

Policy: briefing

Rewarding rogues?

Housing benefit and rogue landlords

One in five UK households now receives housing benefit to help meet their rentⁱ. The majority of claimants live in social housing but there has been rapid growth in the number of privately renting households requiring housing benefit, driven largely by the shortage of affordable homes and the continuing economic downturn. As a result private landlords now receive more than £7.5 billion annually in housing benefitⁱⁱ.

The private rented sector is both expensive and prone to poor conditions. The experiences of Shelter clients show landlord behaviour also remains a concern, particularly at the bottom end of the market where a minority of rogue landlords are able to exploit vulnerable renters. The combination of the rising cost of housing benefit paid to private landlords and renewed interest in the problem of rogues has prompted calls for tighter restrictions on housing benefit payments to rogue landlords or for substandard accommodation.

This briefing outlines the issues at stake, and considers the options for using housing benefit payments to improve standards and drive rogue landlords out of the private rented sector.

How housing benefit works

Housing benefit is a means tested benefit paid to people on low incomes to help them with their housing costs. Local Housing Allowance (LHA) is a type of housing benefit paid to low income households in the private rented sector. No requirements are imposed on the minimum quality of accommodation that housing benefit can pay for, and recent reforms to LHA were explicitly designed to restrict claimants to the lower end of the market, where poor conditions are more common. Some people are not eligible for housing benefit despite having low incomes, including most full-time students, certain migrants and some care leavers.

Although housing benefit is linked to a specific cost and transferred in its entirety to a landlord, it is an income-top up paid to individuals. By boosting incomes it helps low income households resolve their own housing need via the market and claimants operate as individual consumers. The government has no direct relationship with

landlords, even though public funds may indirectly support a large section of the private rented market.

Existing powers to restrict housing benefit payments

Housing benefit is subject to restrictions to prevent it being used to pay for excessively high rents. For the majority of claimants in the private rented sector the maximum amount payable is set via Local Housing Allowance (LHA) rates. These are based on the cheapest thirty per cent of rents in the Broad Rental Market Area (BRMA) for each property sizeⁱⁱⁱ. If a household's actual rent is less than the LHA rate then housing benefit will cover the contractual rent only.

No restrictions can be applied if the landlord chooses to charge the maximum LHA rate for a property with a market value below this. Because maximum LHA rates are determined by the location alone, landlords with very run down properties or in an atypically cheap local neighbourhood can take advantage of the prevailing conditions in a Broad Rental Market Area by letting to renters on housing benefit and charging higher rents than the market would pay.

Case study: Jaywick is a small coastal community in Tendring district council in Essex. It was the most deprived area in England according to the 2010 indices of Multiple Deprivation and much of its housing stock is poorly constructed chalets originally intended as holiday lets. Jaywick sits within the Colchester BRMA, which covers more affluent areas, boosting Local Housing Allowance rates. The three bedroom LHA rate for the BRMA is £160 per week^{iv}. Under existing LHA rules there is nothing to prevent a private landlord in Jaywick charging a rent equal to the LHA rate, even if this is above the property's true market value.

Under pre-LHA rules housing benefit payments to private renters could be restricted if the rent charged was "greater than it is reasonable to meet by way of housing benefit"^v. This rule was intended to cover cases where the rent referred for housing benefit was "significantly higher than the rent which the landlord might reasonably have been expected

to obtain,” for example because the property was in a poor condition^{vi}. This power was rarely used in practice and will not be carried forward when housing benefit is subsumed with the new Universal Credit.

The issue

Increased awareness of the problems caused by a small minority of rogue landlords has prompted calls for fresh restrictions on LHA when a landlord is operating criminally or when a property is over-priced compared to its condition.

Shelter has concerns that, although well-intentioned, such an approach risks directly and indirectly penalising tenants, and that other enforcement measures are more appropriate for tackling rogue landlords.

The flaws

Restricting housing benefit because of a landlord's behaviour or a property's condition would penalise the tenant who would remain legally liable for the contractual rent. Their housing costs would quickly become unaffordable and they would be put at risk of arrears, debt and homelessness through no fault of their own.

Landlords are likely to pursue a tenant for the full rent, even if their housing benefit is restricted as a consequence of Government policy^{vii}. We would expect landlords to take legal means to recover unpaid rent, and because the proposed policy is explicitly directed at rogue landlords there is the additional risk that some may engage in illegal harassment.

To protect tenants from unaffordable rent demands any mechanism to restrict housing benefit would have to be accompanied by changes in legislation to effect a corresponding reduction in the contractual rent. This could mimic the precedent in the “fair rent” system under the Rent Act 1997, which limits the contractual rent to the amount set by a rent officer as the maximum rent payable on a property. This would ensure that tenants were not put at risk of arrears, debt and eviction.

Section 22 of the Housing Act 1988 can be used to restrict rent for assured short hold tenancies where the rent is “significantly higher” than the average market rent. Tenants can apply to the Rent Assessment Committee for a rent reduction within the first six months of the tenancy. This would have the benefit of reducing housing benefit payable to the property without incurring expense for the tenant. In practice this power is rarely used, no

doubt because tenants fear that landlords would respond by seeking eviction at the earliest possible opportunity.

Attempts to verify a property's or a landlord's suitability for housing benefit before a tenancy is signed to reduce the risk for tenants would introduce delays into the HB assessment process, reversing previous efforts to improve administration.

A prohibition on housing benefit payments to “rogue landlords” would require a water-tight definition of whom this should apply to. The Housing Act 2004 defines a “fit and proper person”, a test which is applied elsewhere in housing law, but housing benefit officers may lack the expertise to apply the legal test of a fit and proper person.

Applying a prohibition following prosecution of a landlord would provide a clear test but this would allow landlords to slip through the net when a prosecution was not pursued. This may happen for any number of reasons such as the local authority's lack of resources: at present, very few landlords face prosecution at all.

These problems will be compounded by the introduction of Universal Credit, which will replace the local knowledge and expertise of housing benefit officers with a heavily centralised system.

Households claiming housing benefit already frequently struggle to secure private rented accommodation because of reluctance among many landlords to take on benefit claimants^{viii}. Previous research into landlords' letting preferences has consistently found that landlords prefer to let to non-housing benefit households^{ix}.

Introducing the risk that housing benefit payments could be withdrawn would further discourage landlords from letting to low income households. Past analysis has suggested that an uncertain income stream could shrink the benefit sub-market further, trigger illegal eviction and harassment of claimants, or lead to increased rents – and therefore the cost of housing benefit- as landlords seek to recoup a potential “risk premium”^x.

Using HB as tool to drive up standards and target rogue landlords would also effectively ignore those properties let to low income households ineligible for public funds, where poor conditions are just as likely to occur. In many local areas this market will be of sufficient size to provide a continued pool of tenants for any rogue landlords excluded from the housing benefit market.

The alternatives

Shelter acknowledges the frustration caused by the fact that a small minority of rogue landlords can exploit the housing benefit system, either by overcharging tenants for substandard accommodation or as part of a general pattern of criminal and negligent behaviour.

But a blanket ban on the payment of housing benefit when a household rents a property in poor condition or from a rogue landlord is a high risk move which could backfire on low income households. It risks shrinking the already limited pool of properties which are available to housing benefit claimants further. Households who found that they were ineligible for housing benefit through no fault of their own would quickly build up unaffordable rent arrears, and could suffer worse harassment from their landlord as a result, or struggle to find another tenancy. There are also real concerns as to how such a policy could be practically pursued under a centralised Universal Credit system.

Wholesale, pre-emptive restrictions on housing benefit are therefore problematic. Some rogue landlords may be incentivised to improve their properties and practices if effectively barred from letting to housing benefit tenants. But many will be able to find alternative tenants desperate for a home and ineligible for public funds. Without enforcement action targeted at rogue landlords, poor conditions will continue to prosper on the lowest rungs of the rental ladder.

However, targeted, retrospective powers to reclaim funds paid in very specific circumstances do warrant further exploration:

- **Rent Repayment Orders** could be strengthened by extending the provision to cases where a landlord has failed to comply with an improvement or prohibition order.

Rent Repayment Orders already enable tenants to claim back rent, but can only be used in specific circumstances where a landlord is in breach of selective or mandatory licensing.

They are currently used when rent is paid on accommodation which should have been licensed under Part 2 or 3 of the Housing Act, but was not.

The landlord must first have been convicted of the offence of operating a licensed property without a licence, or the local authority must already have obtained a rent repayment order in respect of housing benefit paid during the unlicensed period. The Residential Property Tribunal can then issue a Rent Repayment Order in favour of the occupier, up

to the value of any rent paid for a maximum period of 12 months. The local authority can apply to the Tribunal for a Rent Repayment Order to reclaim housing benefit paid during the previous 12 months in these circumstances, whether or not the landlord has been convicted of an offence.

Extending the scope of Rent Repayment Orders would benefit tenants living in accommodation which is unsafe or suffering from disrepair and which the landlord has failed to improve.

- The law could be amended so that the **Proceeds of Crime Act** could be used against criminal landlords who benefit from rent received under tenancy agreements.

This would apply the same treatment to criminal landlords as, for example, drug dealers who benefit from ill-gotten gains.

The Proceeds of Crime Act (POCA) can be used when a defendant has benefitted financially as a result of or in connection to criminal conduct. This covers so-called “lifestyle offences” such as drug-related offences or money laundering. Confiscated profits are split between the Treasury and other official bodies rather than being returned to the tenant.

Successful actions had previously been launched against rogue landlords but have now been blocked by a successful appeal to the Court of Appeal in the case of Sumal & Sons (Properties) Ltd v London Borough of Newham. Extending the reach of POCA would target proven criminal landlords who have received thousands of pounds in housing benefit.

- **Statutory nuisance** could become a civil wrong rather than a criminal offence.

This would cover premises which are let in such a poor condition that they are hazardous to health, for example due to condensation or mould.

Statutory Nuisance is currently a criminal offence. In residential accommodation the most common form of statutory nuisance is condensation, dampness and mould growth. The local authority must first serve an abatement notice against the landlords and can then prosecute or serve an improvement notice. Tenants can bring a private prosecution against their landlord, but in practice rarely do and this cannot be covered by legal aid. Landlords are therefore frequently able to continue letting premises in a poor condition.

Making statutory nuisance a civil wrong would enable a tenant to take action against their landlord in the county court, including seeking an order

requiring the landlord to do any necessary works, rather than rely on local authority enforcement.

This would not directly lead to repayment of housing benefit but would help improve standards in the private rented sector.

- The best way for local authorities to stamp out rogue landlord activity is **tough, high profile enforcement action**.

Local authorities must step up enforcement, including prosecution when landlords have broken the criminal law as in cases of harassment or illegal eviction. Local authority press officers can help

publicise successful prosecutions and the tough stance that the authority is taking in order to deter other landlords from similar behaviour. Local officers must also give tenants the practical support they need to bring complaints, by setting up well publicised contact points such as help-lines. Tenants must know that when they contact the authority swift action will be taken.^{xi}

For more information, contact:

Kate Webb, Policy Officer

kate_webb@shelter.org.uk

0344 515 2006

ⁱ 4,909,510 households claim housing benefit (DWP figures: August 2011) out of approximately 26,148,000 households in GB (CLG Table 401: Household projections, United Kingdom, 1961-2033)

ⁱⁱ Pawson H and Wilcox S, UK Housing Review 2011/12, CIH, 2012.

ⁱⁱⁱ A Broad Rental Market Area is a geographical area used to set LHA rates. It is drawn up by a rent officer and represents an area where someone could loosely be expected to live, taking into account access to facilities such as shops, schools and doctors. BRMAs are often larger than a single local authority and may be considerably bigger than what most people would consider to be their local neighbourhood.

^{iv} August 2012 figures

^v Regulation 12B(6) of the HB Regulations 2006

^{vi} Lister S, Ward M and Zebedee J, Guide to Housing Benefit and Council Tax Benefit 2008-09, CIH, 2008

^{vii} Marsh A and Hills J, Housing Finance Aspects of the Green Paper, 2000

^{viii} Shelter, On the Right Path?: Interim findings of Shelter's research into HB pathfinders, 2005

^{ix} LHA Two Year Review, DWP, Local Housing Allowance evaluation

^x Marsh A and Hills J, Housing Finance Aspects of the Green Paper, 2000

^{xi} Shelter, Asserting Authority – calling time on rogue landlords, 2011.