

## **Membership**

SWLA renewals become due on 1st November 2018. Annual subscriptions remain unchanged at £45.00 p/a. During the last year, SWLA have improved the new website complete with a news feed, trade listing of trusted local professionals and an updated documentation/members area.

Over 700 landlords have attended training courses with many becoming accredited. Our Chairman, Vice-Chairman and Committee members (all unpaid) have represented the association with local authorities and politicians.

Documentation has been reviewed and is in the process of renewal to meet new legislative requirements. The office has received an increase in both visitors and telephone queries.

Our Office Manager Gillian and Senior Administrator Anna have been joined by Mandy as Office Administrator. A first-class team giving a first-class service to members.

## **Renewal Reminder**

SWLA Membership runs from 1st November to 31st October. £45.00 membership renewal payments are due by 1st November 2018. Here's how you can pay;

**\*\* Please quote your name and membership number as the reference\*\***

BACS or Standing Order to;  
Account Name: SWLA  
Sort Code: 20-68-10  
Account Number: 50498610

Or by Cheque to:  
SWLA, 30 Dale Road, Plymouth, PL4 6PD

By paying your £45.00 renewal fee, you agree to continue the terms and conditions of your original membership sign up. SWLA will send you a receipt by email upon receiving your renewal payment.

## **Extension of Mandatory HMO Licencing 1st October 2018**

A home is a House in Multiple Occupation (HMO) if both of the following apply:

- At least three tenants live there, forming more than one household.
- Toilet, bathroom or kitchen facilities are shared with other tenants.

Under legislation pre 1st October 2018, an HMO is considered to be licensable if all of the following apply:

- It's at least three storeys high.
- At least five tenants live there, forming more than one household.
- Toilet, bathroom or kitchen facilities are shared with other tenants.

As of 1st October 2018, an HMO is considered to be licensable if all of the following apply:

- At least five tenants live there, forming more than one household.
- Toilet, bathroom or kitchen facilities are shared with other tenants.

You have until 30th September 2018 to apply for an HMO licence in line with the extension. If you are still uncertain whether your property requires an HMO licence, contact your local council who will guide you.

## **September 2018**

**Gaskin v Richmond Borough Council, HMO Licence Case**

**Bank of England base rate, How to Rent, Air BnB Tax Crackdown**

**How to keep Landlord/Tenant relationships positive**

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**Bath landlord fined £24,000, Empty property?, Upcoming courses**

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**Questions to ask prospective tenants**

**Right to rent scheme legal challenge date set**

**Universal Credit - How you can support your tenants claim**

# **Gaskin v Richmond Borough Council, HMO Licence Case**

The High Court has given two judgements in a recent case involving a landlord and Richmond London Borough Council.

In *R(Gaskin) v LB Richmond Upon Thames* (2018) EWHC 1996 (Admin) the High Court overturned a prosecution against Mr Gaskin and gave substantial guidance on fees and other points associated with HMO licensing, and by implication selective licensing, schemes under the Housing Act 2004.

Mr Gaskin had been prosecuted for not having a proper HMO licence for his property. He was of the view that he had made a proper application and that this had been unreasonably rejected by Richmond. Richmond took the position that the application was not properly completed because Mr Gaskin had not given the names of all the current occupiers and also because Mr Gaskin had not paid the proper fee.

## **What happened?**

Mr Gaskin was applying for a renewal of his HMO licence. He refused to provide the full list of information that the local authority was seeking such as names of current tenants and the terms of their tenancy agreements. This request, he considered, to be excessive. The requirements for a renewal licence were amended and simplified in 2012 by the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Amendment) (England) Regulations 2012. The High Court agreed with Mr Gaskin and found that the only information that could be sought on a licence renewal application was that set out in the amended regulations.

## **Fees**

This was the more complex and contentious area. Richmond were charging a fee per lettable unit which amounted in Mr Gaskin's case to £1,799. He considered this to be excessive and tendered a fee of £850. Richmond refused this and refused to licence the property. This led to a complex argument about the EU's Provision of Services Directive which is enshrined in UK law as the Provision of Services Regulations 2009. Mr Gaskin argued that he was providing a service for the purpose of these regulations in that he was providing the service of letting and managing housing. The Court agreed with this. Accordingly, the local authority, as a regulatory body were obliged to treat him in accordance with the terms of this Directive and the UK implementation of it. The Directive and the UK regulations contain provision relating to fees for regulation which aim to keep those fees to the lowest reasonable level in order to keep the cost of regulation to businesses within limits.

A fee for an application cannot include the cost of enforcement and management of the regime and can only include the cost of the application process itself. In the case of Mr Gaskin that meant that the fee he had paid was enough and the prosecution should not have been taken.

## **Wider Implications**

This case has a large number of very serious implications:

- Local authority licence renewals can only ask for the information set out in the relevant regulations, and nothing else. Not all local authorities have modified their renewal application forms to deal with this but those that have not should do so.
- Local authorities normally include substantial elements of enforcement and management activity in their licence fees. This decision suggests that they cannot make these charges as part of an application fee. This is about much more than fees. The Gaskin case says that the Provision of Services Directive applies to licensing schemes in full.

## **The Outcome**

It is very likely that the fees element of the decision will be appealed. In practice, Richmond probably have no choice as their own licence scheme is likely to be uneconomic if they do not protect the income stream. Equally, there will be a collection of local authorities queuing up to encourage them to appeal to protect their own position. For local authorities grappling with the upcoming change in the definition of mandatory HMO licensing and the increased cost of licensing many more properties, this decision has come at a difficult time.

## ***Article Abridged from RLA***

## **Bank of England Base Rate**

On Thursday 2nd August 2018, the Bank of England base rate increased from 0.50% to 0.75%.

Anyone on a variable rate or tracker rate mortgage will be making higher monthly payments for their debt. It is estimated that this affects around 40% of homeowners. This will inevitably impact on landlords if they have a portfolio with tracker rate mortgages in place.

Anyone on a fixed rate will continue their monthly payments until their fixed rate expires, at which point they will most certainly end up paying more.

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## **'How to Rent' Guide Update**

[\*https://www.gov.uk/government/publications/how-to-rent\*](https://www.gov.uk/government/publications/how-to-rent)

On 9th July 2018, the government made a very minor update to the How to Rent guide by amending the subtitle of the guide, it is now called 'How to rent: the checklist for renting in England'. This change reflects the wording in the Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015.

Other updates this year have been on 26th June 2018 and 17th January 2018.

All new or renewing tenants in England must receive the most current version of the 'How to Rent' guide from their landlord at the start of their tenancy. Therefore, if you have a new or renewing tenant, it is advisable to print the guide straight from the gov.uk website to ensure that the latest version is given.

You should ensure that your tenants sign to acknowledge receipt of all documents that you give (please see page 6 of the 'How to Rent' guide). There is space for your tenant to sign for receipt of these documents at the back of the SWLA Assured Shorthold Tenancy agreement.

If you do not provide the correct prescribed documents to your tenant, a Section 21 Possession Notice would be invalid and any application for possession would be thrown out if it goes to court.

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## **AirBnB Tax Crackdown**

Homeowners can earn up to £7,500.00 tax free when renting out a room in the property that they live in.

Rent-a-room relief was aimed at helping home owners let their spare rooms in a bid to reduce the housing crisis. Instead, many homeowners have rented out their homes to tourists while they move out on a short term basis and claim up to £7,500 a year in tax-free income.

A new law is set to stop this and makes it clear that the homeowner must be staying in the property for at least a part of the let for the income to be tax free up to £7,500.00.

The draft Finance Bill makes it clear that if you want to rent out your property whilst not being there, you have to pay tax on the earnings.

The Bill has not yet received a final seal of approval from MPs but if it does, the rules are expected to come into force from April 2019.

"This measure will impact individuals who are in the business of renting out rooms in their only or main residence," said the HMRC rent a room consultation report. "The change is expected to have negligible effect on anyone else."

# **How to Keep Landlord/Tenant Relationships Positive**

## **Tenancy Terms**

At the beginning of the tenancy, make sure that the tenant knows what they are signing for. It's worth spending time going through the tenancy agreement terms to ensure that they are aware of the terms and all of the responsibilities that the contract comes with, for example, no pets without permission, upkeeping the garden etc. Often tenants are keen to secure a rental property and don't take the time to check that the property is right for them. This should prevent some misunderstandings as to what you expect from them as a tenant and will give you an opportunity to confirm your repair responsibilities as their landlord.

## **Communication**

Keep communication lines open and easy! Ensure tenants have your mobile number and perhaps a back up number if they cannot get hold of you in an emergency. It's the tenant's responsibility to report any repairs or faults to you, the sooner you receive the information, the sooner you can arrange the repair. Keep the tenant updated and always provide at least 24 hours-notice if you or a contractor needs to visit the property. Remember that the tenant has the right to exclude all others from their home, including the landlord so you will need permission for each visit.

## **Repairs**

Respond quickly to repairs. Landlords repair responsibilities include;

- the structure and exterior of the building, including the walls, stairs and bannisters, roof
- external doors and windows
- sinks, baths, toilets, pipes and drains
- heating and hot water
- chimneys and ventilation
- gas appliances
- electrical wiring

Other landlord responsibilities include repairing the common parts of a building, such as entrance halls, communal stairways and shared kitchens. Landlords must also put right any damage to internal decorations caused by repair problems they are responsible for or while repairs were carried out.

## **Financial Issues**

Allow tenants to be able to talk to you when problems arise. If rent is late, there may be a reason why. Listen to your tenant and make a plan of action to support them. This often has a better outcome than when all communication from tenants stop.

## **When Things Go Wrong**

If a tenant has breached their agreement or they are in rent arrears, whilst dealing with the issue, do it as carefully and kindly as possible. If a letter is sent to a tenant, always advise that you hope to resolve the matter amicably and in a way that benefits all parties. Remember that emails and letters may be seen in court at a later date so to be factual and positive in the correspondence.

## **Next Steps**

Sometimes a situation can be irreconcilable. In this instance, you may wish to serve notice to your tenant. You can call us for advice on which notice to serve and to ensure that the notice that you serve is valid.

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## **'How to Let' Guide**

The government has published a 'How to Let' guide for landlords. It's a great guide to read through to ensure that you have carried out all of your landlord responsibilities. The guide can be found on the gov.uk website. This must not be confused with the 'How to Rent' guide that you give to your tenants upon each new or renewal tenancy. Please note. The 'How to Let' booklet does not cover leasehold, holiday lets or resident landlords who let to lodgers.



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## **Minimum Energy Efficiency Standards Reminder**

Since 1st October 2008, when a property is advertised for sale, an Energy Performance Certificate (EPC) must be sought prior to marketing and provided to a prospective buyer.

Since 1st October 2008, an EPC should also be provided to a prospective tenant if they are entering a relevant tenancy type as listed;

- An assured tenancy (including assured shorthold tenancy) defined in the Housing Act 1988.
- A regulated tenancy defined in the Rent Act 1977.
- A domestic agricultural tenancy as set out in the Energy Efficiency (Domestic Private Rented Property) Order 2015.

From 1st April 2018 any new tenancy, renewal or extension of a tenancy, in order to be rented, the building must have an energy performance rating of 'E' or above.

From 1st April 2020, the minimum level of 'E' will apply to all tenancies, including existing tenancies.

### **Properties Where no EPC is Required**

#### **For tenancies that started pre-2008**

The regulations only apply to those domestic properties which are legally required to have an Energy Performance Certificate. Therefore, any tenancies which started prior to 2008 before an EPC was a legal requirement, the minimum energy rating regulations won't apply.

#### **HMOs**

There is no obligation to obtain an EPC on letting of an individual, non-self-contained room let.

There is no legal requirement to provide an EPC to tenants in individual, non-self-contained room lets, however, by not providing an EPC to your tenant, you risk having to argue the point in court when going through the section 21 possession procedure. Our advice is to provide an EPC to every tenant, even in an individual room. Thus, making the Section 21 validity unquestionable.

An HMO may already have an EPC due to it being sold within the last ten years or rented out previously on a 'whole property' basis. If there is a valid EPC for the property, the energy performance must be minimum 'E' in order to begin a new tenancy or renew a tenancy after April 2018.

In situations where an owner of a building which is not legally required to have an EPC has obtained one voluntarily, (i.e. a voluntary EPC on a property which has not been sold within the last ten years, rented as a whole building since 2008 or modified) the landlord will not need to comply with the minimum standard regulations (and no exemption will be necessary). The registration of a voluntary EPC will not in itself require the landlord to comply with the minimum standard.

#### **Exemptions**

There are exemptions. If an exemption is applicable, it must be registered on the National Exemptions Register. This is a public register with the exemption lasting 5 years, after which an attempt must again be made to bring the property up to the minimum rating.

The easiest way forward is to get your rented property up to a rating of E or better. The EPC certificate is valid for 10 years. There are EPC assessors on the SWLA trade listing if you wish to arrange an assessment. The EPC will show a list of recommendations and the impact they will have. F & G rated properties waste energy. They also impose unnecessary cost on tenants. Even if a property is registered as exempt, the local council can still intervene by issuing Hazard Awareness notices and Improvement Notices due to issues such as excess cold due to heating a property being too expensive.

Once an EPC expires (reaches the ten-year point), there is no need to obtain a new EPC unless a trigger point is reached i.e. When the property is next sold, let to a tenant or modified to have more or fewer parts.

Thorough guidance has been published on this subject and can be found on the following link;  
**[www.gov.uk/government/publications/the-private-rented-property-minimum-standard-landlord-guidance-documents](http://www.gov.uk/government/publications/the-private-rented-property-minimum-standard-landlord-guidance-documents)**

## **SWLA Members**

There are grants available to fund energy improvements, EasyGrant CiC is a local community focussed provider of grants and advice to local landlords. They are able to offer guidance, support and funding to help you bring your portfolio in line with the legislation. It is likely that the minimum rating under MEES will be increased to a "D" in 2025 although this has not yet been confirmed.

Contact EasyGrant on 01884 824303 (Option 1) or send an email to [info@easygrant.uk](mailto:info@easygrant.uk) to get the best advice and support with your grant applications.

## **Three-Year Tenancies?**

A Government consultation was launched on 2nd July 2018 and closed on 26th August 2018 regarding the introduction of minimum three-year tenancies being made mandatory.

Housing Secretary James Brokenshire says, 'it's deeply unfair when renters are forced to uproot or find new schools at short notice due to terms in their rental contract' and 'being able to call your rental property your home is vital to putting down roots and building stronger communities.'

A six-month break clause is proposed to allow landlords and tenants to exit the agreement early if needed.

Landlords and mortgage lenders feel that this move is unnecessary as most tenancy agreements are granted for six or 12 months and resort to a rolling contract giving tenants a one-month notice period, whilst landlords must give 2 months' notice. Despite these short tenancy agreements, UK finance reports that most renters stay in their home for just over four years.

## **Specialist Housing Court**

A call for evidence is also due to be launched in Autumn for better understanding of people using court and tribunal services in property cases including considering the need for a specialist Housing Court.

We are hoping that the government will work with landlords and tenants to introduce a change that will improve the rental process for everyone.

## **Letting Agents – As of 6th August 2018, 'Ombudsman Services' Ceased to be a Redress Scheme for the Property Sector**

Since 1st October 2014 - all letting and managing agents in England must belong to a redress scheme.

There were 3 schemes to choose from;  
Ombudsman Services  
The Property Redress Scheme  
The Property Ombudsman

'Ombudsman Services' ceased to be a redress scheme for the purpose of the Enterprise and Regulatory Reform Act 2013 which requires membership by agents.

Any letting or managing agent in England who did belong to the 'Ombudsman Services' scheme must have joined one of the other 2 schemes before 6th August 2018 to ensure that they continue to comply with the requirement to belong to a redress scheme.

Agents must remember to prominently display who they are a member of in their office and on their website (if they have one).

# **New HMO Guidance Document Released for Local Housing Authorities**

The government has released a guidance document for local authorities regarding the extension of mandatory licencing of houses in multiple occupation (HMO). Included in the document is a new definition of an HMO that will require a licence. It also includes the regulations on room sizes and landlords needing to take responsibility for their tenant's rubbish;

**<https://www.gov.uk/government/publications/houses-in-multiple-occupation-and-residential-property-licensing-reform-guidance-for-local-housing-authorities>**

This guidance document will help landlords understand how health and safety rules for shared houses will impact their properties. From 1st October 2018, private landlords renting out a property to 5 or more tenants from two or more separate households must have a licence from the local authority. The aim is to protect tenants from poor and often over crowded living conditions owned by a small number of landlords.

Here we have some highlights taken from the document which will be relevant to our members;

As demand for HMOs increased in the decade since mandatory licensing was first introduced there has been a significant increase in properties with fewer than three storeys being used as HMO accommodation, notably two storey houses originally designed for families and flats. Some have been used by opportunist rogue landlords who exploit their vulnerable tenants, and rent sub-standard, overcrowded and potentially dangerous accommodation. The growth of HMOs has also had an impact on the local community, including where inadequate rubbish storage leads to pest infestation and health and safety problems.

## **Minimum sleeping room sizes**

From 1 October 2018 local housing authorities must impose conditions as to the minimum room size which may be occupied as sleeping accommodation in the HMO. A room smaller than the specified size must not be used as sleeping accommodation, and communal space in other parts of the HMO cannot be used to compensate for rooms smaller than the prescribed minimum. The purpose of this condition is to reduce overcrowding in smaller HMOs.

## **What is the minimum sleeping room size?**

The minimum sleeping room sizes to be imposed as conditions of Part 2 licences are:

- 6.51 m<sup>2</sup> for one person over 10 years of age
- 10.22 m<sup>2</sup> for two persons over 10 years of age
- 4.64 m<sup>2</sup> for one child under the age of 10 years

The minimum size for sleeping accommodation does not apply to charities providing night shelters or temporary accommodation for people suffering or recovering from drug or alcohol abuse or mental disorders.

It will also be a mandatory condition that any room of less than 4.64 m<sup>2</sup> may not be used as sleeping accommodation and the landlord will need to notify the local housing authority of any room in the HMO with a floor area of less than 4.64 m<sup>2</sup>.

Any area of the room in which the ceiling height is less than 1.5m cannot be counted towards the minimum room size.

In addition, local housing authorities are required to impose conditions specifying the maximum number of persons over 10 years of age and/or persons under 10 years of age who may occupy specified rooms provided in HMOs for sleeping accommodation.

The mandatory room size conditions will however be the statutory minimum and are not intended to be the optimal room size. Local housing authorities will continue to have discretion to set their own higher standards within licence conditions but must not set lower standards.

## Waste disposal

All licences issued after 1st of October 2018 will need to include a condition requiring the compliance with the council's storage and waste disposal scheme (if one exists). A licence holder's failure to comply with the scheme is a breach of the licence and a criminal offence. From 1st October 2018, local authorities will be required to impose a mandatory condition concerning the provision of suitable refuse storage facilities for HMOs. Local authorities will be aware that HMOs, occupied by separate and multiple households, generate more waste and rubbish than single family homes. Some local authorities have made specific provision under their function as the local waste authority for landlords of HMOs to ensure there are appropriate facilities for storing rubbish their properties generate.

All licensed HMOs will need to comply with the scheme issued by the local authority (if one exists) for the storage and disposal of domestic refuse pending collection. A licence holder's failure to comply with the scheme is a breach of the licence and a criminal offence. This condition must be included in all HMO licences (mandatory or additional) granted or renewed after commencement of the Mandatory Conditions Regulations 2018 on 1 October 2018.

### Summary;

If you let to 5 or more tenants from 2 or more households and they share facilities (toilet, bathroom, or kitchen), you will need to apply for a licence.

All bedrooms in the property will be subject to a minimum room size.

There must be suitable facilities for rubbish storage and disposal as stipulated by the Local Authority.

Each property requires a separate licence and they are valid for a period of 5 years.

Any landlord who hasn't applied for a licence by 1st October 2018 will be in breach of the law and could be liable to prosecution and hefty fines.

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## **Bath Landlord Fined £24,000**

A landlord in Bath has been fined £24,000 for failing to licence and manage a House in Multiple Occupation. Council investigators found the house to be in poor condition and with fire hazards. The landlord was charged with failing to licence an HMO, failing to comply with management regulations for the HMO and failing to respond to a formal request for information. The landlord was found guilty of all offences, fined £24,000, ordered to pay prosecution costs of £1,860 and pay a victim surcharge of £170.00.

Bath and North Somerset Council started investigations after receiving a complaint from a resident about the property. They found it should have been licenced as an HMO because it was within the Additional Licencing area and had 3 unrelated tenants who were sharing one or more amenity. The court heard that the officers found the house to be in a poor condition with several fire hazards, particularly related to the means of escape from the building. The landlord was asked to provide latest gas and electrical test certificates to the council, but he failed to do so. Contact details for the HMO manager were not displayed in a prominent position within the property. The landlord also failed to co-operate with the council or respond to a formal request for information. Council officers served schedules of work to the landlord which he failed to carry out.

HMO licencing is in place to ensure that occupants of HMOs are able to live in safe and well managed properties.

## **Empty Property? Charity Seeking Properties for Rent**

Local charity Path is looking for properties to house Syrian refugee families via a bespoke letting scheme.

In September 2015 the government announced that the UK would be providing sanctuary to 20,000 Syrian refugees over a five year period. Plymouth has a history of supporting those fleeing war and natural disaster from around the world and agreed to take and house a number of families.

Path (Plymouth Access to Housing) has been working in partnership with Plymouth City Council and START to help find properties for Syrian families arriving in to the city. Through their EasyLet Scheme, run with agents PH4L, they have secured houses in the private rented sector with the help of local landlords but are looking for more.

**If you have a property that may be suitable and available, for more information call: 01752 293719/07920476177 or email: [easylet@pathdevon.org](mailto:easylet@pathdevon.org)**

## **Upcoming SWLA Courses**

Landlord Accreditation Training Course being arranged for November – Plymouth Guildhall.

If you take a deposit – this course is a must – Inventories – 9th October – Plymouth Guildhall.

Please contact the SWLA office for more information or to book your place.

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## **Which? The Consumer Magazine Urges Private Rented Sector Reform**

The private rented sector is failing to serve tenants and landlords alike, a major report from Which? reveals. The sector is plagued by issues of sub-standard accommodation, insecurity and ineffective redress provisions.

Which? tracked the experiences of more than 2,500 tenants as they searched for, secured, lived in and moved on from rented accommodation in England.

Here were a few of their findings;

68% of Millennials say they have experienced problems with letting agents and they are nearly one-and-a-half times more likely than tenants aged 38+ to report poor standards of accommodation.

One in five millennial renters told Which? that they did not receive a written tenancy agreement when they moved into a property.

As more families are priced out of the property market, there has been a dramatic rise in the number of private renters living with dependent children in the past decade but many of them fear losing their homes due to a lack of security of tenure. 59% of families told Which? they were worried about having to leave their property before they wanted to, while almost two in five felt that their previous notice period was too short.

Which?'s research raises serious concerns about a lack of regulation for letting agents, with reports of rogue operators pressuring house-hunters to pay holding deposits or sign contracts without the information needed to make informed decisions.

Which? asked a housing lawyer to undertake an initial review of tenancy agreements, they found unclear language and clauses that could be considered unfair to tenants – such as making tenants liable for costs that are a landlord's responsibility or banning tenants from changing gas or electricity supplier.

Substandard properties A huge 81% of tenants have experienced problems with the standard of their accommodation, with damp or mould being the most common issues. The next most widespread reported problems were with condensation, draughts and problems with plumbing.

Tenants fear eviction, almost half of tenants (45%) have ordered, carried out or paid for repairs themselves, with a significant proportion (23%) saying they did so to avoid causing problems with their landlord. Tenants and landlords find the current system of redress confusing and complex. Only 44% tenants who felt like making a complaint did so, with 58% fearing repercussions from their landlord.

Landlords need better information about their rights and responsibilities. Only 21% could correctly identify their legal obligations, and 43% said they would like better information, training and advice.

Which? is making recommendations for fundamental reform of the sector, including: That all landlords should be registered with local authorities, with information logged on a publicly available database linked to the existing register of rogue landlords and agents established in April 2018.

The creation of an independent regulator for lettings and management agents with a mandatory, legally binding code of practice and strong penalties for rogue operators.

The government must introduce reforms to improve tenure security and review eviction procedures to reduce unnecessary delays for landlords when repossession is justified.

A review of tenancy agreements used by letting agents to establish how widespread use of unfair, inaccurate or misleading terms and conditions is – and if further action, for example an investigation by the Competition and Markets Authority, is required.

The government must provide consumers with an effective and accountable alternative dispute resolution scheme, review the current deposit adjudication schemes and consider options to avoid tenants being forced to cover multiple deposits at the same time.

Information from; <https://www.which.co.uk/news/2018/07/which-urges-private-rented-sector-reform/> - Which?

SWLA agrees with some but not all of the recommendations above. Taking the experiences of 2,500 tenants without taking into consideration any landlord feedback appears somewhat biased. The England Housing Survey 2017 would suggest that tenants in the PRS were significantly happier than the ones surveyed in this report. We do however whole heartedly support the educating of both landlords and tenants.

## **Pests!**

When a tenant reports pests in their property to you, who is responsible for tackling the issue?

The question of who is responsible for dealing with infestations in privately rented housing depends in part on:

Whether there is anything relevant in the tenancy agreement: The tenancy agreement may set out details on who is responsible for dealing with any infestation or may make the landlord responsible for keeping the premises in good condition and fit to live in, which could mean they have to deal with infestations.

Whether the property was already infested when the tenant moved in: If the property is already infested when the tenant moves in, it is likely that the landlord will be responsible for dealing with it. Regarding furnished properties, landlords have a contractual duty (implied by common law) to ensure that at the start of the letting there is “nothing so noxious as to render it uninhabitable”.

Whether the infestation may have resulted from some act of the tenant. The tenant may be responsible for dealing with the problem if the infestation was caused by something the tenant has done or failed to do; e.g. not dealing properly with rubbish, not cleaning the property adequately, leaving food around or keeping pets which have fleas.

Whether the property was in disrepair: Infestations may be the result of, or made worse by structural defects or disrepair, such as holes in external walls. Unless the disrepair has been caused by the tenant, it will usually fall to the landlord to carry out the repair and deal with the infestation.

### **What if landlord and tenant can't agree who should pay?**

The Government says landlords – or tenants – who want to establish who is responsible for dealing with a particular infestation should consider seeking specific advice from:

The council's Environmental Health department; an environmental health officer may be able to identify the cause of the problem and this, in turn, will help to ascertain who is responsible for removing the infestation;

A lawyer, Citizens Advice Bureau or a housing adviser; they may be able to establish whether there is anything relevant in the tenancy agreement, and whether the tenant might have any right to sue the landlord and/or to end the tenancy.

If the tenant denies responsibility, it is worth asking the professionals who come to tackle the issue how they believe the infestation came about. If they advise it was the tenants' responsibility and they still refuse to pay, keep the report and make a deduction from the deposit at the end of the tenancy. If they object to this and the claim goes to adjudication this will form part of the evidence for your case as the landlord.

### **Will the council help me?**

Most local authorities offer some pest control services, but this will differ depending on where you live. Their web pages will outline what they will treat – as well as what they will not treat – and outline their fees and charges.

If they do not offer services to treat the pests you have identified, then you will need to call in a private contractor. Trade associations such as the British Pest Control Association can help find someone in your local area. Remember, if you are organising a pest control visit you must inform the tenant and arrange an appropriate time with their consent. They must also let you know if they are making the arrangements.

***Article Abridged from RLA***

## **Questions to Ask Prospective Tenants**

If you require reference checks and your tenant will not consent to them, this will eliminate them immediately.

### **You'll need to ask for the following:**

I.D. (see the Right to Rent check document for what forms of I.D. you can accept)  
Work reference; References from an employer will help verify income and stable employment.  
Landlord reference; You will want references from a former landlord because their current landlord may not tell you the whole truth because they may just be trying to get the tenant off their hands. It is often prudent to obtain this information on your own to prevent forgery.  
Utility bills; This is a good way to confirm a previous address.  
Credit check; Running a credit check will enable you to see if they've had problems paying bills in the past. It's not a legal requirement and you'll need written permission from the tenant.  
Bank Statement; This should confirm the tenant's ability to pay as it would be best to set up a standing order for rent.  
National Insurance number.  
Right to Rent; A thorough Right to Rent check must be carried by the landlord on all prospective tenants. For more information on how to make the check, see the gov.uk website.

### **Do you have a rental guarantor?**

This is always helpful to have as an added security blanket if you think someone may struggle. In the unlikely event that anything does go amiss with a rental payment then you have a back-up to ensure you are not left out of pocket.

### **Do you have any pets?**

This seems like obvious questions to ask, but many people forget. If you are open to allowing pets in your property, you may want some more information about what type of animal they have.

### **Have you ever been evicted?**

While the prospective tenant may not tell the truth, it is still worth asking. A direct question will give the tenant an opportunity to explain the situation. Anyone can fall on hard times and an eviction may have been a one-off circumstance.

### **Finally, any questions?**

This simple question could unearth a reason that this property might not suit this tenant - which they may otherwise not realise until they move in.

If a potential set of tenants do not suit your property you need to walk away as having a person living in your property when it doesn't suit can be very costly, stressful and time consuming.

*Article Abridged from This is Money/Property Tribes.*

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## **Right to Rent Scheme Legal Challenge Date Set**

The government's controversial Right to Rent scheme which forces landlords to undertake immigration checks on prospective tenants is to be challenged in the High Court on 18th and 19th December 2018. The Joint Council for the Welfare of Immigrants (a charity) won the right in June to launch the High Court case against the Home Office scheme.

The case is to determine the legality of the environment that has been created which has given landlords the responsibility to act as border guards.

The JCWI, is seeking to crowd fund the challenge and has received support from various bodies.

The Right to Rent checks that landlords must carry out on every prospective tenant can make it difficult for legitimate tenants who may have the right to rent in the UK but do not have the documentation to prove it. Phillipa Kaufmann QC, acting for the Joint Council said there was evidence that the checks were causing indirect discrimination against foreign nationals as landlords were likely to request that tenants provide a British passport to prove their right to rent.

When carrying out your Right to Rent checks, refer to the gov.uk guide which talks you through the process and provides images of the documentation that you can check.



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### Universal Credit – How You Can Support Your Tenants Claim

Tenants need to make an online claim for Universal Credit. It takes 40-60 minutes. To apply, the claimant will need;

- Email address Bank details
- National Insurance Number and proof of identity
- Household income and savings
- Rent, mortgage and childcare costs

Within 7 days of applying, the claimant will need to attend a meeting at their local Jobcentre Plus. At this meeting, if the tenant feels that they cannot manage their money well, they can request that the housing element is paid to their landlord direct. This is called a 'managed payment'. The advisor will decide whether to make the direct payment to the landlord or offer budgeting support instead.

Universal Credit is paid monthly in arrears. Claimants usually have to wait 5 weeks for their first payment. Claimants who do not have enough money to live on within that period can ask for a Universal Credit advance. This can be done when applying for or updating Universal Credit online, on the telephone or face to face at Jobcentre Plus.

The claimant will need to provide evidence of their private rented housing accommodation. This must happen before any payment can be made for housing support. The claimant must prove the following;

- That they are responsible for paying rent (tenancy agreement or landlord letter).
- That they are living in the property (utility/telephone bill or landlord letter if it's a new tenancy).
- They must also provide details of their landlord such as landlords address and email address (on tenancy agreement).
- Verification of the frequency and amount of rent payments (on tenancy agreement)

#### **If you have a tenant who is in arrears and claiming Universal Credit:**

If the tenant is two months or more in arrears, you can apply for a managed payment using the UC47 form found on the gov.uk website. Rent arrears deductions from the tenant's Universal Credit can also be requested.

There is a quarterly Universal Credit newsletter published by the government, the first of which was published in July this year. You can visit the gov.uk website to access the newsletter and sign up for updates about Universal Credit.

# NOTICE BOARD

## SWLA stationery

SWLA stationery may change without notice so before using a document, make sure that you use the latest one on the SWLA website, by checking the issue date or check with the SWLA office at the email address or telephone number shown below. Don't forget our ability to advertise accommodation to let, property for sale in our office window

## E-Mail address

If you change your email address **PLEASE TELL US** otherwise you might miss important messages from us!

## KBG CHAMBERS - Barristers – Plymouth, Truro & Exeter

We will support members with legal advice and representation through public access. KBG cover all areas of Property Law.

Call 01752221551 or email Colin Palmer, Senior Clerk, on [colin@kbgchambers.co.uk](mailto:colin@kbgchambers.co.uk)

## Rory Smith, Enigma Solicitors

Rory Smith is a highly experienced specialist in a wide range of disputes and their resolution. Rory can also recommend to you other law firms in Plymouth who will all offer free initial advice to SWLA members in other specialist areas.

Contact Rory on 01752 600567 or by email at [rls@enigmaweb.com](mailto:rls@enigmaweb.com) Enigma is located 5 minutes away from SWLA's office at Farrer Court, 77 North Hill PL4 8HB. The office is open 8:50 a.m. until 5:00 p.m. weekdays.

Richard Gore Solicitor in Bristol Richard is with Greg Latchams on 0117 9069424 and will support initial telephone calls to discuss your problems

Did you know that SWLA have a trade listing of local businesses? Head to the SWLA website 'Trade Directory' for all of your landlord needs from Gas Safety Checks to Building Services

# SWLA

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## South West Landlords Association

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Or visit our office in Dale Road, it is open week days from 10am to 3pm

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