

CAS Response to Call for Evidence on the Cost of Living (Tenant Protection) (Scotland) Act 2022

May 2023

1. As we approach the Act being in force for almost six months, do you believe the provisions in the Act have helped to support private tenants?

Yes, CAS believes that the provisions in the Act have helped to support some private tenants, in terms of preventing rents from increasing substantially, and delaying or even avoiding eviction during the Cost of Living crisis.

We have some recent evidence emerging from across CABs of clients whose cases fall under the scope of the Cost of Living Act, mostly in terms of challenging rent rises over and above what is allowed by the Act. Our advisers have been able to provide advice to these clients (who are both tenants and landlords) as to the impact of the temporary measures regarding rent rises, but the evidence indicates that the legislation is not properly understood by some tenants and landlords.

Citizens Alert: A West of Scotland CAB reports of a client whose landlord has proposed a rent increase of £730 per month to £900. The landlord is asking the client to sign a new tenancy agreement to this effect with less than a few weeks' notice (therefore without lawful notice). The landlord has told the tenant not to be concerned as the increase will be covered by Discretionary Housing Payment, but this is not guaranteed. The landlord has suggested that they will seek to end the client's tenancy on the basis that they need vacant possession to sell the home if the client does not agree to the new terms. The landlord is seemingly unaware of the protections in place under the Cost of Living Act.

However, our advice code data shows that in Q4 there was a downturn (-13%) in demand for advice on private sector rents compared to the same period the year prior, ending a trend of increasing need for this type of advice over the past year. This suggests that initial demand (likely driven by the introduction of the Cost of Living Act) has tempered somewhat. Our website advice data shows that monthly Unique Page Views (UPVs) of the page "The landlord wants to increase the rent" have increased notably: between March 2022 and March 2023, UPVs increased by 100%. Further, between February 2022 and February 2023 UPVs increased by 113% and between January 2022 and February 2023 by 72% - an average increase of 95% in Q4 compared to the same period the year before.

Bureaux have started to assist a small number of clients to apply to the First-Tier Tribunal (FTT) in regard to eviction proceedings which fall under the remit of the Cost of Living Act. The vast majority of their FTT clients overall have cases which

pre-date the jurisdiction of the Act due to tribunal backlogs. They note however that several clients (which includes landlords) have not wished to proceed to this stage as they feel that the process is off-putting in terms of the required form-filling, time and effort. We believe many would not have progressed with the process had they not been assisted by a trained adviser or lay representative.

Our statistics show that the number of clients requiring advice on evictions for arrears has been steadily rising over the past year, from 164 unique clients in Q1 of 2022-23 to 287 in Q4. However, most of this growth appears is attributed to clients who are social sector tenants rather than private sector tenants: between Q3 and Q4 of 2022-23 there was a 42% increase in social sector clients seeking advice on eviction for arrears, compared with a 16% decrease in private sector clients in the same period.

We are also concerned that more people are being evicted into homelessness. Our advice data on threatened homelessness due to possession action has increased by 12% between Q4 of 2021-22 and 2022-23 and by 20% between Q3 and Q4 of 2022-23. UPVs of our webpage "You're facing eviction" are up 56% in March 2023 compared to March 2022.

It also appears that the measures within the Act have brought to light the complications of having a private rented system which incorporates several different tenancy types. Our experience is that some confusion has arisen among landlords and tenants as to the Act's application to their own circumstances.

Citizens Alert: A West of Scotland CAB reports of a client who has been given an eviction notice from their landlord on the basis of the landlord wishing their daughter to move into the property, despite this not being one of the exemptions to the Cost of Living Act.

Advisers also tell us that in their experience, and including in the above case example, tenants believe that the Act prevents eviction rather than delaying it.

Some evidence is also emerging about the impact of the legislation on couples living together who have ended the relationship. Many single clients we have assisted cannot afford the full rent they previously paid with a partner. It can be assumed that the intention of the legislation would be to afford them additional time to source alternative accommodation. However, we have seen evictions being granted by the First-tier Tribunal regardless of the Cost of Living legislation due to the fact that the tenant would be unable to meet the full rental liability. It would be helpful to gain clarity on what should happen in this event.

2. Whilst the changes to the rent cap only recently came into force, what do you believe the impact of the rent cap increasing from 0% to 3% on private tenants will be?

It is too soon for us to see what the impact of the change to rent cap is so far, however we would want to see that it is giving landlords some assistance in meeting their own mortgage requirements. We also want to see it giving tenants some security in knowing what the maximum rent rise may be, noting of course the additional allowable rise should the landlord find themselves in financial hardship or difficulty.

We do have emerging evidence from advisers of landlords attempting to apply rent rises of more than 3% without the correct notice period and are concerned that this will be happening to far more tenants than those who approach bureaux for assistance with this type of issue.

Citizens Alert: An East of Scotland CAB reports of a client who contacted the bureau as his landlord informed him that he wanted to raise the rent from £465 to £600 per month, effective from the following month.

3. Do you have evidence of tenant and/or landlord behavioural changes as a direct result of the changes to the temporary measures?

We have some anecdotal evidence from advisers about an increase in landlords selling some or all of their rental properties in recent months, potentially incentivised by the temporary measures. We do not have evidence as to whether the recent changes to the rent cap have specifically had an impact on this behavioural change and our advice code statistics on private sector possession action (not for arrears) have remained mostly steady over recent quarters, following a spike in Q4 of 2021-22.

4. Are you aware of any evidence that tenants experience suggests that landlords not meeting the terms of the emergency requirements (seeking to increase rent above the cap, unlawful evictions etc)?

Yes, we are aware of evidence from advisers that some landlords are not meeting the terms of the emergency requirements, attempting to raise the rent above what is allowed and attempting to evict tenants without going through the correct process. We are also starting to see evidence of some landlords implementing very large between-tenancy rent increases, which while allowed by legislation, causes particular issues especially in instances of joint tenancies.

Citizens Alert: An East of Scotland CAB reports of a client who lives in a four person flat-share. One of their flatmates wishes to leave, which requires all flatmates to agree to bring the current tenancy to an end. The letting agent has said that with the new lease, the rent will go up by £200 per person. The client wishes to leave the flat, however one flatmate wants to stay in the flat but does not want the lease to end as they would have to pay the increased rent.

Our advice code data tells us that demand for advice about illegal eviction has

unfortunately been growing recently:

- There were 137 cases in Q4 (+18% compared to Q4 in 2021-22) and 102 cases in Q3 (+10% compared to Q3 in 2021-22).
- This is coupled with our data on complaints/harassment by landlord, which increased by 19% in Q4 of 2022-23 compared to the same period the year before.
- Our webpage data also appears to confirm this trend as there has been a steady monthly increase in UPVs of the webpage “problems with your landlord”, peaking at a 73% increase in March 2023 compared to March 2022.

Citizens Alert: A West of Scotland CAB reports of a client who was given a month’s notice to leave her rented property, otherwise the door locks would be changed on that day. The client advised she had received no letter of eviction. Immediately before the landlord moved to evict the client, the landlord had also renovated the house in an invasive way which affected the client’s right to quiet enjoyment of the property.

Citizens Alert: An East of Scotland CAB reports of a client who has one month of arrears but has resumed paying rent this month. The client’s letting agent called to threaten the client with eviction if the rent is not repaid. There is a small repair required in the property but the agent stated that no help would be provided until rent is paid. The letting agent also informed the client of an increase in rent from £650 to £675 which is more than current 3% allowed by Scottish Government.

SUPPORTING TRANSITION AWAY FROM THE EMERGENCY MEASURES

Temporarily removing the ability for rent to increase above the new rent requested by the landlord.

There are concerns that some tenants may be deterred from challenging a rent increase because there is a risk that the Rent Officer or the Tribunal could increase the rent above that being requested by a landlord, if the new rent originally proposed by the landlord was below market value.

Scottish Ministers are considering modifying the existing rent adjudication measures so that, where a tenant makes an application for rent adjudication to the Rent Officer or to the Tribunal, the Rent Officer or Tribunal would only be able to either accept the rent increase proposed by the landlord or reduce it. Under this proposal, the Rent Officer or the Tribunal would not be able to set the new rent for the property to a rent higher than that requested by the landlord. This would also apply in cases where a landlord or tenant with a private residential tenancy appeals a Rent Officer’s decision to the Tribunal.

By removing the power of the Rent Officer or the Tribunal to increase the rent above that requested by the landlord, tenants will know that the maximum amount their rent will be increased by will be the amount the landlord has stated in the notification, helping to ensure predictability and stability during the transition out of the recent period of economic crisis.

We consider that this proposed measure would balance the rights of landlords and tenants, as the rent originally proposed would be one that a landlord has fully considered and set themselves. These measures would allow the proposed rent to either be maintained if appropriate, or to be reduced if it is judged to be an unreasonable increase for the property concerned.

Temporarily introducing another comparator for rent adjudication alongside open market rent

As set out above, existing rent adjudication processes are based on setting rent with reference to the open market rent for the property. Scottish Ministers are giving consideration to temporarily introducing another comparator for rent alongside open market rent.

Under these proposals, where a proposed rent was referred to a Rent Officer or the Tribunal for adjudication, the rent determined by the Rent Officer or Tribunal would need to be based on the lower of either open market rent or an alternative measure. There are a range of metrics that could be considered for inclusion as an alternative measure including Consumer Price Index (or CPI +/- a given percentage), Retail Price Index, Consumer Price Index including Housing Costs or an income or earnings related measure that takes account of available data, such as that produced by the Office of National Statistics as part of the Average Weekly Earnings and Annual Survey of Hours & Earnings information.

Determining the adjudicated rent for a property based on the lower of open market rent or an alternative measure could continue to take account of the differences between local markets, whilst also protect individual tenants from rent increases which would be unreasonable in the context of their locality.

<p>What are your views on the transitional options presented?</p>
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<p>For the same reasons as outlined in our response to Question 2, we support in principle the proposal to temporarily remove the ability for rent to increase above the new rent requested by the landlord.</p>
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<p>We recognise the intention behind the second proposal to introduce an alternative comparator for rent adjudication and in principle support linking rents more closely to incomes rather than allowing market forces to determine rents, in order to make them more affordable. However, we are concerned that unless the emergency measures are extended beyond September 2023, there is not ample</p>
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time to properly consider and model these alternative comparators.

For more information, please contact Aoife Deery, Senior Social Justice Policy Officer Aoife.deery@cas.org.uk