

Response to additional questions

- Whether the Bill does anything to help letting agents deal with anti-social behaviour;

Providing a standard form of words dealing with anti-social behaviour this is welcomed. This will remove inconsistency with wording between Landlords. The potential flexibility to evict the perpetrator is noted, however the situation remains that the surviving contract holder may still be at risk of losing their home if they cannot fully meet their contract terms individually.

What is not clear is whether a landlord is able to serve a termination notice on all tenants if he so wishes. While domestic abuse can certainly be perpetrated by one party unilaterally, some forms of anti-social behaviour can be the joint efforts of tenants. A landlord may find himself needing to establish blame for each perpetrator within a larger group to evict those that cause disturbance – if each blames the other, collecting evidence will be impossible and it will be necessary to evict all tenants.

- The Bill proposes a procedure that will allow a landlord to recover possession of a property without the need to obtain a possession order from the court. How big a problem is abandonment for letting agents and how do they currently deal with it?
- What risks do the abandonment proposals in the Bill present to agents, and in particular how would they serve notice on the contract-holder?
- Do you have a view on whether the proposals in the Bill relating to abandonment could be improved, particularly in relation to ensuring that vulnerable people are not exploited?

Abandonment is a particular ‘grey area’. The practical issues with determining if a property is abandoned are an issue. At present it often relies on local information advising the agent or Landlord that a tenant has vacated the property. The issue is normally noticed through the build-up of rental arrears and a change of conduct by the tenant and lack of communication. Court can be time consuming and costly and lead to delays dealing with fundamental works such as ensuring the property is heated in frosty times.

If the property has not been abandoned, then a Notice delivered to the property will be received. Stipulating other locations, such as parents/guarantor, place of work, with a referee etc. all create risk of harassment and breach of confidentiality. Service by text or social media cannot be proven. Only the property is a point of certainty.

The six month period contained within the Bill for the tenant to reappear is not agreeable. If the procedures have been correctly followed to confirm that the tenant has abandoned the property, this needs to be the end of the Contract. There should not be a requirement for the

Landlord to reinstate the Contract nor find alternative housing. Once proved by serving the relevant Notices, this should be the end of the Contract and rights thereafter.

We are concerned that the 6 month period for a tenant to come back and restart the tenancy or be offered alternative accommodation will be open to manipulation and will be very harsh on a landlord who will likely have let the property on by then. We would urge strongly that this clause is removed.

Finally, you will have noted that the Bill uses the county court (or High Court) for a number of purposes. A number of responses to the public consultation proposed alternative bodies and processes to settle disputes that arise under the Bill. Do you have a view on whether the Residential Property Tribunal, or an alternative body, could be developed to reduce the need to go to court to resolve disputes?

Whether this would allow contract-holders to exercise their rights more effectively?

The trend in litigation is to ADR, reducing costs and giving easier access for non-professionals. Where possible this principle should be adopted for proceedings. Very tight timescales should be provided, especially on postponed hearings due to a party submitting evidence on the day etc. Delay costs not just money but stress and uncertainty for all parties concerned.

In Scotland the way of dealing with disputes was changed under the Agricultural Holdings Act 2003, requiring disputes to be heard within the Scottish Land Court rather than Arbitration. This has caused considerable problems with Landlord and Tenant relationships. The costs of Court often meant that the threat of taking a matter to Court often lead parties accepting a position that was not agreeable just to avoid the costs of going to Court. The process was onerous and was used as a threat in many cases to urge the other party to settle a dispute rather than face Court. There was also a concern on the outcome of taking an issue to Court to be heard by a Judge, rather than a panel of experts who dealt with practical issues on a daily basis through the course of their profession.

There has been a lot of work undertaken through SAAVA to re-introduce a short form arbitration which would reduce costs and encourage parties to engage the Tribunal to provide a solution to a problem.

RICS would welcome an expert tribunal or application to a professional body for appointment of an Expert for determining disputes. This would encourage Contract Holders to exercise rights more effectively.

I look forward to your response.

Yours sincerely,

Christine Chapman AC / AM

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