

Response to the Welsh Government consultation on a Private Rented Sector Code of Practice for Landlords and Agents

Shelter Cymru

Shelter Cymru works for the prevention of homelessness and the improvement of housing conditions. Our vision is that everyone in Wales should have a decent home. We believe that a home is a fundamental right and essential to the health and well-being of people and communities.

Vision

Everyone in Wales should have a decent and affordable home: it is the foundation for the health and well-being of people and communities.

Mission

Shelter Cymru's mission is to improve people's lives through our advice and support services and through training, education and information work. Through our policy, research, campaigning and lobbying, we will help overcome the barriers that stand in the way of people in Wales having a decent affordable home.

Values

- Be independent and not compromised in any aspect of our work with people in housing need.
- Work as equals with people in housing need, respect their needs, and help them to take control of their lives.
- Constructively challenge to ensure people are properly assisted and to improve good practice.

Introduction

Shelter Cymru welcomes the opportunity to respond to this consultation. We are strong supporters of landlord licensing, and during 2014 we worked hard to persuade Assembly Members to pass Part 1 of the Housing (Wales) Act 2014.

Unfortunately we cannot support the Code of Practice in its current format. The draft Code needs to be restructured and rewritten to be much clearer

and more easily navigable. In its current form we do not believe it is capable of supporting compliance or best practice.

As currently presented, the separation between the 'statutory requirements' and 'best practice' sections is likely to ensure that most landlords and agents will read only what they need to read, and will probably not read 'best practice' at all.

We are also concerned that there has been no tenant involvement in defining 'best practice'. We believe that if tenants had been involved, the content of the draft Code would be considerably different.

We have identified a number of additional points that we believe need to be included – and we are convinced that engagement with private tenants themselves would identify further important points.

In partnership with other housing organisations we would be in a position to arrange this engagement within a short timescale if the Welsh Government agrees with us that the Code, and therefore the implementation of Part 1, would be more effective as a result.

Drafting points

- The structure of the Code should be revised so that statutory requirements and best practice are presented together. There should be no need to repeat all the different sections twice. Presenting both side by side will make it much more likely that both elements are read and understood. Enabling readers to distinguish between 'musts' and 'shoulds' ought to be straightforward.
- There is considerable repetition between the two sections, and 'best practice' includes numerous statutory requirements. This is likely to confuse readers, and gives the impression that anything listed under 'best practice' is essentially optional. This is a further reason why we advocate a restructure.
- The language is overly legalistic and not very user-friendly. The point of the Code should be to communicate the law, not just to reflect it. One example of this is the description of landlords' statutory duties relating to the HHSRS: 'Conditions in or around a property that contribute to a hazard and are determined to pose a serious risk must be mitigated so that they do not pose such a significant problem.' The meaning of this sentence is far from clear. The word 'mitigate' is not likely to be widely understood. The concept 'not...such a significant problem' is very weak. The sentence does

not effectively communicate the essence of the law, which is that landlords must ensure that there are no serious hazards on the premises. It would also be beneficial to include examples of such hazards.

- There are too many obscure terms used such as ‘prudence’, ‘mitigate’, ‘divulgence’, ‘diligent’ etc.
- There is too much use of the passive voice, which at times leads to a lack of clarity about who precisely is being asked to do what. One example is the HHSRS sentence above: who determines whether hazards pose a serious risk? And who should be mitigating?

Additional points

- The Code makes no mention anywhere of what penalties landlords and agents may face if they fail to comply with existing law. This is quite misleading. We argue that landlords and agents should be reminded of the potential consequences of non-compliance in each area of the Code.
- There needs to be clearer guidance regarding transparency in fees and charges. Although the Code states that ‘all non-optional fees must be disclosed and made clear’, it does not mention the requirement to include charges in property adverts and listings following the Advertising Standards Authority ruling of March 2013.
- There is no mention of excessive penalty charges, although such charges may constitute a breach of the Unfair Terms in Consumer Contract Regulations 1999 and should be included as a statutory requirement.
- The guidance on ending a tenancy needs to be much clearer. The current Code refers briefly to not evicting ‘without a possession order and following due process’. There is no mention of harassment. The Code needs to make it clear that harassment and illegal eviction are criminal offences that carry a penalty.
- There is no mention of security of tenure. Landlords and agents should be made aware that best practice is to offer tenancy lengths that meet the needs of the household, including offering longer fixed terms to tenants who have passed a probationary period and who want long-term security. Letting agents should not insist on six- or 12-month tenancy agreements as a blanket policy, just in order to maximise their renewal fees – a practice that we know is widespread.

- There is no mention of allowing tenants to decorate to their own tastes. We suggest that this is something that is important to tenants and ought to be included as best practice.
- ‘Best practice’ should include reference to adaptations for disabled tenants. Landlords should be asked to consider consenting to adaptations being made for tenants who require them, and should be reminded of the benefits of setting up long-term tenancies in these circumstances.
- There is no mention of steps that landlords and agents may take to assist with the prevention of homelessness. We would urge the Private Sector Housing team to engage with Homelessness on the best practice elements of the Code relating to the ending of tenancies. With the advent of Part 2 of the Housing Act, many local authorities in Wales are trying to encourage private landlords to make contact with them at an early stage, prior to eviction, in order for prevention work to take place. The most proactive authorities are going out and speaking at local landlord forums to urge members to get in touch if they have problems with their tenants that may lead to eviction and a potential homeless presentation. Furthermore, we have been contacted by numerous landlords who want guidance on how to deal with vulnerable tenants and prevent problems escalating to the point where eviction is the only solution. We think it is very important that the Code reflects this, and signposts landlords and agents to potential sources of help and support offered by the local authority and other agencies. At present there is nothing in the Code about prevention, even though the loss of a PRS tenancy is the second highest contributor to homelessness.
- Finally, best practice among landlords and agents ought to include signposting tenants to sources of independent housing advice. The best landlords in Wales are already doing this via their websites, written information and personal contacts with tenants.

For more information please contact Jennie Bibbings, Policy & Research Manager jennieb@sheltercymru.org.uk 02920 556903