

# Consumer Rights in the Private Rented Sector

Lewis Shand Smith



## Acknowledgements

This report was generously sponsored by the Wates Family Enterprise Trust, an independent charity set up by the Wates family, the owners of the Wates Group. Launched in 2008, the Trust is integral to the Wates family's approach of being responsible business owners and its vision of being a force for good.

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Special thanks to Paul Hackett and Paul Hunter of the Smith Institute for their assistance in producing this report, and to the expert attendees of a roundtable discussion convened in March 2019 to discuss the emerging findings from the research behind this report.

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## Foreword – Rt Hon John Healey MP

People who rent from a private landlord are at the sharp end of the housing crisis, but the truth is we have often more rights as consumers when we rent a car, buy a fridge-freezer or take out a loan than we do as private renters.

This has been reinforced during the coronavirus crisis, with people spending more time at home and many realising just how precarious their housing situation is.

This report sets out a new perspective on how we can improve the private rental market: by recognising the consumer rights we're used to having in other markets, from utilities to financial services, and looking at how we might apply those lessons to the private rented sector.

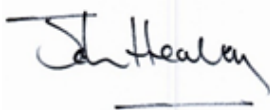
The debate on private renting is polarised. Broad alliances are hard to build, and it's too often a debate without wider reference or reflection on the functioning of other markets beyond housing.

This report doesn't pretend to provide a comprehensive set of prescriptions for the private rented sector, but it does provide a strikingly fresh perspective which I hope will provide food for thought for politicians in Westminster and beyond, as well as the wider housing sector, and change the terms of policy debate about how we make renting better for everyone.

The challenges in the private rented sector are likely to continue to grow as the number of renters grows – now up to 11 million in England today, and rising. One in four families with children in this country now rent from a private landlord. One in four of the homes let in the private rented sector is classed as 'non-decent' by the Government, and tenants collectively pay over £10 billion in rent to live in these sub-standard homes.

Meanwhile, rents have risen faster than incomes for too many, and 1.7 million renters now pay more than a third of their income in rent, while the insecurity of private renting means eviction has become one of the most common ways of people becoming homeless.

To fix the housing crisis requires action on all fronts, and this includes a better private rented sector. Rented housing must be a decent and affordable home for the millions who need it. This report will make an important contribution to the debate about how to achieve that.

A handwritten signature in black ink, appearing to read 'John Healey', with a horizontal line underneath.

Rt Hon John Healey MP



# Executive summary

## Executive summary

This report argues that the consumer protection that renters receive in the private rented sector compares poorly with much of what consumers expect in other markets, such as financial services, utilities, telecoms, transport and even basic discretionary consumer goods.

In making this comparison, the report assesses the rights and protections that private renters have against established consumer outcomes measures covering features such as choice, competition, voice and influence. It sets out how other markets meet these standards in order to shed light on how the private rented sector could work better for consumers.

Ultimately, we conclude that this is a market that could do much more to bolster consumer rights for renters, and in the final section of this report, we set out some outline suggestions for how this might be done.

### Profile of the private rented sector

The recent tenure shift to private renting is clear: in 2017/18, 2.5 million more households in England lived in the private rented sector than in 2000. In total 4.5 million households now rent their home from a private landlord, comprising an estimated 11.2 million people.

According to official statistics there are over 1.5 million landlords in England. The vast majority (94%) are individual landlords rather than companies, but despite the fragmented nature of private landlords around 6% of landlords (97,000) own 30% of all private rented properties. On the whole, landlords report that they entered the industry for investment purposes, including to supplement current salary, or as a contribution to their pension.

### The nature and scale of consumer detriment in the private rented sector

Consumer market theory holds that where market forces do not produce the right outcomes, regulation should step in to protect consumers and remedy market failure. The greater the detriment and harm, the greater the need for intervention. To assess the level of detriment and harm in the PRS we use the established consumer outcomes measures: access, choice and competition, fairness, quality, value for money, safety, information and advice, complaints and redress, voice and influence, and externalities.

We find a number of areas where the private rented sector doesn't produce good outcomes for renters as consumers. Renters are often constrained in their consumer choice, and renters on lower incomes in particular face barriers to accessing rented housing. Official statistics record widely varying quality of rented housing, with around one in four private rented homes failing the Government's 'decent homes' standard, and a significant minority of homes classed as unsafe to live in.

Private tenants are not always provided with basic information on important safety issues and there is no accessible public register which renters can check to see if they are dealing with a landlord who has a good track record of treating renters fairly. There is no clear, widespread means for tenants to exercise voice and influence in the sector.

### Comparison to other sectors

Compared to consumers in the main comparator sectors considered here, private renters are poorly protected. Regulation is not used effectively to maintain consumer standards and consumers are often better protected when buying discretionary consumer products, as a result of the consolidated Consumer Rights Act 2015 and reasonably competitive market forces for consumer goods.

In the financial services sector, there is a single regulator in the Financial Conduct Authority, with a statutory objective to protect consumers, promote competition, and a range of enforcement powers. A Statutory Financial Services Consumer Panel has a dedicated budget to represent consumers in the industry.

In the energy and water sectors, there are dedicated regulators in OFGEM and OFWAT, which have a statutory objective to protect the interests of consumers. OFGEM sets down standards for complaint handling by firms and appoints and the Energy Ombudsman on behalf of the Secretary of State. OFWAT operates a complaints and dispute resolution process. Both OFGEM and OFWAT produce a range of guides and information for consumers. OFGEM has consumer and stakeholder engagement panels and OFWAT requires water companies to have panels.

In telecoms, the regulator OFCOM has specific objectives to further consumer interest and promote competition for consumers, and monitors compliance with standards.

In transport, there are dedicated regulators including the Office for Rail and Road, which has responsibility for maintaining service standards, and employs over 500 staff to monitor compliance with safety regulations.



For consumer goods, the Consumer Rights Act 2015, requires goods to be of satisfactory quality, to be fit for the consumer's particular purpose, and 'as described'. Consumers have a minimum of 30 days in which they can reject goods that fail to conform to the contract. Services must be performed with 'reasonable care and skill' and 'within a reasonable time'.

### **Outline proposals for change**

With the right framework for raising standards there is an opportunity to create a modern, data-driven approach to giving people greater protection and more power as consumers in the rental market and identifying bad landlords who flout the rules so that:

- private renters with fewer options have access to homes that they can be confident will be safe, secure and affordable;
- private landlords have greater clarity about their obligations;
- where landlords or tenants are not fulfilling their obligations, these breaches are identified and regulation is enforced; and
- private renters have easy, free access to a redress scheme when things go wrong.

We recommend that Government takes steps to protect and empower renters, and allow them to enforce their consumer rights, including:

- establish a new Private Rented Sector Regulator with its primary aim being to ensure "consumers are treated fairly" - the Regulator would oversee compliance with standards, supporting local authorities in their enforcement role, and ensure both tenants' and landlords' voices are heard;
- introduce a new open-ended Private Residential Tenancy, including removing no-fault evictions and increase notice periods for longer term tenants;
- reform redress and dispute resolution by introducing mandatory membership of the Housing Ombudsman Service for private rented sector landlords and lettings agents;
- establish an independent Private Renters Panel to represent interests of renters and engage with Government and the new Regulator on policy development;
- require all landlords to provide better information for tenants, setting out terms of the tenancy, information about the property, information about the landlord and responsibilities of tenants and landlords, and how to access redress through the ombudsman service in the event of a dispute.



# Introduction

## Introduction – Lewis Shand Smith

For ten years I was an ombudsman dealing with disputes between consumers and their energy and telecommunications providers and also complaints about property professionals, lettings agents, estate agents, managing agents and chartered surveyors. It struck me from the beginning that while there is support, protection, provision of advice, and access to redress for customers of energy and communications companies, in the property sector such provision is partial and, where it does exist, often confusing. Several attempts have been made to remedy this and, while welcome, have still not sorted out the gaps and overlaps. One of the biggest gaps is in the private rented sector (PRS). Over a period of 15 years the number of households in the sector has more than doubled to 4.5 million, 54% of those renting, but available protection has simply not kept up with the change.

The UK has one of the lowest percentages of home ownership in the EU, with around 65% of homes owner occupied. Owner occupiers spend on average 18% of income on housing costs, those in the PRS 34%.

International human rights law recognises everyone's right to an adequate standard of living, including adequate housing. Adequate housing was recognised as part of the right to an adequate standard of living in the 1948 Universal Declaration of Human Rights and in the 1966 International Covenant on Economic, Social and Cultural Rights.

The right to adequate housing covers measures that are needed to prevent homelessness, prohibit forced evictions, address discrimination, focus on the most vulnerable and marginalized groups, ensure security of tenure to all, and guarantee that everyone's housing is adequate. These measures can require intervention from the Government at various levels: legislative, administrative, policy or spending priorities. It can be implemented through an enabling approach to shelter where the Government, rather than playing the role of housing provider, becomes the facilitator of the actions of all participants in the production and improvement of shelter.<sup>1</sup>

Taking the energy sector as an example, there is strong regulation and enforcement, clear standards and consumer rights – especially the right to be treated fairly, universal service obligations in place, mechanisms to help those who find it difficult to pay or are in arrears, a price cap on standard tariffs, and the right of access to the Energy Ombudsman. Citizens Advice has a statutory role, in monitoring and challenging the market, representing the view of consumers, providing advice and providing dedicated support for the vulnerable. Energy for cooking, heating and lighting is one of the UN criteria for “adequate housing” and yet energy consumers have much higher levels of protection than consumers in the private rented sector.

The starting point for our report is that the householder in the PRS is a consumer<sup>2</sup> issue and we compare detriment in this sector and the level of consumer protection with other major consumer sectors, financial services, utilities, telecoms and transport. We also look at the rights available through the Consumer Rights Act 2015. To make the comparison we use a consumer protection template covering the legislative and regulatory framework, standards and required behaviour of providers, supervision and enforcement, consumer education and information, consumer representation, complaints regimes and access to redress schemes.

We also consider issues like standards and quality, affordability, security and choice. Our study demonstrates that, when compared to the other sectors, consumers in the PRS are poorly protected. Regulation is not routinely used to drive up standards and there is a lack of advice and representation.

Legislation is fragmented, landlord registration patchy, monitoring and enforcement weak, routes to complaining limited and access to free and independent redress absent for the majority of renters in the PRS. We propose therefore that there should be a Private Rented Sector Act, consolidating the plethora of legislation that already exists and building on it.

The Act would be used to establish a regulator for the sector, concerned with standards, rights, access and a well-functioning market – its primary aim to ensure “consumers are treated fairly”. A new Private Residential Tenancy would be introduced with measures to control excessive rent increases, remove no-fault evictions and increase notice periods for longer term tenants.

The regulator would oversee compliance with standards, supporting local authorities in their enforcement role and ensure that both tenants' and landlords' voices are heard. The regulator would be responsible for ensuring good quality advice is available locally for private renters and landlords about rights and obligations.

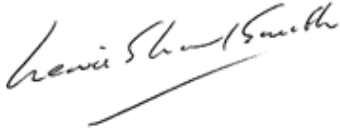
We also propose that dispute resolution and redress is reformed by introducing mandatory membership of the Housing Ombudsman Service for landlords and lettings agents. The Housing Ombudsman is free to consumers.

The flow of information is key. There is a need to establish comprehensive databases and to require landlords to provide better information to tenants. An independent Private Renters Panel should be established to represent the interests of renters with the Regulator and Government.

There are of course many unanswered questions. What is the best way to fund new or expanded bodies? How will monitoring and enforcement

be achieved, what is the role of local authorities? How can we best use existing structures? Key to all of these proposals, is that they are developed in partnership; co-designed by landlords, tenants, local authorities and advice agencies

There is no doubt that the PRS is a vital component of the housing market and there is no indication that it will contract any time soon, indeed some analysts predict it will continue to grow. Surely then, the time is right to introduce the same consumer rights, protections and support which are the bedrock of other consumer markets which provide essential services.

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Lewis Shand Smith



# Section 1: Profile of the private rented sector

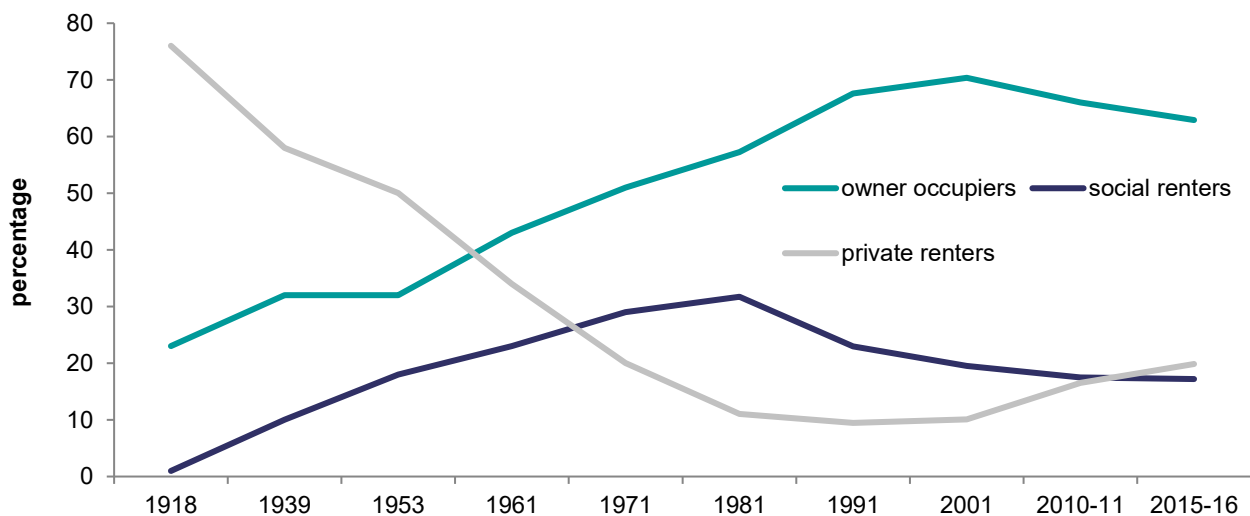
## Section 1: Profile of the private rented sector

To provide a context for a comparative discussion of consumer protection, this section describes the development of the private rented sector in England. It covers who lives in the sector as well as providing information about private landlords.

### The history of the private sector in England

At the outbreak of the First World War the majority of households in England lived in private rented housing. However, the expansion of homeownership and social renting saw the sector decline rapidly from housing three quarters of households to one in ten by the 1980s. After this long decline the sector continued to be home to 10% of households until the early 2000s. From that point there was a rapid rise, doubling over a decade and a half. As the graph below highlights, private renting is now the most common form of renting - the first time this has been the case since the 1960s.

### Trends in tenure: 1918 to 2015-16



Source: MHCLG, 50 years of the English Housing Survey (2017)

The recent tenure shift to the PRS is clear when looking at the growth in absolute numbers. Over the period 2000 to 2017/18 an additional 2.5m households in England live in the PRS.<sup>3</sup> In total 4.5m households live in the PRS, with an estimated 11.2m people living in the sector.<sup>4</sup>

The tenure shift in England is clear across the country. While London has the highest levels of private renting (one in three households), across all regions there has been a substantial increase in the levels of private renting. Indeed, the level of growth across England is a comparable doubling to that experienced in London (113% growth in London versus 105% in England excluding London).

	Proportion in 2003/04	Proportion in 2017/18	Percentage growth
North East	6%	16%	169%
North West	7%	18%	156%
Yorks and Humber	10%	18%	90%
East Midlands	8%	18%	132%
West Midlands	7%	16%	132%
East of England	10%	17%	74%
London	14%	29%	113%
South East	10%	19%	94%
South West	11%	18%	69%
England (excluding London)	9%	18%	105%

Source: English Housing Survey, 2017/18



## Who lives in the PRS?

Consumer protection in the PRS is likely to affect certain types of households more than others because of the nature of who lives in the sector.

The head of household in the PRS tends to be younger than in other tenures and much less likely to be over retirement age.

### Age group of the household representative person



Source: English Housing Survey, 2017/18.

Around two thirds of households headed by someone aged 16-24 live in the PRS (68%) and 44% are aged 25-34. As a result of the large increase of households in the PRS there has been an increase in the proportion of all age groups living in the PRS. However, looking at the proportion of households within the PRS growth has been most pronounced amongst households headed by someone aged between 35 to 54 years old.

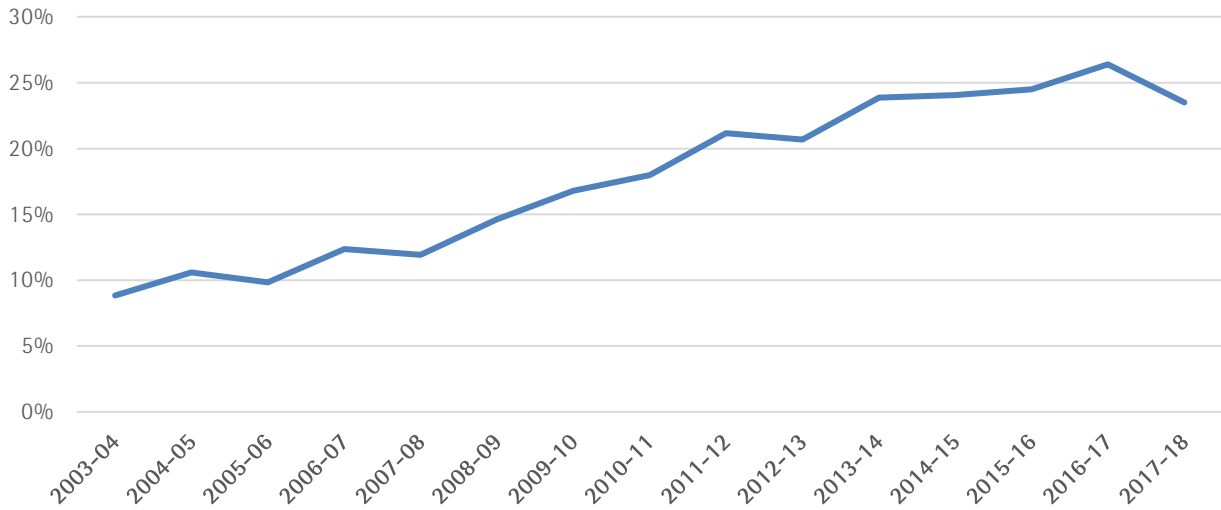
### Age profile of household representative person in the PRS

	2003/04	2017/18	Percentage change
16-24	17%	12%	-29%
25-34	35%	32%	-9%
35-44	19%	24%	29%
45-54	11%	16%	46%
55-64	8%	8%	7%
65 or over	11%	8%	-26%
Total	100%	100%	

Source: English Housing Survey, 2017/18.

The data also show a sharp rise in the number of households with children living in the PRS. As a proportion of households within the PRS it has risen from 29% to 35% between 2003/04 and 2017/18. This growth alongside the sharp rise in the size of the PRS now means that while in 2003/04 some 9% of households with children lived in the PRS that figure has rapidly risen to 23% in 2003/04.

**Proportion of all households with dependent children that live in the PRS**



Source: English Housing Survey 2017/18, Annex Table 1.5: Households with dependent children, by tenure, 2003-04 to 2017-18.

The incomes of those in the PRS is more evenly spread across the income distribution than other tenures.<sup>5</sup>

**Household income quintiles by tenure**



Source: English Housing Survey, Annex Table 1.7: Gross weekly household income quintiles by tenure, 2017-18.

However, as a result of the sheer rise in scale of the PRS there has been a rapid growth in the number of people in poverty within the sector. Across the whole of the UK within the PRS, it has risen from 1.7m to 4.4m people between 2000/01 and 2017/18. In 2000 13% of people in poverty lived in the PRS while in 2017/18 it was 31%.<sup>6</sup> This can also be seen in the levels of housing benefit claims for people in the PRS. Across the UK in 2017/18 some 1.3m people claimed housing benefit and lived in the PRS (33% of HB claims) increasing from under 800,000 in 2000/01 (20% of HB claims).

Robust consumer protection may be more necessary for certain groups facing different forms of discrimination. In this regard, the PRS is home to a higher proportion who people who are not white. Around 18% of the PRS households have a non-white head of household, higher than in the social rented sector.<sup>7</sup> The levels of households with a long-term illness or disability is much lower in the PRS, perhaps reflecting the fact that PRS tenants tend to be younger.

**Why are people in the PRS?**

Despite the growth of the PRS many within the sector would prefer not to be in it. This is seemly apparent in a survey conducted for a recent review of the PRS.

### Reasons for currently renting privately (more than one response could be given)

Appropriate while a student	11%
While saving for a deposit to buy	13%
Can't afford to buy	38%
Don't want the responsibility of owning	6%
Can't get a social tenancy	4%
While on a social housing waiting list	2%
Prefer the PRS over social renting	4%
Prefer the PRS over owning	9%
Like the flexibility of the PRS	12%
Like the quality of the PRS	7%
Like short-term PRS tenancies	4%
Because recently moved to the area	11%
Because a relationship ended	4%
PRS is the only way can live in the area	11%
Other reason	11%

Source: Rugg, J and Rhodes, D The Evolving Private Rented Sector: Its Contribution and Potential (University of York, 2018).

The data highlights the large numbers within the PRS who would prefer to buy. The English Housing Survey also finds that around 60% of people within the PRS expect to buy. It also highlights the different markets the PRS is serving, from students, people new to an area, those aspiring to buy and others who would prefer a social tenancy.

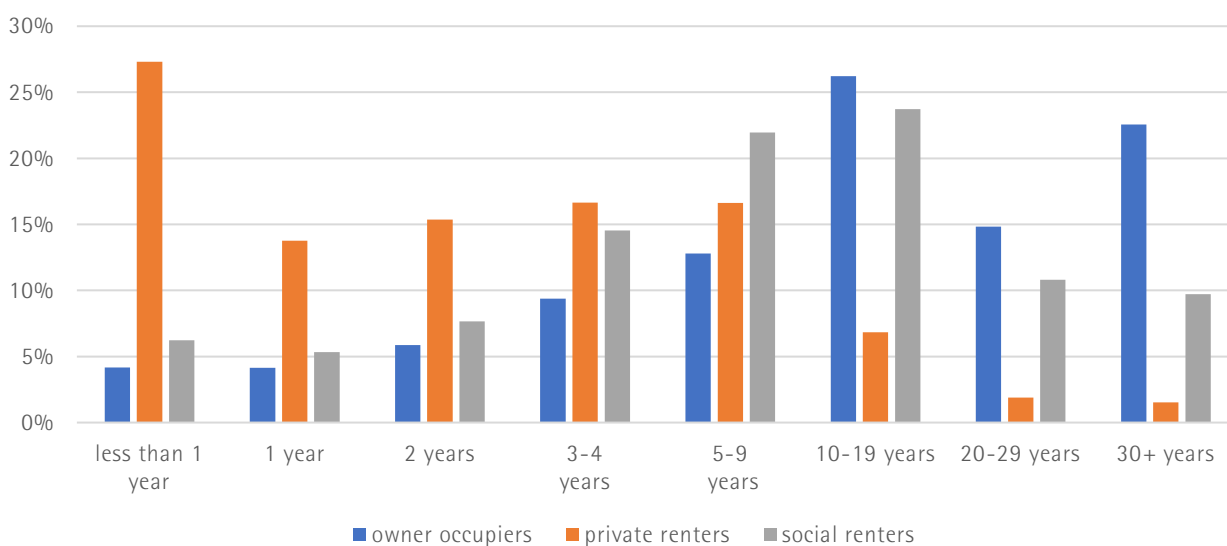
This preference for other tenures is borne out in the levels of dissatisfaction with the PRS tenants' tenure. One in five (19%) private renters is dissatisfied with their tenure versus 10% in the social rented sector and 1% in homeownership.<sup>8</sup>

### Security of tenure

The vast majority of initial tenancies within the PRS are short-term. A third (33%) of initial tenancies are for six months and half (50%) are for 12 months.<sup>9</sup>

Length of residency is however longer with around half of private renters living in their current property for over five years.<sup>10</sup> Nevertheless, it is much shorter than other tenures.

### Length of residency by tenure



Source: English Housing Survey, 2017/18.

Whilst the majority of people move for reasons unrelated to housing standards or security (move for work, better area or bigger home) a significant minority move because they are asked to by their landlord. Around one in ten (11%) PRS tenants that moved in the previous three years stated that they did so because their landlord asked them to leave or gave them notice.<sup>11</sup>

### Affordability of the private rented sector

The PRS is often perceived by the public as offering poor value for money.<sup>12</sup> Rents in the private rented sector are higher than average mortgage costs or social rents paid. Rents are 14% higher than mortgage payments and 55% higher than social rents. Although care should be taken when making comparisons (i.e. it is dependent on property size, regional composition of tenure, quality and location).

### Average weekly rents/mortgage payments by tenure, 2017/18

Own with mortgage	Rent privately	Social rent
£138	£156	£97

Source: Analysis of the English Housing Survey 2017-18; Ministry of Housing, Communities and Local Government.

The English Housing Survey also highlights that those in the private rented sector pay a higher proportion of their income on housing than other tenures. Private renters on average pay over a third of their income on rent above the affordability threshold often identified. The fact that private renters spend more on rent than homeowners do on mortgage payments is worth noting given the very different consumer protection regimes that apply to taking out a mortgage and renting.

### Mortgage/rent as a proportion of household income by tenure, 2018-19

	owner occupiers	private renters	all social renters
Including HB	18%	33%	27%
Excluding housing benefit	18%	37%	35%

Source: English Housing Survey, Annex Table 1.13.

According to the English Housing Survey, couples with no children spend the lowest proportion of income on rent – around one-quarter (25.6%). The group that spends the highest proportion on rent is the single person household. Not surprisingly, lone parents with children spend a very high proportion – single parents with dependent children spend 41.8%.<sup>13</sup>

There are noticeable regional differences. Taking all types of property into account, median rents in London at £1,495 per month are more than twice the level of the whole of England at £695. The ratio for 2-bedroom properties is even greater – London rents are 2.4 times the level of rents across England.

Private renters in London pay significantly more than renters in the rest of England. Looking at mean household income (including benefits) to mean rents, private renters in London spend 42% of their income on rent compared to just over 30% in the rest of England. According to the IFS, over 30% of private renters in London spend more than half of their disposable income on rent.<sup>14</sup>

### Profile of landlords

According to official statistics there are over 1.5m landlords. The vast majority (94%) are individual landlords rather than landlord companies. The landlord sector is dominated by small landlords. 45% of landlords have a single property, and 83% have fewer than five properties. As a proportion of properties, those with fewer than five properties hold 52% of all tenancies and those with fewer than ten manage 70% of tenancies.

Despite the fragmented nature of private landlords around 6% of landlords (97,000) own 30% of all private rented properties.<sup>15</sup> This is relevant because any proposed policy interventions could produce a real benefit for a large number of renters by focusing on a small number of landlords. Of individual landlords, around 30% of tenancies have landlords who are self-employed as a landlord (this is followed by retired – 28% – and full-time employed – 23%).<sup>16</sup> Just under half (49%) of landlords also use agents largely for letting services while others also management services provided by agents as well.

By way of comparison in the context of regulation, the total number of landlords is much higher than the number of FCA regulated firms which totals 59,000.<sup>17</sup> In the social housing sector, there are more than 1,600 social landlords registered with the Regulator of Social Housing, which oversees economic regulations, governance, financial viability and value for money, and consumer standards.<sup>18</sup>

Landlords on the whole became landlords for investment purposes – be it to supplement current income, as an investment opportunity

or as a contribution to their pension. They view their role as a landlord in similar terms, with the majority stating their roles as long-term investors. Relatively few, just 14%, see their role as a residential landlord.

### Landlord views on their role and why they became landlords

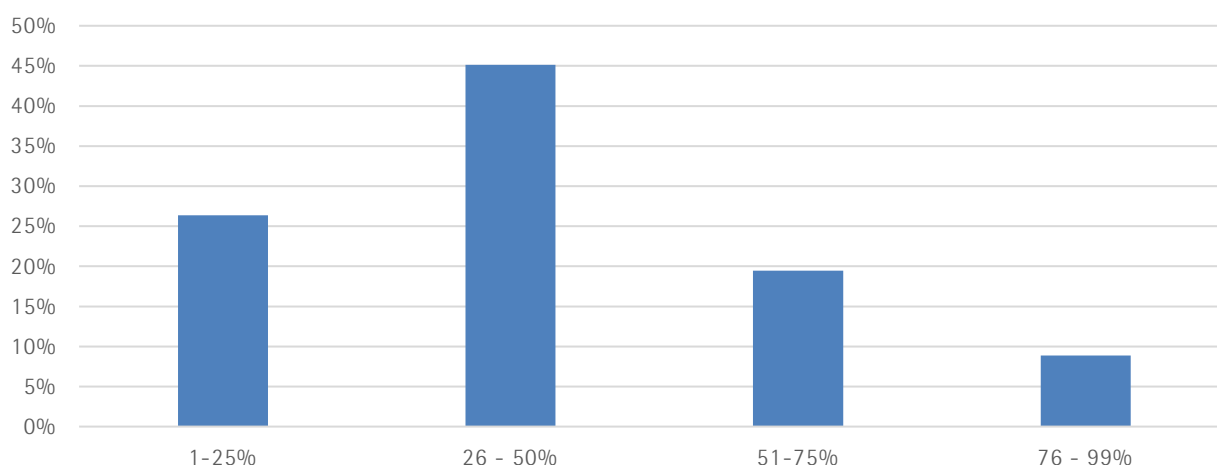
<i>Reasons for becoming a landlord</i>		<i>How landlords view their role</i>	
wanted to let property as a full-time business	4%	as a full-time business	4%
preferred to invest in property rather than other investments	46%	as a part-time business	14%
wanted to supplement earnings / income	34%	as an investment, for capital growth	30%
to provide a home for a relative / child / friend	7%	as an investment, for rental income	47%
as a pension contribution	44%	as a temporary investment	4%
inherited / was given the property	6%	as a long-term investment to contribute to my / our pension	59%
could not afford the mortgage to live in ourselves	2%	as a residential landlord	13%
other	16%	providing housing as an employer	0%
none of the above	2%	other	4%

Source: MHCLG, 2018 English Private Landlord Survey.

The data suggest that landlords are investing for the long term. Few stated the reason for becoming a landlord was that they inherited a property (6%) and a small number saw their role as being about a temporary investment. Similarly, research commissioned by the Council of Mortgage Lenders (CML)<sup>19</sup> found that 8% of private landlords considered themselves to be temporary or 'accidental' landlords because they could not sell their property.<sup>20</sup> This is perhaps reflected in the length of time that individuals have been landlords – 70% of individual landlords have let a property for 6 or more years.<sup>21</sup>

Government data tracks the investment returns that landlords are making. On average, private landlords receive two fifths (42%) of their total gross income (including rental income) from rental property. Just over a quarter (26%) receive up to a quarter of their gross annual income from rents. A further 45% receive more than a quarter and up to half of their income from rental property. Almost a fifth (19%) receiving more than half and up to three quarters of their gross income from rents, with a further 9% received more than three quarters of their income from rental property – so 28% in total receive more than half their income from the rental market.<sup>22</sup>

### Rental income as a proportion of total landlord income



Source: MHCLG, 2018 English Private Landlord Survey, Figure 1.10: Rental income as a proportion of total landlord income.

The total value of the housing stock owned by private landlords is £1.3 trillion.<sup>23</sup> A fair proportion of this has been funded through Buy to Let mortgages. According to official survey data, over half of landlords cite the use of BTL mortgages for funding of rental property, four in ten (39%) have no debt and smaller numbers either borrow commercially or from friends.<sup>24</sup>

Buy to let mortgages have been offer since 1996. Soon after their introduction in 2000 the number of BTL mortgages was equivalent to just 5% of PRS properties in the UK but by 2016 that figure had risen to 33% or 1.9m homes. In 2017, outstanding BTL mortgages totalled £238bn and made up 17% of all outstanding mortgage debt.<sup>25</sup> Of those with debt, eight out of ten have a loan worth less than 70% of the value of their property portfolio and 5% have a loan to value 90% or more.<sup>26</sup>

### Buy-to-let mortgages, 2000-2016

Year	Outstanding BTL mortgages in the UK (N.)	UK PRS dwelling stock (000s)	Outstanding BTL mortgages as % of PRS stock
2000	120,300	2,387	5.0
2001	185,000	2,441	7.6
2002	275,500	2,512	11.0
2003	417,500	2,888	14.5
2004	576,700	2,956	19.5
2005	699,400	3,122	22.4
2006	835,900	3,410	24.5
2007	1,025,500	3,632	28.2
2008	1,168,800	3,920	29.8
2009	1,246,900	4,244	29.4
2010	1,309,400	4,491	29.2
2011	1,387,800	4,726	29.4
2012	1,449,000	4,962	29.2
2013	1,528,200	5,172	29.5
2014	1,654,400	5,343	31.0
2015	1,782,900	5,501	32.4
2016	1,856,200	5,575	33.3

Source: Rugg, J and Rhodes, D The Evolving Private Rented Sector: Its Contribution and Potential (University of York, 2018).

### Landlord views of tenancies

As the Government survey of tenants suggested, the majority of landlords offer short term tenancies. Under half (46%) state they offer 6-month tenancies and a similar number (48%) offer 7-12 months contracts. There is openness to lengthier tenancies – 41% stated they would offer tenancies longer than 12 months and a further 38% stated they would do if there was a break clause. When asked why they had not done so already, half (48%) stated they were happy with the current arrangement and 43% were concerned about removing tenants. The view from one in three was that tenants did not want longer tenancies (28%), that they may not be able to increase the rents (9%) and that lenders may have concerns (9%).

Half of landlords did state that a new three-year tenancy agreement that allows rents to increase annually at the rate of inflation would encourage them to offer longer tenancies as would fiscal incentives (55%) and making it easier to evict problem tenants (70%).<sup>27</sup>

Large numbers of landlords are also reluctant to let properties to certain households. Half stated they would not let a property to someone receiving housing benefit or local housing allowance. One in six (17%) state they would not let to a household with children and a quarter (24%) to non-UK passport holders.<sup>28</sup>

The levels of landlords complying with their legal obligations is mixed, with large numbers seemingly unaware of their requirements. Although agents are more compliant, there are areas where rates are well below 100%.

## Compliance with legal requirements for most recent letting

	Landlords			Agents		
	Yes	No	Don't Know/ n/a	Yes	No	Don't Know/ n/a
carried out 'right to rent' checks	62%	15%	22%	87%	6%	8%
provided the tenant with a copy of 'how to rent'	52%	27%	22%	83%	10%	6%
provided tenants with a copy of EPC certificate	84%	8%	8%	95%	3%	3%
made reasonable adjustments for disabled people when undertaking a letting	9%	23%	68%	19%	15%	66%
registered the deposit with a tenancy deposit protection scheme (TDP) if a deposit was taken	96%	1%	3%	96%	1%	3%
ensured a working smoke alarm was installed on each floor of the property	99%	0%	1%	99%	-	1%
ensured a working carbon monoxide alarm was installed in rooms containing a solid fuel burning appliance	69%	3%	28%	75%	2%	24%
carried out an annual gas inspection by a qualified inspector for properties where gas is installed	87%	0%	13%	93%	-	7%
provided tenants with a copy of a gas safety certificate for properties where gas is installed	84%	2%	14%	92%	1%	7%
ensured electrical installation (e.g. wiring) checks were carried out by a qualified tester <sup>1</sup>	78%	13%	10%	65%	18%	17%
ensured any electrical appliance (e.g. fridge, toaster) safety checks were undertaken by a qualified tester <sup>1</sup>	49%	22%	29%	42%	20%	38%
ensured a visual check of the electrical installation and appliances was carried out <sup>1</sup>	82%	6%	12%	81%	7%	12%

Source: MHCLG, 2018 English Private Landlord Survey.

The data also highlights views about the ending of tenancies. Most tenancies are said to have been ended by the tenant, nevertheless a number were ended by the landlord not renewing (4%), asking the tenant to leave (7%) or evicting their tenant (6%). Of those ended by landlords, 12% wanted to sell the property, 3% wanted to let the property at a higher rate, 9% stated there were too many complaints about the property. These reasons were less frequently cited than the property not being cared for (44%) or rent arrears (55%).<sup>29</sup>

## Reasons tenancies ended

	landlord	agent
it was the end of the tenancy and the tenant decided not to renew	47%	74%
it was the end of the tenancy and the landlord/agent decided not to renew	4%	5%
the tenant moved out before the end of the tenancy	25%	25%
the landlord/ agency asked the tenant to leave	7%	9%
the tenant was evicted	6%	14%
other	22%	14%
none of these	3%	3%

Source: MHCLG, 2018 English Private Landlord Survey.

**Summary**

The private rented sector has grown rapidly, doubling in 15 years and is now the most common form of renting. The views of tenants suggest that they would prefer other tenures, with many in the PRS aspiring to homeownership. The income of tenants is spread across the income distribution. With many more people in the PRS, the sector is now home to a third of people in poverty. There has also been a marked increase in the levels of households with children which underlines the need for adequate consumer protection. However, tenancy lengths in the PRS are short. Rents are substantially higher than in the social sector and seen as offering less value for money than buying. Together it paints a picture of a sector in which consumers are not getting a fair deal.

The sector is dominated by small landlords owning one or a handful of properties. They view their role in investment terms for the most part. They tend not to be professional landlords and levels of awareness of their legal obligations are mixed at best. This fragmented and non-professionalised sector brings with it challenges for regulation, raising standards and ensuring that tenant rights are protected. It also highlights the need for a robust consumer rights regime.



## Section 2: How well-functioning is the private rented sector? A consumer perspective

## Section 2: How well-functioning is the private rented sector? A consumer perspective

In this section, we assess how well the private rented sector functions for consumers compared to selected other sectors – financial services, utilities, telecoms, and transport.

### Why do we use a consumer outcomes framework?

The PRS is delivered by a market of private providers – landlords – with private renters as consumers. Using a consumer outcomes framework allows us to demonstrate more clearly any deficiencies in legislation, regulation, and consumer protection.

It is helpful first to remember why consumer protection in any market or service is needed. The degree to which a market is well-functioning depends on three main factors:

- How effective the market is at producing the right outcomes (see below) for consumers.
- The culture and ethical standards within the market
- The effectiveness of legislation and regulation

Consumer market theory holds that where market forces do not (or are unlikely to) produce the right outcomes, legislation and regulation should step in to correct the market failure, protect consumers, and remedy the detriment caused. The greater the existing and potential harm, the greater the need for legislative and regulatory intervention.

An important consideration here is the degree to which consumers, in this case renters, can exercise genuine choice, switch (or move), and exercise influence on the behaviour of providers. In other words, we need to consider who holds the power in the market in the relationship between consumers and providers.

### Comparison of the PRS

Below, we set out the established set of consumer outcomes, and determine what this means in the PRS.

**Access:** a right of access to a sufficient supply of decent, affordable accommodation

At the beginning of the millennium, households renting from a local authority or housing association made up around two-thirds of rented households. That now stands at less than half. This means that renters have increasingly needed to rely on private rented accommodation.

Households on lower incomes can find their access to decent homes limited in a market-based system. Rents can be unaffordable for some households, and high fees and deposits can act as a barrier to access. As the statistics described in the previous section show, the PRS is on average significantly more expensive than other kinds of rented accommodation.

Perhaps more fundamentally, renters do not have a legal right of access to a rented property. Landlords cannot legally discriminate on grounds of race, disability, or sexuality but they can reject tenants on economic grounds – a common example is tenants who claim social security benefits. A recent survey found that 52% of landlords and 37% of agents would be unwilling to rent to people on Housing Benefit; 47% of landlords and 33% of agents said they would be unwilling to rent to people on Universal Credit; and 60% of landlords and 40% of agents would be unwilling to rent to 18-21 year olds on Universal Credit.<sup>30</sup>

Government legislation known as 'Right to Rent' – intended to stop landlords letting to illegal migrants – has been criticised for causing discrimination in the PRS. According to a recent report, half of landlords surveyed said that Right to Rent has made them less likely to rent to foreign nationals.<sup>31</sup> This is a particular issue in London where more than two-thirds of adults living in privately rented homes were born overseas.<sup>32</sup> The High Court has previously ruled that Right to Rent breaches human rights law and is discriminatory, and must be scrapped.<sup>33</sup>

This contrasts to areas such as banking, utilities, and postal services there are provisions to ensure that even in difficult circumstances consumers can at least have access to a minimum level of service.

**Choice and competition:** where consumers can exercise meaningful choice in a market and so exercise influence on providers in the market – in this case landlords and agents.

There are a number of factors that constrain consumer choice in the private rental market. For some households, low incomes mean that the number of decent properties available to them is limited. This is particularly true for those in receipt of social security benefits,

for reasons mentioned above. Moreover, other factors may limit their ability to move – for example, if they have to live near work, then they will have a limited choice within a narrow geographical area. Furthermore, moving home can be a stressful, and dislocating experience so tenants may be less reluctant to exercise their consumer sovereignty by 'switching'.

This contrasts with the choice and competition available in other consumer sectors such as financial services, utilities, and telecoms markets and the efforts made by regulators to help consumers make informed choices and facilitate switching.

For example, in banking consumers benefit from the Current Account Switch Guarantee<sup>34</sup> which makes it easier to switch to a new bank. So far, since the introduction of the guarantee, over 4 million current accounts have been switched. In the energy market, the Energy Switch Guarantee covers 90% of the market. In 2018, 5.8 million customers, or one in five, switched.<sup>35 36</sup> Similarly, OFCOM brought in measures to make switching broadband provider easier.<sup>37</sup> Research conducted by OFCOM found that three in five consumers said they had switched mobile phone provider at some stage, one in seven in the previous 18 months.<sup>38</sup>

Compared to other sectors where providers are under clear pressure from consumers who can comparatively easily take their custom elsewhere, in the PRS, the limited supply, high demand, and limited ability of renters to 'switch' can mean market power lies with landlords not with the renter.

**Fairness:** the right to be treated fairly in the market by providers who are fit and proper persons. Fairness includes: being provided with clear, fair, and not misleading information about a property; not being exploited or subject to abusive behaviours; not being discriminated against; being able to plan with a degree of certainty; or being treated fairly if in financial difficulty.

One well documented concern with the PRS is the lack of a robust system for licensing or registering landlords to ensure they meet minimum standards of fitness and properness. Moreover, there is no single, easily accessible, comprehensive public register which allows renters to spot landlords with a history of treating renters unfairly or improperly.

This contrasts with the way financial providers are treated by the Financial Conduct Authority (FCA). Firms and individuals have to be authorised before they can operate in the market. There is a searchable public register which allows financial consumers to check whether the firm or individual they are dealing with is authorised. The FCA also uses Treating Customers Fairly (TCF) principles to supervise the behaviour of financial firms and individuals.

There is certainly compelling evidence of unfair practices in the PRS. A recent Which? survey found major inconsistencies in the information provided to prospective renters when they moved into a PRS property (see *Information and Advice*, below) with important information not provided.

More than one in four (29%) of private renting households report that they find paying their rent difficult (24% fairly difficult, and 7% very difficult). This amounts to a total of 1.3 million households.<sup>39</sup>

In the third quarter of 2018, private landlords in England and Wales issued 5,781 possession claims. This compares to mortgage lenders who issued 4,901 in the same period.<sup>40</sup> In England, the number of households with a mortgage is 6.9 million, with the number privately renting at 4.5 million. So, not only is the absolute level of possession claims higher in the private rented sector, this suggests that the risk of facing a possession claim in the private rented sector is significantly greater.

Although there are some protections in place, one of the main criticisms of the current system is that landlords can still evict tenants too easily. In theory, a tenant with an assured shorthold tenancy who has been mistreated can assert his or her rights. However, it has been argued that tenants are often wary of doing so for fear of the landlord deciding to terminate the tenancy, in what is known as 'retaliatory eviction'. Recent research by Shelter estimated that 200,000 renters in the PRS faced retaliatory eviction last year because they asked their landlord to fix a problem.<sup>41</sup> A recent report produced by StepChange, the debt charity, reported that over 50% of its clients had not reported problems to their landlord for fear of eviction – higher than those in the housing association (32%) and local authority sector (49%).<sup>42</sup> The same report found that 18% of clients in the private rented sector had felt they had been forced to move because of their landlord's treatment of them.<sup>43</sup> The Government has undertaken to end so-called no-fault, or Section 21, evictions. However, tenants may still be vulnerable to being forced out through unaffordable rent increases.

From the consumer rights standpoint, an important component of fairness is the vulnerability of the consumer involved – that is, consumers who are more vulnerable, for whatever reason, are more susceptible to being treated unfairly and will require higher levels of consumer protection. Research by StepChange found that 29% of its clients who rent in the private sector are vulnerable (in addition to being financially vulnerable).<sup>44</sup> This is higher than proportion in other tenures who are considered to be vulnerable – mortgagees (13%), local authority (21%), and housing association (20%).

Mortgage lenders are required by the Financial Conduct Authority to treat borrowers who are in arrears fairly. This includes offering

forbearance and informing the borrower about the availability of advice from charities.<sup>45</sup> Water customers who are in financial difficulty can have their bills capped.<sup>46</sup> In the energy markets, customers can be cut off, but utility companies have to go through a process allowing customers in arrears the chance to repay money owed through a payment plan before they can be disconnected. The plan must factor in the customer's financial circumstances and ability to repay.<sup>47</sup> Landlords are not under similar obligations.

Moreover, as explained below (see section on 'value for money'), regulators in other consumer markets operate price caps to protect consumers from exploitative pricing strategies.

As mentioned, 77% of UK renters moved in the five years up to 2015 (compared to 43% across Europe). This is partly attributed to short term tenancies prevalent in the UK.<sup>48</sup> This means that private renters are subject to a great deal of uncertainty, can find it difficult to plan for the future, and be subject to sudden rises in rent. Longer stay renters tend to pay lower rents than short stay tenants. Those renting between 3-4 years paid around £20 a week less than those who have been renting for under one year.<sup>49</sup>

**Quality:** available housing should meet certain minimum standards of decency including not being overcrowded.

The Government defines a decent home as one that meets all of the following four criteria:

- it meets the current statutory minimum standard for housing as set out in the Housing Health and Safety Rating System;
- it is in a reasonable state of repair (related to the age and condition of a range of building components including walls, roofs, windows, doors, chimneys, electrics and heating systems);
- it has reasonably modern facilities and services (related to the age, size and layout/location of the kitchen, bathroom and WC and any common areas for blocks of flats, and to noise insulation); and
- it provides a reasonable degree of thermal comfort (related to insulation and heating efficiency).

In 2017, a quarter (25%) of private rented homes were recorded by the English Housing Survey as 'non-decent', meaning they did not meet the Government's Decent Homes Standard.<sup>50</sup> There has been a considerable improvement in the proportion of non-decent private rented homes since 2006 when nearly half were considered to be non-decent. However, some of this fall is because of the significant increase in the size of the private rented sector.

Despite the improvement over time, there is a higher proportion of non-decent private rented homes (27%) than owner-occupied (19%), and social rented (13%). In other words, the proportion of non-decent private rented homes is twice that of non-decent social rented homes.<sup>51</sup>

Private rented homes are also more likely to fail the minimum standards for health and safety: 14% of private rented homes had at least one 'Category 1 hazard' – meaning they fall below the statutory minimum standard expected of all homes, and may pose a risk to health or even a risk to life of the occupants – compared to 11% of owner-occupied homes and 6% of social rented homes.

Interestingly, research suggests that renters have very low expectations when it comes to being able to rent a decent property. A Which? survey found that while 77% of tenants described their property as being in a good state of repair, 81% had experienced a problem with standards. The most common problems faced were damp or mould (42%), condensation (34%) and draughts (32%). Even with these low expectations, nearly one quarter, (24%), said that the quality and standard of their accommodation was worse than they expected once they had moved in.<sup>52</sup>

There are more overcrowded social rented homes compared to private rented homes – 205,000 to 261,000. But Government data make clear that the increase in the number of overcrowded homes in the private rented sector has grown at a significantly higher rate – more than doubling in 10 years and almost quadrupling over 20 years. Put another way: two decade ago, the private rented sector used to make up one in seven overcrowded homes, now it makes up one in three.<sup>53</sup>

**Value for money:** the PRS should provide value for money, a combination of affordability and good quality.

As the data in Section 1 shows, private renters overall spend 39% of their household income on rent before housing benefit is taken into account, and just over 34% once housing benefit is factored in. In 2017/ 18, a fifth of private renters needed Housing Benefit to help pay for their rent.<sup>54</sup> Social renters (local authority and housing association tenants) spend just over 37% of incomes before housing benefit, and just under 29% after housing benefit is included. In comparison, owner occupiers spend just over 17% of their household incomes on housing costs.<sup>55</sup>

Private renters spend more than social renters and significantly more than owner-occupiers – the fact that private renters spend more on rent than homeowners do on mortgage payments is worth noting given the very different consumer protection regimes that apply to taking out a mortgage and renting.

The affordability of private renting can be a particular problem for specific types of households. All households spend just over 34% of their household income (including housing benefit) on rent. But, single parents with dependent children spend 41.5% of their income (including housing benefit) on rent.

Not surprisingly, private renters in London pay significantly more than renters in the rest of England. Taking into account all household incomes (which will include households with multiple occupants earning), private renters in London still spend 11.5 percentage points more than the rest of England (43.2% compared to 31.7%).

As the proportion of different housing tenures has changed, growing numbers of households have been required to use the more expensive PRS. The growth in the private rented has been attributed primarily to the greater difficulty faced by younger people trying to buy a property. Although there isn't a direct relationship, it must be reasonable to assume that the failure to build sufficient local authority and social housing has forced more people to use the private rented sector.

As an aside, the UK compares very poorly to the rest of Europe. Based on standardised comparisons, private renters in Europe spend on average 28% of their income on rent<sup>56</sup> - this compares to nearly 40% for the UK as a whole and England.

By way of illustration, if UK renters were paying the same as European counterparts, the total amount spent on private rent would be around £30 billion a year rather than the current £42 billion – a £12 billion saving.

Lower income UK households fare badly. According to analysis by the OECD, 59% of low income households in the UK (defined as those in lowest quintile of household incomes) who rent in the PRS spend more than 40% of their disposable income on rent. Of the 38 countries covered by the OECD analysis, the UK had the fifth highest proportion of low incomes households paying more than 40% of disposal incomes on rent in PRS.<sup>57</sup>

Recent analysis estimates that, in 2017, private renters in Britain paid £51.6 billion in rent – more than double the £22.6 billion spent in 2007.<sup>58</sup>

Overall, consumers in the PRS are more likely to pay a higher price for poorer quality, less safe housing.

In other markets, regulators operate price caps to protect consumers from exploitative pricing strategies. For example, there is a price cap on payday loans to protect vulnerable financial consumers.<sup>59</sup> Similarly, OFGEM operates an energy price cap. OFCOM operates price caps on a range of telephone and postal services.<sup>60 61</sup> On the railways, 45% of fares are regulated.<sup>63</sup>

**Safety:** the right to not to be put at risk by substandard, hazardous accommodation and equipment

Private rented homes are more likely to fail the minimum standards for health and safety than other types of home: 15% of private rented homes had at least one Category 1 hazard compared to 13% of owner occupied homes and 6% of social rented homes.<sup>64</sup> The English Housing Survey estimated that there were 800,000 private rented homes containing one or more Category 1 hazards.<sup>65</sup>

Moreover, there are concerns that renters are not being informed about important safety issues. A recent large-scale survey by Which? found serious lack of provision of critical information. For example, only 46% had been provided with confirmation that the smoke alarm was working; 44% provided with a gas safety certificate; 30% with confirmation that carbon monoxide detectors were working; and 26% a record of any electrical inspection.<sup>66</sup>

In each of the other four sectors, there are very robust safety standards. Critically, these are closely monitored and enforced. For example, trains, airplanes, and motor cars are required to pass minimum safety tests before they can be used by the public. These minimum safety standards are regularly monitored to ensure compliance with safety standards. Motor cars have to pass MOTs. Each of the utilities used by consumers are also required to meet tough safety standards. Although not directly comparable, financial services providers are required to be authorised by the Financial Conduct Authority (FCA) to ensure they are fit to operate in the market; lenders and insurance companies are also regulated by the Prudential Regulation Authority (PRA) to ensure they are safely run to minimise the risk of going bust.

**Information, education, and advice:** the right information and advice to make effective choices, understand risks, exercise their rights

In this case, this should include information about: the fitness and properness of the landlord; information about the tenancy and quality of the property that is clear, fair, and not misleading; and legal rights and redress. Ensuring there are well-resourced, independent sources of information and advice is also important.

One of the most obvious information gaps is on the fitness and properness of landlords. Although there are some exceptions, there is no national, mandatory licensing scheme for private rented landlords in England. This is contrast to Wales<sup>67</sup> and Scotland<sup>68</sup> which do require landlords to register and maintain a public register.

In England, there is a Selective Licensing (SL) regime. But local authorities must secure permission from the Secretary of State by demonstrating a robust case for licensing based on criteria set out in the regulations. So far, around 70 local councils in England – just one in five – operate some form of a scheme.<sup>69</sup> Interestingly, 22 out of the 32 London boroughs operate their own scheme. But, as at July 2017, there were just five local authority wide schemes in operation.<sup>70</sup> A further 35 local authorities had selective licensing applicable only to certain wards.<sup>71</sup>

This is contrast to the practices in other consumer sectors. For example, the FCA maintains a public register of all firms and individuals that are (and were previously) authorised by the FCA to operate in financial services. The register is searchable and allows consumers to check to see if their adviser is authorised or been struck off.<sup>72</sup>

As well as concerns about tenants not receiving information on critically important safety issues, there seems to be an issue with the provision of information on basic details of the rented property and rights. The same Which? survey found that: 30% of respondents said that information on potential fees was missing and/ or inaccurate; 32% reported that details on the condition of the property, fixtures, or fittings was missing or inaccurate; and 21% reported that the size of the property/ floor plans were missing and/or inaccurate during their most recent search.<sup>73</sup>

Private renters are also poorly served with regards to provision of information, education, and advice by public bodies. In financial services, there is a dedicated Single Financial Guidance Body (formerly Money Advice Service) which provides financial consumers with information and guidance on the full range of financial products and services, and produces educational materials. OFGEM and OFWAT produce a range of guides and information for consumers in the energy and water sectors. OFCOM provides consumers in the telecoms market with information on their rights, how to choose the best provider, and advice and tips. The Office of Road and Rail (ORR) has a responsibility for improving information passengers get when travelling. Similarly, the Civil Aviation Authority (CAA) provides information to passengers on rights and tips when travelling. In contrast, Government provides very limited information to private renters on their rights. It is mainly left to charities and consumer groups to inform renters about their rights. But, when private renters do look for advice they tend to ask family or friends. Only 9% sought advice from the Government or local authority sources, or independent advice organisations such as Citizens Advice or Which?.<sup>74</sup>

**Complaints and redress:** renters should have the right to complain about mistreatment/ poor service, be able to resolve disputes in an effective way, and obtain redress in the event of experiencing detriment

This is an area in which private renters are badly served compared to consumers in the other key comparator sectors. In the PRS, mechanisms for making complaints, dispute resolution, and obtaining redress are very limited. Using the courts to get redress can be costly and daunting for ordinary people.

In contrast, consumers in other sectors have much more effective rights to make complaints and get redress. For example, in financial services, consumers have access to the free-to-use, statutory Financial Ombudsman Scheme (FOS), to make complaints and obtain redress. If the firm they deal with has gone bust, they can claim compensation from the statutory Financial Services Compensation Scheme (FOS). In the energy markets, OFGEM sets down standards for firms' handling complaints, and approves the Energy Ombudsman to handle disputes between energy suppliers and customers. In the water sector, OFWAT operates a complaints and dispute resolution process. For telecoms and postal services, OFCOM provides advice and refers consumers to alternative dispute resolution (ADR). In the transport sector, the Office of Road and Rail (ORR) issues guides to help consumers take complaints to TransportFocus. In the airline industry, the Civil Aviation Authority (CAA) approves ADR providers for complaints and dispute resolution.

But it isn't just the lack of free, easily-accessible complaints and redress schemes which presents a problem for private renters. As mentioned above, the threat of retaliatory evictions can inhibit the willingness of renters to make a complaint and obtain redress.

A survey commissioned by Citizens' Advice found that 57% of private renters who could get compensation for problems were reluctant to force the issue with their landlord for fear of eviction, while 51% said they were concerned that their landlord would increase their rent if they continued to complain.<sup>75</sup> Which? research found that only 44% who had a problem and wanted to complain did so. 58% of tenants who did not make a complaint did so because they feared repercussions from the landlord. One-third didn't complain because they didn't think it would solve anything.<sup>76</sup>

**Voice and influence:** renters should have a strong voice, influence or power in the PRS market – whether through being able to exercise choice in the market or a voice in the regulatory system that oversees the market

As with complaints and redress, this is another area where private renters are very badly served compared to consumers in other sectors.

In financial services, there is a statutory Financial Services Consumer Panel (with its own budget) to represent the interests of consumers to the FCA. The energy regulator OFGEM has consumer and stakeholder engagement panels. OFWAT requires water companies to have panels. Citizens Advice has a statutory representation role. OFCOM has a statutory consumer panel plus a number of advisory panels including advisory committees for each of the four nations of the UK.

Transport Focus is the voice of train, tram and bus passengers, and road users. The CAA operates a non-statutory consumer panel to provide advice on issues affecting airline passengers. In contrast, there is no statutory provision for tenants' representation.

**Positive externalities:** as well as working for individual consumers, a well-functioning PRS market should create positive externalities/welfare gains for wider society

Finally, a dysfunctional private rented sector has knock-on effects for renters and the rest of society in the form of an increase in health problems, mental health issues, and higher social security payments. This can be an issue in other markets but as explained above there are a range of robust consumer protections in place – treating customers fairly provisions, price caps, availability of advice and so on – to minimise the impact of market failure. We just don't have those sorts of provisions and protections in the PRS.

### Conclusion

As the table below summarises, there is a compelling case that the PRS is not a well-functioning market for consumers. The case is even stronger when it is compared against the other major sectors. As we set out above, consumer theory holds that where markets are not well-functioning, regulation and consumer protection should be more robust to compensate for the failure of the market to deliver the right outcomes for consumers.

In the next section, we now come on to evaluate how well the legislation and regulation of the PRS compares to that which applies to four other major consumer sectors. In addition, we assess the rights available to consumers generally under the Consumer Rights Act 2015.

### Summary of consumer detriment in the PRS using the consumer outcomes framework

Outcome	Rental market
Access Access to decent, affordable services	Renters now rely more on poor quality, more costly PRS; lower income households have limited access to good quality homes; in other areas legal provisions ensure minimum services, local authorities have duty to provide assistance to homeless but limited in practice due to lack of resources/ availability of housing
Choice and competition A meaningful choice with a competitive market in which consumers exercise market power	For many in PRS, choice is illusory, income constraints, geographical limitations, more demand than supply, information asymmetries; stark contrast to other sectors with huge actual choice, high levels of switching, switching guarantees
Fairness The right to be treated fairly in the market	No single system for licensing landlords/ register, 1/3rd private renters (1.3m households) had difficulty paying rent but little formal requirement to treat renters fairly, retaliation evictions; contrast with FCA TCF regs, water bills cap, forbearance on utilities arrears, price caps to protect consumers from unfair pricing
Information and advice Objective information and advice to make effective choices, understand risks, exercise their rights	Lack of national, mandatory licensing system on landlords, basic information on conditions of property not provided, PRS renters poorly served by Government agencies/ public bodies; contrast role of FCA, SFGB, OFGEM, OFWAT, OFCOM, CAA
Safety The right to safe services, not to be put at risk	PRS 2X as likely as social rented to fail minimum standards of health and safety, 800,000 PRS properties with one or more Cat 1 hazards, many renters not being provided with important info on safety standards eg gas safety certificates; in other sectors, robust pre-authorisation standards in place, routinely inspected

Quality Products and services that meet minimum standards	27% of PRS properties (1.3m) considered 'non-decent', 2X that in social rented sector, proportion fallen but absolute number risen; PRS 2X as likely as social rented properties to be in serious disrepair – 20% compared to 10%; 80% of renters experienced a problem with low standards (Which?); number of overcrowded properties grown by 84% over 10yrs, 274% over 20yrs
Value The market provides value for money	Function of quality and affordability, PRS compares badly to other sectors and to EU counterparts
Voice and influence A strong voice, influence or power in the market - whether through being able to exercise choice in the market or a voice in the regulatory system that oversees the market	As well as weak market power, PRS renters have limited formal voice; contrast with statutory FS Consumer Panel, OFGEM consumer and stakeholder engagement panels, OFWAT panels, OFCOM statutory and advisory panels, TransportFocus
Complaints and redress The right to complain about mistreatment/ poor service, resolve disputes in an effective way, obtain redress in the event of experiencing detriment	Mechanisms for making complaints, dispute resolution, getting redress limited, courts costly and daunting for ordinary people, threat of retaliatory eviction stops renters making complaints; in other sectors, statutory schemes, ADR, regulators mandate complaints handling standards
Externalities Well-functioning markets should create positive externalities/ welfare gains for individuals and society	A dysfunctional private rented sector has knock-on effects for renters and the rest of society in the form of an increase in health problems, mental health issues, and higher social security payments.



## Section 3: Cross-sector comparison of consumer protections in the private rented sector

### Section 3: Cross-sector comparison of consumer protections in the private rented sector

The question we now turn to is: how does the consumer protection regime in the private rented sector compare to those in the comparator sectors: financial services, utilities, telecoms, and transport?

#### A template for an effective consumer protection regime

The overall effectiveness of any consumer protection regime depends on the level of rights, protections and support afforded to consumers - in this case private renters:

- The regulatory framework
- The objectives, powers and duties given to those regulatory bodies, the design of the regulatory system, setting – in this case landlords and other market participants (e.g. letting agents)
- The resources available to regulatory bodies with authority and responsibility for monitoring and enforcing compliance with legislation and regulation
- The 'culture' of regulation in the sector e.g. the willingness of the regulator to set standards for those providing services
- Monitoring, supervision and enforcement
- How aware consumers are of their rights (if consumers aren't aware of their rights, they will be less empowered to exercise those rights, providers will be under less pressure to maintain decent standards, regulatory bodies will be under less pressure to enforce those rights and standards)
- How easy it is for consumers to exercise their rights and obtain redress (having a body of legislation and regulation conferring rights is one thing but if it difficult for consumers to exercise those rights – for example, if it onerous or too costly – then the benefits are undermined)
- Consumer representation (it is accepted that having mechanisms for representing the consumer interest improves the efficacy of regulatory bodies – the regulators that cover the major consumer sectors each have formal and informal mechanisms for representing the consumer interest)

In this report, we are using a consumer rights model to make the case for bringing private rented sector consumer protection up to the level of other sectors. But, it is worth stating that a social justice case could be made for improving the protection and rights available to private renters on the grounds that the right to a decent home, to be treated fairly while living in that home, and to be protected from unfair practices is a basic human right in and of itself.

#### The current state of private rented sector legislation and regulation

This report does not argue there is no legislative and regulatory protection for private renters in England. Far from it. As we show, below, there is a plethora of Acts of Parliament and regulations, and agencies involved in the sector. The law provides for a degree of protection although this is still not as robust and comprehensive as that available to consumers in other sectors (this is discussed in more detail in the next section). Moreover, the legislative and regulatory system is fragmented and inefficient.

The Government intends to introduce new measures on banning Section 21 evictions and a new Housing Complaints Resolution Service. But, welcome as these measures are, these do not address the wide range of consumer detriments identified in the analysis, above.

Legislation is most effective in practice for consumers when it is:

- accompanied by regulation (including rules and guidance) which codifies and explains what the legislation is intended to do (this helps consumers understand their rights, helps the market better understand what is expected of them, and allows regulators to enforce against breaches of regulation; and
- there is a well-resourced regulator which can monitor compliance with those regulations and rules and enforce against breaches.

In other words, it is very possible to have good law in place but for that law to be rendered ineffectual if it cannot be used by consumers or enforced by regulators on their behalf. This is one of the fundamental weaknesses of the system relating to private renter consumer protection. As well as being built on comparatively weaker statutory protection and rights to private renters which is poorly enforced. Moreover, the mechanisms for making complaints, resolving disputes, enforcing rights and redress is inefficient and cumbersome and costly for most ordinary renters.

Therefore, following the basic model above (which lists the necessary components of an effective regulatory system), in this section of the report we summarise the key components of current legislation and regulation relating to the private rented sector. This includes a summary of the:

- relevant legislation on private renting;
- regulatory architecture and the regulatory bodies overseeing the private rented sector including the role of local authorities;
- objectives, duties, enforcement powers and sanctions, and resources provided to regulatory bodies;
- regulations, rules, and behavioural standards landlords are expected to comply with, rights available to renters, and renters' responsibilities;
- means by which landlords and others in the market are monitored and supervised;
- complaints mechanisms and rights to redress available to renters; and
- mechanisms for consumer representation.

### **Main legislation and regulation relating to the private rented sector**

In evidence given to the Housing, Communities, and Local Government Committee hearing on the private rented sector, the Residential Landlords Association stated that there are over 140 Acts of Parliament and more than 400 regulations affecting landlords in the private rented sector.<sup>77</sup> On top of this, there are various self-regulation schemes.

Moreover, landlords are covered by elements of legislation which has general application such as equalities legislation, various health and safety measures, and money laundering/ anti-terrorism legislation (if let through an agent).

Although there are some exceptions, there is no national, mandatory licensing scheme for private rented landlords in England. This is in contrast to Wales<sup>78</sup> and Scotland<sup>79</sup> which do require landlords to register and maintain a public register.

This is also in contrast to the practices in other consumer sectors. For example, the FCA maintains a public register of all firms and individuals that are (and were previously) authorised by the FCA to operate in financial services. The register is searchable and allows consumers to check to see if their adviser is authorised or been struck off.<sup>80</sup>

The central component of legislation relating to the private rented sector is the Assured Shorthold Tenancy (AST). All tenancies that started from the end of February 1997 will have automatically had AST status - this applies even without a written tenancy agreement. Therefore, nowadays, although there are exceptions, most tenancies will be ASTs.<sup>81</sup> The most recent data suggest that 81% are on AST with a minimum fixed term of six months or 12 months - even though people on average tend to rent for four years.<sup>82</sup>

ASTs can be granted for a fixed term or on a 'periodic' rolling month-to-month contract basis. Once a fixed term AST expires, if a replacement fixed term AST is not agreed then, by law, the tenancy continues as a periodic tenancy.

There is little meaningful protection given to tenants against high rents. The landlord does have to set out in the tenancy agreement the terms by which a landlord will increase the rent. Tenants have to agree a rent increase. But if they don't agree to this, the landlord can serve a notice to terminate the tenancy. Standardised rent increase clauses were built into the model tenancy agreement launched in 2014. However, use of this agreement is not mandatory.

Analysis by the OECD of rental regulation in different countries found that the rate at which rents can be increased during the term of a contract and/or the frequency of such increases is regulated in most of the countries covered. England is one of the few countries which does not have this protection in place.<sup>83</sup>

Last year, the Tenants Fees Act became law. This legislation bans most fees, caps the amount of deposit renters have to pay, improves the information letting agents must provide to renters, details which authorities are responsible for enforcement, makes some changes to the information provided about client money protection schemes, and details the penalties that enforcement authorities can levy.

The main trade associations, the National Landlords Association<sup>84</sup> and the Residential Landlords Association,<sup>85</sup> operate their own self-regulation schemes. These trade associations run self-regulated accreditation schemes and operate their own complaints processes.<sup>86</sup> RICS operates a code of conduct for lettings agents.<sup>87</sup>

There is also a statutory Housing Ombudsman Scheme (mainly designed for social landlords) which private landlords can join on a voluntary basis. Over 2,500 landlords covering around 4.8 million housing units are members of the Housing Ombudsman Scheme. This is primarily made up of just over 2,000 housing associations covering 3 million housing units, and 325 local authorities covering 1.8 million housing units. But, as at end of March 2018, there were only 65 voluntary members covering 18,666 housing units.<sup>88</sup> Interestingly, the number of voluntary members has fallen - as at end of March 2015 there were 80 voluntary members covering 35,000 housing units.<sup>89</sup>

So, social renters are better protected than private renters - even though the detriment is greater in the private rented sector.<sup>90</sup> But, even with a statutory Ombudsman scheme, even the regulation of social rented sector still falls well short of the protection available to other consumers. There is no FCA style supervision and enforcement of detailed 'conduct of business' or 'treating customers fairly' rules and guidance.

There are also three separate deposit protection schemes – MyDeposits, Tenancy Deposits Scheme, and Deposit Protection Scheme (although it is not clear whether this one is still active).<sup>91</sup> Letting agents in the private rented sector are not subject to overarching statutory regulation, although they are subject to general consumer protection law, and will be subject to the forthcoming Tenants Fees Bill. Moreover, they are required to join an approved redress scheme (see below).

The Homes (Fitness for Human Habitation) Act which received Royal Assent in December 2018, amended the Landlord and Tenant Act 1985 to require that *'residential rented accommodation is provided and maintained in a state of fitness for human habitation'*.

The main trade associations operate their own codes of practice covering issues such as creating a tenancy, maintaining a tenancy, how to determine a tenancy, and complaints and dispute resolution.<sup>92</sup> The Government also asked the Royal Institution of Chartered Surveyors (RICS) to lead work on developing a code of practice for the private rented sector.

### **Regulatory bodies overseeing the private rented sector, supervision and monitoring of landlords and others in the market**

The regulatory architecture and number of regulatory bodies that are involved in the private rented sector is extremely confusing. As mentioned, there are over 140 Acts of Parliament and 400 regulations covering the private rented sector. On top of this, there are various self-regulation schemes (see above for the role of these self-regulation schemes).

Overall responsibility for the housing sector generally lies with the Ministry of Housing, Communities, and Local Government. But clearly local authorities play the key role in monitoring the private rented sector.<sup>93</sup>

Interestingly, most local authorities who gave evidence to the Housing, Communities and Local Government Committee in 2018 said they had enough powers to deal with low standards in the private rented sector.<sup>94</sup> But, they raised concerns about not having sufficient resources to use those powers effectively (see below). Similarly, the fragmentation and sheer complexity of the legislative framework made it difficult for local authorities to use in practice.

As mentioned above, there are a number of organisations involved in the self-regulation of the private rented sector.

It is one thing having a body of legislation in place. But if that legislation is not enforced then the effect is seriously undermined. The level of enforcement in the private rented sector seems to be shockingly low. In evidence to a Housing, Communities and Local Government Committee Inquiry into the private rented sector, the RLA stated that in 2016-17 of the 296 councils in England and Wales that responded to its survey there were just 467 prosecutions of landlords - despite receiving 105,359 complaints. Generation Rent reported that the average local authority received 433 complaints a year (of which 260 were inspected); 70 Category 1 hazards were identified but only 17 enforcement notices issued. To put this in context, the English Housing Survey estimated that there were 800,000 private rented homes containing one or more Category 1 hazards.<sup>95</sup>

Moreover, it would seem that most of the enforcement activity is very much concentrated in a small number of relatively active local authorities. Indeed, some experts argue that there are only five or six local authorities actively enforcing.<sup>96</sup>

The complexity and fragmentation of the legislation and regulations can act as a barrier to effective enforcement. Environmental Health Officers (EHOs) found it difficult to understand what their powers are and how to use them in practice.<sup>97</sup>

Using the courts to prosecute landlords can be an inefficient, ineffective way to police the market. The cost of prosecution can be prohibitive and local authorities can find it hard to recover costs. There is no question that lack of resources is a major problem. The figures relating to the reduction in resources available to local authorities are stark. The amount spent on monitoring and regulating housing standards has fallen from £44 million in 2009/10 to £39.4m in 2015/16 (this equates to an average expenditure of £8.75 per privately rented household in England).<sup>98</sup> But, the financial pressures facing local authorities means that this could see further cuts.

Overall, the low level of enforcement can be attributed to three factors:

- The complexity and fragmentation of legislation;
- The political will evident within local authorities to enforce – it is clearly more of a priority in some local authorities; and
- Lack of resources to enforce.

### **Complaints mechanisms, dispute resolution and rights to redress available to renters**

This is one of the areas where the system of consumer protection for renters is weakest and is in stark contrast to the statutory and accessible complaints, dispute resolution, and redress mechanisms available to consumers in, say, financial services.

The Government advises that if a renter has a problem with their landlord they should:

- Complain to the landlord (who should have a complaints policy);
- Make a complaint to a 'designated person' (these are MPs, local councillors, or tenants panels) if the problem can't be resolved; and
- If it still can't be resolved, then contact the local council.

In theory, if these options have been exhausted, private renters might be able to take landlords to court. The new Homes (Fitness for Human Habitation and Liability for Housing Standards) Act provides that, where a landlord fails to maintain a property that is fit for human habitation, tenants would have the right to take action in the courts directly, without the intervention of the local authority.

This is an advance. But this can be very costly and daunting for ordinary renters. There is no provision for free and accessible advice to help tenants take landlords to court. The cost itself can be prohibitive. Cuts to the legal aid system have exacerbated the problems for tenants. Housing cases fell by half since the reforms to legal aid.<sup>99</sup>

This is one of the key reasons why we have statutory Ombudsmen schemes. It is recognised that while in theory citizens can exercise their rights through the law, in practice there are too many barriers that prevent this from happening.

There are other cases where renters can use formal legal procedures. But these are limited and the process can be cumbersome. The cases include: rent increases for 'fair' or 'market' rates; and leasehold disputes – for example, regarding variable service charges, recognising a tenants association, and management disputes. If tenants have a dispute with a private landlord, they can apply to the First-Tier Tribunal (Property Chamber – Residential Property). The tenant has to put his/ her case to the Tribunal (but can use a lawyer). The Tribunal is independent of Government and will listen to both sides of the argument before reaching a decision. If renters are unhappy with the decision, they can ask the Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber) within 28 days of the decision.

So, there is at least some formal legal procedure which could be expanded to incorporate wider disputes about private landlords.

The major landlord trade associations operate their own self-regulation complaints and dispute resolution schemes.<sup>100</sup>

The system is different for lettings agents. Agents must join one of the two Government approved redress schemes – The Property Ombudsman<sup>101</sup> and The Property Redress Scheme.<sup>102</sup> Tenants can complain about the failure of the agent to explain things properly, avoidable delays, hidden fees, and rudeness. But tenants generally can't complain about things that are the fault or responsibility of the landlord unless the agent has contributed to the problem. If the complaint is about non-return or deductions from deposits, the tenant can use the tenancy deposit dispute resolution service. If complaints are upheld, the redress scheme can order the agent to apologise to the tenant, reimburse the tenant for financial loss, or pay compensation for avoidable distress or inconvenience. The scheme's decisions are binding on the tenant and the agent. Tenants can also complain to Trading Standards, to Propertymark<sup>103</sup> (if the agent is a member), or ultimately take legal action to claim compensation.

The Government has consulted on options for streamlining redress services.<sup>104</sup> As a result of that consultation, the Government proposes establishing a single access portal for handling redress called the Housing Complaints Resolution Service.<sup>105</sup> The Government has committed to make belonging to a redress scheme mandatory. This is positive. But, the Government intends that multiple providers will be able to operate redress schemes. It also intends to develop codes of practice on complaint handling. However, this will be on a voluntary basis in the first instance. This falls well short of the redress systems available in other consumer sectors.

### **Consumer representation in the PRS**

There are a number of civil society organisations, which campaign on behalf of private renters and provide advice, guidance, and information, including Shelter, Citizens' Advice and Generation Rent.

But, there is a lack of official mechanisms for representing renters' interests. Consumers in the comparator sectors benefit from mechanisms such as consumer or stakeholder engagement panels. OFGEM, which regulates the gas and energy markets, has a Consumer First Panel, a Consumer Challenge Group, and a Stakeholder Engagement Panel, while Citizens Advice acts as the consumer champion for energy consumers. All water companies in England and Wales are required to establish an independent Panel, or Customer Challenge Group (CCG), to provide assurance to OFWAT, the regulator, that business plans have been the subject of effective customer engagement, and that customer preferences are reflected in business plans. The Financial Conduct Authority has a statutory Financial Services Consumer Panel. In the communications sector (including telecoms), the statutory Communications Consumer Panel is a represents the consumer interest to OFCOM and policymakers. Transport Focus is the voice of train, tram and bus passengers, and road users. This is slightly different as it is an executive non-departmental public body sponsored by the Department for Transport.

Of course, the lack of official representation for private renters can be partly explained by the fact that there isn't a regulator to attach a formal advisory or stakeholder engagement panel. The various panels outlined above have usually been established as part of the

process of establishing the relevant statutory regulator. Nevertheless, despite there not being a single statutory regulator for private renters, it is very surprising that there isn't some form of formal representation mechanism along the lines of Transport Focus which could represent renters' voice to the MHCLG.

### Consumer protection and rights available in PRS compared to other major consumer sectors

The matrix below summarises the key elements of the consumer protection regime for each sector. All data is based on most recent publicly available reports. We also include a brief description of the Consumer Rights Act 2015 to illustrate the protections available to consumers when buying general goods and services.

CONSUMER SECTOR	Financial Services	Utilities	Telecoms	Transport	Private rented sector
ELEMENT					
Legislative and regulatory framework	Single regulator FCA with statutory FOS, Financial Services Compensation Scheme	Dedicated regulators OFGEM, OFWAT	Dedicated regulator OFCOM	Depends on which transport Dedicated regulator CCA for airlines and pilots Rail and Road services regulated by Office of Rail and Road (ORR)	Complex and fragmented, no single overarching regulatory authority Licensing of landlords is not mandatory
Objectives, powers, duties of regulators	Statutory objective to protect consumers, promote competition, range of enforcement powers	OFGEM/ OFWAT both have statutory objective to protect interests of consumers/ powers/ duties provided for in relevant statutes	Specific objectives to further consumer interest and promote competition for consumers, protect from unfair treatment, maintain universal service obligation for post Power to enforce consumer law	ORR has responsibility for maintaining service standards that are contained in the rail operator licences and safety on the railways, promotes competition, and protects consumers CAA responsible for maintaining airline safety and competence of pilots, ensuring consumers have choice and get value for money, range of enforcement and prosecution powers	Various duties and powers laid down in disparate legislation Responsibilities delegated to local authorities
Resources available to regulators	3,800 staff, Direct resources £600m, but additional resources for SFGB, FOS, FSCS	OFGEM 816 staff, Budget £90m OFWAT 210 staff Budget £26m	Budget £122m 530 staff	ORR budget £30m, 305 staff CCA revenue £191m, 1,078 staff	Direct spending on housing standards £38m Unclear how many staff employed by local authorities in enforcement roles

The 'culture' of regulation	Firms must comply with high level regulatory principles plus conduct of business rules	OFGEM firms must comply with licence conditions Water companies must comply with obligations	Telecoms companies must comply with conditions on marketing and promotions, connection and so on For post there is a USO	Railway companies must comply with requirements set down in statute Airlines must comply with safety standards, treat customers fairly, pilots must comply with professional standards, competence	Tenants have a number of basic rights (and landlords responsibilities) in law But no clear rules or guidance to interpret law
System for monitoring/ supervision	Dedicated supervision and enforcement divisions- total of 2,000 staff	OFGEM 400 regulatory staff Carries out investigations and reviews OFWAT has dedicated enforcement and investigations functions	OFCOM monitors compliance with standards, and enforces against breaches issuing guidance on penalties for breaches	ORR undertakes formal health and safety inspections CAA employs over 500 staff to monitor compliance with safety regulations	Left to individual local authorities Major gaps in the licensing of landlords means monitoring is very patchy
Consumer awareness – provision of information/advice	Dedicated Single Financial Guidance Body (formerly MAS)	OFGEM and OFWAT produce a range of guides and information for consumers Citizens' Advice produces a range of consumer guides	OFCOM provides consumers with information on their rights, how to choose the best provider, advice and tips	ORR responsible for improving information passengers get when travelling CAA provides information to passengers on rights and tips when travelling	Government provides very limited information on rights Left to charities and consumer groups to inform consumers about rights
Complaints and redress schemes	Statutory Financial Ombudsman Scheme (FOS), free for consumers, statutory Financial Services Compensation Scheme	OFGEM sets down standards for firms' handling complaints, Energy Ombudsman OFWAT operates complaints and dispute resolution process	For telecoms and post provides advice and refers to ADR OFCOM allows consumers to send it information about misselling For television/ radio hears complaints	ORR issues guides to help consumers take complaints to TransportFocus CAA approves ADR providers for complaints and dispute resolution	Mechanisms for making complaints, dispute resolution, and obtaining redress are very limited, need to use courts can be costly and daunting
Consumer representation/ accountability mechanisms	Statutory Financial Services Consumer Panel (with own budget)	OFGEM has consumer and stakeholder engagement panels Citizens Advice has a key role as consumer champion in the energy markets OFWAT requires water companies to have panels	Statutory consumer panel plus a number of advisory panels inc a Nations' Advisory Panel	Transport Focus is the voice of train, tram and bus passengers, and road users. CAA operates a non-statutory consumer panel to provide advice	Lack of statutory provision for tenants' representation

### The Consumer Rights Act 2015

The Consumer Rights Act 2015 consolidated a range of existing consumer protection law – including Acts relating to the supply and sale of goods and services and unfair contracts regulations. It also introduced a set of new rights for consumers and potential remedies to address detriment in consumer markets.

The CRA requires goods to be of satisfactory quality, to be fit for the consumer's particular purpose, and 'as described'. Consumers have a minimum of 30 days in which they can reject goods that fail to conform to the contract. Services must be performed with 'reasonable care and skill' and 'within a reasonable time'. Moreover, statements made by traders about services (before and after the consumer has made a decision) can now be considered a binding contractual term which should make it easier for consumers to make claims and obtain redress. Importantly, new rules set down what should happen if a service is not provided with reasonable care and skill or as agreed with the consumer. If this is not the case, the service provider must bring that service back into line with what was agreed with the consumer, or if that can't be done, the consumer should get some money back.

With regards to complaints and redress, the CRA gives more flexibility to enforcement organisations such as Trading Standards to react to breaches of the law and seek redress for consumers who have faced detriment. It is also worth noting that provisions for alternative dispute resolution (ADR) came into force in July 2015 resulting from an EU Directive on ADR.

The CRA has been welcomed by consumer organisations as it means the law is now much easier for consumers and their representatives to understand and navigate and apply. If it is enforced effectively, this should help improve consumer markets and improve consumer confidence.

It is also worth remembering that the CRA deals with rights and contractual relationships between consumers and providers, and the behaviours of providers. But, when it comes to goods and products, consumers also benefit from legislation and regulations on product safety and quality.

There are some interesting lessons here for reforming the PRS particularly the way complex and fragmented legislation has been consolidated and simplified, the greater protections given to consumers, the greater responsibilities placed on providers of goods and services, easier access to redress, and the opportunity to make enforcement more effective. But, it still falls well short of the system of consumer protection available to, say, financial consumers who can benefit from a statutory Ombudsman scheme and a very well-resourced regulator with tough civil and criminal sanctions at its disposal. The success of the CRA will very much depend on how effectively the measures are enforced. This will depend on the resources available. But, concerns have been raised about the level of resources available to Trading Standards and other enforcement bodies. However, a more fundamental point is that even with the improvements brought by the CRA, the regime for general consumer goods and services remains a 'passive' regime. The provisions in the CRA are activated *after* consumers notice things have gone wrong. This is very different to the system in financial services where the FCA proactively monitors and supervises behaviours in the market.



## Section 4: Steps to improving consumer protection for private renters

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The private rented sector has grown significantly over the last 30 years and is a major element of the housing system, housing around a fifth of England's households. The sector is catering for large numbers of 25-34 year olds, likely to be largely households who have been unable to access homeownership due to affordability constraints and the tightening of mortgage lending following the financial crisis. There has also been a significant increase in the number of families with children living in the private rented sector – again these households would, previously, quite probably have entered owner occupation.

There has been an increase in the number of "accidental" landlords, however there has also been an increase in the number of "professional" or corporate landlords, taking advantage of the relatively reliable return on investment.

For many renters, the sector offers high quality, good value homes and the relationships between tenants and landlords are effective and positive. However, the private rented sector is less affordable than other sectors, and particularly unaffordable to lone parents. As well as being the least affordable and least secure sector, the private rented sector is also the one with some of the poorest quality homes.

It is certainly not the case that there is no legislative and regulatory protection for private renters in England. In fact, there is a plethora of Acts of Parliament and regulations. This, in itself, leads to a confusing picture, with a real lack of clarity for both tenants and landlords around rights and obligations. The law does provide a degree of protection, although this is not as robust or comprehensive as that available to consumers in other sectors.

This complex legislative framework also leads to challenges in relation to regulatory enforcement – this is particularly the case when those responsible for enforcement (local authorities in the main) are facing significant pressure in terms of resources.

In terms of complaints mechanisms, dispute resolution and rights to redress, consumer protection for private renters is significantly less than that available to consumers in other consumer sectors, such as financial services.

The lack of genuine competition for many consumers of the private rented sector means that they are not readily able to choose to move to a different supplier if they are dissatisfied with quality, service or cost. The most vulnerable in society are also those who are least able to exercise the normal consumer behaviour of switching supplier to get a better deal or higher quality service.

But with the right framework for raising standards there is an opportunity to create a modern, data-driven approach to giving people greater protection and more power as consumers in the rental market and identifying bad landlords who flout the rules so that:

- Private renters with fewer options have access to homes that they can be confident will be safe, secure and affordable;
- Private landlords have greater clarity about their obligations;
- Where landlords or tenants are not fulfilling their obligations, these breaches are identified and regulation is enforced; and
- Private renters have easy, free access to a redress scheme when things go wrong.

### Empowering renters

"A strong system of consumer advocacy is essential for an effective system of consumer protection. With a powerful enough voice, it brings balance to markets, public services and regulatory processes and ensures the consumer interest is paramount."<sup>106</sup>

Private renters collectively have relatively limited advocacy when compared with other the other consumer sectors considered within this report. The Financial Services Consumer Panel, OFGEM consumer and stakeholder engagement panels, OFWAT panels, OFCOM statutory and advisory panels and Transport Focus all provide strong consumer advocacy functions. Although much is done by organisations such as Shelter, Which? and others, much of this is campaign based and there is no formal advocacy group that has consumers of the private rented sector as its core concern.

Availability of personal information and advice is mixed, with Shelter and Citizens' Advice being the principle providers, and some local authorities provide advice, largely through web-based information. But this is rarely detailed and specific enough to warn tenants to avoid individual landlords that might abuse their rights. For individual renters, there has also in recent years been a proliferation of digital apps to connect tenants and landlords.

There are clearly challenges for any regulator in overseeing many thousands of providers of any service. A properly resourced structure of regulatory institutions can collect and analyse data from open sources and directly from tenants, landlords and others through annual registration and reporting. As noted above, this could be made available to tenants through a searchable database, giving them a greater chance of an informed choice of landlord. For local authorities, data can help to identify tenants at greatest risk of harm and to direct enforcement and compliance activity and resources to the highest risk.

The right analytical capability could also identify landlords in need of training, supervision and help create ways to incentivise good standards, for example potentially through tax discounts. It could monitor landlord registration and underpin enforcement including helping to prevent retaliatory evictions, stopping banned landlords from phoenixing and building evidence of building control or safety standards evasion. It could monitor trends in pricing and housing supply to inform housing benefit policy and any future rent controls. This would also help make the evidential case for appropriate resourcing of enforcement agencies at both national and local levels.

In short, through the collection and analysis of private renting data across England, tenants could be empowered to find better landlords and enforcement agencies given the tools they need to target their resources at the worst rule-breakers.

To better empower renters, the Government should:

- Establish an independent **Private Renters Panel** to represent interests of renters and engage with Government and the new Regulator on policy development;
- Require all landlords to provide **better information for tenants**, setting out terms of the tenancy, information about the property, information about the landlord and responsibilities of tenants and landlords, and how to access redress through the ombudsman service in the event of a dispute;
- Develop an **industry wide information hub** – for landlords, tenants, local authorities and advice agencies – and to use data to underpin a national drive to raise standards;
- Require all local authorities to ensure good quality **advice is available locally** for private renters and landlords about rights and obligations.

### Enforcement and Redress

As identified in this report, the legislative landscape in England is complex and disjointed. This contributes to the difficulties faced by both landlords and tenants in understanding rights and obligations. It makes challenge more difficult and makes enforcement cumbersome and costly. However, local authorities have stated that they feel they have sufficient powers, if not sufficient resources to tackle quality in the sector.

The MHCLG Select Committee has argued for strengthening sanctions as part of reform of the sector, including the introduction of more substantial fines and local authority power to confiscate properties. However, this should be accompanied by investment in resources to work with private landlords to ensure they understand their responsibilities, and that those landlords who are providing a good quality service are not penalised.

It is recommended that the system of regulation and enforcement builds on what is already in place, building on the enforcement role of local authorities and ensuring this is overseen by a national body comprising landlords and tenants.

Although there are several voluntary redress schemes in which many conscientious landlords participate, the current voluntary approach is not adequately protecting the most vulnerable. It is, therefore, recommended that redress and dispute resolution is reformed. The Housing Ombudsman Service already allows for private sector landlords to register and participate on a voluntary basis. It is recommended that membership becomes mandatory for all landlords, and lettings agents.

To uphold and enforce renters' consumer rights, Government should:

- Introduce a new **National Private Rented Sector Reference Group**, led by the new PRS Regulator and comprising representative of landlords, the Private Renters Panel, local authorities and advice agencies;
- Review the impact of mandatory use of third-party deposit schemes. If found to be insufficiently robust, introduce a new **National Tenancy Deposit Scheme**;
- Explore options for introducing **mandatory registration** scheme for private landlords and lettings agents in England;
- Work with the National Private Rented Sector Reference Group to develop a **voluntary Code of Conduct** for landlords and letting agents;
- Require all landlords and lettings agents to become members of the **Housing Ombudsman Service**, ensuring that is adequately funded and free of charge to those bringing complaints;
- Build on the newly introduced Banning Orders by giving local authorities the power to levy more substantial fines and **tougher penalties for breaches, including the ability to confiscate properties** from those landlords whose business model relies on exploitation of vulnerable tenants;
- Work with the National Private Rented Sector Reference Group to develop a new **Private Renting Quality Standard**. This would enhance build on the recent Homes (Fit for Human Habitation) Act 2018 and provide clearer guidance to landlords and tenants about quality expectations.

### Protecting private renters

The piecemeal rules that have accumulated over the decades for this increasingly important market are clearly out of date, incentivise poor behaviour by some landlords and harm renters through no fault of their own. It is time to consolidate the existing legislation and provide greater clarity to landlords, tenants and advice and enforcement agencies about their rights and obligations, redressing the imbalance between landlord and tenants.

The law should level the playing field by protecting landlords who are working hard to comply with obligations, and making it easier to take enforcement action against those who are not. And it should make it easier for local authorities and advice agencies to ensure tenants can understand and enforce their rights.

New legislation, backed by the necessary coordination and resources for those charged with enforcing it, should:

- Establish a new **Private Rented Sector Regulator** with its primary aim being to ensure "consumers are treated fairly". The Regulator would oversee compliance with standards, supporting local authorities in their enforcement role, and ensure both tenants' and landlords' voices are heard;
- Introduce a new **open-ended Private Residential Tenancy**, with measures to control excessive rent increases, remove no-fault evictions and increase notice periods for longer term tenants;
- Reform redress and dispute resolution by introducing mandatory membership of the **Housing Ombudsman Service** for private rented sector landlords and lettings agents;
- Build on the powers local authorities already have under the Housing Act 2004 and introduce **mandatory registration of landlords and letting agents**. This would contribute data to a national, searchable register which would be accessible to tenants and enforced by local authorities.
- Build on the Homes (Fit for Human Habitation) Act 2018 and develop a new **Private Renting Quality Standard** that all tenants can expect their rental property to meet.

Key to all of these proposals, is that they are developed in partnership; co-designed by landlords, tenants, local authorities and advice agencies.

## End notes

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