.

<sup>20</sup> Our research showed that 24% of tenants who paid administration fees were unclear that these needed to be paid before securing the property and where tenants did pay administration fees 78% consider the charge to be unreasonable.

## Areas for reform

Neither tenants' or landlords' behaviours incentivise letting agents to provide a more professional service. In particular, our survey found that tenants are predominantly driven to a particular agent by their choice of property, with 61% of recently moved tenants finding a property they like and then approaching the agent listing it.<sup>21</sup> Consequently, for many tenants, walking away from a letting agent with whom they are dissatisfied may also entail giving up on their desired property. It is possible that tenants are overlooking poor practice in order to secure their preferred property.

Our survey results demonstrate that a number of factors can influence a landlord's choice of agent. For example, the size of agent's fees and marketing ability; 92% of landlords stated that size of fees was an important factor in their choice of agent. Comparatively however, being a member of a professional body was rated as important by 76% of landlords, with 23% stating it was unimportant in their choice. This suggests that landlords may prioritise other factors over standards of professional service when choosing a letting agent, therefore limiting their ability to drive high standards in the sector.

### Professional standards for letting agents

The letting agent market currently suffers from a lack of required professional standards. Although many letting agents do submit to voluntary regulation and codes of practice,<sup>22</sup> in practice anyone can set up and operate as a letting agent without the need for any specialist skills, training or knowledge.

To better regulate letting agents, the government has proposed:

- i) A single mandatory and legally enforceable code of practice which, as a minimum, will set standards on transparency of potential conflicts of interest; transparency of current and future financial commitments to which clients are agreeing; service charges; communication and customer service; handling of clients money, and dispute resolution
- ii) Requiring agents to have a nationally recognised qualification to practice
- iii) Establishing an independent regulator to own the Code of Practice, have a role in the qualification requirement and enforcement powers against agents, including the ability to ban them
- iv) Imposing criminal sanctions on agents who practice despite being banned

The Code of Practice must cover the following areas (this list is by no means exhaustive):

### Information:

- Adverts (letting agents' websites and property portals) must accurately reflect the property with accurate photographs and floorplans, Energy Performance Certificate (EPC) ratings, and the government's 'How to rent Guide'.

21 Only 8% said that they did some research into different agents and then approached the ones they liked and only 5% stated that they approached agents who were members of a professional body.

22 In our survey of landlords 84% said that their agent follows a code of practice.

- Clearly display the fees charged to landlords and tenants on the agent's website and at their premises, with clear explanations of charges.
- Provide detailed information of property management arrangements at viewings. Including details of the landlord if the property is self-managed.
- Letting agents at all viewings must clearly explain requirements relating to smoke detectors, gas safety certificates, carbon monoxide detectors, etc.
- Tenants should be provided with contract terms, EPC certificate and any existing safety documentation, such as a gas safety certificate, prior to becoming liable for related property fees and charges. Where safety checks are yet to be completed (for example if the property is being refurbished) the tenant should be informed as to when this documentation will be provided to them.

**Conduct:**

- Provide professional and fair advice to tenants on current market conditions and the level of interest in particular properties.
- Ensure that prospective tenants can fully access the property they are viewing.
- Agents must not act in an aggressive or misleading way, or pressurise prospective tenants to make rushed or ill-informed decisions. Tenants must be provided with an adequate timescale (eg 48 hours) to check the contract and paperwork.
- Agents must treat landlords and tenants fairly and provide both parties with clear and impartial advice with regards to resolving conflicts. For example, informing both parties of avenues of redress, such as local authorities or (when established) the landlord redress process.

**Tenancy agreements:**

- Sample agreements should be provided at the earliest opportunity and prior to tenants becoming liable for property fees and charges.
- Agreements must be fair, clear and written in plain English.
- Letting agents should make tenants aware of key terms and obligations before signing any agreement.

**Properties:**

- Ensure that properties advertised are in an adequate state of repair or, where they are not, that there is a comprehensive plan for bringing the property up to an acceptable standard; with contractual provisions in place to safeguard tenants' rights where this is not honoured.
- Where letting agents are responsible for the management of property they should respond promptly to communications from landlords and tenants, particularly in relation to repair and maintenance issues. Landlords should be informed in writing of any issues raised, and tenants kept frequently informed of the course of action being undertaken.

**Landlords:**

- Ensure landlords are compliant with any requirements on them – eg provide a registration number (see our recommendations on landlord registration) and/or copy of their local authority licence.

**Complaints:**

- The agent must provide a clear and comprehensive in-house complaints procedure on their website and at their premises.

**Enforcement framework**

It is essential that any independent regulator is given adequate powers to hold agents effectively to account, including the ability to impose penalties and ban agents from operating in the sector where appropriate.

Outside of formal regulation, upfront information about agents should be provided to consumers to help them in making informed decisions. Therefore, we believe that the government's national database of rogue landlords and property agents should be made publicly available to consumers and fully searchable.

We also see a greater role for property portals in providing more transparent information about the agents advertising on their sites; for example, whether the agent has Client Money Protection in place, if they are a member of a professional body, and confirmation that they are signed up to a redress scheme.

**The government must prioritise the introduction of an independent regulator for the letting and managing agent sector, ensuring a robust mandatory, legally binding code of practice, and a strong enforcement framework.**

**The full national database of rogue property agents and landlords established under the Housing and Planning Act 2016 should be made publicly available to inform consumers and to better hold negligent practicing letting agents to account.**

**There needs to be a review of tenancy agreements being used by letting agents to fully understand if there is widespread use of unfair, inaccurate or misleading terms and conditions and see what further action is needed for example investigation and enforcement action by the CMA.**

**The government should work with property portals to provide consumers with better upfront information about the letting agents advertising on their sites.**

# 4 Adequate property standards

- **Despite significant improvement to standards across all of England’s housing stock the private rental sector remains the worst performing tenure with the 2016/17 English Housing Survey reporting that over a quarter (27%) of private rental properties are considered to be ‘non-decent’.**<sup>23</sup>
- **Current provisions to ensure adequate standards are hampered by barriers to tenants enforcing their rights; a confusing, complex and outdated regulatory landscape; and issues with enforcement.**
- **We are asking the government to:**
  - **review of the effectiveness of the HHSRS and associated guidance.**
  - **make carbon monoxide alarms mandatory in any property with a gas boiler (or any fuel burning appliance) and require mandatory five-yearly checks on electrical installations.**
  - **take steps to increase the effectiveness of local authority enforcement. This should include consideration of increasing the civil penalties that can be imposed on landlords.**
  - **introduce a requirement for landlords to be registered with the relevant local authority.**

## The problem

Our survey found that while 77% of tenants described their property as being in a good state of repair, 81% experienced a problem with standards. The most common issues encountered were damp or mould (42%), condensation (34%) and draughts (32%). The disconnect between tenants’ descriptions of their properties as ‘good’ and their lived experience, suggests that expectations within the sector are generally low and that tenants simply expect to encounter problems.

We have already demonstrated that tenants lack awareness of their rights when renting, and are often unaware of the standards they should expect from a property, and the quality of service they receive from the agent or landlord. Our primary research also indicates that tenants invest a large amount of trust in agents and landlords, assuming that properties marketed to rent are safe and of an adequate standard. Only 23% of tenants told us they saw gas and electrical safety certificates prior to signing tenancy contracts; yet 87% of tenants were aware that landlords must provide tenants with a valid gas safety certificate (if required to have one). This, at times misplaced, trust can have consequences, with a quarter of tenants (24%)

finding that the quality and standard of their accommodation was worse than they expected once they had moved in.

Of those tenants who were dissatisfied with the maintenance of their property, three in five said they felt their landlord only does the bare minimum and/or is slow to get things done. Faced with a complicated system of redress, it may be that tenants often feel they have little choice other than to accept and tolerate poor property standards. There is therefore a clear need to better hold agents and landlords to account when property maintenance is neglected.

Some tenants are also concerned about the security of their rental tenure and we believe this can be a barrier to reporting or resolving maintenance issues. Only 44% of tenants who felt like making a complaint about their accommodation went on to make one. When asked why they didn't make a complaint, 58% of respondents said it was because they didn't want to cause problems for themselves or were keen to avoid repercussions with their landlord. This fear may also act as a driver to tenants undertaking maintenance works themselves or at their own cost. Indeed, 45% of tenants reported that they ordered or carried out, or paid for property repairs themselves, such as buying and fitting new shower heads, replacing blinds, fixing floors, relaying carpet or replacing kitchens. The mean cost of such repairs was c. £195.

The reasons reported by tenants as to why they had undertaken or paid for work themselves is of particular interest. Around a quarter (23%) who had done repairs did so because they didn't want to cause problems or bad feelings with the landlord/letting agent. Additionally, 18% didn't want to risk any repercussions for their tenancy or risk facing costs.

Our survey asked specifically whether tenants felt confident reporting problems with their accommodation without repercussions for their tenancy or costs. While 74% reported that they were confident, this figure was lower at 55% amongst those tenants who also reported that they have experienced property problems. It's possible that tenants who have suffered negative experiences resolving problems have become less confident about reporting future issues; although we cannot say this with certainty.

### **Confusing regulatory landscape**

Poor property standards in this sector are exacerbated by the confusing legal and regulatory landscape. No single piece of legislation neatly and clearly sets out the standard requirements for private rental properties, which can make it difficult for landlords to understand their rights and responsibilities. Indeed, there are several pieces of interrelated legislation that must be examined if the full picture of current regulatory requirements is to be understood (see box below). In part, the complex and fragmented nature of the regulatory landscape is likely to be a contributing factor to poor standards in the sector as tenants and landlords find it difficult to understand their rights and

responsibilities. A recent review of the legal landscape relating to health and safety in the home, jointly undertaken by the Universities of Bristol and Kent in 2017, ultimately concluded that:

*“the law regarding the state and condition of property is in a mess. It is old and out of date; it does not provide appropriate remedies for modern concerns; its enforcement is variable... it desperately requires reform”<sup>24</sup>*

As discussed elsewhere in this report, private landlords can struggle to understand and keep pace with their legal requirements. Similarly for tenants, it can be difficult to know if they are living in a property which meets the required standard; a complex regulatory framework in relation to property standards can act to compound this.

### Key property standards regulation

#### **The Landlord and Tenant Act (1985) – Fitness for human habitation.**

Stipulates a requirement that properties be “fit for human habitation” at the start of, and throughout the tenancy. The legislation sets out the matters to which regard must be given in determining fitness, and include: freedom from damp, ventilation, drainage and sanitary conveniences etc. However, the legislation is effectively obsolete as it contains a condition that the requirement only applies to properties for which the annual rent is less than £52 (£80 in London).

#### **The Landlord and Tenant Act (1985) – Repairing obligation**

Places a duty on landlords, where the lease is for less than seven years, to keep the property in a state of good repair. The aspects of the property to which this relates is specified in the legislation and limits the obligation to:

- the structure and exterior of the dwelling (including drains, gutters and external pipes);
- installations for the supply of water, gas and electricity and for sanitation (however it specifically excludes fixtures, fittings and appliances for making use of the supply of water, gas and electricity);
- heating and hot water installations.

#### **Environmental Protection Act (1990)**

Enforcement action can be taken where a property is in such a state that it could be considered a ‘Statutory Nuisance’, to the effect that it is likely to cause harm to a person’s health. This could include, for example the presence of mould or asbestos that impacts on health but is not applicable to issues relating to comfort.

#### **Gas Safety (Installation and Use) Regulations 1998**

Landlords are responsible for repair and maintenance of gas fittings, appliances and flues. They must be checked annually by a Gas Safe Registered engineer with a record provided to the tenant.

**Key property standards regulation (continued)****Housing Act 2004 – Housing Health and Safety Rating System (HHSRS)**

Local authorities can take action to address, or require landlords to address, the most serious property standard issues following a risk-based evaluation of a property using the HHSRS. This legislation does not outline a minimum standard requirement and is not a pass or fail test, rather it provides guidance to identify the presence of risks of harm.

**The Smoke and Carbon Monoxide Alarms Regulations 2015**

Private Landlords are required to install smoke alarms on every storey of the property, and a carbon monoxide alarm in any room with a solid fuel-burning appliance. These must be in working order at the start of any new tenancy.

**Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015**

As of April 2018, landlords must ensure their properties reach at least an EPC rating of E before granting a new tenancy to new or existing tenants.

In addition there is a range of legislation focused on enforcement and improving conditions, including property standards across the sector. These include:

**Rent Repayment Orders**

Allow tenants or local authorities to apply for to a First-Tier Tribunal to seek repayment of up to 12 months rent or housing benefit (or universal credit), where the landlord has committed a specific offence including failure to obtain a licence where one was required; breach of a banning order; unlawful eviction or harassment of tenants, breach of an improvement order or prohibition notice.

**Banning Order**

From April 2018, local authorities are able to apply for landlords and letting agents who are convicted of specific offences to be banned from letting or managing a property for at least 12 months. Banning order offences are set out in regulations but include unlawful eviction and harassment, violence for securing entry, offences relating to HMO licensing, failure to comply with an improvement notice, theft and blackmail.

**Civil Penalties**

Since April 2017, local authorities have had the power to impose a civil penalty of up to £30,000 on landlords and/or letting agents as an alternative to prosecution. Offences for which a civil penalty can be imposed include: failure to comply with an Improvement Notice, offences in relation to licensing of HMOs, failure to comply with management regulations in respect of HMOs. The monies raised through civil penalties are retained by the local authority to support enforcement action.

### Key property standards regulation (continued)

#### Database of Rogue Landlords and Letting Agents

From April 2018 letting agents and landlords which have received a banning order will be entered onto a database. In addition local authorities can also include a landlord or agent who has been convicted of a banning order offence or has received 2 or more civil penalties within a 12 month period.

Looking ahead, legislation is currently being considered by Parliament with the aim of improving property standards

#### Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill 2017–19

This Private Member's Bill updates the obsolete section of the Landlord and Tenant Act 1985 and contains 2 clauses which provide that:<sup>25</sup>

- i) There is to be an implied covenant in a lease that a landlord must ensure that their property is fit for human habitation at the beginning of the tenancy and for the duration of the tenancy; and
- ii) Where a landlord fails to do so, the tenant has the right to take action in the court for breach of contract on the grounds that the property is unfit for human habitation

To determine a property's fitness, reference will be made to the list of 29 categories of hazards, as set out in the HHSRS and the existing requirements of 1985 Landlord and Tenant Act. The government has committed to supporting the Bill.

### Areas for reform

Chapter 2 describes our proposals to ensure tenants and landlords understand their rights and responsibilities, chapter 5 describes our proposals to improve redress in the sector and chapter 6 asks for reform to increase tenure security. Together, these reforms should lift standards and enhance tenants' confidence to raise concerns when problems arise. The rest of this chapter considers additional areas for reform.

#### Clear standards

Introduced under the Housing Act 2004, the HHSRS enables local authorities to take action to address, or require landlords to address, the most serious property standard issues following a risk-based evaluation of a property using the HHSRS.<sup>26</sup> The severity of an identified hazard depends on the professional but subjective judgement of the relevant inspector.

<sup>25</sup> <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0010/en/18010en.pdf>

<sup>26</sup> This legislation does not outline a minimum standard requirement, rather it enables Environmental Health Officers to identify the presence of risks of harm. For each identified hazard a weighting score is given, and the outcome of the assessment will determine the presence of any category 1 (serious) hazards or category 2 (other) hazards. Where a category 1 hazard is identified, Local Authorities are under a duty of care to take action. For a Category 2 Hazard, the Local Authorities have the power to take action if considered necessary, but are not compelled to.

Supporters of a risk-based approach argue that “there is a need for professional judgement to be exercised in determining priorities for enforcement”<sup>27</sup> and a more simplified approach is too subjective. However, in considering the evidence received on this issue as part of its recent inquiry, the Housing, Communities and Local Government (HCLG) Committee concluded that the current HHSRS system “*is unnecessarily complicated and fails to give tenants, landlords and agents a clear understanding of the minimum standards that are expected*”.<sup>28</sup> The Committee ultimately concluded that a more straightforward set of quality standards should be introduced while acknowledging the support from many environmental health professionals to maintain the risk based approach.

Where there appears to be broad consensus amongst sector experts, is in the need to update the data on which the HHSRS assessment is based, to ensure that it reflects changes in housing conditions. The Chartered Institute of Environmental Health report highlighted issues with the underlying statistics of the HHSRS no longer being based on real world evidence, given that they had not been updated since the HHSRS was first introduced. Furthermore the report found that inspectors were encountering hazards that they felt were not adequately addressed in the HHSRS operating guidance, and that there was a need to review and update enforcement guidance. In its response to the HCLG Committee report, the government failed to commit to a decision on whether or not the HHSRS would be updated. It stated that it would consider the proposal but gave no timescale for doing so. Given the evidence put forward by industry experts we are disappointed that the government has not committed to take this recommendation forward and we note The Chartered Institute of Environmental Health have expressed similar disappointment at the lack of government action in this area.

**The government to commit to implementing a full review of the HHSRS to ensure it is an accurate and effective tool to allow local authority to identify properties in poor condition requiring their intervention.**

We also support the recommendations of the HCLG Committee, that the government should move forward with taking action on requirements around carbon monoxide alarms and to implement the requirement for five-yearly electrical checks. In its response to the HCLG Committee Report, the government stated it is reviewing responses to their consultation on the introduction of mandatory electrical checks and expect to publish their response in the autumn. Additionally they will carry out a review of carbon monoxide alarm requirements with a view to consulting by the end of the year. This is an area where we believe the government could take swift action and we would encourage it to move ahead with reforms as soon as possible.

**Carbon monoxide alarms should be made mandatory in any property with a gas boiler (or any fuel burning appliance) and the government should implement requirements for the introduction of mandatory five-yearly checks on electrical installations.**

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27 Closing The Gaps: Health and Safety at Home, University of Bristol and University of Kent, 2017.

28 Private rented sector, Fourth Report of Session 2017-19, Housing Communities and Local Government Committee, 2018.

## Robust enforcement

We strongly believe that a comprehensive review of the HHSRS framework is required. It is vital that any reform is given the necessary credibility with adequate means of enforcement. For many of the existing provisions, including the HHSRS, the local authority acts as the primary route of enforcement. As outlined in the HCLG Committee enquiry, resource constraints on local authorities have a significant impact on their ability to undertake effective enforcement action. The Association of Residential Letting Agents highlighted in their evidence to the Committee that Birmingham City Council had only five environmental health offices, who were required to cover a city with a population of 1.1 million.<sup>29</sup> And data released by the National Audit Office on the ‘Financial sustainability of local authorities 2018’ found that spending on housing services by local authorities has fallen by 45.6% from 2010/11 to 2016/17.<sup>30</sup>

The impact of these constraints is evidenced by the fact that local authorities rarely seem to address poor property standards by taking active enforcement action. Research conducted for Karen Buck MP in support of her Private Members Bill on property standards indicated that enforcement action is only taken at *“a level equivalent to only 1% of all the properties that are unfit according to the English housing survey”*.<sup>31</sup> Furthermore, research undertaken by Shelter found that formal enforcement action undertaken by local authorities (which includes hazard awareness notices, improvement notices and prohibition notices) has fallen by 40% since the previous Parliament.<sup>32</sup>

Evidence submitted to the HCLG Committee highlighted the costs of utilising enforcement powers, such as prosecution. According to the Local Government Association:

*“A successful prosecution can lead to an award of costs to councils. However the amount awarded often does not reflect the full cost, as a council can only claim costs from the point that a decision was made to prosecute. Any preliminary investigation or time spent collecting evidence cannot be counted in the application for costs”*.<sup>33</sup>

The HCLG Committee also received evidence that many local authorities do not consider sanctions an effective deterrent to criminal landlords, with some landlords considering fines and civil penalties merely *“a cost of business”*<sup>34</sup> and insufficient to driving the worst offenders out of the sector.

29 Private rented sector, Fourth Report of Session 2017-19, Housing Communities and Local Government Committee, 2018.

30 Financial Sustainability of local authorities 2018, National Audit Office.

31 [https://hansard.parliament.uk/commons/2018-01-19/debates/8B42756A-B334-4C72-AD8D-BF437FE1C66B/Homes\(FitnessForHumanHabitationAndLiabilityForHousingStandards\)Bill#contribution-94EEB27D-9AAE-4579-BF8B-708C8459D58A](https://hansard.parliament.uk/commons/2018-01-19/debates/8B42756A-B334-4C72-AD8D-BF437FE1C66B/Homes(FitnessForHumanHabitationAndLiabilityForHousingStandards)Bill#contribution-94EEB27D-9AAE-4579-BF8B-708C8459D58A)

32 Briefing: Fitness for Human Habitation Private Member’s Bill, Shelter, 2017

33 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/housing-communities-and-local-government-committee/private-rented-sector/written/74215.pdf>

34 Private rented sector, Fourth Report of Session 2017-19, Housing Communities and Local Government Committee, 2018.

We recognise that informal courses of action by local authorities to work with landlords to improve their property's condition can have a valuable role in improving standards in the private rental sector, and punitive enforcement action is often only likely to be required in more extreme cases. That being said, the importance of raising the standards, and the increasing constraints on local authorities, leads us to conclude that action is necessary to better support local authorities. In line with the HCLG Committee, Which? recommends that:

**The government should take steps to increase the effectiveness of local authority enforcement, including increasing the civil penalties that can be imposed on landlords.**

**The government must follow through on its commitment to work with local authorities to understand additional funding needs. This includes funding informal enforcement action, and to convene opportunities for sharing knowledge and disseminating best practice between local authorities.**

As explained in Chapter 2, we are calling for a national register of private landlords, with each landlord being assigned a licence number, which should be a prerequisite for any landlord activity. National registration would play a role in tackling poor standards and driving negligent landlords out of the sector. Local authorities would know which properties in their area are in the private rental sector, and the identities of landlords operating them. This would enable more efficient use of their limited resources to better target properties of a poor standard, and landlords who deliberately avoid their responsibilities. Local authorities would then be able to focus their efforts on identifying and taking action against those failing to register. We are calling for the database to be made publicly available, to provide tenants with necessary information to check that their landlord is compliant; and to help them to avoid negligent landlords, or those continuing to operate illegally.

### **Selective licensing**

Currently, local authorities may introduce limited selective licensing in order to tackle problems relating to low housing demand, anti-social behaviour, poor property conditions, high levels of migration, high level of deprivation or high levels of crime.<sup>35</sup> However, explicit permission must be sought from the Secretary of State for Housing, Communities and Local Government, where the scheme would cover more than 20% of the authority's geographical area, or to affect more than 20% of privately rented properties in their area. Evidence gathered as part of the HCLG Committee enquiry highlighted that the process was taking too long and that central government is not best placed to take decisions on the effectiveness of selective licensing on tackling local issues.<sup>36</sup>

Selective licensing has been proposed as one way of improving enforcement of property standards in the private rented sector. The London Borough of

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<sup>35</sup> Selective licensing in the private rented sector: A Guide for local authorities, Department for Communities and Local Government, 2015.

<sup>36</sup> Private rented sector, Fourth Report of Session 2017-19, Housing Communities and Local Government Committee, 2018.

Newham, which was responsible for 60% of all landlord prosecutions in London in 2017,<sup>37</sup> has cited particular success of this method.

We have not undertaken an in-depth review of the effectiveness of selective licensing, but the HCLG Committee received mixed views on its success. We welcome the government's announced review of selective licensing. This must include the lessons learnt from schemes in operation to date, and an assessment of the impact they have had on raising standards in the private rental sector.

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<sup>37</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/communities-and-local-government-committee/private-rented-sector/oral/77774.htm>

## 5 Clear access to effective redress

- **The current system of redress in the private rental sector can be inconsistent, confusing and complex. Furthermore, consumers face difficulties accessing the available provisions. This can be due to a desire to maintain good relations, lack of confidence, or concern about the potential costs of taking direct legal action.**
- **Effective and clear mechanisms for raising a complaint and seeking redress, informal and formal are vital for any well-functioning market. Establishing a consistently robust and usable, trustworthy system, motivates providers to meet expected standards, as well as enabling those who don't to be held to account or disqualified in the worst cases.**
- **The government has already announced its intention to take action in this area. We welcome this and call on the government to:**
  - **introduce an effective and accountable Alternative Dispute Resolution (ADR) framework with a single point of access.**
  - **require all landlords to join an ADR scheme.**
  - **prioritise looking at a specialist Housing Court.**
- **Action on redress must be coupled with reform to tenure security (as discussed in detail in Chapter 6) to ensure that tenants are empowered to take action when necessary.**

### The problem

Many landlords and letting agents communicate well, resolve maintenance issues swiftly and handle financial transactions and negotiations with professionalism.

However, our research found that this is not always the case. Many in the private rented sector experience significant problems at all stages of the rental journey, even when they may state their overall experience is positive. 71% of tenants we surveyed told us they are satisfied with the management of their home, but 47% of this group have a current unresolved maintenance problem. Tenants frequently report feeling rushed by agents and that they felt landlords were slow to make repairs or were getting away with doing the bare minimum. Similarly, while 85% of the landlords we surveyed who use lettings agents said they were satisfied with their current service, 59% told us they had experienced issues with a letting agent.

Despite the prevalence of these problems, few tenants choose to complain about landlords and letting agents. Only 44% of people who had a problem and wanted to complain went on to do so. And our data suggests a similar situation with landlords as customers of letting agents. Despite 3 in 5 (59%)

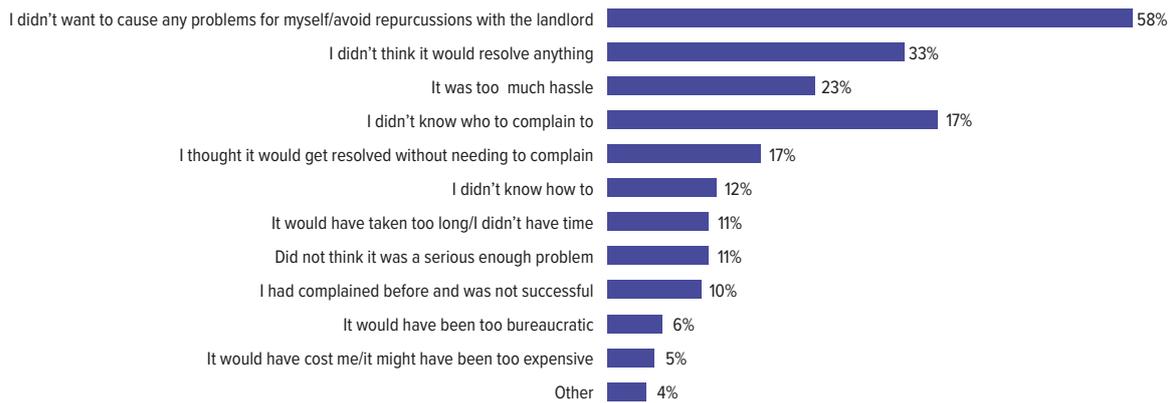
landlords experiencing issues with letting agents, just 8% have complained to an independent redress system in the last three years.

Why do so few complainants choose to come forward? Our research suggests three interconnected sets of factors (see figure below).

Tenants are keen to maintain good relations with landlords; indeed, our research suggests that these relationships are vital. Nearly 3 out of 5 (58%) tenants who held back making a complaint did so because they feared repercussions with the landlord. This is likely related to genuine concerns around lack of security of tenure (discussed further in Chapter 6).

Individuals are also impeded from making a complaint by the confusing and complex regulatory landscape. Of the tenants we surveyed, 23% told us they considered complaining but then didn't, because they didn't know who to complain to, thought it might be too much hassle (also 23%) or simply did not know to go about it (12%).

**Figure 5: Why did you not make a complaint about your most recent problem?** <sup>38</sup>



Our research indicates that landlords also consider it similarly important to maintain good relations with their letting agent, which is perhaps not surprising considering that so many landlords are reliant on their agent to market their property and ensure they are compliant with legal obligations.

There is no single clear route of redress for tenants in the private rental sector and the means by which renters can resolve issues are multiple and overlapping (see box below). Access to independent conciliation, mediation, adjudication and arbitration can depend on whether the concern relates to a letting agent or a private landlord; the type of property; specific and varied local authority arrangements in relation to property licensing; and the nature of the issue concerned. Even where a complainant has established the relevant help, they may still have to establish which particular scheme their landlord or agency is signed up to. With three separate redress schemes dealing with lettings agency issues, and three separate deposit schemes, there is no clear single doorway or system for private tenants to access redress simply.

### Roles of different bodies in dealing with disputes between parties

**Alternative Dispute Resolution schemes** arbitrate and resolve cases before they escalate to the court system. It is mandatory for all letting agents to register with one of three private lettings agency redress services, and all landlords must secure deposits through one of three Tenancy Deposit Schemes. These can all make binding decisions, although in the case of the tenancy deposit schemes, for example, both parties must consent to using the ADR in the first instance. They may propose awards but they do not have any recourse to enforcement.

**Local Authorities** get involved where there is an environmental health issue or a breach of local licenses (mandatory in the case of houses of multiple occupation and otherwise applied by some local authorities to particular types of property or within allocated geographical zones) which tend to cover housing standards and anti-social or criminal behaviour. Many also run voluntary accreditation schemes which offer incentives and endorsements for private landlords who wish to participate. They can withdraw licenses where applicable, issue formal Notices and charge fines of up to £30,000 for a breach of any civil offence (which they retain). Through the Housing Act they also have some stronger powers to deal with a wider set of serious breaches by landlords or agencies – in particular ‘rogue landlords’. These include triggering Rent Repayment Orders or Banning Orders which prohibit landlords from operating at all.

**County Courts** get involved where an individual decides to pursue an issue directly, for example claiming against a landlord or letting agent for failing to protect a security deposit. This can also occur where ADR decisions are not accepted by either party, or an agreed award not paid by a landlord. It can also happen where there is not other specific mandatory redress scheme and court action may be taken for a number of reasons ranging from taking emergency action for repairs to be carried out or for claims for other breaches of the tenancy contract. Local authorities may also pursue some grievances via the County Court, for example where their licensing schemes are not complied with, including not registering to a mandatory scheme, or where a civil penalty or Notice they have issued is not complied with.

**First Tier Tribunal (Property Chamber)** gets involved where called upon by a local authority to implement sanctions such as a Banning Order or Make Rent Repayment Order. The Tribunal employs various in-house experts (eg surveyors and environmental health experts to assess the condition of properties) and tries to mediate initially. The Tribunal deals with many cases on paper, enabling it to act more quickly than a court. Often, individuals represent themselves informally at tribunals held in public buildings, such as community centres and schools. Judges serving in this Tribunal may also serve in a County Court.

A final and significant obstacle preventing people from accessing redress is the lack of confidence in the effectiveness of the system. 33% of tenants who had a problem but didn't complain told us that they didn't think that making a complaint would solve anything.

Data shows inconsistencies in how forcefully local authorities apply formal enforcement measures, with many not prosecuting cases through the Tribunal or Court system at all.<sup>39</sup> Cuts in housing services are also likely to curtail their capacity to investigate. The recent Select Committee inquiry on the private rental sector found that 6 out of 10 councils had not prosecuted a single landlord in 2016, and there can be huge variation across councils. In some instances this may reflect successful informal action being taken, but in other cases it is possible that tenants are finding significant issues being left unresolved.

For common issues where the landlord is responsible, such as disrepair, often the only means of redress available to the tenant will be the county court. However, a recent estimate suggests less than 0.5% of private rented dwellings are covered by ADR for disrepair disputes<sup>40</sup> and many local authorities will not have the time or resource to pursue issues other than the most serious. The time and expense that legal action entails often make it prohibitive for tenants, and this is especially the case since the diminishment of legal aid.

Landlords too frequently complain about the efficacy of the county court system. If a tenant falls into serious arrears or causes damage to property, landlords often have to take action through the courts. Yet Possession Orders currently take an average of 22 weeks to complete,<sup>41</sup> and for some, this process will take longer. This is unsustainable for many and can have broader implications for tenants too. As discussed in Chapter 6 landlords can be less inclined to offer longer tenancies to tenants they may need to evict (due to broken terms of tenancy), if they do not have confidence in the courts to resolve such problems quickly.

### **Areas for reform**

We want a private rental sector where landlords and tenants can resolve issues when they first occur, informally - avoiding escalation to third parties or formal redress wherever possible. While effective systems of formal redress must provide an ultimate deterrent and means to pursue non-compliance, it is in the best interest of everyone to minimise conflict before matters escalate.

To build trust and mutual understanding, tenants, landlords and lettings agencies must all be better supported and equipped with the proper knowledge and information they require on their respective obligations and rights. Better information and advice for landlords and more effective signposting for tenants is needed.

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39 Briefing for Second Reading Debate: Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill 2017–19, Residential Landlords Association, 2018.

40 It's broke, let's fix it: Improving redress for private renters, Citizens Advice, 2017.

41 Overcoming the Barriers to Longer Tenancies in the Private Rented Sector, Ministry of Housing, Communities & Local Government, 2018.

As professionals, and often first port-of-call intermediaries, lettings agencies play a vital role in the private rented sector, which underlines the need for them to abide by a mandatory Code of Practice with clearly embedded principles and undertake training to help broker solutions effectively between tenants and landlords.<sup>42</sup>

Where negotiations fail, or other problems occur, consumer problems should be resolved effectively and efficiently by in-house complaints procedures. Lettings agencies must clearly communicate their in-house complaints procedures to consumers, with indicative timings for issues to be resolved. They should also monitor their complaints data to frequently detect problems and address them. Again, the proposed Letting Agent Code of Practice offers a mechanism through which these practices can be enshrined.

Which? welcomes action by the government to strengthen the coverage and accessibility of redress in the private rental sector. Formal arbitration and dispute resolution should be effective and easily accessible.

A key part of this is the government's proposal to establish a mandatory requirement for all landlords to join an ADR scheme. All tenants, whoever they are complaining against, should be entitled to alternative dispute resolution support. Tenants should be able to go to an independent body which considers complaints with reference to a clear set of dispute resolution principles, arbitrates and formally makes recommendations and awards of compensation. 83% of the tenants we surveyed told us they would support the idea of an independent body to help renters resolve problems.

Which? believes that a single point of access via an online portal is necessary to ensure smooth and simple redress, avoiding unnecessary complexity and confusion. Referral numbers from the Housing Ombudsman demonstrate the extent to which people's time is wasted by initially approaching the wrong agency. During 2017–18, the Housing Ombudsman signposted 638 people to the Property Ombudsman, 115 enquirers to Ombudsman Services (Property) and a further 18 to the Property Redress Scheme.<sup>43</sup> An expanded ADR market would make the challenge of effective ADR navigation even more vital to address.

For a new mandatory requirement on landlords to be meaningful and effective, sufficient delivery capacity will also be necessary, and essential that new or expanded redress schemes are designed in a way that does not overburden landlords. Furthermore the requirement to join a redress scheme must be clearly and broadly communicated to landlords.

**The government must introduce an effective ADR framework with a single point of access for consumers and with a requirement for all landlords to join a redress scheme. The new or expanded ADR provider/s will need to incorporate a number of features in order to deliver an effective service which are outlined in the box below.**

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<sup>42</sup> These ideas are discussed further in Chapter 3.

<sup>43</sup> <https://www.housing-ombudsman.org.uk/wp-content/uploads/2018/05/20180416-mhclg-consultation-on-consumer-redress-in-the-housing-market.pdf>

### Features of effective Alternative Dispute Resolution:

- 1. Accessible and affordable** for consumers by ensuring there are not barriers to consumers seeking the redress they are entitled to.
- 2. Effective** by having adequate enforcement powers to hold providers to account when things go wrong, and by having the necessary skills to deal with consumers' complaints effectively.
- 3. Transparent** through the regular publication of decision criteria, complaints data and outcomes of cases.
- 4. Independent** by providing an impartial service to both parties.
- 5. Accountable** to a competent authority. That authority should undertake periodic reviews on the effectiveness of ADR schemes and publish the results. It must also provide a route for consumers to escalate complaints with the service they received from the ADR scheme and where this has not been adequately addressed through the ADR provider's in-house complaints process.
- 6. Promotes improvements** within the housing sector by using the information gathered to (a) identify sector wide issues and (b) encourage companies to act on complaints data.

### Robust formal enforcement and effective sanctions

All parties must feel confident that there is effective recourse and that those who break laws or tenancy agreements will be subject to sanctions. The costs and waiting times involved in bringing civil actions through the county court system can be prohibitive for individuals. Increasingly councils have been given powers to take action.

Local authorities must have adequate resources to implement their powers. Spending on housing services by local authorities has fallen 45.6% from 2010/11 to 2016/17<sup>44</sup> creating a major resource challenge in this area. Recent changes mean that councils can now keep money received through civil penalties (up to £30,000) and Rent Repayment Orders, where rent was paid through state benefits, provide the potential for some additional access to funds for housing enforcement purposes. This may ease the situation somewhat, but it remains to be seen the amounts raised will be sufficient to genuinely empower more authorities to take effective action.

More broadly the legal complexities, restrictions and costs of enforcement can be a strong disincentive to local authorities to use their powers or for individuals to pursue cases. For example, one of the limiting factors for an individual in taking court action for disrepair are the associated costs risks, where disrepair claims of over £1000 are not dealt with within the small

claims track in pursuing a claim the tenant is open to the risk of facing potentially significant court costs.

**The government should prioritise looking at a specialist Housing Court. In considering options, the government should seek a system which builds on the best of the Tribunal system, utilising professional expert judgement to improve access to sanctions and resolve disputes swiftly. It must also be a system that does not create undue financial burden on those bringing action forward.**

While we believe the above reforms will be beneficial in putting in place an effective redress process and give consumers greater confidence in the effectiveness of the system, the reforms must be underpinned by action to ensure consumers feel empowered to take action in the first place.

This means ensuring there are no barriers to tenants from raising or escalating legitimate complaints for fear of repercussions such as having to leave their home. As we have outlined above, a lack of tenure security is preventing tenants from taking action, even when they want to. Furthermore, while there is legislation in place to protect tenants against retaliatory evictions, a number of organisations (including Citizens Advice and Shelter) have criticised the narrow level of protection that the legislation provides. Crucially the legislation requires a formal complaint to the local authority and for a relevant Improvement Notice to have been issued before the protection applies. Consequently, if the local authority delays taking action then tenants may be left without adequate protection. As we outline in detail in Chapter 6 better tenure security will provide greater protection to tenants, therefore better enabling them to raise issues and demand appropriate action.

## 6 Better tenure security

- **A private rental market which is fit for the future is one which provides for the variety of tenure security needs of different types of tenants. Both the overall tenancy length and the notice period provided by the landlord play a role in this.**
- **The sector must recognise the changing needs of particular groups of tenants, including the rise of families with children wanting longer term security and those requiring more notice in order to find another suitable property when they need to move. Improvements to tenure security would have a beneficial impact on other issues affecting tenants, giving them greater confidence to raise issues and problems without fear of repercussions.**
- **Landlords have legitimate concerns with the introduction of longer tenancies, particularly the length of time it can take to regain possession where tenants are in breach of their contract.**
- **The government have announced plans to take action in this area which is welcomed. However, to improve tenure security the government needs to consider options on contract length and the length of notice period.**
- **It also needs to review the current eviction procedures to increase clarity and reduce unnecessary delays where repossession is warranted. In particular, the government should prioritise looking at a specialist Housing Court to enable swifter justice for tenants and landlords.**

### The problem

Under an Assured Shorthold Tenancy (AST) the minimum fixed term is six months. While longer terms can be agreed our review has found that most common practice was for tenants to be offered a contract length of no more than 12 months. In our survey 84% of tenants were offered a contract of 12 months or less. If the landlord wants the tenant to leave the property they must either provide no less than two months notice under Section 21 of the Housing Act 1988 or seek possession under Section 8 of the Housing Act 1988 where one or more of the grounds for doing so apply.<sup>45</sup>

Tenure security is an issue, with 51% of tenants in our survey stating that they were worried about having to leave their property before they wanted to. This is a particular concern for those with children, with 59% of families expressing concerns about having to leave before they wanted to. This shows that while the current system is working well for some, it does not offer all tenants

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<sup>45</sup> Grounds include circumstances of rent arrears, breach of terms of the tenancy agreement or the tenant is guilty of anti-social behaviour. Please refer to the legislation for full details.

security or peace of mind. Our analysis identified that both overall contract length, and the length of notice period tenants receive, influence tenants' sense of stability and security. If a tenant was required to move, the time he/she was given to find a property was as important as the overall length of time that a tenant could stay in a property.

Opinions vary on the overall tenancy length. When asked about the length of their current tenancy 3 in 5 (63%) tenants thought that it was about right. However, 30% of tenants who recalled the length of tenancy would have preferred a longer tenancy. That this figure is not higher reflects the benefits that some tenants gain from having greater flexibility.

However, it is again notable that this figure increases to 43% amongst family households. There truly is diversity of needs when it comes to security and flexibility. Even where a longer tenancy term may have been preferred, some tenants expressed feeling disempowered when it came to negotiating their desired contract terms. Only 19% of those who would have preferred a longer tenancy length went on to negotiate this before signing their contract. Our qualitative research similarly found evidence suggesting that tenants lack confidence in negotiating, largely because they did not want to risk losing the property to another tenant who would accept the tenancy terms. Consequently, *“tenants described a lack of control over their tenure length, feeling little choice but to accept a year-long tenancy even when they would have preferred a longer length”*.<sup>46</sup>

A key consideration for our review was whether tenants who were given notice to move by their landlord felt they had sufficient time to find suitable new accommodation. Overall, 64% of tenants whose landlord asked them to move out of their previous accommodation found their notice period too short to find new housing. Our analysis found that those who were given notice in their previous property are 5.9 times more likely to think their notice period was too short compared to those who moved for their own reason (eg it was their choice to move). Perhaps unsurprisingly, the suitability of notice periods was again a particular concern for families.<sup>47</sup> This potentially reflects the differing needs of families when looking for a property and their reduced ability to be flexible or to make compromises in terms of what they need. This may be due to children being settled in local schools or family size dictating the type of property that they need. Where tenants do not have sufficient notice to find new suitable accommodation this may be leading to other issues such as feeling rushed to make decisions or insufficiently prepared, emotionally or financially, for the search ahead.

We wanted to understand landlords' views on tenancy length. The results of our survey were relatively split on whether landlords currently offer tenancies for a period of longer than 12 months. 54% of landlords say they do offer more than 12 month tenancy terms. Equally however 46% of landlords told us they only

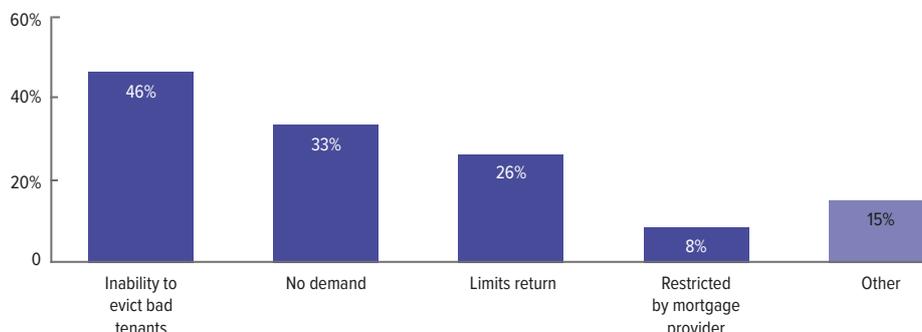
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46 Private Renters' Customer Journey, Report for Which? by Ipsos MORI page 28.

47 Of those that had moved in the last 24 months 37% of families stated that their previous notice period was too short compared to couples/singles living on their own with no children (27%).

offer tenancies of 12 months or less. As the graph below illustrates, a mixture of factors contribute to landlords not being willing to offer longer tenancies. The most common concern is that they may be unable to evict bad tenants.

**Figure 6: You said you wouldn't offer a tenancy of more than 12 months. What, if any, are the reasons for this?** <sup>48</sup>



Letting agents may also influence the length of tenancy offered. According to our survey, tenants whose property is managed by a lettings agent are 1.5 times more likely to worry about having to leave their property before they want to than those tenants living in property that is managed directly by a landlord. Where letting agents charge fees to either tenants for tenancy renewal, or to landlords in order to find replacement tenants, there may be a benefit for some letting agents if there is a high degree of tenant churn. This issue of vested interest was noted in the government's consultation on banning tenant fees.<sup>49</sup> We have not explored this issue in depth as part of this report and therefore have no additional evidence to ascertain to what extent letting agent practices is having an influence on limiting tenure security.

### Areas for reform

The current system of tenure security suits the needs of many, however for others, there is clearly need for reform. The government has launched a consultation on overcoming the barriers to longer tenancies in the private rented sector <sup>50</sup> and this action is very much welcomed.

However the detail of how reform in this area is achieved needs careful consideration. Our review has found that the sector needs to provide a balance between providing greater security for those who need it while continuing to offer flexibility for those that want it. Alongside this it must overcome the concerns of landlords with regards to regaining possession, to recognise that landlords own situation may also change. To ensure effective reform it is necessary for the government to consider a number of things.

<sup>48</sup> Answered by 412 Landlords who do not offer tenancies of more than 12 months.

<sup>49</sup> Banning letting agent fees paid by tenants: A consultation paper, Department for Communities and Local Government, 2017.

<sup>50</sup> Overcoming the Barriers to Longer Tenancies in the Private Rented Sector, Ministry of Housing, Communities & Local Government, 2018.

The current system does not prevent longer term tenancies. However our review has found that even where there may be demand, longer term tenancies are not the norm. There may be a number of reasons for this, including the concerns of landlords and potential letting agent practices, as mentioned above. However, culture and expectation also seem to play a significant role, with a default view, amongst both tenants and landlords, that tenancies of 12 months or less are all that the sector provides.

This highlights the need for action to make certain that longer term tenancies are available to those that need them, rather than simply leaving it as a negotiation between individual landlords and tenants. Our survey suggest that tenants spend on average 4.6 years in their current property and an average of 12.4 years in the private rental sector. The government must therefore be ambitious in their approach to reform. The government should review all the options available including taking a detailed look at the experience of introducing open-ended tenancies as the default option, as has been done in Scotland. It will be necessary however to continue to provide flexibility where the circumstances of tenants change or where a short-term tenancy better suits the tenant's needs. Consequently any reformed tenure arrangements must provide an option for the tenant to give notice on the property where needed; this could require a minimum two month notice period to balance the concerns of landlords that they could be left with an empty property.

Longer term tenancies have clear advantages for landlords too, as supported by just over half of landlords in our survey offering tenancies longer than 12 months. However they equally have legitimate concerns regarding getting their property back if their own situation changes or delays in removing problematic tenants who are in breach of their tenancy terms. The reformed system in Scotland shows that sensible provisions can be put in place to allow landlords to regain possession in specific circumstances. By ensuring that not only are the grounds for repossession clear, but the process for doing so is efficient, potentially requiring the introduction of a Housing Court, the government can remove many of the perceived barriers landlords have to providing longer term tenancies.

Finally, our review has found that the notice period provided to tenants in circumstances where the landlord requires the property back is as an important factor in tenants overall sense of security. Sensible notice periods for when the landlords needs to regain the property must be put in place to ensure that tenants have sufficient time to find another suitable property. Our review has found that an extension to the current two month requirement must be included in the government's consideration of overall reform.

**The government must introduce reforms to increase tenure security. It should look at this as a package that considers both options on contract length and the length of notice period.**

**As part of this package, it is imperative that the government reviews the current eviction procedures to increase clarity and reduce unnecessary delays where repossession is warranted. In particular, the government should prioritise looking at a specialist Housing Court to enable swifter justice for tenants and landlords.**

# 7 Efficient and transparent security deposit arrangements

- **Security deposits can involve significant amounts of tenants' money.<sup>51</sup> Broadly though, there is good understanding of the need for these deposits and they are well accepted compared to other upfront costs.<sup>52</sup>**
- **However, at the end of the tenancy disputes can occur over deductions made, with a lack of clarity amongst tenants and landlords as to what can be reasonably claimed for from the deposit.**
- **The deposit protection system must be a clear and transparent. Tenants must have confidence their money is protected from unreasonable claims and that there are no barriers to them seeking redress where necessary.**
- **To address the issues identified, we are asking the government to:**
  - **review the deposit adjudication schemes to understand the experience of consumers using the adjudication service and to introduce routes for consumers to escalate problems with the service provided by these schemes.**
  - **review the current cash-based deposit system to ensure it is operating as efficiently as possible and consider options to avoid tenants having to cover two deposits when moving between properties.**

## The problem

While many tenants had their deposit back in full, of those that didn't, over half (55%) disputed the deduction. This corresponds with findings from the 2014/15 English Housing Survey which stated that, of the tenants surveyed who had not had their deposits returned in full, 54% felt that the landlord should not have withheld any of their deposit.<sup>53</sup> Our survey showed that the two most common reasons for a deduction were cleaning and damage to the property. In its Annual Review for 2016/17, the Tenancy Deposit Scheme also showed these to be the two most prominent reasons for disputes being raised with its adjudication scheme.<sup>54</sup> The graph below outlines the reasons given for deductions from respondents to our survey who had not had their deposit returned in full.

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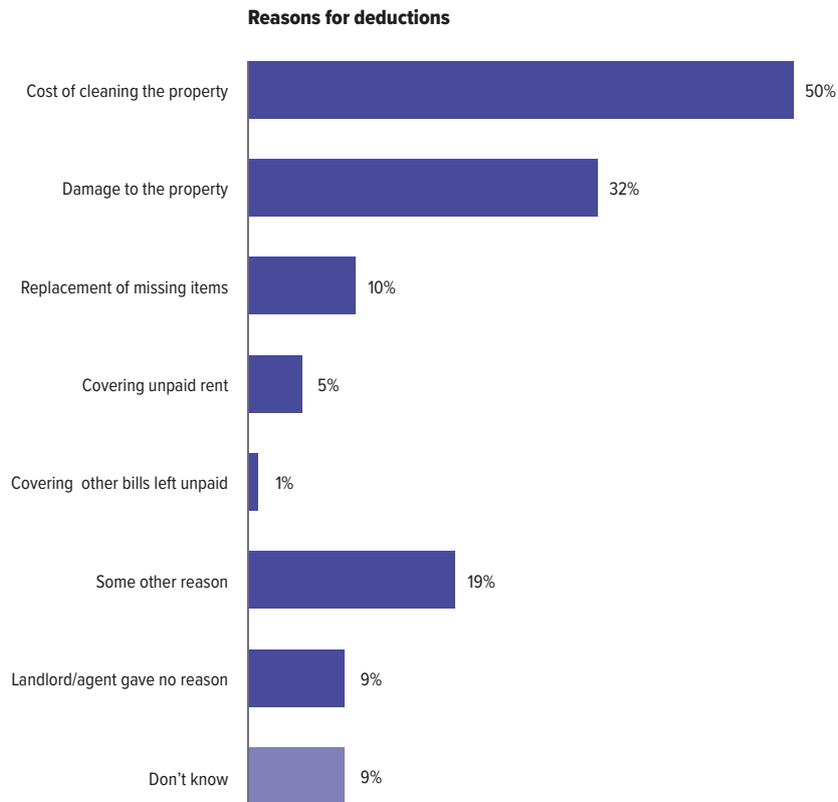
51 Our qualitative research found that tenants were usually expected to provide a deposit equivalent to between one month and six weeks rent, and our survey found a mean cost of £803. The Tenant Fees Bill 2017-19 proposes capping deposits at no more than six weeks rent. As such even with new legislation in place the money tenants are required to provide may still be significant.

52 70% of those who paid a security deposit stated that they thought doing so was reasonable. This compared to only 46% of those who paid a holding deposit and 17% of those who paid administration fees agreeing those charges was reasonable.

53 <https://www.gov.uk/government/statistical-data-sets/new-households-and-recent-movers>

54 TDS Annual Review 2016 - 2017, Tenancy Deposit Scheme.

**Figure 7: What were the reasons given for the deductions from the security deposit or delays to agreeing the amount?** <sup>55</sup>



81% of tenants whose security deposit was deducted for cleaning costs viewed this as an unreasonable deduction and similarly for damage to property, 75% of tenants thought that the deduction made was unreasonable.

Disagreements between tenants and landlords can occur due to a lack of clarity as to what deductions can reasonably be made from a security deposit. Our qualitative research demonstrated “*widespread uncertainty about what landlords can deduct from a security deposit and where to look for information on how to challenge or prepare for this*”.<sup>56</sup> Similarly, our research suggests a lack of awareness amongst landlords as to what constitutes an allowable deposit deduction. In response to our survey 62% of landlords wrongly thought that deductions could be made for unpaid utility bills and 18% said that deductions could be made for wear and tear on the property.

This lack of clarity may further be contributing to a lack of faith amongst some tenants to make use of available redress schemes in order to resolve disputes. Participants in our qualitative research “*felt it wasn't worth disputing the charges, or getting into an argument during an already stressful process of moving homes even where they felt the deduction was unreasonable*”.<sup>57</sup> Our review suggests there may be barriers preventing tenants from raising

<sup>55</sup> 187 respondents who had no deposit returned or only received in part, who are still waiting or who have not claimed yet.

<sup>56</sup> Private Renters' Customer Journey, Report for Which? by Ipsos Mori page 43.

<sup>57</sup> Private Renters' Customer Journey, Report for Which? by Ipsos Mori page 43.

disputes, even where they may feel there is a case to do so. As we discuss in more detail in Chapter 5 the redress system across the sector can be complex and confusing for consumers and may not be operating effectively for tenants where they believe they have been treated unfairly.

Furthermore, it is notable that levels of satisfaction with the deposit scheme are much lower amongst tenants who have actually disputed their deposit. 68% of those tenants who have not had a dispute stated that they were satisfied with the deposit scheme, however only 33% of tenants who have raised a dispute said that they were satisfied.

From our review we cannot know why this difference in satisfaction levels occurs, however it may suggest that tenants can have negative experiences when going through an adjudication process, further fuelling a lack of confidence to use the system in the future. We are aware that the schemes are required to provide the government with monthly reports on their service performance, including response times to enquiries and time taken for resolution of disputes, etc.<sup>58</sup> In addition, in response to a Parliamentary Question in 2015 the then Minister of State for Housing and Planning stated that “over the period that the schemes have been in operation, they have performed at a consistently high level... the majority of disputes are resolved in 28 days, which is the performance target set by the government”.<sup>59</sup> However, there may be other issues or aspects of the adjudication process which aren’t working adequately well for consumers but which are not picked up by the government’s current performance measures.

This highlights the necessity of the government having a good understanding of the tenants experience of using these services in order to hold the redress systems sufficiently to account and ensure the performance measures in place are the right ones. Furthermore, and as mentioned in Chapter 5, there must also be a route for consumers to escalate issues with the adjudication service they have received from these schemes and where they do not feel their complaint has been adequately dealt with in-house; this seems to currently be lacking for the security deposit schemes.

More broadly, our analysis indicates a need to consider how well the use of cash-based deposits as a whole is working for tenants. We are aware, for example that moving between rental properties can require tenants to cover two deposits at the same time and this presents obvious difficulties for consumers. A third (31%) of tenants had to pay a new security deposit before they had received their previous one back. The money required for this can be significant and participants in our qualitative research reported they could face financial difficulties and stress when paying two deposits at once along with other costs of moving. Some tenants have to find additional sources of money to cover moving costs, and this includes paying for a new deposit. A third (32%) of tenants covered the cost of moving by borrowing money

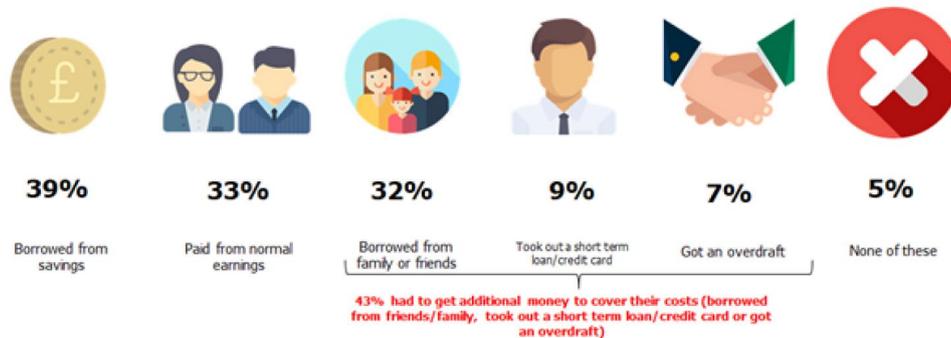
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58 file:///F:/Downloads/Annex%20B\_019A%20Service%20Concession%20Agreement%20(2).pdf

59 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-10-27/13604>

from family and friends, while 9% had to take out a short-term loan or credit card. This highlights the requirement for the current deposit schemes to be operating as efficiently as possible in order to ensure against any delays to tenants having the money they are owed returned to them.

**Figure 8: How do you cover the costs of moving?** <sup>60</sup>



### Areas for reform

It's encouraging that confidence in the deposit protection scheme overall is positive. However, it's clear that some aspects of the system may not be benefiting all tenants. The deposit protection system must be clear and transparent to give tenants confidence that their money is protected from unreasonable claims. There should be no barriers to tenants seeking redress where they need to. Furthermore they must ensure that there is sufficient accountability for the service that the adjudication schemes are providing to consumers. Where they are not providing a good service, the government must take action.

We believe landlords and tenants need clearer guidance as to what reasonable deductions can be made, and in particular greater clarity of what constitutes "allowable wear and tear". This will help to remove a significant area of ambiguity and help in limiting areas of dispute at the end of the tenancy. To avoid further confusion, consistent criteria must be applied across the three protection schemes. Particularly as renters move properties so their deposits may over time be lodged with different schemes.

**The government must review the deposit adjudication schemes to understand the experience of consumers using the adjudication provisions, and to introduce routes for consumers to escalate problems with the service provided by these schemes.**

More broadly it is essential that the deposit protection system continues to adequately meet the needs of consumers that it serves. The government should take the opportunity to review the efficiency and appropriateness of the cash-based deposit system and consider options for where it could be improved in order for it to keep pace with the changing dynamics of the private rental sector. In particular it should consider options which can help tenants manage the transition between rental properties, particularly in cases where they may be required to cover two deposits at once. We are aware

of a number of new insurance-style products as alternatives to cash-based deposits, and proposals for direct transfer of deposits between properties. Such approaches could potentially help tenants better transition when moving between rental properties. However, such approaches are relatively nascent at present.

**The government should also review the current cash-based deposit system to ensure it is operating as efficiently as possible and consider options to avoid tenants having to cover two deposits when moving between properties.**

# Appendix A: Research methodology

We undertook three iterative phases of research. The first is a qualitative journey mapping project, the second a series of large-scale surveys and the third a mystery shopping exercise amongst letting agents. Each research element was designed to understand better the lived experiences of those involved in the private rented sector. The methodology, sampling and fieldwork details of each phase are summarised below.

The figure below outlines each research element.

<b>Methodology overview</b>	
<b>Qualitative journey mapping</b>	40 depth interviews across the UK. 25 X interviews with those looking to move into a PRS property (Cohort 1); 15 X interviews with those currently living in the PRS Diary apps, telephone interviews and follow up interviews were also conducted Conducted in partnership with Ipsos MORI
<b>Quantitative surveys: Tenants</b>	One survey of 856 English tenants living in the PRS who had moved in the last 24 months One survey of 1749 English tenants living in the PRS Fieldwork carried out by Populus
<b>Quantitative survey: Landlords</b>	One survey of 898 private landlords who rent out residential property in England Fieldwork carried out by Populus
<b>Mystery shopping investigation: Letting Agents</b>	30 mystery shopping visits to PRS property viewings, assessing letting agents' knowledge and conduct during the viewing Carried out by Which?

## Qualitative journey mapping research

Ipsos MORI, on behalf of Which? were commissioned to undertake a qualitative research project which aimed to fully understand the journey, needs and detriment experienced by a diverse range of private renters. The semi-longitudinal research was conducted amongst two samples. Cohort 1 were defined as 'looking for a new private let' and Cohort 2 were defined as 'those who have been in their current rented property for at least six months'.

In order to capture the most recent and relevant experiences, quasi longitudinal research (incorporating telephone interviews, digital diary work and face-to-face interviews) was conducted with participants in Cohort 1. A single depth interview was conducted with Cohort 2. A small number of

short tele-depths were used to follow up cases of interest across the whole sample, and, in a final phase, we conducted five filmed interviews with key illustrative cases from across the sample.

In total, 25 in depth telephone interviews, 21 diaries, 40 face-to-face interviews, 5 follow-up short telephone interviews and 5 filmed interviews were conducted. Fieldwork was conducted between 18th September 2017 and 21st February 2018.

Primary sampling criteria for the project were: a mix of consumers looking to move (Cohort 1) and already renting for a minimum of six months (Cohort 2); a range of household structures (families, couples/single person household, sharers) broadly reflecting the relevant composition across the private rented sector; a range of geographical locations, to include diverse types of housing markets. Secondary sampling criteria included: a mix of ranges of household income, including some households receiving Local Housing Allowance; a mix of ages of participants. A more detailed breakdown of the sample structure is available in the full Ipsos MORI research report, which is being published alongside this report.

### **Quantitative**

Populus, on behalf of Which?, conducted three large-scale surveys in March 2018. Two surveys were conducted with tenants currently living in the private rented sector – one amongst only those who had moved properties in the last 24 months, the other with current tenants in the PRS. The third survey was conducted among private individuals who own one or more residential properties rented out to others for domestic use. Where possible, questions were sourced from existing validated questionnaires, such as the English Housing Survey and Shelter's Living Home Standard questionnaire. Statistically significant results are described in the report, and logistical regression analysis was also performed to investigate whether characteristics (such as demographic information) were predictive of certain attitudes or experiences. Further details about these surveys are below.

#### *Tenant survey 1: current PRS tenants who have moved in the last 24 months*

Populus, on behalf of Which?, conducted an online survey amongst PRS tenants who have moved in the last two years to understand better what, if any, issues they faced during this process and to understand how the sector could be further improved. Areas covered in the questionnaire were:

- Experience of moving out, e.g return of security deposits
- Searching for a new home
- Securing a new home: fees, contracts and letting agent practices
- Information provision

While respondents were distributed across the United Kingdom (n=1,028), data referenced in this report is from respondents who live in England (n=856). Respondents were aged 18+ and were interviewed online between 21st March to 2nd April 2018. No weighting has been applied to the data. The data is close to profiles from national surveys such as the English Housing Survey.

### *Tenant survey 2: current PRS tenants*

Populus, on behalf of Which?, conducted an online survey amongst tenants living in the private rented sector to understand their experiences and views of living in the sector and to understand how it could be further improved.

Areas covered in the questionnaire were:

- Quality of accommodation: standards & problems
- Property maintenance
- Landlord and letting agent practices
- Redress
- Overall outlook on renting

While respondents were distributed across the United Kingdom (n=2,050), data referenced in this report are from respondents who live in England (n=1749). Respondents were aged 18+ and were interviewed online between 21st-26th March 2018. No weighting has been applied to the data. The data is close to profiles from national surveys such as the English Housing Survey.

### *Private Landlord survey*

Populus, on behalf of Which?, conducted an online survey amongst private residential landlords to understand better who private rental sector landlords are and their attitudes towards a range of rental issues. Areas covered in the questionnaire were:

- Profiling information
- Information and advice
- Knowledge & responsibilities
- Experience with letting agents
- Attitudes to tenants
- Problems with tenants
- Overall outlook on being a landlord

While respondents were distributed across the United Kingdom (n=1,019), data referenced in this report are from landlords who rent out property in England (n=898). Respondents were aged 18+ and were interviewed online between 13th – 22nd March 2018. No weighting has been applied to the data.

### **Mystery shopping investigation**

Which? conducted an investigation into the practices of letting agents by carrying out mystery shopping. Fieldworkers posed as potential tenants interested in renting privately and were shown round a property by a letting agent. In total, 30 viewings were conducted (6 in each of Bristol, Edinburgh, Leeds, London, Manchester). The locations were chosen according to where the rental market is large or experiencing significant growth - as discussed in a 2017 House of Commons briefing paper on home ownership and renting demographics.<sup>61</sup>

We used internal Which? data (not published) on the number of estate agent instructions for lettings to inform which companies we chose for each area. This resulted in most mystery shops being conducted with larger letting agents, the majority of whom are members of ARLA (Association of Professional Letting Agents). We sent our fieldworkers in with a list of questions to ask (shown below). The fieldworkers recorded their conversation with the agent during the visit. Analysis of the visit transcript was then conducted by property expert, Kate Faulkner. We grouped the answers to the questions into themes and scored each according to what we expect best practice to look like. A scoring matrix was created, where visits were either scored as bad (0 points), satisfactory (1 point) or good (2 points). Fieldwork was conducted between 26th March - 17th May 2018.

- Questions about the *state of the property*
- Who will be managing the property and what happens if anything goes wrong?
- Do you take a holding deposit?
  - [if yes,] How does it work?
- Is any other agency advertising this property?
- Are there gas and electricity safety documents we can see?
  - [if yes,] when?
- Can we see an Energy Performance Certificate (EPC)?
  - [if yes,] when?
- When was the boiler last serviced?
- Are smoke alarms and carbon monoxide alarms fitted and checked?
- How long is the contract?
- Would I be able to see a contract before paying anything?
- Are there any agency fees?
  - [if yes,] what are they?
- How soon would I need to make a decision?

Detail of the results of the investigation were published in an article on the Which? Website at <https://www.which.co.uk/news/2018/07/how-renters-get-a-raw-deal/>.

# Appendix B:

## Table of recommendations

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### The right information, easily accessible for landlords and tenants

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|---|---|
| 1 | The government must introduce a legal requirement for all landlords to be registered with the relevant local authority. The registration information should be logged on an online, publically available national database which is linked to the database of rogue landlords and letting agents introduced in April 2018. In addition local authority registration should be linked to the proposed requirement for landlords to join a redress scheme, providing a ‘one-stop shop’ to save landlords registering with multiple organisations. |
| 2 | The government should require letting agents and landlords make the guide ‘How to rent: the checklist for renting in England’ available at the start of the searching process. This should include linking it to letting adverts. Provision of the ‘How to rent a safe home’ should also be made a mandatory requirement. This report identifies a number of additional areas that should be included in the broader ‘How to rent’ guide.   |
| 3 | The government should work with Which? and other relevant organisations to raise awareness of the information available to tenants with a proactive communications campaign. In addition, the government should consider how other bodies which have direct contact with prospective and current tenants (e.g property portals) can be used to promote helpful sources of information.  |

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### Professional letting agents

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| 4 | The government must prioritise the introduction of an independent regulator for the letting and managing agent sector charged with ensuring a robust mandatory, legally binding code of practice, and a strong enforcement framework. This report identify a number of areas that should be included in the Code of Conduct. |
| 5 | There needs to be a review of tenancy agreements being used by letting agents to fully understand if there is widespread use of unfair, inaccurate or misleading terms and conditions and see what further action is needed for example investigation and enforcement action by the CMA.                                     |
| 6 | The government should make the full national database of rogue property agents and landlords established under the Housing and Planning Act 2016 publicly available to inform consumers and to better hold negligent letting agents to account.  |
| 7 | The government should work with property portals to provide consumers with better upfront information about the letting agents advertising on their sites.   |

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### Adequate property standards

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|---|---|
| 8 | The government should commit to implementing a full review of the HHSRS to ensure it is an accurate and effective tool to allow local authority to identify properties in poor condition requiring their intervention.                              |
| 9 | Carbon monoxide alarms should be made mandatory in any property with a gas boiler (or any fuel burning appliance) and the government should implement requirements for the introduction of mandatory five-yearly checks on electrical installations |
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10 The government should take steps to increase the effectiveness of local authority enforcement, including considering increasing the civil penalties that can be imposed on landlords. The government must follow through on its commitment to work with local authorities to understand additional funding needs. This includes funding informal enforcement action, and to convene opportunities for sharing knowledge and disseminating best practice between local authorities.

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11 As above, the government must introduce a legal requirement for all landlords to be registered with the relevant local authority. The registration information should be logged on an online, publically available national database which is linked to the database of rogue landlords and letting agents introduced in April 2018

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#### **Clear access to effective redress**

12 The government must provide consumers with a comprehensive, effective and accountable Alternative Dispute Resolution (ADR) scheme with a single point of access for consumers. This should include a requirement for all landlords to join an ADR scheme. For ADR to work effectively, the government needs to take the necessary steps to ensure ADR schemes are accountable to competent authorities.

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13 The government should prioritise looking at a specialist Housing Court. In considering options, the government should seek a system which builds on the best of the Tribunal system, utilising professional expert judgement to improve access to sanctions and resolve disputes swiftly. It must also be a system that does not create undue financial burden on those bringing action forward.

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#### **Better tenure security**

14 The government must introduce reforms to increase tenure security. It should look at this as a package that considers both options on contract length and the length of notice period.

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15 As part of these reforms to tenure security, it is imperative that the government reviews the current eviction procedures to increase clarity and reduce unnecessary delays where repossession is warranted. In particular, the government should prioritise looking at a specialist Housing Court to enable swifter justice for tenants and landlords.

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#### **Efficient and transparent security deposit arrangements**

16 The government must review the deposit adjudication schemes to understand the experience of consumers using the adjudication provisions, and to introduce routes for consumers to escalate problems with the service provided by these schemes.

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17 The government should review the current cash-based deposit system to ensure it is operating as efficiently as possible and consider options to avoid tenants having to cover two deposits when moving between properties.

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