BPF

Position paper on the Renters' Reform Bill

Delivering a Fair and Efficient Private Rented Sector

10 September 2021

Introduction

Residential tenure reform has been part of political discourse for some time now. The BPF has and will continue to engage positively, and we welcome recently announced intentions to progress with reform. Our objectives are to ensure investment continues to support the growth, quality, and innovation in the housing sector, which institutional investment in the sector is all supporting.

We also want to deliver housing that meets the needs of its residents, and does that as well, if not better than at present. If the Government gets reform right it will make the private rented sector even more appealing to the sector's residents, with more people enjoying an affordable, quality experience and renting for longer. If, on the other hand, reform is not right, history shows that investment, both institutional and individual, will exit the sector – impacting housing supply which is already at crisis levels.

The primary interests we represent are large scale institutional investors in the private rented sector (PRS), including the nascent, but growing Build-to-Rent (BTR) sector. We also represent investors in the Purpose-Built Student Accommodation (PBSA) sector, which has supported the significant expansion of higher education in the UK over the past 30 years. One important distinction to make is we do not claim to represent smaller investors, and whilst all investors will have much in common, there will be different impacts on smaller and larger investors of some reforms – it is important both voices are heard.

The BTR and PBSA sectors have come into their own during the pandemic. Having hands-on 24/7 management has helped people during periods of lockdown. Providing someone to talk to, to take in all those online parcels, or support peoples' mental health through online socialising and other community-building activities. Having quality homes to live in whilst in lockdown or isolation, with functional and practical layouts, rapid repairs and maintenance, and financial support for tenants experiencing financial difficulty. All this has demonstrated the housing standard that can be provided to all residents in the PRS.

BTR has provided additionality to housing supply over the past decade, with government and industry intervention helping set the sector up to contribute to diversity of housing supply through a quality, professionally managed product. Our quarterly statistics for Q2 2021 show yet another quarter of strong growth in the sector. The number of completed BTR homes rose 25% over the last year to reach a new peak of 62,274 units. Overall, the BTR sector (planning, construction, completed) has grown 17% over the last year to 195,000 units. More broadly, the UK's institutional PRS is also delivering and managing housing supply to the rental market that it may not otherwise have done were it not for favourable domestic investment and regulatory conditions.

More generally, BTR has been at the forefront of, and often ahead of, many recent reforms aimed at improving the PRS. With longer fixed-term tenancies, no fees, in some cases no deposits, and high standards of energy efficiency at or above the Minimum Energy Efficiency Standards (MEES).

Residents also rate their experiences of the sector very highly, the most recent Homeviews report on the sector (May 2021) saw residents' rate their experiences with where they live 4.39 out of 5 stars.

Executive summary

The Government is embarking on reforms that will literally affect millions of residents and investors. The sector has historically relied on Section 21 for efficient access to property in instances of anti-social behaviour, asset management, rent delinquency and in some circumstances rent arrears. The certainty of S21 also limits dispute costs. Our support for the removal of Section 21 is therefore predicated on sensible changes set-out which address these issues and would continue to encourage reputable landlords to remain in the sector.

The Government must focus on getting the fundamentals of reform right in designing a system that works for the majority – providing residents with high quality, secure housing – whilst allowing property managers to effectively and efficiently administer support for both residents and owners alike. Inevitably legislative process tends to get mired in the exceptions and dealing with those at the margins of the law, who are constantly seeking to test and break the law. The BPF can assure government that institutional investors in the PRS, delivering BTR and PBSA, are providing an exceptional service and therefore should not be inadvertently caught by punitive measures aimed at those who are doing the wrong thing.

One risk of reform now, is that it leaves the door ajar for further less helpful measures to come along in the future. Whilst this Government has made its views on the damage of rent controls clear, many landlords will fear that sensible reform now is a slippery slope to less helpful measures that will damage the sector. The Government must continue to reaffirm opposition to any introduction of rent controls throughout and beyond this reform process to ensure that landlords and property managers get on board with sensible reform.

Our preferred option is to continue to allow landlords to offer fixed-term tenancies of longer duration. With any move to longer-term fixed-term tenancies, or a more open-ended tenancy, then it is central that grounds for possession are significantly altered and reviewed so that effective property management is enabled in the absence of Section 21. This is not only for the benefit of investors, but their other residents too. For example, a block that has anti-social behaviour, non-payment of rent, or where repairs, maintenance or upgrading is not able to be done, ultimately hurts most residents. Landlords must be able to maintain ability to repossess properties quickly in these instances.

The Government must also be mindful of how these reforms align with other policy priorities and reforms. For example, the Government is likely to confirm a minimum energy efficiency standard (MEES) of EPC C by 2025/2028, which means that substantial retrofitting and renovation work will be required in the PRS – in some cases requiring possession. Any proposed reforms must enable, not hinder, investors in the PRS to help achieve government's other policy objectives.

Perhaps the most important factor in the proposed reforms is that it is essential that there is Government investment in a far more efficient court process, with more resource and full digitalisation. Simply changing structures, for example introducing a housing court, whilst welcome, will not in itself be sufficient to deliver the reform that will make the new system work with a far heavier workload. The Government's commitment to reform of the courts, and therefore resource for a workable system, will need to be reflected in this year's Comprehensive Spending Review.

There are many other aspects of reform we are likely to embrace. We are long-term supporters of a landlord register, but only if it is set-up correctly, so that it captures the whole market and does not simply rely on landlords voluntarily registering, which will just capture the same landlords that are law-abiding on all other

laws. It is also important that Government considers how any register will sit alongside existing licensing. The Government reviewed selective licensing in 2019 and the independent review recommended amongst other things:

Government should consider adding to the specific exemptions from selective licensing schemes where the case can be made; such as purpose-built student accommodation that follows a Government approved code.

Such reform will require primary legislation and that should be included in the Renters' Reform Bill.

We also support compulsory redress. Many larger landlords are already voluntarily providing redress through membership of schemes like the Housing Ombudsman Service, and in the student accommodation sector through membership of the National Codes.

The removal of Section 21 must be led by reforms that streamline and improve possession grounds and court proceedings to enable fair and effective property management. Anything that replaces Section 21 must work well.

Most investors want to retain their residents for as long as they want to stay. Having an empty unit is the worst outcome for investors, but occasionally investors do have to regain their property for a variety of legitimate reasons. The use of S21 is widespread and reflects other failings of the current system, with access to the courts slow, timescales uncertain, and grounds for possession in need of reform. It is also often forgotten that investors are human too, and for smaller investors particularly, going to court can be a daunting experience, much as it will be for many residents.

Professional landlords will want to manage their assets, to provide the best experience for their customers and ensure they are adapting to market trends. Asset management allows landlords to improve customer experiences by in terms of keeping the asset up to standard and appropriately configured. The ability to regain possession is needed to keep properties up to date with safety requirements and generally prevent depreciation and obsolescence of the rental stock.

Whilst grounds for possession will be used by all landlords, their weighting will differ between different sized landlords, dependent on certain factors;

1. The ability to deal effectively within developments year to year (rent arrears, nuisance, so grounds 7A, 7B, 8, 10, 11, 12, 13, 14, 15) and prevent unfair cost transfer to landlords is important to all landlords; and

2. The ability of landlords to deal effectively with their properties across years (so grounds 6 & 9), will carry a heavier weighting with large landlords.

The short case studies in Annex 1 illustrate why landlords rely on S21, and why that delivers not only a good outcome for them, but also often for other residents.

Our position explained – Key Proposals

1. The Government must retain fixed-term tenancies

The previous consultation paper – A new deal for renting: resetting the balance of rights and responsibilities between landlords and tenants, suggested that Government would consider as part of reforms having a fixed-term assured tenancy. Most BPF members already offer longer fixed-term tenancies, typically of three years. This helps give security to tenants, whilst providing landlords with a known timescale when they will be able to refresh and refurbish a unit, if that is needed. We continue to believe that fixed-term tenancies must be retained a part of the reforms. They will also be essential for markets such as student accommodation.

The previous consultation also proposed incorporating mutually agreed break clauses into tenancy agreements, which should be agreed prior to commencement of any tenancy. This requires further clarity as to what constitutes 'agreement' and what notice periods will apply. Likewise, will these be tenant only break clauses or will landlords also be able to operate break clauses and will there be any restrictions/procedures as to how these will operate within fixed term/when it becomes a periodic tenancy?

Another consideration in any proposals to dispense with S21 is whether reform should apply to the whole market, or to parts of it. At present, any rental agreement with rent over £100,000 per annum is not an assured shorthold tenancy.

The often-reported metric for an affordable rent is one-third of household income. The present threshold is £100,000p.a. which equates under that formula to a household income of £300,000p.a. For 2019 the mean UK income across all persons was £30,673 and the median was £24,937.For Kensington and Chelsea in the same year, the borough returning the highest mean income across all persons was £92,675 and the median was £36,277, the latter far closer in relative terms to the UK experience and reflecting the experience of the majority of people in the borough.

If the threshold is not considered, the legislation will protect those that benefit from housing choices that the majority of the population do not have. In some instances, this cohort may have more choice than the landlords they are renting from.

2. The Government must streamline and improve grounds for possession to replace Section 21

Landlords must be able to maintain ability to repossess their properties quickly. If Section 21 is dispensed with it will significantly weaken investors' ability to manage their properties, with consequences for their investors and other residents. It is therefore imperative that Government reforms the grounds for possession. Annex 2 illustrates our thinking on revised grounds.

Accelerated Grounds for possession

The current regime using S21 also allows for the use of Accelerated Possession Proceedings (APP), where there is no requirement for a court hearing. It is not clear if S21 is dispensed with, what will be the Government's position on APPs? There is a strong appetite for the use of APPs to remain and become a feature of any

reformed regime. We consider it could be used for grounds 1, 2, 6, 7, 7A, 7B and 8 (all being mandatory grounds) subject to sufficient evidence being provided.

Notice periods

In normal circumstances, notice periods are either two months or two weeks, depending on the imperative behind the grounds for possession being used. There are some anomalies in the existing grounds, for example, two months for using ground 7: conviction for serious offence, which we suggest should be reduced to two weeks.

3. The Government must streamline and improve the court and mediation process through investment and digitalisation

If the Government dispenses with S21 then landlords are going to have to rely far more on the courts for possession.

We welcome the Government's commitment to improving the courts and their processes:

"Giving landlords more rights to gain possession of their property through the courts where there is a legitimate need for them to do so by reforming current legislation. In addition to this we will also work to improve the court process for landlords to make it quicker and easier for them to get their property back sooner."

One potential reform that has been subject of consultation is the formation of a specialised housing court. Whilst that is broadly welcome, changing structures does not provide a guarantee of improved process or timescales. Early evidence from Scottish tenure reform suggests changing structures there has not delivered the speedier and less formal processes that were desired.

Only investment in the courts, particularly in digitalisation, will deliver a system able to cope with the increased caseload reform will bring, provide the service standards that users of the courts should expect, and deliver a system that provides fair and speedy access to justice for landlords and tenants.

The Government has said it wants the new system to be fair to landlords and tenants. A litmus test of that commitment to landlords, will come early, and whether the Government commits to investment in the courts as part of this year's Comprehensive Spending Review.

Suggested changes to court process

We make several recommendations as to how court processes can be improved:

i. All possession claims should have the option to use an online application, this is currently not available for trespass, breach of tenancy or accelerated possession claims.

ii. There should be a digital process throughout. At present claimants rely on the courts posting documentation which can be slow and unreliable. If they could be issued electronically across the board it would be more efficient. Tenancy agreements would need to reflect the rights to issue notices and court claims electronically with the customers email address detailed within.

iii. It would be better to have one form for all situations, to reduce issues of using the wrong form – currently there are different forms for different types of claims.

iv. Claim form should include a checkbox enabling costs/debt to be claimed from the customers deposit (where court awards costs, the order would automatically include instruction to the deposit stakeholder to release deposit up to the value of the claim or deposit (whichever is less) – currently this needs to be a specified as an adhoc request within the claim, which can be missed by the judge, or forgotten during the initial application by the claimant. This results in the claimant being unable to use the deposit money against the debt, and the claimant having to return to court to amend the order. It is especially important for any deposit held by the custodial schemes.

v. The ability to upload all evidence electronically – rather than hard copies provided to the courts which delays the process and is time consuming for all parties. It would also be environmentally friendly.

vi. Online tracking which enables both the claimant and the defendant to view current progress with a stage/status progress bar and expected timeframes. Currently you need to phone the courts for an update, which is time consuming for all parties including the courts. Where the claimant uses online, but defendant does not, the court should maintain online tracking for the claimant with any defence uploaded and claimant notified to review/respond.

vii. Following a court eviction date, there should be the ability to request a warrant for possession online, again with stage bar to track progress.

viii. We support clear guidance for judges on when they can stay or dismiss a case and judges who have excellent understanding of housing law rather than general judges who deal with a large variance of legal proceedings. This may be achieved via a housing court, which we would welcome.

It is worth stressing when we say full digitalisation, we do not mean hearings should be virtual. We think the option of defending oneself in Court is a fundamental right. However, if both parties agree to a virtual hearing that should also be allowed.

Mediation

The Government introduced a pilot mediation scheme on 1st Feb 2021 to try and help clear some of the backlog of cases that have been building up during the Covid-19 pandemic. The scheme is funded by the Government and is being run independently by the Society of Mediators. Mediation sessions are conducted by telephone, email, WhatsApp or Zoom. The purpose of the scheme is to mediate on possession proceedings as they progress through the court system, to facilitate settlement between the parties without the need for a court hearing if possible, and to manage capacity within the over-stretched court system. The pilot will initially run for 6 months.

In principle, we can see merit in the use of mediation before court and hope there will be an evaluation of the current temporary scheme. However, any mediation service would need to have short turn arounds, so as not to unduly delay the process further.

If we use rent arrears as an example, there could be a requirement that if a customer becomes in arrears by the period prescribed in legislation, there is a specified requirement, either statutory or within the tenancy agreement to use a mediation service to resolve – this would need to be a service that is available swiftly and not delayed. If the customer refuses to engage or an agreement cannot be reasonably met, the mediation service would confirm the outcome which would enable the landlord to seek mandatory eviction in the court.

4. The Government must recalibrate the relationship between investors and local authorities

As is illustrated by our case studies, landlords often rely on local authority help to resolve problematic situations, particularly anti-social behaviour and other issues which affect not only investors, but their other customers – residents in the same block as an anti-social neighbour. Local authorities will often, however, cover their own position, without offering any assistance to landlords. In absence of S21, landlords are likely to place even more reliance on local authorities. It is important they are willing and have the resource to be supportive.

Part of the Government's reform agenda must therefore also incorporate a recalibration of the relationship between investors and local authorities that sets out the obligations expected of both, and service standards investors should expect, perhaps through some sort of concordat.

There is one other aspect of local authority behaviour, which must change. It is common for local authorities to advise tenants to stay put even where a landlord has given notice. A possession order from a court is seen by many local authorities as the only trigger for their duties on homelessness, and therefore to rehouse the tenant. Whilst we have significant sympathy for local authorities, who may not have the resources to rehouse, it cannot be right that tenants and their landlords must go through the trauma of going to court and sometimes literally having the bailiffs at the door before a duty of homelessness is triggered. We hope as part of the reforms that Government will deal with this, and that the triggers should be notice on mandatory grounds, and hearing on discretionary grounds.

5. The Government must ensure alignment of other Government policy ambitions and ability for the industry to deliver and comply

The Government must be mindful of how these reforms align with other policy priorities and reforms. For example, the Government is likely to confirm a minimum energy efficiency standard (MEES) of EPC C by 2025/2028, which means that substantial retrofitting and renovation work will be required in the PRS – in some cases requiring possession. Any proposed reforms must enable, not hinder, investors in the PRS to help achieve government's other policy objectives.

In addition, any reform to the tenure system in England must strike a balance that enables the continued strong investment into the institutional private rented sector so that it can contribute to delivering on the Government's own housebuilding targets. It is vital that favourable market conditions are maintained to enable the flow of capital into the institutional PRS. If reforms go too far and investors lose their fundamental right to effectively manage their stock, this will have impacts on the long-term viability of investment in high-quality, professionally managed rented housing such as Build to Rent.

6. The Government must continue to rule out Rent Controls

One of the issues that will arise with any moves to an open-ended tenancy is whether large rent increases can be used to in effect cause a tenant to leave, because of unaffordability. There is virtually no evidence so far to suggest that has occurred in Scotland. For those rare cases where it happens there are already mechanisms in England to deal with it via Rent Tribunals. In addition, international examples of rent controls, such as those in Berlin, Germany, have proven to be ineffective interventions with detrimental impacts on housing. Any more formal form of rent control will damage investment in the sector and must not be considered as part of the Government's reforms.

Other elements of reform

Student accommodation and other exceptions

The desire of most students and most student landlords is to have a fixed-term tenancy for the period of three terms of each year of study. Any reform should therefore first and foremost cater for that need. It is also worth mentioning there are small numbers of single semester stays via exchange programmes and the like. Typically, September to Christmas and Christmas to summer.

Having open-ended tenancies in the student accommodation sector would lead to various unhelpful consequences.

Purpose built student accommodation often comes with planning restrictions which limit its use to accommodating students. If graduating students were able to stay on after the study it would bring providers in breach of their planning conditions.

Another practical consequence would be to reduce the supply of accommodation available for students, and in the purpose-built sector not being able to fully service the needs of first year students for example. In essence the application process for PBSA starts in November prior to September academic start the following year when students arrive. Landlords would simply not know what they were able to market each November in the absence of a fixed tenancy. The risk would be voids or double-booked rooms – both awful outcomes.

In Houses in Multiple Occupation tenancies are mostly joint and can be broken by one of the multiple tenants. One tenant leaving would therefore trigger the end of the tenancy making any security of tenure weak. Mixing of students and non-students would also lead to changes in the council tax status of houses and PBSA accommodation. To the detriment of students.

The BPF was heavily involved in the Scottish legislation (Schedule 1). We lobbied successfully for student let exemption in the 2016 Act. We would have preferred to have gained exemption for all student lets, but the exemption was secured very late in the legislative process, and only included Purpose-Built Student Accommodation. For that, we suggested an exemption based on the UUK and ANUK codes, which are recognised under the UK Government's 2004 Housing Act. Instead, however, the Scottish Government defined exemption in the following terms, based on a building's planning status and size:

This sub-paragraph (exemption) applies to a tenancy if—

(a)planning permission for the construction, conversion or change of use of the building (or part of the building) of which the let property forms part was given on the basis that the let property would be used predominantly for housing students, and

(b)the landlord is an institutional provider of student accommodation.

(4)For the purposes of sub-paragraph (3), a landlord is an institutional provider of student accommodation if—

(a)the landlord lets, or is entitled to let, other properties in the same building or complex as the let property,

(b)the let property and the other properties together include at least 30 bedrooms, and

(c)the landlord uses, or intends to use, the other properties predominantly for the purpose of housing students.

Our preference in any Renters' Reform Bill would be to allow student lets to continue to be based on a fixed-term tenancy, and to base this on definition of a student, with certification from a student's Higher Education Institution, in much the same way as HEIs certify a student's status for council tax purposes.

A landlords' register

The BPF has for 13 years supported the introduction of a landlord register. Knowing the extent of the landlord population could aid local authority and central government communication with landlords, and therefore improve compliance and support.

There are ways of setting up a register though, and we believe that a voluntary register, or one that relies on weak enforcement, will not be sufficient, and simply be another cost and bureaucratic burden on landlords who would comply with the law. Those landlords who already break the law on the other hand, will just break one more law, and not comply with a register.

If the Government is contemplating a register it should refer to the Rugg Review 2008, which set out a relatively simple register, but one that was enforced through landlords various contacts with the state and other third parties. So, once a landlord had registered, they would get a registration number, which they (and their tenants) would constantly need to use to access other services, for example, the courts, gaining a loan, their tenants accessing benefits, registering a deposit, etc.

Licensing

The previous Government published its independent Review of Selective Licensing in June 2019. The Review made several recommendations as to how to improve licensing. Amongst those were:

Government should consider adding to the specific exemptions from selective licensing schemes where the case can be made; such as purpose-built student accommodation that follows a Government approved code and non-profit charitable institutions that are not registered social housing providers.

Government should consider introducing a national registration scheme for landlords to support and complement selective licensing.

Government should explore alternatives to judicial review as the primary method of challenging a designation, as the process of judicial review can be prohibitively expensive.

Currently, in most cases, licenses are issued for a full five-year period regardless of the time remaining on the designation. Local authorities introducing new schemes should adopt the practice of charging the enforcement element of the licence fee on a prorated basis to allow this element of the charge to reflect the remainder of the designation period. This should only apply in cases where there is no evidence of a deliberate attempt to avoid applying for a licence.

Some of these recommendations will require primary legislation. Implementation has understandably had to wait because of political events and the pandemic, but it is important Government now moves ahead with the recommendations it accepts as part of any Renters' Reform Bill.

More generally, it is important that Government not only considers a register, licensing and redress separately, but how they all fit together. In addition, any licensing implementation must consider the needs of large landlords, such as institutional investors, who should be accommodated for in a simple, mass licence approach.

Compulsory redress

Many larger investors are already members of the Housing Ombudsman Service and see that as good practice. Having an independent backstop for complaints is good for customers, but also good for investors. It can help root out unsubstantiated complaints, and no one benefits from complaints that fester, or customers feel have been unfairly treated.

Where our members are not in the Housing Ombudsman Service it is often because they use a third-party agent, who themselves are obliged to offer redress.

BPF member investors will therefore be supportive of widening access to redress, but we would stress we are not representative of smaller landlords, who may have their own perspectives on this. Smaller landlords may have different challenges, for example affordability for larger landlords can be spread across a large portfolio, and therefore costs are lower per unit than for a smaller landlord. The larger landlords may already have a lot of internal procedures also, which means that only complaints that have been escalated through the organisation reach the Ombudsman Service, keeping numbers that are referred overall very low.

Lifetime deposits

The objective of lifetime deposits is welcome. Trying to ensure that tenants are not having to raise in effect 'double-deposits' at the point of moving home is a worthwhile aim. In pursuit of that aim, however, it is important that Government does not add to the complexity of what is already quite complex legislation. Landlords also take security deposits for a reason, and they cannot be expected to give up their right to make claims against that deposit until such time that they are satisfied there will be no need to.

We have also made representation in recent Budget submissions that a deposit held in a Government-approved tenancy deposit scheme should 'count' towards a Help to Buy ISA and the Government contributions to it, thus not disadvantaging young renters versus those who may be living at their parental home.

Annex 1 – Case Studies

Our members have provided case studies demonstrating existing problems with the current eviction processes.

1. Asset Management – Refurbishment

Situation:

2 bedroom flat in a purpose built block of 6 flats in London on an Assured Shorthold Tenancy (AST) occupied by a family of three. Landlord conducting significant renovations of the flat directly above this AST flat.

Timeline and Actions for Resolution:

Vacant possession is required as the extensive refurb works will be both extremely noisy and disruptive to residents. Additionally, contractors will be removing waste and materials through the common areas. In this instance, there is a chimney stack being removed as part of the refurbishment of the flat to improve the layout for modern requirements. This significant structural work creates a significant health and safety risk to the unit below on account of masonry and debris coming down the remaining chimney flues. It is not possible to mitigate this risk without significant cost and even then, there would still be an unacceptable level risk and potential noise disturbance to these tenants.

Outcome:

The current S21 process was necessary and reasonable in order to bring an existing tenancy to a planned termination date in order that these works can proceed minimising disturbance to a neighbouring unit. The ability of the landlord to improve their units by renovating them to modern standards is evidently necessary of a neighbouring unit and is crucial to enable these works to commence safely.

2. Asset Management – Refurbishment

Situation:

2 bedroom flat in a purpose built freehold block of 14 flats in London wholly owned by the landlord. All flats within the block let on Assured Shorthold Tenancy (AST), with many occupied by two sharers.

Timeline and Actions for Resolution:

Landlord wanted to carry out a full refurbishment and upgrading of the whole of the 1900 block where both the external fabric and internal flat arrangement and infrastructure was tired and past its best.

The block is held as an investment and it decided to refurbish individual flats on a piecemeal basis floor by floor so that the remaining flats could continue to be occupied and income producing.

The deteriorating infrastructure and fittings of all the flats (15-20 years old) resulting in there being leaks between the units causing water damage and great inconvenience to tenants.

The landlord recognised that there was a need to carry out a comprehensive refurbishment of the whole block and a replacement of all the infrastructure including electrics, heating and hot water systems as well as replacement of all fittings and finishes within flats.

The ongoing repairs required to keep the units useable was economically unviable, and with continual access being required for contractors a constant hassle to the tenants.

Outcome:

Section 21 was used to gain access to a number of flats in a co-ordinated way in order that the works could be programmed on a floor by floor basis whilst the remainder of the block continued to be let.

3. Arrears – Unable to evict nor recoup arrears through the current court system

Situation:

Rent debt at start of possession claim were £3k, debt level now £27k. Resident is paying a monthly plan amount of £400 following money judgement from 06/2020. This is a claim for possession where a resident has a dependent child who has exceptional circumstances such that they will need to be re-housed by the local council.

Timeline and Actions for Resolution:

13/05/2018 – Entered into AST with resident, Conversations confirmed that resident in receipt of Housing Benefit, at start of AST. Unconfirmed status of benefit to date.

23/08/2019 – Notice issued seeking possession, court proceedings seeking possession could begin after 13/09/2019

Due to non-payment of arrears, pursued to bring about such claim for possession, whilst also seeking an order for accrued rent due and owing.

10/12/2019 - Proceedings (claim form) issued for possession - Possession sought on the basis of grounds 8,10 and 11, Schedule 2 of Housing Act 1988.

22/01/2020 – Possession hearing at County Court, Defendant was ordered to give up possession on or before 05/02/2020. Judge ordered judgement of rent arrears & cost's total £10,379.38.

25/02/2020 – Warrant paid £121.00

13/03/2020 – Inspection of property booked ahead of eviction date.

18/03/2020 – Resident self-isolating – court informed.

20/03/2020 – Notice of application (with Bailiff) eviction date 06/04/2020 @ 10:00 am (cancelled due to COVID-19).

24/06/2020 – Correspondence between resident and credit control re; payment plan arrangement.
01/09/2020 – Application for money claim online.

13/10/2020 – Notice of application (With Bailiff) eviction date 28/10/2020 @ 10:20 am (cancelled due to COVID-19).

25/11/2020 – Call received from Housing Needs Officer – short questionnaire about resident situation.

10/12/2020 – Letter received from .County Court - warrant expiry date 25/02/2021

14/01/2021 – Emailed Housing Needs Officer (HNO) for further information following our email correspondence, if there are any negotiations arrangement, payment from the council to assist with the arrears, we can agree on.

15/01/2021 – Email response from HNO, to inform of their role is to; ascertain if the council have a duty to re-house. Advised that resident may be entitled to DHP.

16/02/2021 – Call made to HNO – enquired on DHP award amount, advised the debt is too high for DHP award.

17/02/2021 – Meeting held with resident to discuss vacate options, resident discussed her circumstances were being reviewed by the council and was advised to stay put until the eviction date is given and a warrant issued. Resident was reluctant to find alternative accommodation, due to dependent child and not potentially making themselves homeless. Council unable to help with moving to another accommodation, until bailiff arrive and evict resident.

21/03/2021 – Request new Warrant of possession.

25/03/2021 – Inform Resident of new warrant issued for eviction.

01/04/2021 – Receipt received for warrant of possession.

30/04/2021 – Email sent to courts to request an exception criteria order (debt +6 months old) be made so we can have the eviction conducted sooner.

07/05/2021 – Document N244 sent for completion.

24/05/2021 – Notice of hearing - 16/06/2021.

27/05/2021 – Email courts to cancel hearing as not required or requested, through N244 document

28/05/2021 – Call made to courts for advice on the next steps – file to be seen by judge and referred back to Enforcement section for eviction

Outcome:

04/06/2021 – Still awaiting response from Court as to eviction date.

4. Hoarding/arrears - Difficulty to evict and recoup arrears through the current court system.

Situation:

A male tenant in his 50s who had a history of mental health problems and was a hoarder. As well as miscellaneous rubbish at least knee height was sometimes higher throughout, the tenant was also storing his excrement and urine in open jars throughout his apartment and the common parts which in addition to concerns about fire safety etc was also causing a significant nuisance to neighbours.

Timeline and Actions for Resolution:

Our member sought help from the local environment health department and in return they threatened our member with a notice despite our member not having the statutory powers to force access for cleaning.

Our member tried to bring in adult social care to assist (but received a very lukewarm response) and enlisted a specialist hoarder support charity https://www.cloudsend.org.uk/ *to work intensively with the tenant at their cost. Nothing helped. Our member could not gain access for the gas safety check and had to disconnect the gas supply. The situation was deteriorating.*

Our member did not have a break clause but began possession proceedings under S.8 ground 12-14 (all discretionary). Eventually the tenant stopped paying his rent and before our member got to court he had amassed 9 months of arrears so they were awarded possession. Our member was not convinced they would have obtained the order without the arrears as it was clear the judge was hugely reluctant.

Outcome:

It was a further 4 months before the bailiffs were able to enforce the order. This was before Covid created even more of a court backlog.

5. Anti-social behaviour – lack of support from local authorities.

Situation:

Our member had repeated complaints from a long standing and vulnerable statutory tenant that the young male occupier of the flat above was causing her noise nuisance.

Timeline and Actions for Resolution:

Our member went through accepted triage practice of speaking politely to him, reminding him that old buildings aren't always the best for sound insulation and so on. Our member also signposted our resident to the local authority noise team because they have statutory powers our member lacks.

The situation deteriorated to long, noisy well attended parties despite lockdown. The male tenant was frequently verbally abusive to his elderly neighbour and she felt he was now deliberately stamping on the floor and slamming doors. Our member had not disclosed that she had complained.

Disappointingly, rather than using their statutory powers to deal with the issue, the local authority got in touch threatening a notice if our member failed to deal with the nuisance and so after exhausting all avenues our member served S.21 and S.8 (belt and braces) notices.

This provoked a complaint to the CEO about our member for unreasonable and bullying conduct towards the tenant but this was not upheld.

Outcome:

The tenant left without the member having to go to court.

6. Anti-social behaviour – use of Section 21 due to inefficient court system.

Situation:

Our member had a resident who was effectively using their flat as a night club – from 2- 5am would have "after parties" with DJs, bouncers and a door fee!!

Timeline and Actions for Resolution:

The police felt it was a private matter, our members' other residents were distraught and the court process would have taken too long so our member used S21 as the tenancy was coming to an end within a quicker timeframe.

Outcome:

Section 21 served as a last resort.

7. Anti-social behaviour – inefficient court system causing harm to other residents.

Situation:

3 bedroom flat in a purpose built block of 8 flats with shared communal gardens for approximately 70 flats in London. An Assured Tenancy by a family of mother, partner and young adult (teenage) children. The tenant had a history of anti-social behaviour (ASB) over the last five years ranging for petty theft and reports of intimidation of neighbours, to drug dealing from the premises.

The tenant hosted a "lockdown party" in the communal garden which culminated in a violent attack involving weapons between attendees causing substantial distress to other residents and their families.

Timeline and Actions for Resolution:

A subsequent police raid on the tenant's flat found sizable amounts of drugs and cash.

It took over seven months to receive a court date to hear the landlord's possession claim which will be over 12

months from the date of application. In the meantime, the tenants continue to reside at the property causing a significant culture of fear within the building due to their presence.

In spite of the landlord's best efforts the landlord appears "impotent" in dealing with this clearly significant issue, such that maintaining a service led and responsive management of the block appears ineffective resulting in tenant dissatisfaction and an adverse impact of the value of the investment.

Outcome:

The landlord's inability to act has a direct impact on the wellbeing of neighbours resulting in a high turnover of neighbouring AST tenants, especially those with young families who have asked to be relocated or leave their tenancies early. In addition, the landlord has found it difficult to re-let neighbouring flats on account of the local knowledge of the problem.

Annex 2 – Revised Grounds for Possession

Ground	Mandatory or Discretionary	BPF recommendation
Ground 1: Prior notice has been given that the landlord may wish to take the property as their own home. (Notice is two months or more)	Mandatory	*Ground 1 should ensure a clearly defined position on 'spouse' and what constitutes 'evidence'. This ground should also include provision to sell, which again should be evidenced and the definition of such 'evidence' set out in the legislation. The previous consultation considered widening to circumstances where the landlord's family member wishes to use the property as their home. We agree and do not think there should be a restriction requiring the landlord/family to have lived their previously. Notice should not exceed 2 months.*
Ground 2: Mortgage property (Notice is two months or more)	Mandatory	*This ground relies on the borrower giving advance notice. We suggest removing this requirement.*
Ground 3: Holiday let (Notice is two weeks or more)	Mandatory	*No comment.*
Ground 4: Property tied to an educational institution. Used when the tenancy is for a period of no more than twelve months and the property belongs to an educational institution. Written notice must be given before or at the start of the tenancy that possession might be recovered based on this ground. (Notice is two weeks or more)	Mandatory	*We have called elsewhere in this paper for all student lets to be exempt from the requirement to provide an open-ended tenancy and instead be able to offer a fixed-term tenancy. It is important the notice period on this ground remains at two weeks so that should a tenant not leave at the end of their fixed-term, action can be taken swiftly to be able to relet the property for the next academic year.*
Ground 5: Housing for a minister of religion (Notice is two months or more)	Mandatory	*No comment.*

Ground	Mandatory or Discretionary	BPF recommendation
Ground 6: Reconstruction, demolition or other works (Mandatory) If this ground is used, the landlord has to pay reasonable removal costs. (Notice is two months or more)	Mandatory	*This ground is crucial for effective asset management. This is an important ground for landlords to maintain/refurb/upgrade their investments and must remain mandatory, particularly given the incoming Minimum Energy Efficiency Standards (MEES) that will in many cases require substantial retrofit. It is important this ground also applies to property that is purchased with tenants in situ. Notice should not exceed 2 months.*
Ground 7: *Death of the tenant (Notice is two months or more)*	Mandatory	*No comment.*
Ground 7A: Conviction for serious offence (Notice is four weeks/1 month or more)	Mandatory	*This ground's notice period should be reduced to two weeks. It seems illogical that there are other grounds with two weeks' notice, which do not have the same severity as this and to protect other residents the period of notice should be reduced. It would also be advisable to define in more detail what is a serious offence, thus giving all parties greater clarity and certainty.*
Ground 7B: Service on landlord of notice by Secretary of State in respect of illegal immigrants (Notice is two weeks or more)	Mandatory	*No comment.*
Ground 8: Rent arrears Used when the rent is still in arrears on the date that the Section 8 notice is served and on the date of the hearing. Where rent is due weekly or fortnightly, at least eight weeks' rent must be in arrears. Where rent is due monthly, at least two months' rent must be in arrears. Where rent is due quarterly, at least a quarter's rent must be in arrears by more than three months. Where rent is due yearly, at least three months' rent must be in arrears by more than three months. (Notice is two weeks or more)	Mandatory	*This ground should be reformed to significantly reduce the backlog of arrears and prevent those who play the system ensuring minimum payments are made on the eve of the hearing to avoid the mandatory ground being made out.* *There are various ways this could be achieved. One option would be to reduce the arrears trigger. The Government's previous consultation had suggested a period of a month's arrears.* *Another option would be to stipulate (and define) that any last-minute payments must be substantially repaying the debt.* *A further option would be to stipulate a date ahead of the hearing where any repayment offer must be made. If that is not met, the hearing then becomes a formality and does not waste valuable court time.*

Ground	Mandatory or Discretionary	BPF recommendation
Ground 9: Alternative accommodation That there will be suitable alternative accommodation available for the tenant if a Possession Order is made. The landlord must pay the tenant's reasonable removal expenses if a Possession Order is made. (Notice is two months or more)	Discretionary	*No comment.*
Ground 10: Rent Arrears The tenant was behind with his or her rent both when the landlord served notice seeking possession and when he or she began court proceedings. (Notice is two weeks or more)	Discretionary	*See comment for ground 11.*
Ground 11: Regular failure to pay rent (Notice is two weeks or more)	Discretionary	*It is usual that when serving a Ground 8 notice, Grounds 10 and 11 are also relied upon to bolster any claim. Could this ground be more codified, for example, x late payments, in any period y to convert it into a mandatory ground regardless of rent arrears level at time of hearing?*
Ground 12: Breach of tenancy obligation (Notice is two weeks or more)	Discretionary	*This ground should be reviewed with a means to strengthen its standing in to compensate for the absence of Section 21.*
Ground 13: A tenant/occupant has caused the property to be neglected. (Notice is two weeks or more)	Discretionary	*This ground should be reviewed to be more clearly defined in terms of what evidence is required to demonstrate meeting ground requirements. This should include a clear burden of proof. The Government should consider this becoming a mandatory ground.*

Ground	Mandatory or Discretionary	BPF recommendation
Ground 14: Nuisance, annoyance, illegal or immoral use of the property (Notice is two weeks or more, but can be immediate)	Discretionary	*This ground will take on far more importance if S21 is dispensed with and must be maintained or strengthened to ensure adequate action on anti-social behaviour. Landlords often use S21 to remove tenants who are making other residents' lives a misery and would have to place greater reliance on this ground. There are aspects of this ground which could be made mandatory. For example: using the dwelling-house or allowing it to be used for immoral or illegal purposes, or an (indictable) offence committed in, or in the locality of, the dwelling-house.* *So far as anti-social behaviour is concerned there needs to be greater clarity on what evidence and burden of proof a landlord should provide. Perhaps making it a mandatory ground where there are repeat offences. As set out elsewhere in the paper, there will also need to be a recalibration of the relationship between local authority services and landlords.*
Ground 15: Poor treatment of furnishings (Notice is two weeks or more)	Discretionary	*This ground should be kept. Many institutional PRS properties provide furniture free of charge.*
Ground 16: Tied to employment The property was let to the tenant as part of his/her employment with the landlord and the tenant is no longer employed by the landlord and the property is needed for another employee. (Notice is two months or more)	Discretionary	*In the Scottish experience, tenancies with employees was a badly crafted part of the legislation. Employees of hotels, for example, can stay long after their employment has ended, creating problems for their employers. Ensure that any revision to this ground considers implications for employers and landlords alike.*
Ground 17: False statements (Notice is two weeks or more)	Discretionary	*No comment.*

Position paper on the Renters' Reform Bill

BPF

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