

Tackling discrimination in the Renters' Rights Bill

The problem

Landlords in the private rented sector enjoy considerable freedom when selecting tenants, often exploiting this freedom to impose near-untenable conditions on prospective renters, which limits access to housing. This disproportionately impacts households in receipt of housing benefit, sometimes excluding them from the private rented sector entirely.

Landlord preferences that disadvantage renters in receipt of housing benefit are a serious concern, particularly given that nearly a quarter (24%) of private renters rely on housing support.¹ **The English Housing Survey found that nearly 100,000 households were refused tenancies in the last 12 months because they were in receipt of housing support.**² Shelter's own research shows that 52% of landlords do not or prefer not to let to these tenants.³

Discriminatory practices can often be covert. **Requirements such as high sums of rent in advance and the need for a high-earning or home-owning guarantor are employed in a targeted and exclusionary way**, deliberately locking certain groups of tenants out of the private rented sector.

In effect, these arbitrary barriers are a form of discrimination, disproportionately affecting those more likely to receive benefits. **Groups such as women, single-parent households, Black and Bangladeshi households, and people with disabilities – who have protected characteristics under the Equality Act – are particularly impacted.** Several successful cases have already ruled that policies which result in the exclusion of groups with a protected characteristic from housing is unlawful, but more needs to be done to address indirect strategies, like rent in advance and guarantor requirements that impact these tenants.⁴

In addition to preferences relating to benefits status, **landlords have been found to be deliberately avoiding letting to tenants without a UK passport, or even those who**

¹ Ministry of Housing, Communities & Local Government (2024) *English Housing Survey 2022 to 2023: rented sectors*. [online] MHCLG. Available at: <https://www.gov.uk/government/statistics/english-housing-survey-2022-to-2023-rented-sectors/english-housing-survey-2022-to-2023-rented-sectors>

² Ibid.

³ YouGov survey for Shelter of 4,023 private renting adults (18+) in England. 14th July – 16th August 2023

⁴ Shelter. (2020) *No DSS: Landmark court ruling confirms housing benefit discrimination is unlawful*; Shelter. (2020) *No DSS: Second Shelter court case confirms disabled dad-of-four was discriminated against for receiving housing benefit*;

Arnall, R. (2021) *Third court declaration in a year for Shelter over unlawful 'No DSS' policies*

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“appear to be immigrants”.⁵ This is a result of the damaging and dysfunctional Right to Rent policy, which has had the effect of encouraging and excusing racial discrimination among some landlords.

Discrimination and prejudice are currently thriving, unchecked, within the private rented sector, pushing more and more households into homelessness, or untenable living situations.

The solutions

The Renters’ Rights Bill presents a vital opportunity to tackle discrimination within the private rented sector and ensure fair access to housing for prospective tenants. Making it illegal for landlords to discriminate against individuals who are in receipt of benefits or have children is a positive step forward. However, **the reality is that many landlords who discriminate often resort to more covert and indirect methods, such as requiring rent in advance or imposing stringent guarantor requirements.** Demonstrating intent and individual targeting on a case-by-case basis will be highly challenging, when landlords employ these methods of indirect discrimination – these must be dealt with upstream. Renters must be genuinely protected from discrimination when trying to access a home in the private rented sector by the removal of indirect discriminatory practices. Additionally, the Bill must address the issues stemming from the Right to Rent policy, which has been shown to enable racial discrimination.

Rent in advance

Many tenants are asked to pay rent upfront at the beginning of their tenancy, creating a significant barrier to securing housing. **59% of private renters reported having to pay some level of rent in advance to secure a property, with some facing demands for 6 months or more upfront.**⁶ This is an impossible challenge for 1 in 10 tenants, who said the demand prevented them from securing a property in the last 5 years.⁷ Women, families, benefits claimants and people with a disability are more likely to be unable to afford rent in advance requests.⁸

For many tenants, paying more than a month’s rent in advance is simply not affordable. **A staggering 45% of working private renters in England wouldn’t have enough in savings to cover their rent for more than a month if they lost their job, and 28% would be immediately unable to pay their rent.**⁹ Even for those households who can manage

⁵ Shelter (2016) *Research Report: Survey of Private Landlords*. [online] Available at: https://assets.ctfassets.net/6sxvmndnnp0s/1kE9HpyjQKk962Sks6uni1/0bf0eb79e6e05dbe14f558749eb9af63/Research_Report_-_Survey_of_Private_Landlords_-_Shelter_England.pdf

⁶ YouGov survey for Shelter of 4,023 private renting adults (18+) in England. 14th July – 16th August 2023

⁷ Ibid.

⁸ Ibid.

⁹ YouGov survey for Shelter of 2,002 private renting adults (18+) in England. The survey was conducted online between 29th Feb – 19th March 2024, and the results were weighted to be representative of private renters.

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their monthly rent, additional up-front costs such as rent in advance are difficult to meet.

Benefits recipients face even greater hurdles, being almost twice as likely to have been unable to rent a home in the last five years because they could not afford to pay rent in advance, compared to those not on benefits.¹⁰ The benefits system fails to provide private renters with the means to cover multiple months' rent in advance. A 4-year freeze of local housing allowance (LHA) in 2020, combined with soaring rents in the same period, completely decoupled LHA from local rents – the result being that last year, only 5% of advertised rents were affordable to those in receipt of housing support.¹¹

From a practical point of view, Universal Credit payments are paid in arrears, meaning that zero advance rent is made available to benefits recipients when trying to secure a home. This effectively eliminates their ability to access a home in the private rented sector where large sums of rent in advance are demanded.

- **To help tackle discrimination in the private renting the Renters Rights Bill should be amended to limit rent in advance requests to a maximum of one month**

Guarantors

Another barrier that prospective private renters must contend with is the requirement to appoint a guarantor. In the last five years, **21% of tenants looking for a private rented property were asked to provide a guarantor, and nearly a third reported that they were unable to meet this demand.**¹² For those claiming benefits, securing a guarantor is even more challenging; **45% of benefits recipients asked to provide a guarantor said they found it difficult, compared to just 24% of those not on housing benefit.**¹³ Additional criteria placed upon the appointment of a guarantor – that they should earn over a certain amount, be UK-based or own their own home – create further barriers for people trying to secure a private rented property.

Moreover, guarantor requests are frequently employed unfairly, often based on assumptions about tenants' ability to pay the rent. In fact, 33% of landlords who asked for a guarantor did so because they were letting to a tenant they considered to be 'high

¹⁰ YouGov survey for Shelter of 4,023 private renting adults (18+) in England. 14th July – 16th August 2023

¹¹ Berry, C. (2023) The housing benefit freeze is costing the country. [online] Available at: https://england.shelter.org.uk/what_we_do/updates_insights_and_impact/the_housing_benefit_freeze_is_costing_the_country

¹² YouGov survey for Shelter of 4,023 private renting adults (18+) in England.

¹³ *ibid.*

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risk'.¹⁴ Based on experiences in Shelter's advice and legal services, we see that this request - and the landlord or agent's perception of 'risk' - is often related to the applicant's benefits status, even where tenants are able to demonstrate they can afford the rent. The expectation that a tenant is more likely to default on their rent as a direct result of their benefits status is highly prejudiced and also leads to disproportionately worse outcomes in accessing a home for households on low incomes.

- **The Renter's Rights Bill should restrict the scenarios in which a landlord can legitimately request a guarantor to those in which a prospective tenant cannot prove that the rent is affordable to them**

Right to Rent

In addition to discrimination against benefits recipients and families, further inequality is baked into our renting system by the discriminatory right to rent policy.

The Immigration Act placed a legal requirement on landlords and letting agents to check prospective tenants' immigration status to confirm that they have a right to rent in England before granting a tenancy. The consequences for letting a property to a tenant without a right to rent are severe; a responsible person may face a fine of up to £20,000 or a 5-year prison sentence.

The transformation of private landlords and letting agents into backstop border officers has resulted in discriminatory policies and behaviours, either as a result of over-caution or a reluctance to engage with additional admin in the form of right to rent checks. As early as 2015, shortly after the suite of "hostile environment" policies were first introduced, the JCWI found that, as a direct result of the policy, "landlords were less likely to rent to those without British passports, those with complicated immigration status, and people with 'foreign accents or names' [...]. In addition, tenants had been wrongly refused tenancies owing to confusion among landlords and there were a number of worrying reports of harassment by landlords".¹⁵

In 2019, Right to Rent was declared unlawful by British High Court Judge, Mr Justice Spencer, who concluded that the scheme "causes [landlords] to [discriminate] where otherwise they would not".¹⁶ This decision was appealed by the government and overturned in 2020, not because the decision was incorrect, but because the

¹⁴ YouGov survey of private landlords in England. Total sample size was 1007 adults. Fieldwork was undertaken between 14th - 26th July 2023. The survey was carried out online.

¹⁵ The Joint Council for the Welfare of Immigrants (2017) Passport Please: the impact of the Right to Rent checks on migrants and ethnic minorities in England. [online] Available at: <https://jcw.org.uk/reportsbriefings/passport-please-2017/>

¹⁶ Dearden, L. (2019) 'Right to Rent scheme violates human rights laws and causes discrimination, High Court rules', The Independent, 1st March. Available at: <https://www.independent.co.uk/news/uk/home-news/right-to-rent-scheme-human-rights-violation-racist-foreign-citizens-court-a8802666.html>

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discrimination caused by the policy was deemed justifiable.¹⁷ People born abroad are far more likely to depend on the private rented sector than those born in the UK. Households in England with a household reference person (HRP) from the EU and those whose nationality originates from the rest of the world reside predominantly in the private rented sector (53% and 58% respectively).¹⁸ This is true for only 15% of households with a UK or ROI HRP, by contrast. Because of their disproportionate reliance on the private rented sector, people born outside of the UK are particularly vulnerable to the state-sanctioned discrimination cultivated by the Right to Rent policy, whether or not they have regularised status.

Where a tenant's immigration status is not straightforwardly proven, the Right to Rent scheme tempts landlords to resort to proxies – such as skin colour, name, or accent – to judge whether it is safe to let to them, or choose the much simpler option of rejecting their applications outright.

Shelter believes that discrimination has no home in the private rented sector, and no type of discrimination is justifiable. For many migrants, policies like the Right to Rent all but guarantee destitution and endless cycles of homelessness and rough sleeping.

- **To truly eradicate discrimination, the government must also scrap the dysfunctional and discriminatory Right to Rent policy.**

Contact

If you would like to speak to Shelter directly about the Renters' Rights Bill and how it can tackle discrimination in the private rented sector, please contact public_affairs@shelter.org.uk

¹⁷ [March, S. \(2020\) 'Government successfully appeals in 'Right to Rent' case', UK Human Rights Blog, 22 April 2020 \[Blog\]. Available at: https://ukhumanrightsblog.com/2020/04/22/government-successfully-appeals-in-right-to-rent-case/](https://ukhumanrightsblog.com/2020/04/22/government-successfully-appeals-in-right-to-rent-case/)

¹⁸ Ministry of Housing, Communities & Local Government (2024) English Housing Survey 2022 to 2023: rented sectors