

Proposed Fair Rents (Scotland) Bill

Response from Citizens Advice Scotland

August 2019

Citizens Advice Scotland (CAS), our 59 member Citizens Advice Bureaux (CAB) and the Extra Help Unit form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone.

In 2017-18 the Citizens Advice Service network helped over 295,100 clients in Scotland and dealt with almost 800,000 advice issues. With support from the network clients had financial gains of over £138 million and our self-help website Advice in Scotland received approximately 3.2 million page views.

Introduction and context of response

CAS welcomes the opportunity to respond to this consultation. In 2017/2018, CAB advised on 46,777 issues relating to housing. Of these, 12,199 were concerned with issues in the private rented sector (PRS), including rent arrears.

Rent cap

1. Which of the following best expresses your view of capping private sector rent increases annually across Scotland at one percentage point above inflation (measured according to the Consumer Price Index)? Please explain your answer.

Partially supportive.

CAS supports in principle a cap on rent increases. Our evidence suggests that affordability of housing is a key concern for CAB clients, particularly for those on a low income (whether from employment, social security benefits, or a combination of both). Indeed, since 2012, advice on arrears across all rented tenures has grown by over 40%. More specifically, in 2017/2018, there were 1241 new issues relating to PRS arrears, an increase of 20% during the same period. This stands in sharp contrast to the steady decline in other debt-related advice during the same period. Our research also indicates that 36% of PRS tenants surveyed are struggling to manage financially, with many spending less on food and other essentials to pay their rent.¹

CAS therefore believes that there is both a necessity for and clear benefits of intervention in this area. In addition, whilst we believe that the PRS should not take the place of social housing, we agree that it has an important role in meeting housing need in Scotland. Indeed,

¹ Rent Arrears: Causes and Consequences for CAB clients, Citizens Advice Scotland, available at: <https://www.cas.org.uk/publications/rent-arrears>

with a total of 157,806 applicants on waiting lists for local authority housing in Scotland,² the PRS needs to be an affordable option for people on low incomes, and a cap on rent increases may help to ensure that more PRS stock is and remains affordable. However, we are concerned that the proposed cap of CPI +1% will not result in genuinely affordable PRS housing, particularly for the groups listed above. Instead, we believe that it would simply offer a sense of predictability, rather affordability, for the following reasons. Firstly, average wages seldom grow in line with inflation, particularly for the lowest earners. Secondly, Local Housing Allowance (LHA) rates have been frozen for the last four years, meaning that the support that low income private renters can receive through Housing Benefit or Universal Credit is capped, increasingly bearing little or no relation to the true cost of renting in many areas and leaving tenants to make up the shortfall themselves. This has an obvious knock-on impact on tenants' ability to pay their rent, and how much income tenants have remaining after housing costs. With as many as one fifth of private renters in Scotland receiving help with their housing costs³, we should not underestimate how many people this problem affects.

It is expected that benefit rates will be unfrozen in 2020. However, unless rates are also uprated annually by CPI + 1% (which is unlikely, the 'usual' rate is CPI), CAS believes that the proposal as it stands would have a limited impact. Indeed, for benefit claimants, any rent increase significantly greater than annual benefit uprate would simply not be affordable over time, and so those on the lowest incomes would continue to experience the most detriment. CAS is also concerned that the proposal does not contain any provisions to tackle rents that are already too high. Indeed, any positive impact of a cap on rent increases is likely to be limited for tenants who are already struggling to pay their rent. Whilst not problematic in every area of Scotland, high pressure markets are not confined to the country's bigger cities, such as Edinburgh, Glasgow and Aberdeen. Indeed, CAB advisers have highlighted that there tends to be fewer social lets available in many rural areas. This increases demand on PRS stock, which is often already limited, due to higher concentrations of holiday homes and because many homes are tied to employment in these areas. There also tends to be less investment in new homes in rural areas.⁴ The result of all of the above is higher rents.

Related to this, CAS is also concerned that properties entering the market for the first time would not be subject to the cap. Whilst this may not be an issue in areas where PRS rents are relatively low, we remain unconvinced that market forces in mid-range and high pressure areas will act as a suitably robust safeguard against landlords setting unreasonably high rents. This runs the risk of PRS remaining unaffordable or simply unreachable in the first place, particularly for those on the lowest incomes.

Whilst it is true that a tenant in any of these situations could, in theory, apply for rent adjudication, it would simply not be feasible for every tenant to do so, especially as early evidence from the first-tier tribunal confirms that caseload has been unprecedented, with

²Housing Statistics for Scotland: Housing lists – Scottish Government, available at: <http://www.gov.scot/Topics/Statistics/Browse/Housing-Regeneration/HSfS/HousingLists>

³ Shelter Scotland, available at: https://scotland.shelter.org.uk/housing_policy/key_statistics/homelessness_facts_and_research

⁴ Remotely Excluded: Barriers Facing Scotland's Rural Consumers, available at: <https://www.cas.org.uk/publications/remotely-excluded>

tenants sometimes having to wait months for their cases to be heard. For instance, in 2019 alone, the tribunal has heard almost 2,000 cases, which includes some historic cases from 2018 that had yet to be heard (more than 3,300 cases were heard in 2018).⁵ Indeed, without increased resources for the tribunal, we are concerned that some tenants may remain trapped in unaffordable housing. Many PRS properties would also simply remain out-of-reach for those on a low income.

Finally, it is also important to note that the Scottish housing market is not homogenous. Rather, it is made up of many smaller sub-markets, each with (sometimes hugely) varying levels of demand for PRS housing and average rents charged. Average incomes of those who need and live in PRS housing will also vary across the country. Thus, CAS believes that it is important to consider and evaluate the possible impacts that a blanket policy such as this may have in different areas. For instance, whilst it may help to increase affordability of rent in high pressure markets, it may also drive rents up (even to the maximum allowed by the cap) in others. This is conceivable in low-demand areas where rents may be relatively cheap and landlords may not be accustomed to routinely increasing them.

Rent level appeals

2. Which of the following best expresses your view of providing that, when tenants appeal their rent, rent officers and the First-tier Tribunal would be able to either lower or maintain the rent but not increase the rent? Please explain.

Partially supportive.

CAS supports this proposal in principle as it would, at least in theory, help to ensure that more PRS housing is and remains affordable. However, we do not have sufficient case evidence to understand how well the current rent appeal system works, and we have been unable to locate evidence or evaluations from other sources. CAS believes that this is an important consideration and we would therefore welcome investigation into the matter, if it has not already been carried out. In addition, as discussed above, we are concerned that the tribunal may not be able to cope with increased demand for its services. Therefore, in order to maximise efficacy, we believe that this proposal must be accompanied by sufficient resource for the tribunal.

Landlord registration scheme

3. Which of the following best expresses your view of expanding the landlord registration scheme so that landlords must input the rent that they charge when they register, and update the system when the rent changes? Please explain.

Fully supportive.

⁵ Housing and Property Chamber, available at:

<https://www.housingandpropertychamber.scot/forthcoming-tribunal-hearings>

<http://www.scotland-judiciary.org.uk/Upload/Documents/ScottishTribunalsAnnualReport.pdf>

CAS supports this proposal in principle. We agree that there is a need to gather more comprehensive data about rents in Scotland, and this would appear to be a reasonably simple and cost-effective way of doing so. However, evidence from across the Scottish CAB network suggests that current landlord registration system is perhaps not working as well as it should, with many unregistered landlords operating across the country. Others, whilst registered, do not always comply with their legal responsibilities, such as the minimum repair standards. It would also appear that in practice, pursuit and fines for non-compliance with registration requirements are sometimes limited, or even non-existent.

These issues occur not because the current legislation is insufficient, but because enforcement is lacking, with no-coordinated way to tackle poor practice. A number of CAB advisers have also highlighted that many of their clients do not know that the landlord register exists, or what information it contains. This evidence is complemented by the results of a survey commissioned by CAS which suggest that the majority of people in Scotland know very little, or indeed nothing, about both the responsibilities of landlords and their rights as tenants.⁶ Therefore, in order for this proposal to be effective, CAS believes that it is vital that the landlord registration scheme is suitably resourced and enforced. It should also be accompanied by a sustained effort to promote and ensure that tenants understand their rights, as well as the legal responsibilities of their landlords. Informed tenants can help (to an extent) to address bad practice, including failure to comply with registration requirements, by challenging it individually when they encounter it. Tenants must also be able to access high quality advice and support them, where required.

Other options - Rent Pressure Zones

4. Which of the following best expresses your view of tackling the problem of rents rising significantly faster than inflation by making it easier for a local authority to apply to create a Rent Pressure Zone (RPZ)? Please explain.

Partially opposed.

CAS recognises the difficulties in creating RPZs, particularly around the current lack of necessary data. However, CAS is unconvinced that RPZs themselves can meaningfully tackle the problem of above inflationary rent rises. We acknowledge that RPZs could act as a useful stop-gap to protect PRS tenants from large spikes in their rent. However, with above inflation rent increases still possible during tenancies, and with no controls on initial rents, or rent increases between tenancies, upward pressure on housing costs could easily continue under this model, no matter how easy it is for a local authority to create an RPZ.

CAS is also concerned that RPZs may have some unintended consequences. These stem mostly from landlords being allowed to increase rent as much as they wish between tenancies. This could provide incentives for landlords to increase rents in between leases to compensate for limits within tenancies, and to seek evictions that would allow this (although the grounds may ostensibly be within the new legislation, the burden of proof outwith tribunals is low.). Similarly, there could be a converse disincentive for tenants to move. This would be problematic when

⁶ Rent Arrears: Causes and Consequences for CAB clients

circumstances change and could 'trap' tenants in accommodation that is far from work, friends or family. It could even create a dangerous disincentive to leave an abusive relationship. Further, it does not protect more precarious tenants who, for whatever reason, cannot or do not want to stay in properties for longer than 12 months. Indeed, whilst RPZs may go some way to protecting tenants who stay for the maximum period of five years of an RPZ, tenants who move regularly could end up paying more.

Financial implications

5. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on the following? Please explain.

Government and public sector

Some increase in cost.

We recognise that local authorities, including trading standards, may require a significant increase in resource to suitably enforce all of the recommendations made above. Expansion of the landlord registration database would also require some additional resource for set up, but ongoing maintenance costs should not be significantly larger.

Businesses (including landlords)

Some increase in cost.

CAS agrees that some landlords may experience a decrease in their profits and so may be more reluctant to let their properties. Some may even remove their properties from the market. However, based on research conducted in England looking at a similar scenario, we could reasonably expect this impact to be minimal.

Individuals (including tenants)

Some reduction in cost.

We expect that some tenants would experience some reduction in costs. However, as discussed above, the proposal is unlikely to improve the financial situation of all tenants, particularly for those on low incomes, and/or for those living in high pressure markets where rents are already very high. For tenants in these situations, we believe the proposal would guarantee a sense of predictability, as opposed to genuine affordability.

6. Are there ways in which the Bill could achieve its aim more cost-effectively (e.g. by reducing costs or increasing savings)?

Unsure.

Equalities

7. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, maternity and pregnancy, marriage and civil partnership, race, religion or belief, sex, sexual orientation? Please explain.

CAS does not hold sufficient case evidence to determine the possible impacts of the proposal on equality. However, given that some protected characteristics are more likely to be represented in the PRS⁷, the proposal may help to ease some of the additional financial pressure that these groups tend to suffer. In turn, this would, at least in theory, help to reduce the disadvantage that these groups face. For example, disabled people are more likely to suffer from the impacts of higher rents than non-disabled people because they are more likely to be living in poverty, due in part to the increased costs of living with a disability.⁸ In addition, there are a disproportionate number of disabled people living in high pressure PRS markets such as Edinburgh and Glasgow (compared with rural and remote areas).⁹ Further, the gender pay gap means that women suffer the impacts of unaffordable rents disproportionately, and structural problems in the PRS have the added impact of making it more difficult to leave abusive relationships.¹⁰ Finally, 58% of PRS tenants record their ethnicity as White Scottish, compared to 79% of adults as a whole in Scotland. This would suggest that other ethnic groups are overrepresented in the PRS.¹¹ However, as some groups with protected characteristics tend to be lower earners, we remain concerned that the impact of the proposal on equality will be limited, particularly whilst wage growth does not keep up with inflation and LHA rates remain frozen.

8. In what ways could any negative impact of the Bill on equality be minimised or avoided?

Unsure.

Sustainability

9. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts? Please explain.

As discussed above, CAS acknowledges the possibility of two unwelcome impacts from the Bill's proposals: encouraging regular rent increases where none previously existed, and the withdrawal of properties from the market. On the first point, we are satisfied that the information available through the proposed rent registration, if combined with adequate

⁷ Scottish Household Survey, available at:

<https://www.gov.scot/publications/scotlands-people-annual-report-results-2017-scottish-household-survey/>

⁸ Scottish Household Survey AND Scottish Government 'Additional Poverty' Analysis, available at:

<https://www2.gov.scot/Topics/Statistics/Browse/Social-Welfare/IncomePoverty/povertytable>

⁹ Disability Trends in Scottish Cities, available at:

https://www.understandingglasgow.com/indicators/health/trends/disability_trends_scottish_cities/overview

¹⁰ 'The Facts', Domestic Abuse Housing Alliance, available at: <https://www.dahalliance.org.uk/facts>

¹¹ Scottish Household Survey

resources, would allow for monitoring and, if necessary, flagging this issue to local and national government where necessary.

On the second point, CAS acknowledges that some landlords could perceive the cap as an unwelcome limit on their income and opt to withdraw their properties from the market as a result. This could either be withdrawal from the rental market altogether or renting properties as short-term lets, such as AirBnB. While the former could result in a small increase in supply of properties for sale, both could contribute to a reduction in availability of PRS stock for mid to long-term homes. This may create additional demand for remaining PRS stock, which could force tenants to leave the area. However, as discussed above, we would expect this to be minimal¹². In addition, proposals for regulating short-term lets could be used to bring more parity between the two sectors, reducing incentives for long-term PRS landlords to switch. Thus, any potential disproportionate impacts of the proposed Bill could be mitigated or addressed through effective implementation of its measures, robust resourcing for monitoring and compliance, and co-ordination with other relevant legislation.

General

10. Do you have any other comments or suggestions on the proposal?

Whilst CAS welcomes any measures to make the PRS more affordable, the issue itself cannot be considered in isolation. In order to achieve genuinely affordable PRS housing, particularly for people on the lowest incomes, CAS believes that any form of rent control (whether through this proposal or any other) needs to be accompanied by a balanced housing market. This requires serious investment in both social and affordable housing, particularly in high pressure housing markets like Edinburgh, Glasgow, Aberdeen and many rural areas. This would achieve two things. Firstly, it would help to ensure that more affordable cross-tenure housing options are available to everybody. Secondly, it would also provide the essential surrounding context needed for rent control (in any of its many possible forms) to work. Crucially, research from across Europe shows that where rent controls were introduced without this wider action to boost the supply of social and affordable housing, they were all too often rendered ineffective by loopholes and shadow markets on rentals.¹³ This is a critical consideration for this proposal. Finally, whilst not 'within our powers', it is essential that LHA rates are unfrozen, with a view to enabling them to cover, at minimum, the bottom 30% of market rents once more. As for the proposed level of cap itself, CAS recommends that rent increases are, at maximum, capped at CPI.

¹² Cambridge Centre for Housing and Planning Research

¹³ Shelter Scotland, available at:

https://scotland.shelter.org.uk/_data/assets/pdf_file/0011/1527590/Shelter_RentReport_May18_screen3_1.pdf/_ncache