

**Minutes of the
Cross Party Group on Housing
Thursday 26th November 2015**

Present:

Gordon MacDonald MSP	
Margaret McDonald MSP	
Patrick Harvie MSP	
Alastair Hackland	Royal Incorporation of Architects in Scotland (RIAS)
Bret Bellingham	Housing Options Scotland
Caroline Elgar	Scottish Association of Landlords (SAL)
Emma Meldrum	Tenant Participation Advisory Service (TPAS)
Gavin Dick	National Landlords Association (NLA)
James Battye	Shelter Scotland
Katy Dickson	Scottish Land and Estates
Leanne Thomas	Tenants Information Service (TIS)
Lynda Johnstone	Tenants Information Service (TIS)
Martin Barnes	Crisis
Moira Bayne	Housing Options Scotland
Stephen Young	Civil Engineering Contractors Association
Wayne MacKay	Electrical Safety Council

In attendance:

Ciaran McDonald	Age Scotland
Craig Sanderson	Link Group
Malcolm Warrack	PRS 4 Scotland
Mark McCabe	Audit Scotland
Colin MacFarlane	Indigo
Peter Smyth	Indigo
Philip Hogg	Homes for Scotland

1. Welcome and Apologies

Margaret McDougall MSP opened the meeting of the Cross Party Group on Housing and intimated the following apologies:

- Mark McDonald MSP
- Alastair Cameron, Scottish Churches Housing Action
- Ashley Campbell, Chartered Institute of Housing (CIH)
- Hew Edgar, RICS
- Neil Clapperton, Grampian Housing Association

2. Minutes of the previous meeting

Minutes were approved with no matters arising. They were proposed by Stephen Young, Civil Engineering Contractors Association and seconded by Emma Meldrum, TPAS.

3. AGM

3.1 Elections

The existing Convenor, Margaret McDougall MSP, stood down and the elections were led by Lynda Johnstone, TIS.

Convenor

Stephen Young, Civil Engineering Contractors Association nominated Margaret McDougall MSP for the position of Convenor and this motion was seconded by Patrick Harvie MSP.

Vice Convenor

Patrick Harvie MSP and Gordon MacDonald MSP both stood for the role of Vice-Convenor. Margaret McDougall MSP proposed that they co-work the position of Vice-Convenor. This was seconded by Stephen Young, Civil Engineering Contractors Association

Secretariat

TIS offered to continue the role of Secretariat for the group. Caroline Elgar, SAL proposed that TIS should continue in the role of Secretariat. This was seconded by Moira Bayne, Housing Options Scotland.

Treasurer

There is no requirement for the position of treasurer as the group has no monetary responsibilities.

At this point, control of the meeting was handed back to newly elected Margaret McDougall MSP.

4. Presentation on the Private Housing (Tenancies) (Scotland) Bill, presented by Malcolm Warrack PRS 4 Scotland

Please see appendix 1 for the presentation made by Malcolm Warrack.

A paper was also provided by Malcolm Warrack. Please find this enclosed with the minutes.

Discussion regarding the Private Housing (Tenancies) (Scotland) Bill).

- Vacant possession

The student market is a subset of the rental market and an issue arises around the end of student tenancies. 'Crush points' are created as students wish to end their tenancies at certain times of the year. Further education establishments are encouraging students to secure accommodation during January of each year, before their exam periods.

- Rent Certainty

An increase in mortgage rates and changes in the money markets in the buy to let sector will have an impact on the Private Rented Sector (PRS).

- Repairs

It was noted that there is ample regulation in the repairing standards, if properly enforced. The Bill has concentrated more on the security of tenure in the PRS.

The availability of funds to buy property has traditionally been too free and easy. The ease of buying is met with conflict with affordability to invest in repairs and maintenance.

The anticipated interest rate changes, will impact on the PRS and may stop landlords entering the market. A critical factor for managing the market is an increase of supply.

Shelter fully support the Bill and endorse security of tenure for tenants. Consumers of the PRS are varied with changing dynamics. An issue to be considered is consumer empowerment, in addition to the existing repairing standard. It should be noted that students are not a harmonious group, and could include family parent members in full time education.

- Taxation

It was noted that the current tax regime will become less favourable in the UK, with restrictions on mortgage interest relief, which may deter landlords entering and staying in the sector.

NLA are currently drafting a paper on this issue which will be made available to Cross Party Group on Housing members in due course.

- Satisfaction

It was reported that there is an 80-85% satisfaction level from tenants in the PRS on issues such as repairs.

- Rent Controls

On a presented scenario to the meeting, it was noted that for a two bedroom property in an Edinburgh constituency, saw rents in the PRS being on average 37% higher than the Edinex Social Housing listings, which represents on average an 8% return. Should these statistics support capped rents? Concern was expressed that anything to do with caps on rents will impact on investor confidence. There is a nervousness about rent control, which could potentially stop banks lending. Please refer to NLA rent control paper, to be released in the coming weeks.

- Housing Associations

There is scope for Housing Associations to enter into the buy to let market and it was felt that rent controls would put banks off lending to them. New build in the market and build to let will provide more opportunities for social housing tenants to move into the private rented sector and as a result release houses for social rent. There is a need to make the PRS work better and solve under supply problems.

In trying to attract large scale investment for quality accommodation in Scotland, very little is happening at the moment. Increasing risk, or perception of risk, a large majority of lenders have said it would impact on their investment decision. A need was expressed to include a clause in the Bill to review its impact in five years, with an option to remove if not working.

- Consumer empowerment and influence

In considering 'what does the tenant or consumer want', a question was posed to the meeting about how PRS tenants can be given a meaningful voice in influencing the service received. It is assumed that the majority of tenant feedback received through the consultation of the Bill, came through organised tenant groups whereby Registered Tenant Organisations and their networks represent the interests of wider communities. For engagement to be meaningful, landlords in the PRS and Local Authorities must demonstrate commitment and resources to ensuring PRS tenants are supported to gain influence.

It was acknowledged meaningful consumer empowerment, is a challenge for all stakeholders, who need to work together to combine and share statistics and hear from tenants.

Experience often shows that PRS tenants can be frightened or reluctant to challenge the service received from their landlord due to repercussion of loss of tenure.

Letting agent regulation and an increase in standards, will go some way to build trust between the landlord and the tenants. In addition, resources should be invested to ensure PRS tenants are made aware of their rights and that an education programme within schools is developed and implemented to ensure future tenants are informed.

Shelter are currently developing a PRS Tenants Forum in Scotland which will establish a tenant voice within the sector. Private tenants pay a higher rent and often feel they do not get good value for money, and feel disempowered.

Margaret thanked everyone for their input, and to Malcolm Warrack for his contribution.

5. Cross Party Group Business

The topic for the next meeting was discussed. It was agreed to look at housing issues following a prison sentence, to be led by Pete White, Positive Prison and Alastair Cameron, Scottish Churches Housing Action. Moira Bayne, Housing Options Scotland suggested tying this in with their work on housing for veterans.

6. Date of next meeting

Thursday 28th January 2016

It was noted that the meeting which was originally scheduled for 24th March 2016, will no longer take place due to Parliament being dissolved.

Future dates will be set when the new Administration reconstitutes all Cross Party Groups.

Appendix 1

The following presentation was made by Malcolm Warrack, PRS 4 Scotland.

Introduction

Malcolm Warrack – Chair of LetScotland and representative of PRS4Scotland as well as MD of Cullen Property since 1998

My topics to cover today are the

1.....impact of the new tenancy agreement on agreed short term tenancies

2.....interference in rent increases

3.....supply of new homes and data to support the first 2

Who are PRS4Scotland?

An alliance of people and businesses who want to see a strong, modernised and sustainable private rented sector in Scotland. The group includes letting agents, landlords, portals and investors. Organisations such as DJ Alexander, Cullen, Rettie & Co, CityLets, LetScotland, Lettingweb with combined many years' experience of working in the PRS.

The group was established earlier this year due to a number of concerns which were outlined in the Scottish Government's Private Housing (Tenancies) Bill. I will touch on the concerns that we have with the Bill but it might be useful to give a little background to the bill itself.

Malcolm Warrack

A little about me, I came into the property industry in 1966 as a trainee surveyor, qualified in 1973 and worked primarily in commercial property in Scotlandapart from about 3 years in London in the early 70s. My working career has spanned pre the '88 Act and since. I will not go into the experiences of renting as a young professional in Edinburgh and London in the late 60s and early 70s other than to say properties offered now are hugely improved in both quality and safety. A perspective on this current situation from my working life may be of interest.

Much talk is made of the empty upper floors above commercial properties in town centres. This is a hangover from pre '88 when owners of the ground floors looked upon upper floors as cheap storage or if not needed for that easier to close off than consider alternatives such as residential use. There is a bigger discussion point around this but I can recall many occasions when owners said residential was too complex.

I started getting involved in residential lettings in 1995 and opened Cullen in 1998. There is a lot of good in the '88 Act and along with further regulations the PRS market works really well for the majority.

We need to keep in mind the good in current practices and move forwards

Private Housing (Tenancies) Bill

The bill itself was introduced to Parliament in early October 2015 discussions and consultations on its contents were started months ago and the industry has been engaging on many of these proposals for a considerable time.

New Tenancy Agreement

In broad terms, the bill seeks to introduce a new tenancy for the private rented sector in Scotland which would supersede the current short assured tenancy agreement.

This new tenancy would be an open-ended tenancy and therefore this would end what is commonly known as the “no-fault ground” where landlords can seek repossession of their property from a tenant at the end of the tenancy term. This expression of no fault as far as I can find out is not in the '88 Act and seems to have appeared recently to amplify the issues around a small number of rogue landlords and letting agents. We all agree we want to do away with those practices and give security of tenure to those who wish it.

The current proposal permits landlords only to end a tenancy using certain specified grounds which are laid out within the bill – currently there are 16 proposed eviction grounds such as rent arrears, antisocial behaviour or if the landlord intends to sell the property amongst others.

As you may imagine there has been a great deal of negotiation amongst tenants and landlord groups with some advocating less grounds and some seeking more.

Good landlords will generally favour long term tenancies to good occupants. The PRS market is made up of a wide section of society and needs to provide quality accommodation and services at affordable prices to any particular market and be flexible

Some tenants will come to the marketplace looking for accommodation with specific start and end dates of occupation; this is illustrated by the student market which operates around fixed dates of the academic year.

Impact of the new tenancy agreement on students

At the moment, a significant proportion of students opt to take a 9-10 month lease so that they can vacate the property in the summer months and save money and/or move back home. In many cases, this allows landlords to take vacant possession of properties for holiday lets, which is a popular and economically vital option in cities like Edinburgh, where Festival visitors place high demand on local accommodation.

Under the terms of the Bill, landlords and students will be unable to mutually agree a lease of a fixed duration (e.g. 9 or 10 months) and the removal of the opportunity to agree a tenancy end date at the start of the tenancy will disenfranchise the very consumers who we are trying to house. It also means that landlords, agents and specialist university accommodation providers will have no advance knowledge of when their accommodation will be available to let, and so will not be able to advertise properties for rent when most students are looking.

The consequence will be that students looking for accommodation for the first time or looking to move at the end of summer term, will face a severe shortage of options. Moreover, the overnight removal of a significant portion of these properties from the short stay lettings market, which the Bill in its current form will lead to, will leave the organisers of summer events like The Open in St Andrews and Edinburgh's Festivals at a loss over where to accommodate visitors.

Some students wish to take tenancies for part of the year and some for a full 12 months so that they have the opportunity to consider staying in the one property from the start of 2nd year to graduation.

Ultimately, the conclusion among significant investors in the student lettings sector will be that the terms of the Bill make practical investment untenable going forward. We would suggest allowing students and short stay tenants the ability to opt in to a specialist tenancy agreement with a defined duration covering a fixed term of say 9, 10, 11 or 12 months.this is what I would call the **agreed tenancy end date** which in the spirit of the Bill would involve a document produced at the commencement of the tenancy for the tenant to serve "notice to leave" on the landlord of their chosen and agreed tenancy end date.

Student tenants deserve a consistent offering from providers of accommodation be they private landlords or Universities, as proposed under exemption in the Bill as presently provided for. Students will be confused if their accommodation terms are different from one provider to another.

This would also give some legal support to the Policy Memorandum which advocates discussion and agreement between landlord and tenant at the start of a tenancy in these situations..... section 68 of the PM.

Creation of a Tribunal

A new First Tier Tribunal will be created with two primary aims, enforcing landlords rights if a tenant refuses to leave a property after being given notice by the landlord on the proposed eviction grounds and enforcing tenant's rights if they believe their tenancy has been wrongfully terminated.

We acknowledge that there is room for improvement in the PRS, just as we acknowledge that there is a problem with rogue landlords in some areas of the sector.

More must be done to tackle landlords who flout regulations designed to protect tenants – especially where those tenants are vulnerable. Yet the best route to making that happen is through existing regulation rather than new legislation. Figures released by the Scottish Government show that the number of PRS providers registered under the Landlord Registration Scheme has grown from 104,758 in 2007 to 259,509 in 2015.

In that time, the Scheme has received more than £20.7 million in fees from landlords to local authorities. Yet, since January 2011, just 25 cases of breaches of the Scheme have been reported to the Procurator Fiscal, 86 landlords have been deemed to be not "fit and proper" and 139 landlords have been refused registration or had their registration revoked.

Put simply, PRS 4 Scotland would like to see far tougher sanctions taken against landlords who flout all current housing and tenancy regulations, and statutory possession of unfit properties should be used more often in the event of repeated breaches that harm tenants. It is clear that the problem is not a lack of regulation in the PRS, but a failure to use the extensive powers that already exist to tackle rogue landlords.

Rent Increases and Rent Pressure Zones

Also proposed in the bill are measures that landlords would only be able to increase rents once in every 12 month period and only by providing three months' notice. If a tenant considers that any proposed rent increase is unjustified they have the ability to refer the increase for adjudication to a Rent Officer at Rent Service Scotland.

Perhaps more concerning are proposals to allow local authorities to apply to Scottish Ministers to approve a rent pressure zone covering all or part of its area. This would limit rent increases for sitting tenants in that area for up to five years. Within a rent pressure zone landlords would still be able to increase their rents by a minimum of CPI +1% + another number to be determined.

PRS 4 Scotland's concerns – the importance of supply

It is our view that the proposals in this bill do nothing to solve the biggest housing issue in this country – that is supply. Indeed we argue that the proposals could actually make the supply problem far worse.

In Scotland, it won't come as a great shock to anyone in this room that we are not building enough new houses. Indeed the current housing waiting list is almost 200,000 – the same population as Aberdeen.

The Commission on Housing and Wellbeing has advocated a national target of building 23,000 new houses (affordable and private) each year and Scotland is currently around 7,5000 short of that and has been running well below target for a number of years.

There is enormous capacity to finance the building of thousands of new homes for rent. Indeed research by Savills estimates that Build to Rent could attract £30 billion of new investment in the United Kingdom over the next five years. If Scotland can create the right conditions for investment then its share of that money could build approximately 15,000 new homes.

Unfortunately there are growing signs that the attention of major developers and funders is being directed toward more favourable regulatory environments elsewhere in the UK. Our neighbours in the Republic of Ireland and Wales have recently stepped back from plans to introduce rent control measures because of concerns they would deter investment in housing supply. Even the relatively 'soft' rent controls being proposed in the bill will have an impact as they will be seen as the thin end of the wedge. Investors like certainty and currently Scotland's housing policy is uncertain. So faced with the choice of building projects in Manchester or Edinburgh – investors will favour the safer option.

Developing an Evidence based policy

It is clear that there is currently no standardised, authoritative methodology for monitoring actual rents at the local level in Scotland's PRS. We are very concerned that this lack of data clearly hampers the capacity of the Bill to create a stronger, more sustainable PRS that delivers affordability for people in the sector.

The Scottish Government's data since November 2014, is gathered using a variety of means, "including private landlord and letting agent returns, mailshot initiatives, as well as advertised rental information." Meanwhile, further data is available from private sources including Your Move, Citylets, Homelet and Lettingweb.

Each source of information has its strengths, but the variety of methodologies means that results inevitably differ and sometimes conflict. In fact, the only true measure of broad market trends in the PRS would be a detailed analysis of all rents achieved in each area.

Currently, neither the Scottish Government nor private sector sources have a mechanism to collect such data accurately and systematically. Compared with the Republic of Ireland, where a Private Residential Tenancies Board centrally registers and releases data on achieved rents in the country, Scotland's policymakers are working in a comparative vacuum of relevant data.

The result has been that the data we do have available has been cherry-picked as 'evidence' to support calls for rent controls in so-called hotspot areas.

As the Scottish Parliament's Information Centre notes, the majority of statistics that have shown recent upward trends in rental levels are based on mean rental values. We know that mean values can easily be distorted by a small number of 'outliers' in a sample. For example, in an area where average rents for 2-bedroom properties have remained static or fallen, the addition of one or more new, large premium developments to the local market can cause the overall average to rise.

Overall, there would be little reason to suppose that the majority of the PRS in that area was subject to any rise at all, but the impact of outliers may suggest that it is nonetheless becoming a rent rise 'hotspot'. A more useful and realistic measurement would be to use median rent levels as an indicator of trends. These necessarily put less weight on statistical outliers and give a better indication of the situation faced by the majority of tenants.

If we look at median rents for 2 bed properties in Scotland from 2010-2015, rents have actually declined by 5.8% in real terms. Lots of examples but for instance Silvermills 2 bed let in 2003 for £650 now renting for £750....hardly an excessive increase in 12 years

Moreover, the justification for localised rent controls is based on the idea that rent rises in hotspot areas put individual communities under pressure and that the only means of making the PRS more affordable is to regulate the market. There is evidence, however, that the market is entirely capable of adjusting independently. In Aberdeen, where there have been considerable average rent rises over 2010-14, encouraged by a booming economy, the evidence tells us that rents are now dropping rapidly in response to a contraction in the local economy as a result of the collapse in the oil price.

The most recent ONS private rent index shows rent rises in the year up to September 2015 were just 1.6% in Scotland compared with a far higher rise of 2.7% across Britain. The myth of uncontrolled PRS inflation is therefore not borne out by the facts. That is why we would urge MSPs to work with the sector to put in place mechanisms that allow Government and local authorities to gather, track and publish accurate information on market trends in the PRS. We are confident that, as in Ireland, accurate tracking of achieved rents is achievable with modest additional investment, and that it is a necessary prerequisite to formulating regulatory policy that steers clear of damaging unintended consequences that deter additional supply in the sector. We remain deeply concerned that failure to put in place accurate measurements of achieved rents would make the system of localised rent controls proposed in the Private Housing (Tenancies) (Scotland) Bill largely unworkable.

Put simply, the PRS, and future investors in rented housing, will have little confidence that local authorities have the capacity to determine accurately the size, location and conditions of so-called 'hotspot' areas because the evidence they and Government would need to make decisions does not currently exist.

Conclusion

I hope this has raised a number of issues which I hope will prompt a lively discussion.