

## SWLA

#### ROGUE LANDLORD FUND

The Coalition Government, in response to a dubious Shelter report, released a fund of money which Local Authorities could bid for, to use to address the problem of Rogue Landlords. Both Plymouth City Council and Torbay Council submitted bids. Unfortunately Torbay's bid was unsuccessful but Plymouth City council was awarded £68,000. (Sheffield Council were awarded almost a quarter of a million pounds). Both councils work closely and in partnership with South West Landlords Association to educate landlords and tackle rogue Landlords.

Plymouth City Council is using some of the Rogue Landlord money to support the Landlord Accreditation South West Scheme and to promote Landlord education via SWLA Landlord Training Courses. South West Landlords Association in partnership with Plymouth City Council, Torbay Council, Teignbridge District Council and PATH (Plymouth Access to Housing) support campaigns to tackle Rogue Landlords. However, all the above recognise that the majority of landlords are not rogues and offer an essential element of local housing. To benefit from Government money and increase your knowledge do a Training Course and become accredited.

#### **Courses**

Letting and Managing Agents Course—Wednesday 11th June 9.15 — 4.30pm

Landlords Training Course—Wednesday 18th June 9.15— 4.30pm

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For further details please see our LASW website—www.lasw.co.uk or contact the Office 01752 510913

June 2014

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## Choosing the right agent is a key decision for any landlord – and will have a significant impact on your tenants too.

Letting agents have never been more under the spotlight. From next year, all have to belong to an approved redress scheme or be deemed illegal.

Currently, the two redress schemes are The Property Ombudsman (TPO) and Ombudsman Services. However, the Government is currently weighing up whether this is sufficient before implementing the rule, which will apply in England only. Some agents already belong to one of these schemes, either voluntarily or because it is

a condition of membership of a trade body. TPO, by far the larger of the two schemes, has 10,000 lettings offices registered but reckons that still leaves 40 per cent outside a redress scheme.

Other changes are likely. As reported in our last issue, the CLG Select Committee has made a variety of recommendations on the private rented industry. These will be very hard for the current government to reject, partly because this is a cross-party committee and partly because the committee presented its case in Parliament in a way that had both the housing minister and his shadow in agreement.

#### Regulation

The committee has recommended robust regulation of letting agents, meaning they could be banned from the industry, just as sales agents can be. It has also proposed that both Professional Indemnity and Client Money Protection (CMP) insurances are mandatory.

This would revolutionise the industry. Currently, letting agents do not even have to keep client money – ie, tenancy deposits and rents – in separate accounts, let alone insure them. Even TPO does not make CMP a condition of membership.

However, incident after incident has shown how essential it is for landlords and tenants that their agents possess this insurance. Recently, a letting agent in Norwich collapsed owing landlords and tenants money: because it had been an ARLA member and ARLA insists on CMP, all should get their money back.

In contrast, letting agents with no CMP which have gone bust have simply taken clients' money with them, including tenants' deposits which were in the agent's own account, albeit 'insured' with a scheme.

Such a situation leaves the landlords legally obliged to make good their tenants' cash.

The two tenancy deposit schemes that allow agents to use them even if they do not have CMP are Capita and Mydeposits. The TDS, which runs DepositGuard and which is recommended by the RLA, insists on CMP.

Yet another straw in the wind is that letting agents have not been bound by the Property Misdescriptions Act. This only applies to sales agents, meaning that letting agents can be imprecise in their descriptions of rental properties.

This is all changing, because the Act is being replaced by the Consumer Protection from Unfair Trading Regulations. This applies to letting agents as well as to sales agents. Importantly, it penalises agents who misdescribe properties, and also agents who leave out material features – for example, anti-social neighbours or proximity to a noisy pub. Going back to the select committee, it also made recommendations on property standards and safety, including mandatory electricity checks every five years. Estimates vary as to how many landlords use agents, but ARLA puts it as 60%. It is worth underlining that tenants have little choice of agent, as they choose a property, rather than who is marketing it. However, landlords do – and the wisdom of basing a decision entirely on cost is foolhardy. A cheap agent may be cheap for a reason – it cuts corners, has no CMP, and is using clients' money as cash flow for its own business.

#### Ask the right questions

Given that agents can cost you 10-15% to look after your property, it is worth choosing with care and asking the right questions.

What are your fees? What are they for and when are they payable?

What are your fees to tenants? (A subject under much scrutiny.)

How will you advertise and market the property? Do you list properties on both Rightmove and Zoopla? Do you have a database of waiting tenants who are emailed/texted whenever a suitable property comes up.

On average, how long does it take you to let a property, and when do you start marketing it once the tenant gives notice? (You want to avoid an empty property between tenancies on which you may have to pay full council tax.)

Do you do credit checks? What are your referencing procedures? Can I see the references? (Some agents will argue that you can't, for data protection reasons, but it could mean they haven't done the checks in the first place.)

How often do you visit properties? (Three months is normal, but some agents check after the first month. Some, take colour photos at each inspection to pass to the landlord.)

How do you handle tenancy deposit protection?

How do you handle emergencies?

Do you have an out of hours line for tenants to call?

How do you handle maintenance and repairs, and do you have trusted contractors?

Do you belong to a membership body?

Do you belong to an ombudsman scheme?

Dohave CMP, and can I see proof?

How do you handle tenancy deposit protection?



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THINK CAREFULLY BEFORE SECURING OTHER DEBTS AGAINST YOUR HOME. YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP PAYMENTS ON YOUR MORTGAGE.

#### Immigration policy flaws clear after minister Harper resigns.

The practical difficulties posed by the government's proposals to require landlords to check the immigration status of their tenants were thrown into sharp focus in February, when Mark Harper MP was forced to resign when it emerged his cleaner did not have permission to work in the UK.

Commenting on this the NLA said: "Landlords are rightly nervous about having the responsibility for verifying an individual's right to remain in the UK thrust upon them, as this situation demonstrates exactly why this is. Whether Mark Harper would or would not have fallen foul of his own policy, he is right to say that, as the Immigration Minister, he should hold himself to a higher standard. If he could not reach the right conclusion on an individual's status, even after months of being immersed in the detail, what chance does a landlord have of getting it right, especially when they'll need to verify their tenants' status regularly?"

The system must be simple, straightforward and easy for landlords to use. The government must look again at what it is asking and give reassurances that landlords across the UK won't be penalised should they find themselves in a similar position of doing almost nothing wrong. *From NLA News* 

#### Cornish landlords fined £6,000 over HMO failings

Cornwall Council's Private Rented Sector team prosecuted Michelle Bathe and Darren Bathe for failing to comply with the requirements of the Housing Act 2004 and duties imposed under the HMO management regulations 2006 on their property in Newguay.

An unannounced inspection was made after a report from Cornwall Fire & Rescue about the fire alarm not working. Numerous breaches of Management regulations were identified and Mr & Mrs Bathe were informed in writing. They failed to carry out the works for health, safety and welfare of their tenants. These breaches included failure to submit a valid gas and electrical safety certificates, failing to maintain fire precautions.

There was also general disrepair on the property and of the communal areas and garden. The defendants did not attend the hearing and the case was found proved. The court fined the defendants a total of £6,000 (£3,000 each) and a victim surcharge of £120. Costs of £1,873.52 were awarded to Cornwall Council. Cornwall Council said "We value the contribution made by well-managed houses in multiple occupation, but landlords who flout the law by failing to meet their responsibilities and fail to make sure their properties will be dealt with by the Private Sector Housing Team without hesitation".



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#### SHELTER—MISINFORMATION?

Statistics published by Shelter on tenant evictions are failing to provide an accurate picture of the situation in the private rented sector. The data, published jointly between Shelter and British Gas suggest that over the last year, 200,000 tenants in the private rented sector have "faced eviction" because they asked their landlord to fix a problem in their home. However Shelter has ignored the inconvenient truths.

Based on Shelter's data, which indicates that there are 9 million tenants in the private rented sector in England, 200,00 is only a little over 2 per cent of all tenants, meaning almost 98 per cent have not faced the problems Shelter and British Gas warn of. It should also be noted that these figures refer only to tenants facing evictions and not actual evictions.

Official figures published by the Ministry of Justice in February show that in 2013, the total for all tenants – in both public and private housing – having their homes repossessed by the courts amounted to 37,739 homes. This combined figure equates to only 0.5 per cent of all rented homes in England. Shelter admit to scaling up the figures from their research.

Shelter also fails to explain how many of the tenants were failing to pay their rent on time and how many of the "evictions" were as a result of tenancies coming to a close. In this instance, many landlords may have sought possession of their properties in order to embark on refurbishments. It is also noticeable that Shelter fails to indicate how many tenant evictions are as a result of antisocial behaviour.

Responding to the report, Alan Ward, Chairman of the Residential Landlords' Association said: "Shelter are once again needlessly playing to people's fears. "Whilst the RLA accepts that there are landlords who should be rooted out of the sector, the fact that almost 98 per cent of tenants have not faced the problems should be a sober reminder to Shelter that the majority of tenants face no problems whatsoever with their landlord. "The best response to the problems that Shelter identifies is to encourage more good landlords into the sector in order to boost the supply of homes to rent and to provide tenants with genuine choices over where they live. Shelter's continued vilification of landlords will serve only to put the good landlords off further investment in the sector and push tenants into the hands of those operating under the radar."

In a report on regulation in the sector by Professor Michael Ball of Reading University finds that: "Private landlords felt frustrated that they are always treated as potential devils, while social landlords are always seen in official eyes and political rhetoric as angels. In contrast to such publicly aired views, it was pointed out that surveys of tenant satisfaction actually show better results for the private sector. Nor is the social housing stock consistently in tip-top condition."

#### From RLA

#### Landlords ignoring urgent repairs

Thousands of tenants are suffering at the hands of landlords who delay, or fail to make major repairs to heating, electrical faults and water leakage, according to the Association of Independent Inventory Clerks (AIIC). Recent research showed a quarter of a million tenants a year are taking matters into their own hands and withholding rent from their landlords because of delays resolving emergency repairs. 34% of private tenants has faced a home emergency in the past twelve months, with boiler faults and other central heating problems the most common. The research showed that only 31% were dealt with in the same day but 23% took more than a week. The AIIC is asking landlords to listen to tenants and deal with repairs quickly. "Landlords have a duty of care to their tenants and should respond in hours not days. There was a case where a boiler had stopped working for seven weeks during the coldest part of the winter, so no heating or hot water was available. The tenants were not even offered free standing heaters and the landlord ignored all requests. The tenant was too nervous to complain. There have been similar cases where the front-door locks did not work for weeks, leaks from showers eventually brought down the kitchen ceiling below, thus causing the tenant to use the bathroom tap to get water for the kitchen!"

AIIC guidelines for response times:

Tenants should know where the gas taps, stopcocks, mains supplies

Any gas or major electrical fault should be attended to in 24 hours or less also to heating and hot water especially during cold weather

Water leaks within 24 hours
Cookers within 48 hours

Other broken appliances—washing machines dishwashers etc. within 72 hours

## Letting agents should be on their guard to protect against fraudulent activity

As the rise in private rents takes hold, Callcredit Information Group is urging letting agents to ensure their tenant vetting process is robust if they want to protect against acts fraud within their properties. Illegal sub-letting be it a council house being let by the landlord, or a tenant sub-letting a room or house for profit is on the rise. There are also professional fraudsters who make a living from defrauding agents. These activities create problems for agents who may not know who the property is being let to. Agents are being urged to ensure their vetting process is robust.

From the landlord Buy to Let magazine

#### **Large Increase In Possession Court Fees From April 2014**

Court fees for possession claims will see one of the largest percentage increases in years from 22 April 2014.

Previously, an accelerated possession claim used after service of a section 21 notice costs £175. The same fee also applies for the standard paper application for possession which is mainly used after service of a section 8 notice. From 22 April 2014, the fee for these possession claims will increase to £280.00.

The possession claim online (PCOL) service which can only be used after service of a section 8 notice on rent arrears grounds, had a substantially discounted fee of £100. However, from 22 April, there was a massive jump in price to £250 which represents a much smaller discount for using the online system.

The only fee which doesn't seem to have changed is the warrant of possession when the bailiff is required which remains at £110.

In relation to the increase in fees which apply to possession claims, the government have responded by saying at paras 33 & 34:

Having carefully considered the comments made, the Government has decided to press ahead with the change. Although it is recognised that in some instances the fee rise is high, it considers that the benefits brought by a simplified approach with a fee which reflects the average cost of issuing such proceedings justifies the change. Fee remissions will be available for those with low capital and income and in cases such as possession claims, it is expected that the court fees would be passed on to the debtor as part of any cost award.

The fact that higher fees would be passed on to the debtor was highlighted in some responses, with concern expressed that this would simply increase their debt burden. The Government considers that it is appropriate to recover the cost of these proceedings through fees and as such it is unavoidable that the higher fees will be transferred to the losing party in the form of costs. If a creditor incurs those costs through being forced to pursue a case to the courts, it is just that they should be expected to be met by the debtor.

Money claim fees have also increased but only from the point where the amount of the claim exceeds £1,500. These fees are on a tiered basis dependent on the claim amount. For example, the fee for a claim which exceeds £3,000 but does not exceed £5,000 rises from £120 to £205.

A table containing the current and new fees can be found in annex a from page 41 at https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/300100/cm 8845-court-fees-proposals-for-reform.pdf

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#### Landlords from hell blight the market

Rogue and criminal landlords are putting lives at risk and causing problems for tenants and local communities, according to Balgores Property Group. In some parts of the country, there are problems with clusters of very poor quality properties, which are associated with wider problems—illegal working, antisocial behaviour and illegal immigration. Research by Tenant's Voice showed that 37% of tenants would not rent another property from their current agent or landlord and that nearly half (46%) have had deposit disputes. Nearly 40% said properties were generally tired and in need of updating and a further 17% said they were dissatisfied or very dissatisfied with the overall condition of the properties they had rented. Balgores comments "The government's announcement that it had set aside £3million to tackle rogue and criminal landlords is an indication of the serious nature of the growing problem in the private rented sector. Poor living conditions have a major impact on tenants and the local community. Over the past 12 months we have seen a rise in the number of properties owned by irresponsible landlords. Overcrowding inevitably causes dangerous health and safety issues. We had a case recently of a quality 3-bedroom house and the tenants were a nice family looking for a longterm rental. Everything went smoothly and the tenants signed for a further 3year tenancy. This unfortunately marked the start of trouble. Damp started to appear throughout the property; the boiler broke down; the conservatory sprung a leak and the double-glazed windows developed problems leaving them unable to several or close others

As the agent we arranged for quotes to all the items and the findings were damning. It appeared that the work had been carried out to a very poor standard initially and the conservatory was considered a danger, the leaks being symptomatic of the structure moving and likely to collapse. The windows had been fitted with sub-standard hinges and the damp was the result of no damp-proof course and had been painted over to cover the extent of the problem. The boiler needed replacing.

Tenants were often without heating or hot water, as it continually broke down. Despite our best efforts and reminders to the landlord that it was his obligation to carry out the repairs, the landlord felt it was the tenants' problem. We informed the local environmental health authority, cancelled our contract with the landlord and helped the tenants find another property".

From the landlord and Buy to Let magazine

#### The Immigration Bill Becomes The Immigration Act

The Immigration Bill is now the Immigration Act 2014 which received Royal Assent on 14 May 2014.

Although the wording has been slightly modified from the Bill stage, the essence is the same. We are still waiting on all the important parts of the legislation which is the secondary legislation and most importantly the statutory guidance which will provide the detail of what procedures a landlord must follow to avoid penalties under the Act.

A summary is detailed below.

- A landlord must not let to a person who is disqualified from renting
- A person is disqualified if they do not have leave to enter or remain in the UK (or their leave is subject to conditions that they may not rent).
- If a landlord allows such a person to occupy, they will be liable to a penalty of up to £3,000.
- Agents are only responsible if (and only if) they have made arrangements with the landlord in writing to take on responsibility for checking the status of prospective tenants. Otherwise, the landlord will always be liable (even if they use an agent).
- It is not yet known what procedures must be done by landlords but it's likely that a landlord will need to check and record the tenants ID such as driving licence or passport for example.
- The requirements will most likely apply to lodgers in a person's own home as well as normal tenancies.
  - There will be a right to appeal a penalty notice.

When the secondary legislation and statutory guidance is published we will produce a more in-depth article explaining all the duties of landlords because as yet they are unknown for certain. At the time of writing there doesn't even appear to be any draft statutory guidance to get a feel of what might be required.

It is unclear when the Act will commence. October this year has been talked about but nothing is certain at this stage and it's unlikely to be sooner.

#### From the Guild of Residential Landlords

Please note the local (Plymouth) Immigration Compliance and Enforcement officers are **Ben Chacksfield** and **Amy Nickson** at 2nd Floor West Point, 71 Ebrington Street **01752 689160** and **01612 611640** 

From the SWLA

#### Cornish gas fitter left hob in dangerous state

An illegal gas fitter, who was unqualified to carry out work on gas appliances, left a gas hob he had worked on in a dangerous condition. Michael Rowe from Bodmin was contracted to install a LPG hob and associated pipework in a house at Trispen near Truro during a refurbishment project. In March 2013 there was a fire from a gas pipe supplying the gas hob. A Gas Safe engineer found that the compression joints were weeping LPG.

The HSE found that Mr Rowe was not a registered gas engineer and had never been a member of the Gas Safe register or its predecessor CORGI. Mr Rowe's work was substandard and posed a serious threat of fire and explosion. Mr Rowe pleaded guilty to a breach of the Gas Safety (Installation and Use) regulations 1998 and a breach of the health and Safety at Work Act 1974. He was fined a total of £2,000 and ordered to pay £1,770 in costs, and ordered to pay £250 compensation to the homeowner.

The HSE said "Mr Rowe should not have been carrying out work on gas appliances because he is not qualified or competent to do so. His work put the lives of others at risk. Anyone who works on gas appliances and is not Gas Safe registered is working illegally." The CEO of gas Safe said "The best way for people to stay gas safe is to make sure that they only use a registered engineer to carry out gas work. An engineer must carry their Gas Safe ID card, or by calling Gas Safe Register on 0800 408 5500, or by visiting the website www.gassaferegister.co.uk"



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#### Landlord brothers prosecuted for ignoring gas safety

Two brothers from Dudley have been ordered to pay fines and costs of more than £3,000 after they failed to obtain a gas safety record for a property they rented out, thus putting the tenants' lives at risk. The Hale brothers were investigated by the HSE after council housing officers found no trace of a gas safety record for the property. HSE wrote to the brothers requesting a copy of the landlord's gas safety record, a legal requirement. However the two admitted they had not had one for eight years. The tenants also told the HSE that they had never seen a gas safety record at any point in their five-year tenancy. HSE also found that two gas fires provided by the landlords had been condemned by the National Grid following an inspection by them following reports of a gas smell on the property.

The brothers were prosecuted at Dudley Magistrates' Court and one brother was fined £1,000 and the other brother was fined £1,500 and both were ordered to pay costs £464 each.

The HSE said that the brothers had put lives and property in danger by ignoring their responsibilities. It is essential that landlords have gas appliances inspected annually. Well maintained appliances reduce the risk of carbon monoxide poisoning. Gas safety records are a legal requirement.

Gas Safe Register said "When it comes to rented property it is important that landlords understand their duties and tenants know their rights. A landlord should be able to show you an up-to-date gas safety record for the property which shows that gas appliances have been checked by a Gas Safe-registered engineer within the last twelve months."





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#### When a tenant leaves goods behind

The Torts (Interference with Goods) Act 1977 also applies here. If a tenant leaves possessions behind – sometimes because they have left without notice and sometimes following an eviction – then the landlord cannot simply go in and dispose of the goods, either by sale or a trip to the local rubbish skip.

First you must make every effort to contact the tenant, which could include emailing them at their workplace, writing to them at any address you have for them, or contacting the guarantor. If you intend to dispose of the goods, then you are obliged by law to give a "reasonable" period of notice before selling or disposing of them; this is usually 21 days.

If the tenant owes rent to the landlord before service of notification, then the landlord must by law keep the possessions for at least three months before disposing of them. The landlord is entitled to sell the goods and keep any reasonable costs that were incurred through storage, removal and sale. The law expects the landlord to obtain the best price they can and then return the amount net of the landlord's costs to the tenant.

However, the goods likely to be left behind by a tenant are generally now worth much. But even if it is regarded as junk, you cannot simply throw goods away if they are being held against a debt.

If the goods have been left in the property but the tenant does not owe rent, and hence the goods are not being held against a debt, then "reasonable" notice of disposal is required under the Act.

Landlords should take their responsibilities seriously as in law, the landlord is responsible for looking after possessions left by a tenant.

Take photographs and a detailed inventory of any and all possessions left behind before removal – and you are entitled to remove such items. They should be kept in a safe and secure place, and in the event of a future complaint, keep a record of your attempts to contact the tenant.

#### From the RLA

#### Social sector rents increase by six times more than private sector

Analysis by the RLA reveals that rents in local authority controlled homes have increased six times more than the private sector over the past eight years. Figures published by DCLG show that in the eight year period between 2005/06 and 2012/13 local authority housing average weekly rents increased from £55.27 to £78.78 an increase of 42.5%. By contrast figures from ONS have shown that in the years between August 2005 and August 2013, rents in the private rented sector in England increased by just 7.2%. This compared with an RPI increase of 30.3% over the same period, meaning that private sector rents actually fell in real terms. The RLA said that this burst the myth that it is the private rented sector which was spiralling out of control when in fact tenants in local authority controlled housing were facing steeper increases in rents.

#### Beds-in-sheds landlord fined

A landlord who was letting out three self-contained outbuildings at the back of a house in Hounslow has been fined almost £6,500 after a prosecution by Hounslow Council.

Mr Jhawer pleaded guilty to failing to comply with an enforcement notice requiring him to demolish an illegal extension to a property in Hounslow West and to stop using an outbuilding as two separate residential units. Following complaints an enforcement notice was served in May 2009. In May 2013 officers visited the property and found all three self-contained outbuildings were occupied. In one, a couple and their 8-year old son were paying £700 per month, and in another a couple lived paying £800 per month. Officers also found a temporary cabin occupied by two people.

Jhawer was fined £4,00 plus costs of £1,492, with a victim surcharge of £120. He was ordered to remove the kitchen and bathroom facilities in the outbuildings. The court also warned him that if he failed to comply with the notice, the Council may take him back to court for the same offence again.

## <u>Landlord prosecuted for attempted eviction of mother and her new-born</u>

A landlord has been prosecuted for trying to illegally evict a young mother and her nine-week old baby. Sony Darshan pleaded guilty when he appeared at Oxford magistrates Court. He was ordered pay a fine of £650 and £1,205 costs and £65 victim surcharge. He had turned up at the house with a crowbar and pushed past the mother and started to remove the door lock, telling her that she must leave the home immediately because he wanted the house back. The tenant called 999 and police stopped the eviction. Oxford City Council investigated the matter and Mr Darshan was taken to court.

From the Landlord Buy to Let magazine

#### Japanese Knotweed

Japanese knotweed is one of the world's most invasive, destructive and resilient species of plant. It is as much a problem for landlords as it is for owner occupiers. Japanese knotweed can result in problems selling your property most mortgage lenders will not lend on properties with knotweed or where it is located nearby. Damage to your property the plant's invasive root system and strong growth can damage concrete foundations, buildings, roads, paving and retaining walls. Potential liability if the knotweed spreads from your property to another, the owner of that property could be entitled to damages from you. The plant must be treated and disposed of by professionals. This can be expensive. Unless you are licensed to do so, it is an offence to treat or remove the plant.

Japanese Knotweed Claims Ltd 0203 151 5205.

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