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Pàrlamaid na h-Alba

Official Report

INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

Wednesday 18 November 2015

Session 4

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INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE
23rd Meeting 2015, Session 4

CONVENER

*Jim Eadie (Edinburgh Southern) (SNP)

DEPUTY CONVENER

*Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP)

COMMITTEE MEMBERS

*Clare Adamson (Central Scotland) (SNP)
*Alex Johnstone (North East Scotland) (Con)
*Mike MacKenzie (Highlands and Islands) (SNP)
*Siobhan McMahon (Central Scotland) (Lab)
*David Stewart (Highlands and Islands) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Tony Cain (Association of Local Authority Chief Housing Officers)
Mike Dailly (Govan Law Centre)
Kenny Haycox (City of Edinburgh Council)
Silke Isbrand (Convention of Scottish Local Authorities)
Councillor Harry McGuigan (Convention of Scottish Local Authorities)
Chris Ryan (Legal Services Agency)
John Sinclair (Law Society of Scotland)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Infrastructure and Capital Investment Committee

Wednesday 18 November 2015

[The Convener opened the meeting at 09:49]

Decision on Taking Business in Private

The Convener (Jim Eadie): Good morning and welcome to the 23rd meeting in 2015 of the Infrastructure and Capital Investment Committee. Everyone present is reminded to switch off their mobile phones, as they affect the broadcasting system. However, because meeting papers are provided in digital format, you might see tablets being used during the meeting. No apologies have been received.

Agenda item 1 is a decision on taking business in private. Does the committee agree to take in private item 5 and any future consideration and discussions of evidence and draft reports on the Private Housing (Tenancies) (Scotland) Bill?

Members *indicated agreement.*

Private Housing (Tenancies) (Scotland) Bill: Stage 1

09:49

The Convener: Agenda item 2 is evidence on the Private Housing (Tenancies) (Scotland) Bill, with two panels of witnesses. I welcome to the meeting our first panel, who are largely representing the interests of local authorities: Tony Cain is policy manager with the Association of Local Authority Chief Housing Officers, Kenny Haycox is private rented services manager at the City of Edinburgh Council, Councillor Harry McGuigan is spokesperson for community wellbeing with the Convention of Scottish Local Authorities, and Silke Isbrand is policy manager from COSLA's community resourcing team, housing.

Do the witnesses wish to make some short introductory remarks, or are you happy to go straight to questions?

Councillor Harry McGuigan (Convention of Scottish Local Authorities): Thank you very much, convener, for bringing the time of the meeting forward a little bit to accommodate me—although when I leave you might be saying, "Well, that wisnae worth doing." There is to be an important meeting of the housing development group, which the minister will be attending, and it is important that we are able to share our views on the matter with the minister. As I will be jointly chairing the meeting, it will be helpful if you can let me get out by about a quarter to 11.

The Convener: We are always willing to accommodate the needs of witnesses where we can, and we will try to be as gentle as possible.

I will kick off. In general, do the proposals in the bill strike the correct balance between improving security of tenure for tenants and providing the appropriate safeguards for landlords, lenders and investors?

Councillor McGuigan: When we commented and made some observations on the bill way back in May, we said that we were in the main comfortable with the bill's direction of drive. The intention of the bill is to strike a balance between the interests of the investor—in other words, the private sector—and the interests of those who use the service. We feel that that has been out of kilter for quite a long time, so we welcome the serious consideration that is being given to how we improve it and ensure that, as far as possible, the two aspirations—the aspirations of the investor and of the people who use the service—are in tune.

The bill first came to Parliament on 7 October and, in the four weeks since, we have not had the time or the chance to go round all our local authorities. However, we will certainly be doing that; we will be presenting a paper at the 3 December community wellbeing meeting, and after that we might come back with some proposals for amendments to the bill. However, I do not want to anticipate any of that at the moment.

In response to your question, we want a serious and comprehensive analysis of what is really going on and how we can best ensure that there are still incentives for investment in private sector housing. After all, we need that investment, but we must also ensure that good landlords are supported and that landlords who abuse the situation are dealt with in a way that protects the services that their tenants should be getting.

The Convener: Thank you for that. Does anyone else wish to comment?

Tony Cain (Association of Local Authority Chief Housing Officers): My answer to your question is rather shorter. No. ALACHO does not think that the bill strikes the right balance between the rights of landlords and the rights of tenants, and we are of the view that a little more attention needs to be given to connecting the bill with other elements of housing legislation. More particularly, you will see in our submission that we have picked out some issues around the management of business failure and business change and the transfer of costs to others under those arrangements.

That said, the bill represents a substantial improvement on the current position and, broadly speaking, we are supportive of what it is trying to do. Many of its provisions are overdue and will certainly improve the position of tenants and their access to redress. On balance, however, we do not think that the bill strikes the right balance.

The Convener: Just to be clear, who has the Government, in trying to rebalance the relationship between tenants and landlords, not gone far enough in favour of—the tenant or the landlord?

Tony Cain: Our particular point is that, under the bill as currently drafted, where a landlord of scale wants to disinvest or change, or fails in their business, the cost of that disinvestment or failure is disproportionately transferred to the tenant in the first instance and the local authority as the homelessness authority down the line. We do not believe, for example, that allowing a landlord who decides to disinvest simply to evict all their tenants on a mandatory ground is an appropriate way of managing change in the industry.

The Convener: Okay—that is clear. Who is next?

Kenny Haycox (City of Edinburgh Council): City of Edinburgh Council welcomes the bill, especially the removal of the no-fault ground, which significantly improves the lot of the tenant. The mandatory grounds for eviction—although they are somewhat troubling, as Tony Cain indicated—strike a balance with the removal of the no-fault ground for situations in which circumstances change, especially bearing in mind the small scale of most landlords, who may own one or two properties.

The Convener: Ms Isbrand, would you like to add anything at this stage?

Silke Isbrand (Convention of Scottish Local Authorities): No, thank you.

The Convener: In that case I will hand over to my colleague, Dave Stewart, who has some questions.

David Stewart (Highlands and Islands) (Lab): I am interested in the rent pressure zone proposals in the bill, and I would like to raise a few points with you. Do any of you feel that we need to protect tenants from excessive rent increases? You will be well aware, from the Government figures, of the regional variations. For example, greater Glasgow and Lothian appear at the top of the league for rent increases, and yet rents in Aberdeen and Aberdeenshire have actually fallen, presumably because of the oil-price collapse. What are your views on the rent pressure zone proposals?

Tony Cain: On balance, our view is that they will not necessarily help or be particularly effective. The underlying point is that the answer to rents rising faster than inflation or rising excessively is to deal with the shortage in the housing sector.

We understand exactly why those provisions are in the bill, but on balance they will not affect asking rents—they will affect only current rents. The cap that is applied is inflation plus 1 per cent, so there is a real-terms increase even under the cap. The evidence is that rent increases—or excessive rent increases, if you like to call them that—have been an issue in one or two very limited areas, while rents across other parts of Scotland have fallen over the past three or four years. It is a bit of a sledgehammer to crack a nut, and I am not convinced that focusing on controlling rents in a market-driven sector is the best approach to dealing with affordability.

David Stewart: I will bring the other witnesses in, but before I forget—

The Convener: Councillor McGuigan would like to come in on that point.

Councillor McGuigan: The proposals will not affect a large swathe of local authorities. As has been said, Edinburgh may be one of the areas in

which such a zone could alleviate some of the pressure.

We would want to come back after the meeting on 3 December to address some of the issues and concerns that might be brought to the table at that point. I hope that that would be respected, convener.

David Stewart: Mr Cain, you spoke about inflation plus 1 per cent; I will be slightly technical on that point. The irony—as you may have gathered from previous evidence sessions—is that the consumer price index does not include housing costs. It is a great irony on one level that we are reflecting inflation in housing costs and yet the index does not reflect inflation in that respect.

Tony Cain: In our written submission we made the point that CPI is not necessarily a good measure of the costs that landlords face. In any event, ordinary inflation is not necessarily what drives up rents—it is house price inflation that does that, given the way in which rents are calculated. I listen carefully to the evidence of colleagues in the private sector when they appear before this committee, and I know that they have made that point too.

David Stewart: Do other witnesses wish to come in on that particular topic?

Kenny Haycox: City of Edinburgh Council welcomes the fact that the bill provides some new tools in the toolbox. However, we are concerned that, because of the need to evidence the increasing rents in an area before rent pressure zone status is applied, the damage may already be done before the zone can be put in place, and therefore it may not have the intended effect.

Like the other witnesses, we see the problem underlying high rents as a market failure to provide enough housing. A more targeted approach would involve ensuring that there is a sufficient supply of new housing, which should address the issues with increasing rents.

10:00

Councillor McGuigan: I am dealing with a case in which there is an abuse relating to the installation of a new heating system in a home. The rent will rise because that new system has been installed. However, the rent was never negotiated on the basis of an inadequate heating system being in place—it was set at the same high level as other rents. We now have a situation in which, because a new heating system is going in, the rent is going up, but the heating standard should have been met at the time that the original rent was set. That kind of absurdity is taking place, and we are contesting that case in North Lanarkshire.

David Stewart: As the councillor will know, local authorities will play a key role with regard to the proposals, because they will make the application to the Scottish Government, which will then use the affirmative procedure to determine the application of a zone for a five-year period. In general terms, if COSLA and local authorities are not happy with the idea, it will not happen, because an application will have to go through local authorities initially.

With the convener's permission, I will move on to a second question. You will have gathered from our previous evidence sessions that one of the criticisms of the proposals is that there is insufficient data on the private rented sector. Would you agree that we need to look at data capture in a different way? Otherwise it will be very difficult to determine whether we will be able to use the mechanism that is envisaged in the rent pressure zone proposals.

Tony Cain: Absolutely—that is a fair point. There has been an improvement in the evidence base around rents, but it has largely come from the sector itself, so the evidence is not necessarily fully independent. A number of research exercises have been carried out around the structure of the sector, which includes landlords and tenants. One of the gaps concerns property journeys in the private rented sector. Not all houses stay in the sector for very long—in fact, there is quite substantial churn, with houses moving in and out of the sector. That is not well understood.

In the light of that, I agree that, if the sector is going to continue to grow, and if it is a formal part of the Scottish Government's regime and the Government has objectives for the sector, it needs to be better understood than it is at present.

David Stewart: Do any other witnesses wish to comment?

Councillor McGuigan: I would agree with that.

Kenny Haycox: We would agree with that. One of the key elements, especially when rents are involved, is that we tend to end up examining initial rents for private rented sector properties that are coming on to the market. It is very hard to account for those properties that are still being tenanted. There may be no rent rises for people who are continuing their tenancies, or there may be modest rent rises that are tied either to inflation or to a fixed percentage—perhaps 2 or 3 per cent—in the lease. Identifying rent rises for properties with sitting tenants is difficult.

David Stewart: If no one else wants to come in, I would like to raise another issue with witnesses. You will be aware that the proposals for the rent pressure zones apply to existing tenants. There have been some arguments that the zones should apply to new tenants as well. What are your views

on that? Is there a danger that that could impact on the private rented sector?

I will give you an Edinburgh example. The zone may cover north Edinburgh but not south Edinburgh, and we could see a flight of capital for new investment away from the zone. What are your views on that?

Tony Cain: That is very likely to happen. There are parallel examples—for example, where local authorities have attempted to control the number of houses in multiple occupation in a particular area, we immediately see a spillover into adjoining areas with a growth in that type of investment in those areas. The capital in the private rented sector can be quite mobile, and what you have described is exactly what would happen.

Councillor McGuigan: I do not feel equipped to comment on the issue.

Kenny Haycox: We have 57,000 rented properties in Edinburgh. The bulk of them are not build-to-let properties, but individual properties that may be backed by buy-to-let mortgages. If there is a cap on initial rents, we may find that the economics do not work out and there may be a collapse in private rented sector tenancy. However, we do not have any figures on that.

The Convener: Alex Johnstone wants to come in.

Alex Johnstone (North East Scotland) (Con): Several of you have made it clear that you feel that the way to deal with rent pressure is to deal with the housing shortage—the supply side. I want to dig slightly deeper into that. Are you talking about the supply of housing generally or the supply in the private rented sector? Is there anything else in the bill that will fuel growth in the number of houses that are made available for rent under the private rented model, or do you think that the bill will not have that effect?

Councillor McGuigan: There is no reason why the private sector should not play an extremely prominent and necessary role in the general provision of housing, but we want to ensure that, in doing so, the sector is not driven only by the desire to make a return on its investment but recognises that the services that it provides must be provided in a professional manner. That is my general answer to the question.

I think that there are opportunities for the private sector to invest in the provision of housing for people with special housing needs. I am talking about the provision of accommodation that is suitable for people with disabilities, for example. In my home town, such a facility will open on Thursday of this week. It has been a revelation to see the way in which the local authority and the private sector have worked together to realise an aspiration that some people dismissed as unlikely to be successfully met.

We must look at using the resources of the private sector to a greater extent in the provision of housing where a housing need has been identified. The point that my colleague from the City of Edinburgh Council made is that we have to find a sensible equilibrium between return on investment and quality of service to the recipients of that service. I hope that that helps.

David Stewart: My final question is a more general one. Do the witnesses have any views on the bill's provisions on rent increases and challenging a rent increase? As the witnesses will know, it will be possible for landlords to increase the rent a maximum of once a year and they must give three months' notice. What are your views on that?

Councillor McGuigan: As far as our experience is concerned, I do not think that I know enough about the specifics of that. When rent increases are sought, that must be done on the clear understanding of the tenant and the landlord. That is the first stage. When it is clear that there are serious flaws in such an agreement, it must be challenged. That can be done by an individual taking action or through collective action. It can be challenged through the local authority or through Scottish parliamentarians.

Tony Cain: The provisions in the bill seem to be entirely sensible. When the Government officials appeared before the committee, they said that there would be very little point in removing the no-fault ground for repossession and leaving open the option for landlords to drive tenants out by racking up rents. The provisions in the bill replicate the more limited provision in the existing legislation and, for me, they make complete sense.

Kenny Haycox: Our position is the same. The provisions in the bill are broadly similar to the existing provision for assured tenancies, whereby tenants can appeal against a rent increase. We feel that the requirement to give three months' notice provides a good balance between making the tenant aware of what the proposed rent rise is and the need for the landlord to plan ahead.

Mike MacKenzie (Highlands and Islands) (SNP): Last week, the committee heard from a number of organisations that represent private landlords. In their opening statements, they said that everything was almost perfect in the private rented sector, with the exception, perhaps, of a tiny minority of rogue landlords, who could be dealt with if only local authorities would implement the current regulatory regime properly. Bearing that in mind, do you feel that there is a need to improve the operation of the private landlord registration scheme and the repairing standard?

Would that not have the effect of improving tenants' security of tenure?

Councillor McGuigan: Local authorities fulfil their obligations with regard to registration and houses in multiple occupation. I have never had a private sector landlord come along and tell me that my local authority is not doing well enough. If that were to happen, I would certainly take that up. The suggestion that local authorities are not implementing the current regime properly can sometimes be used as an excuse by people who present themselves as very good landlords although we find that not to be parallel with the truth when we look in depth at some of their undertakings.

Of course I want to ensure that local authorities fulfil their obligations. In cases in which they are not fulfilling their obligations, we want to hear about that. Quite rightly, the committee would want to hear about it, too. We need to make sure that we are working constructively with the legislation as it currently is. As I have said, COSLA will hold a meeting on 3 December, and it may well be that we will have more to say on the regulatory aspects.

However, there are plenty of landlords out there who are extremely unwilling to align themselves with the sensible, proper and correct responsibilities that their licence requires them to meet, and those are people we need to deal with.

Mike MacKenzie: Would anyone else care to comment on that?

Kenny Haycox: One of the key issues with repairs is that, although there are very few rogue landlords, a significant number of tenants face problems with more minor disrepair. The law as it stands forces such tenants to make their own applications to the Private Rented Housing Panel, which opens them up to retaliation from their landlord under the short assured tenancy or, at least, to a lack of security in their tenancy. The local authorities welcome the provisions that we have been given to make our own applications to the PRHP, but that issue is still a factor in tenants' unwillingness to engage in the proceedings.

I met one of the charities that the council funds to provide people with help to go to the Private Rented Housing Panel. After it explains the possibility that the landlord might seek to end their tenancy once an application to the PRHP has been made, most people decide that they do not want to make such an application because of that lack of security. That is the key reason why the council welcomes the removal of the no-fault ground for repossession. It will give tenants the security of tenure that they need to be able to challenge problems of disrepair and go to the PRHP. It is only with security of tenure that the PRHP will truly work for tenants.

Tony Cain: I do not doubt the integrity of the witnesses that the committee spoke to last week—they are professionals who operate in a particular part of the sector and they gave an honest view of what they see in that sector. I think that their view is partial, because they represent fewer than half of the properties that are under management in the private rented sector, and I do not think that they necessarily have a full picture of what the experience of tenants is like across Scotland.

In my view, there is a systemic and cultural problem with many parts of the private rented sector, and tenants suffer as a consequence. The statutory framework—the regulatory framework—sets the arrangements for an improved approach and an improved culture in private renting.

As far as enforcement is concerned, not all the difficulties with enforcement rest with local authorities. Anyone in a local authority will tell you that it is one thing identifying a landlord who has broken the law, but it is something else altogether getting a criminal charge against them and another thing again getting a conviction that acts as a genuine deterrent. We have seen the Scottish Parliament raise the maximum fine for non-registration to £50,000. However, where fines are levied, they are much less than that amount and, on occasions, they are less than the cost of the registration that was avoided. Enforcement could be better, and local authorities can play a part in that. That would need to be paid for, and there would need to be a conversation about whether simply raising fees to landlords that register is an appropriate way of funding enforcement against the rogue element, if you like. However, the matter is not all down to issues with local authorities. I do not accept that everything in the garden is rosy as far as the private sector is concerned.

10:15

Mike MacKenzie: Before I leave this area of questioning, I will just return to what Councillor McGuigan mentioned about HMOs. What percentage of HMO licences are granted following an inspection of the property and what percentage are granted following a desk-based exercise?

Councillor McGuigan: I am unable to give you that information, but we could perhaps seek to acquire it and get it to you some time after 3 December.

We must bear in mind that resources are needed to make sure that authorities can do the job as thoroughly as you, I and—according to the commentary of some of them—registered landlords would wish them to do. We need resources. We are struggling, as there is a high

demand on local authorities' resources as it is, and we need to see that change. In this area, it is very important to make sure that we are being assisted in the job that you want us to do effectively. We will do the job effectively and we will try to channel our resources, but that is getting harder and harder to do.

Mike MacKenzie: Are you still doing the job effectively or are you looking for resources because you are not doing it effectively?

Councillor McGuigan: Yes, we are doing the job effectively. I cannot speak for all local authorities. The issue of registration and the available resources that are needed for that, as well as what is happening at the moment, will certainly be discussed. You ask a good question. I would doubt very much that, right across Scotland, we are able to accompany every single registration with a visit. We could end up visiting a property four or five times if complaints were raised, for example. Therefore, visiting can become expensive.

As I said, we will try to get back to you with that information.

Mike MacKenzie: Thank you very much. That is very useful indeed. I will move on to my next question. What are witnesses' views on the removal of the no-fault ground for repossession? Will that lead to greater security for tenants?

Tony Cain: There is no question but that that will be an improvement in the tenancy regime, but it is not the only issue in security of tenure. ALACHO has supported the proposal throughout the process and in the two consultations that have taken place to date and I am happy to say the same here, too. The removal of the no-fault ground is an important move to rebalance the relationship between tenants and landlords. It will put tenants in a stronger position to exercise their rights and to take or to encourage enforcement action against the landlord when that is necessary. It will leave tenants in a much more secure and settled position in a house that they may wish to occupy for the longer term.

Councillor McGuigan: The list of reasons for repossession has not been before my executive group. However, I think that the group would be comfortable with most of what is in there. The matter will be discussed at the December meeting.

Kenny Haycox: We agree that the removal of the no-fault ground will greatly improve security of tenure in the sector, because it allows tenants to raise complaints in the confidence that they will not have immediate comeback from the landlord.

Alex Johnstone: The message that I am picking up from landlords and their representatives—I have heard this in evidence and privately—is that the removal of the no-fault ground will take away the option of no-fault removal and cause landlords in many cases to pursue one of the other grounds, such as anti-social behaviour. That might result in a more litigious and confrontational approach when, at the moment, landlords simply use the no-fault ground rather than pursue a case that they have to prove.

Tony Cain: That is absolutely and clearly the case. The evidence is that most tenancies are terminated by tenants, but there is also evidence that landlords, when faced with a difficult housing management issue to resolve, will terminate the tenancy rather than engaging with the issue.

When the landlords were in front of the committee, much was made of issues around antisocial behaviour. My response to that would be on two levels. First, why is the level of proof that is required to remove somebody's home greater in the social sector than in the private sector? To what extent is justice blind on issues of tenure when it comes to such issues?

That is my principal point, if I think about it. I will leave it at that.

Alex Johnstone: You suggested that the bill might make it easier to get people looking forward and giving evidence. It has been suggested to me that, whereas the no-fault ground can be used to deal with, for example, an antisocial behaviour case, the bill will require such cases to be proved in court, and consequently neighbours will have to be prepared to give evidence. That might produce a much more confrontational relationship than the one that exists with the no-fault ground.

Tony Cain: I think that it will produce a much more engaged relationship between landlords and their tenants when the landlords are dealing with housing management issues.

One comment that was made at the evidence session that I referred to was that nobody in their right mind would go to court over antisocial behaviour. I worked in local authority housing as a head of housing for eight years and we regularly went to court on the ground of antisocial behaviour, because that is the correct way to deal with it.

Alex Johnstone: If you were a landlord who owned a single property that was up for rent, would you be prepared to go to court in those circumstances?

Tony Cain: We are talking about removing somebody's home. I do not know whether members of the committee have been present at an eviction. I have, and it is an act of violence. It is a very nasty thing to do to a household and I do not think that it should be done without evidence or grounds.

Alex Johnstone: You suggested that, in your public capacity, you were prepared to go to court in these circumstances. If you were an individual landlord who owned a single property, would you be in a position to take your case to court or would the fact that that is an expensive option exclude you from the legal process?

Tony Cain: If someone is a landlord, they have to play by the rules that the Government puts in place for the management of the sector, and they have to have some respect for the rights of the tenants they are renting to. If those rights are set out by legislation that requires a particular course of action to remove tenants for antisocial behaviour, that is the correct way to go about it.

When we get beneath many accusations of antisocial behaviour, the evidence says that something else is going on, and summary ejection on accusation seems to me to be an inappropriate approach to dealing with such issues. I asked why we would have different standards of evidence for tenants in the social rented sector and tenants in the private sector.

The Convener: I would like to bring in some of the other witnesses on the issue. Councillor McGuigan, do you want to comment?

Councillor McGuigan: Silke Isbrand is furiously writing down a wee note of something that I should say. I will ask her to say it to the committee. When we consider individual landlords who have one property, as opposed to institutional landlords, there will be differences—of course there will.

Silke Isbrand: As Councillor McGuigan said, our executive group will be looking at the issues in more detail, so we can speak about them only broadly at present.

I would answer the question with two points. First, we have been working as part of the private rented sector stakeholder groups for a long time now, and the general thrust of what we have taken from that is that there is a strong need for professionalisation of the sector. The issues that are being highlighted result partly from the fact that that is lacking . Where it exists, the issues can be dealt with in much better ways.

Secondly, as Councillor McGuigan highlighted, part of the challenge that we are faced with is that we have such a big difference between individual landlords, who might be renting out a flat for half a year while they are working in Hong Kong and who will find certain procedures a much bigger challenge, and big institutional investors.

We want to explore those issues with our members on 3 December and discuss how that tension can be resolved and whether there are opportunities to deal with it in different ways. I repeat that the real problem is the lack of professionalisation in the sector, and that needs to be dealt with.

Councillor McGuigan: I hate to repeat this, but I am anxious for some of these issues to be discussed and deliberated over at that meeting, when we will respond to questions on them. That may help you.

The Convener: Thank you, Ms Isbrand and Councillor McGuigan. Mr Haycox, do you want to come in on the same point?

Kenny Haycox: Yes. The burden for removing somebody for antisocial behaviour will be the same under the new proposals as it is under the existing law. If a landlord wants to remove somebody for antisocial behaviour, the test is broadly the same in the private secure tenancy regime that we have. However, we have landlords who do not want to evidence that behaviour and who are shortcutting the system by using the no-fault ground when they should use one of the grounds for antisocial behaviour, rent arrears or late payments of rent that we have in the existing scheme. Because of the overuse of short assured tenancies in circumstances in which Parliament did not intend them to be used, the easiest way to remove somebody is the no-fault ground. You will see other grounds being used, but that is right and proper.

We are very supportive of the proposal that these cases should not go to the sheriff court. The feedback from landlords is that going to the sheriff court is time consuming and problematic. Under the bill, the cases would be assigned to the first-tier tribunal, which is a streamlined housing chamber that will be able to deal with the cases very effectively. That is to be welcomed. We would be concerned if the cases had to go to the sheriff court. The proposal is that they will go through the more streamlined, quicker system that you are introducing in your wider reform of the justice system.

Clare Adamson (Central Scotland) (SNP): I will follow up the concerns about neighbours or co-tenants being reluctant to go on the record in such cases. What is your experience of that in relation to council housing? Is that an issue if there is antisocial behaviour?

Tony Cain: Absolutely—it is a substantial challenge. Particularly when there is genuine and severe—borderline criminal—antisocial behaviour, it is an enormous challenge to persuade neighbours that they will be safe if they come forward with evidence and that it is appropriate for them to do so. We face that challenge every day. I am not about to offer any particular answer to that, but I recognise that part of the work that antisocial behaviour officers up and down the country do involves having such conversations, persuading

neighbours to come forward and finding other ways of presenting the evidence—through professional witnesses, for example, or council officers.

In the public sector, I have seen victims come close to being evicted because the complaint of antisocial behaviour has been made by the perpetrator as a deflection. Only sharp reinvestigation at a late stage in the process has spotted that, particularly when the case has involved tenants with learning disabilities. I know of two disabled tenants who were the victims of antisocial behaviour but who found themselves in the process of having their tenancies terminated. In the end, the problem was spotted and the correct action was taken.

The burden of proof needs to be there, although it is a challenge and neighbours need to be supported to give evidence. There is no easy answer to the problem, but allowing summary removal is not necessarily an appropriate response.

Clare Adamson: Do you recognise that, although a local authority might have the capacity to provide that support, it would be a significant challenge for individual small landlords?

Tony Cain: Absolutely. However, most of the stock in the private sector is managed by investor landlords, not owners of single properties. Once someone has more than one property, they are an investor landlord, and there is a growing and increasingly good-quality management sector out there that provides landlords with professional management services at a cost and deals with such issues for them. If a change in the legislation to require more use of formal procedures also promoted growth in that professional sector, that would be a good outcome.

10:30

Councillor McGuigan: Clare Adamson asked whether, in such circumstances, the situation in the private sector would differ from that in the public sector. It would be no different: people would be fearful.

Someone came to see me about such an issue last week. There was drug dealing in another house and all the problems that are associated with that. I arranged a meeting with a senior member of staff in the housing department and the local police. After I had phoned the person to tell her that that arrangement was in place and that I would be there with her, she phoned me to say that she had decided not to take the matter any further, because she was frightened that she might have her windows smashed and so on. The situation would be no different in the private sector. It is an unfortunate aspect of human nature.

Clare Adamson: How will the bill change how rent arrears are dealt with? Representatives of landlords and of tenants' interests have told us that, for different reasons, rent arrears grounds can be quite draconian. I would like to get your interpretation of how the bill might change how rent arrears are dealt with. I would also like us to put that in the context of the pilots for the roll-out of universal credit. We have certainly seen increased rent arrears in the Highlands and Islands because of things such as people not being in receipt of their benefits for up to three weeks after their initial registration to be on benefits.

Tony Cain: I do not know whether you are asking me to comment on universal credit and welfare reform.

Clare Adamson: The main thing is the bill and how rent arrears will be dealt with, but if you could comment on the roll-out of universal credit, that would also be useful.

Tony Cain: The collection of rent is landlord 101, as the central transaction in the tenancy agreement is the obligation to pay and the requirement to collect. I have probably taken a rather harder line on the non-payment of rent than some of my colleagues, but when a tenant consistently does not pay the rent, there needs to be a sanction.

In the public and private sectors, the service is funded only from rent, so the non-payment of rent is a serious issue. As with antisocial behaviour, all sorts of complicating factors may be involved and tenants may be able to get back on to an even keel and to paying their rent in advance as the contract requires. It strikes me as not unreasonable to examine those issues as part of a process for removing a tenant for rent arrears.

Councillor McGuigan: The most important part of that answer is the examination of the issues. It is important that, if someone is in rent arrears, it is not assumed that that is because of pure indifference to their responsibility and that it is recognised that it may be because of serious issues. Assistance can be and is being provided through local services such as citizens advice bureaux, local housing offices, income maximisation services and so on.

Those are all very important but, as Tony Cain said, there will be those who do not care about those aspects and do not take the advice. There comes a time when the responsible step has to be one that has a more disciplinary nature, but that should always be prefaced by thorough work with the family or the persons concerned to assist them through what might simply be a difficult period.

Clare Adamson was right to refer to welfare reform and some of the consequences that have flowed from that for people, in relation to the extra room and that kind of thing.

Kenny Haycox: We certainly believe that this is another area where the removal of the no-fault ground will be of benefit, because the landlord will have to prove the rent problem as per the terms of the bill, whereas the no-fault ground is commonly used to mask the issue. For example, I dealt with a quite distressing call at the beginning of the year, when a landlord wanted to remove a tenant because of late payment of rent. I offered to put the tenant in contact with charities to mediate and it turned out that every December the person is slightly late in paying their rent. The landlord agreed that every January the rent was made up in full, but he had become bored of that and decided to evict the person on the no-fault ground. He used the no-fault ground to mask the problem when the law would not otherwise have provided for the eviction on the grounds of either persistent late payment of rent or actual loss to the landlord.

Removal of the no-fault ground is one of the things that will help to protect tenants and to manage the process. The terms that are laid out in the bill will have to followed, rather than the no-fault ground being used to mask the problem.

The Convener: I will ask about termination of the tenancy by the landlord—the eviction grounds. Section 41 empowers the first-tier tribunal to issue an eviction order against the tenant if, on the application of the landlord, the tribunal finds that one of the eviction grounds contained in schedule 3 applies. There are 16 eviction grounds in schedule 3—four are mandatory and 12 are discretionary. Do the eviction grounds that have been included in the bill achieve the objective of allowing landlords to recover their property in all reasonable circumstances, or should additional grounds be added?

Councillor McGuigan: We will discuss that at a future COSLA meeting. The grounds that are stated in the bill give reasonable coverage, but we might come back and ask for additional aspects to be included. I will not say what I think those are, if there are any.

The Convener: Thank you for that interim response.

Tony Cain: In its submission, ALACHO identified four grounds as an issue. Our view is that the balance has been struck in favour of the landlord rather than the tenant, and we would like that to be adjusted in particular areas. The four grounds that we picked out as being not entirely appropriate relate to when the landlord wishes to sell a property; when a lender repossesses a property and wishes to sell it; when a landlord has lost their HMO licence; and when a landlord has lost their registration.

Those are aspects of business change and business failure in the private rented sector. Allowing them as mandatory grounds in effect transfers the burden and the costs of business failure and change to the tenant and the public sector. If the private rented sector is to operate as a mature industry that is properly connected to the full framework of housing legislation and the housing sector as a whole, those things need to be dealt with differently.

I will give a couple of examples of other industries—one of which is probably not the best—where business failure is managed differently. In the travel industry, if an agent goes under while holidaymakers are abroad, arrangements are in place to ensure that those holidaymakers do not pay the price of that business failure; the ABTA arrangements will bring them back home in a reasonable way. Similarly, in the banking industry—although it is not the best example—quite a substantial sum of depositors' money is protected in the event of a bank failure. In both cases, those arrangements are priced into the way in which the industries operate.

We would argue that, when a property business fails—because the landlord fails to pay the mortgage or loses their registration or licence—it is inappropriate for the tenant to immediately bear the cost of that failure and for the public sector to pick up the fallout through the homeless persons legislation. I would extend that to the idea of giving a lender that had loaned to someone under a buy-to-let mortgage so that they could operate as a landlord a mandatory right of repossession and sale into owner occupation if the landlord failed. Those grounds seem unfair.

The same is true on issues of business change. If landlords choose to disinvest, they need to plan and manage that disinvestment and not simply load the consequences on other people. We have seen a couple of examples in which public opinion on the matter is clear. At the Agnes Hunter Trust in Leith and, less recently, the New Era estate in Hoxton, landlords have attempted to clear large numbers of tenants, which is simply not acceptable. In both those cases, that appears to have been stopped.

Clare Adamson: You mentioned situations in which a landlord loses their registration or HMO licence. Is there a danger that people might be reluctant to enforce those aspects? It is the local authority that enforces them, and it then has to deal with the homelessness that arises.

Tony Cain: In our submission, we said that that would have to be a factor in decision making. If an authority is thinking about de-registering a landlord

that has 50, 80 or 120 properties in an area, I cannot imagine that that would not be a factor in the thinking of the officials who were looking at the action and the likely fallout from it.

Councillor McGuigan: Given that that is a factor in the thinking of officers, there should be a more thorough examination of the alternative methodologies that could be adopted in that kind of multiple residence situation. Local authorities might wish to have the power to take over those multiple residences in order to manage them for a time, until an alternative solution could be found. Negotiation would be required—it is not a simple matter.

Kenny Haycox: We feel that the balance is right. The City of Edinburgh Council asked in response to the early consultation for grounds on landlord registration and HMOs to be added to the bill to reflect the current situation, where there have to be consequences for landlords that fail. Making people homeless is certainly not what we want or intend to do, but we were concerned that, if the bill did not provide for a landlord to lose out eventually because of their business failure, those two regimes would lose their impetus. What use is an HMO licensing scheme if there is no consequence for a landlord that loses their licence and their business continues as normal?

There is clearly room for improvement in that area through having additional powers, and we would be open to considering how addressing such business failure could be improved. However, we are just looking for parity between the bill and what the regime is at this moment.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): I want to ask about a provision in the bill on the initial tenancy. Section 43 provides that, during the initial period of the lease, the landlord can end the tenancy using any of five out of the 16 eviction grounds. Do you have any comment on that? I understand that you have criticised some of the five grounds, Mr Cain.

Tony Cain: Yes. In particular, the one where the lender wishes to sell seems inappropriate to me. That is no more appropriate during the initial six months of the tenancy than it is later.

Adam Ingram: What about the initial tenancy idea? Do you have any comment on that?

Tony Cain: I think that the consensus in the evidence is that people are broadly supportive of the idea—as are we—that a tenant can be evicted for non-payment of rent or antisocial behaviour, and that is also appropriate during the initial tenancy. That relates to default and lender repossession, and I do not have any difficulty with that.

From a public sector point of view, the idea of an initial tenancy is slightly different. Most local authorities use weekly tenancies, but the investment context is very different. The argument that was made was that landlords need some certainty around the start-up costs for letting a property and that knowing that they are going to have a tenant for six months seems to be a reasonable balance for them against that part of the process. That seems to me to be perfectly reasonable and sensible.

Adam Ingram: What would you do to change the provision about the five grounds during the initial period of the tenancy? How would you tweak the bill in that regard?

Tony Cain: In our written evidence, we ask for removal of the grounds that we highlight because we believe them to be inappropriate.

Adam Ingram: Would that leave any grounds?

Tony Cain: For repossession?

Adam Ingram: Yes.

Tony Cain: The breach of tenancy terms would still be there, such as non-payment of rent and antisocial behaviour. The grounds that we have picked up on are in essence about business change and business failure. In effect, the landlord would transfer the cost of that to the public sector and the tenant.

Adam Ingram: Does anyone else want to comment on the initial tenancy?

Councillor McGuigan: I amplify the last point that Tony Cain made. At the end of the day, local authorities can be landed with the responsibility for dealing with the calamities that result from terminations of the sort that are described. We do not have sufficient resources to be able to do that in the way that we should.

We are working hard on the homelessness targets and we have done very well there. However, section 43 places an added requirement on us. We would try to deal with it in the best possible way, but there is not an easy answer to this, to be honest. I do not know whether the proposals in the bill will enable us to deal with the extra requirement any better, unless the resources are made available for us to meet the demand that would result.

10:45

Adam Ingram: Mr Haycox, do you have any comment?

Kenny Haycox: The initial period of let is a reasonable compromise for landlords, who undergo significant costs when setting up a tenancy—costs that the Parliament has decided

they should not be able to recover in any other ways, by banning premiums. We welcome that. Therefore, it is not unreasonable to say that a landlord should be able to expect a minimum length of tenancy.

I seem to recall that, when the Scottish Government conducted a review of the private rented sector several years ago, it found that there was great support for the initial six-month tenancy and people did not want to see it reduced any further. We think that it strikes a reasonable balance between the needs of tenants and landlords' need to have a wee bit of certainty about the costs that are associated with setting up a tenancy.

The Convener: Councillor McGuigan, I am conscious of the pressure on your time, but we have only a few short questions left before we end the evidence session. I ask you to bear with us.

Clare Adamson: I have a supplementary question on the six-month tenancy. Do you have concerns that for some tenants—perhaps people who are fleeing domestic violence—the six-month tenancy could be quite restrictive and not offer the tenant any flexibility?

Tony Cain: Evidence to that effect was given at previous hearings, and there is a risk around that. I have also spoken to private landlords who have been faced with that issue and whose response has been to be flexible and supportive and to assist the tenant out and on and help them to remove themselves from that risk.

We are striking a balance with the six-month tenancy. The provisions allow the tenant and the landlord to agree a shorter period if the tenant requests that. A tenant who feels that they might be at risk could ask at the beginning of the tenancy for a shorter period. In the end, these are all compromises that are bound to be imperfect. What you describe is a real risk but it is a challenge that we would hope a responsible private landlord would meet with a sympathetic and appropriate response.

If the alternative is to create a particular ground for termination where the tenant would genuinely be at risk if they remain in the property, I suspect that that would be difficult to evidence and to draft. In the end—I probably would say this because I am a bloke—we might be living with a compromise around those issues. Equally, though, I can see why you would want to make some specialist provision in order to protect against that risk.

Councillor McGuigan: Where there is a will in such a situation, there will be a solution. A solution can be found, and it has to be found because it is an absolute affront that that can take place and be tolerated, whether the tenancy is for three months or six months.

Clare Adamson: Thank you.

Adam Ingram: I want to ask about the wrongful termination regime in the bill. It seems to many people that the bill contains little in the way of teeth to address situations where landlords use grounds for eviction as a smokescreen. For example, the reason that they give could be that they want a member of their family to move into the property. That might happen, but further down the line it might become clear that they were not looking to put somebody in.

What checks are there in the system for that? Is it just another convenient ground for eviction that should be looked at? What is the regime like at present? Does the bill do anything to tighten it up? Are the penalties in the bill for wrongful termination significant enough to deter the action that I described?

Councillor McGuigan: I certainly hope that the bill will help to enable deterrence of that sort. We see that kind of eviction happening on a regular basis.

Local authorities need to be more diligent in this area and to consider the background to the issue. Some would say that their responsibility with regard to housing is to look after their own properties, but we also have a responsibility to look at how licensed operators conduct themselves, including in a situation where the owner of a single property says that they want to pass it on for a particular reason but is using that as a cover for something else. We have to be aware of that and to find ways of countering such circumstances. We will think about possible amendments that would deal with that.

As Ms Adamson said earlier, situations arise that leave people frustrated, but the bill does not allow us to assume that they will be easily dealt with. The system that is outlined in the bill will still leave us with problems.

Tony Cain: The grounds exist but they are not used at present, because the no-fault ground is used instead. A landlord who intends to sell or to move into the property will never say that; they will simply use the no-fault ground. That means that there is no experience of using the grounds. ALACHO's view is that the grounds need to be removed. If you need to make a particular arrangement for a situation in which a landlord is genuinely the previous occupier of a property, that might be appropriate. Otherwise, we would simply like the grounds to be removed.

If the grounds are to remain and you are going to allow eviction on a landlord's statement of intent—that is what we are talking about; a landlord would simply have to say, "I intend to do this, so will you please put this person out of their home?"—the penalties need to be far stronger and

more punitive than the ones in the bill. A penalty of up to three months' rent—I stress that the bill says "up to"—at the discretion of the tribunal does not send a sufficiently strong message about potential abuse. There ought to be a third-party referral route as well.

Adam Ingram: That would enable local authorities and others to help the tenant in that situation.

Tony Cain: The tenant might well have moved out before evidence that the landlord had been disingenuous was available.

Part of the issue is about connecting the bill to other pieces of housing law. There needs to be a connection between what the bill says and what the legislation on landlord registration and HMO licensing says so that landlords who can be proved to have used the grounds disingenuously are at risk of losing their registration or their licence.

My view is that, if you are going to allow eviction on statement of intent, the sanctions for abuse of that should be more punitive than the ones in the bill.

Adam Ingram: However, prevention is better than cure, so you would take the grounds out of the bill.

Tony Cain: Why would you give an investor landlord the right to remove a tenant on the ground that they or a member of their family are going to move in? An investor landlord runs a business and does not have a selection of houses that they might want to put some of their family or friends in. They are investing in property for a return. You have to treat the sector as a mature business sector and not take the approach that has been taken previously, which involves making a series of compromises and saying that these people are really the owners of houses but we have to make some concessions to tenants.

Adam Ingram: Do you have a view, Mr Haycox?

Kenny Haycox: As Mr Cain indicated, the grounds are broadly the same as the existing regime and they are not tested regularly because of the existence of the no-fault ground. We occasionally see circumstances that could be perceived as disingenuous use of the grounds, with family members moving in for short periods of time. However, it is difficult to evidence ill-intention. It is perfectly legal to move a family member in for a month or so; in the current regime, there is no penalty for that. We welcome the fact that the bill includes penalties for abuse of the grounds.

To see how effective the bill will be, we will need to see how easy it is for a tenant to go to a first-tier tribunal and get that compensation. We find that, under the similar scheme for tenancy deposits, going to the sheriff court is quite a burdensome process and a lot of tenants choose not to access justice in that way. We hope that the barrier to justice will be significantly reduced under the first-tier tribunal.

Councillor McGuigan: You should remember that the local authority will be the organisation that is called upon to assist the tenant in a situation such as going to the tribunal. Once again, there will be a demand on local authorities to step up to the challenge, but the resources to do that do not always accompany it.

Alex Johnstone: The grounds that ALACHO suggests should be removed are perhaps irrelevant in the context that you describe, but they are essential if we look at rural and farming communities, where families traditionally move through properties. I once kept a house empty for seven years before my son went into it. That was a terrible thing to do. It could have been occupied by someone under a rental arrangement, but I was afraid to do that. I would seriously worry about the grounds being removed in case it causes people to make decisions on the same ground that I did.

Tony Cain: My response is that, where we are talking about individual properties and individual owners, separate arrangements may or may not be appropriate. Over the piece, however, the issue is that a substantial business sector needs to be managed in a way that encourages professionalism, encourages individual landlords to use professional agents to manage their properties and encourages planning around investment, disinvestment and business failure so that the risks around those things and their impacts on the public sector and on tenants are minimised.

There will always be—as we have talked about for victims of domestic violence—areas of compromise and of risk. It is not going to be a perfect world, but the core issue is how we see the private rented sector operating, how it fits within the wider framework of the housing system and housing provision and how it relates to public sector provision and other legislation. There is a balance to be struck. I am making a case for a particular approach.

Councillor McGuigan: Alex Johnstone makes a serious point that should be considered. It takes us back to the whole issue of housing across Scotland and the need for us to build more houses. We can look for specific solutions to this little bit and that little bit, but the bottom line is that we need to start building houses again in Scotland.

The Convener: That is probably a good point on which to end the session, unless witnesses have any final comments on the bill that they do not think have been adequately covered so far.

Tony Cain: I have one observation. The private rented sector is largely a product of the tenancy regime that we have in place. That has set a framework, created a culture and created business opportunities, and those business opportunities have been taken and developed. If we look at the student market, for example, it is the short assured tenancy and the holiday let exemption that have allowed that market to grow in the way that it has and allowed that investment and those businesses to grow.

One of the difficulties with changing the regime is that we cannot be certain how the change will be reflected in business culture in the future. Investors will adjust and change the way in which they do their business in order to ensure that they continue to generate a return.

It is important—and much of the bill does this—to drive landlords towards a more professional approach to managing their properties. It formalises routes in and out of the sector for landlords, tenants and properties, and that is to be welcomed. The suggestions that ALACHO has made regarding particular grounds are about strengthening that cultural shift in the sector, which the bill will undoubtedly generate once it is in place.

The Convener: I thank the witnesses for their evidence this morning.

We look forward to further written evidence from the Convention of Scottish Local Authorities following its meeting on 3 December. That will not come in time for the committee's final evidence session with the minister, but I am sure that it will inform our deliberations and enhance our understanding of the bill.

10:59

Meeting suspended.

11:02

On resuming—

The Convener: The second panel of witnesses to provide oral evidence on the Private Housing (Tenancies) (Scotland) Bill today largely represent the interests of legal bodies. I welcome Mike Dailly, solicitor advocate and principal solicitor at Govan Law Centre; Chris Ryan, senior associate solicitor and head of the housing and general team at the Legal Services Agency; and John Sinclair, member of the property and land reform committee at the Law Society of Scotland. Do any of the witnesses wish to make short introductory remarks?

Mike Dailly (Govan Law Centre): I am quite happy to make a brief opening statement. From Govan Law Centre's perspective, the intentions behind the bill are very good. Ultimately, the Scottish Government wants to simplify and modernise the law with respect to private lets. The Minister for Housing and Welfare has said that, ultimately, she wants to protect the 700,000 folk who live in the sector in Scotland by providing more security and stability, so we think that the Scottish Government's aims are very good indeed. The problem, which we will obviously have some time to go into, is in the execution. We do not think that the bill, as drafted, lives up to those very good ambitions. We hope to persuade the committee as time goes on that the bill needs to be amended.

Chris Ryan (Legal Services Agency): Likewise, the LSA broadly supports the bill's objectives. We realise that there is increasing demand for and reliance on the private rented sector in relation to housing need in Scotland. We have seen that with the current generation, who can no longer afford a deposit to buy property. We have also seen it increasingly with those who would be in social sector housing but for the fact that there is not sufficient housing for them. Given that context, we appreciate that there is a requirement for improved security of tenure.

However, as Mike Dailly just said, there are potential problems with the bill's execution when it comes to providing adequate protection for tenants, who have little choice and who otherwise might be in the social sector and have greater security of tenure. The key point is that the bill does not provide that balance between the rights and interests of landlords and tenants. That is something that we will be able to go into as we look through the bill.

The Convener: Okay. Mr Sinclair, do you want to say anything at this stage?

John Sinclair (Law Society of Scotland): No.

The Convener: Mr Ryan pre-empted my initial question, which is whether the Government has managed to strike the right balance between improving security of tenure for tenants and providing the appropriate safeguards for landlords, investors and lenders. I asked the previous panel that question, too. Does anyone want to comment?

Chris Ryan: There is really no issue with the six-month initial term, which seems to provide a sensible balance for both landlords and tenants, and it is clear that the parties can agree a different term at the outset of the tenancy if they wish to do so.

On striking a balance and the grounds for eviction, which we can go into in more detail, there are issues in relation to the fact that there is no room for the tribunal to assess the circumstances that give rise to those grounds. There are grounds whereby the landlord can give notice of his intent to move into or to sell the property, but there is no room for discretion in relation to the rent arrears ground, for example. If that ground is satisfied, the tribunal is not in a position to take into account the reasons for arrears increasing, for example, or any offer that a tenant has made to repay arrears. I am happy to go into that in more detail.

The Convener: Okay. Thank you.

Mike Dailly: We think that the 16 grounds, which are more or less mandatory, go so far that they remove any security of tenure for tenants. In some respects, we could say that they are so powerful and so mandatory that they are the equivalent of giving a tenant a zero-hours contract on their home—and I do not say that lightly.

In our experience, there are really two sectors in the private rented sector in Scotland—

The Convener: Mr Dailly, for our understanding of the bill, will you clarify for us that you are talking about the 16 grounds for eviction?

Mike Dailly: Indeed.

The Convener: Our briefing on the bill suggests that four of those grounds are mandatory and 12 are discretionary, but you are saying that in effect they are all mandatory. Will you explain that?

Mike Dailly: Absolutely. You are quite right. Technically, 12 are mandatory and four have some element of reasonableness, but the reasonableness requirement is incredibly focused and narrow. In relation to home owners or tenants in the social rented sector in Scotland, the Parliament introduced a fantastic reasonableness test that requires the court to look at a number of different factors, such as the history, the person's circumstances and the impact of the repossession or eviction on other occupiers of the house, such as children and disabled persons. However, in the bill, there is a very narrow view of what is reasonable in terms of the facts. That is why we say that there is very little room for manoeuvre.

Ultimately, although I wholly accept that the Scottish Government has said that it will remove the no-fault ground, the problem is that so many mandatory grounds have been created that that effectively supersedes the Government's good intentions.

I will give one brief example. As I said, in our experience, there are two sectors in the private rented sector. There is the nice sector, in which people have lots of money and choice, and the sector for everybody else—for people who do not have lots of money and who have no choice. In our experience, landlords in the latter sector often just ignore the law. They break the law and do whatever is required to get their property back.

Under ground 1 in the bill, all that a landlord will need to say is, "I intend to sell my house in the future." They will then be able to evict, and that will be that. What is interesting about that ground is that it undermines the Leases Act 1449, which is the second-oldest act of the Scottish Parliament in existence. Believe it or not, that is still good law in Scotland. It was passed because farmers who grew crops had rich landowners who sold the land to their mates, who would then inherit the crops. It has always been the case that a person who sells a tenanted property in Scotland sells it with a sitting tenant. In one fell swoop, the bill would put that act out of the window.

The Convener: That clarification is very helpful.

I should correct my question, as I got things the wrong way around. There are 12 mandatory grounds and four discretionary grounds.

Does Mr Sinclair or Mr Ryan have anything to add to the points that have been made so far?

John Sinclair: The Law Society has looked at the grounds for eviction and we felt that they were complete. Comments about the grounds are more policy based than technical, so it is not an area on which it would be suitable for us to comment.

Chris Ryan: The Scottish Parliament acted promptly in relation to the credit crunch and the recession by introducing safeguards for home owners. The Home Owner and Debtor Protection (Scotland) Act 2010 means that home owners have an opportunity to appear at court and state their case, and the court has to consider reasonableness.

A range of measures have been taken over the past decade or so that were designed to minimise homelessness, which is the key concern. For example, pre-action requirements were introduced in social sector cases, under which a landlord must assist a tenant as far as possible in reaching an agreement to resolve any issues, with eviction seen as a last resort. We must ensure that eviction is indeed seen as a last resort in private rented sector tenancies. The concern about the grounds in the bill—particularly in relation to the rent arrears ground—is the very low threshold in establishing them, which could result in families becoming homeless.

The Convener: I want to tease out the issues around the removal of the no-fault ground. Mr Dailly, you said that you welcome the provision in principle but that you worry that its practical execution may be undermined by other provisions in the bill. The removal of the no-fault ground has

been broadly welcomed by organisations that represent tenants—clearly, they think that that will have some benefit for tenants.

Mike Dailly: That is why I said that the Scottish Government's intention—what it is trying to do—is fantastic. No one has any issue with that. However, the problem lies with the drafting of the bill. The devil is in the detail. We heard from the previous witnesses that, at the moment, when a landlord wants to get rid of a tenant they just use the no-fault ground. I am suggesting that, in future, unless we correct the bill, a landlord would simply have to say that they would like their brother, or their grandchild, to move in. How could anybody dispute that, as a matter of practice? The LSA and Govan Law Centre defend tenants day in, day out, and we see how these things work in practice. If, following the bill's passage, a landlord said, "I intend to move a member of my family into this property within the next three months", how could we defend such an action? I do not think that we could. Another example would be when a landlord wanted to refurbish their property at some point in the future. How could I possibly argue against that, given that it would be a future intent?

The Convener: How do you suggest we strengthen the bill's provisions to enhance tenants' rights?

Mike Dailly: It would be helpful if some of the grounds in the bill were removed—we have set that out in our written submission to the committee. We could remove or modify some of the grounds by having a reasonableness test, but when it comes to the ground that the landlord wants to sell the property, we have a complex problem. It is a result of what has happened in the private rented sector in Scotland, which has trebled in the past 15 years and is a completely different creature. Since 2008, we have seen a 40 per cent increase in buy-to-let mortgages throughout Scotland. A lot of the rental market has been fuelled by people buying with buy-to-let mortgages. People may have to sell those properties for very good reasons and we need to grapple with how we enable those landlords to sell their properties if they get into financial difficulties, while at the same time protecting the tenants' rights. The issue is complex. However, enabling a landlord to sell a property at the drop of a hat undermines all the Scottish Government's good intentions.

Chris Ryan: We would support an amendment to the intentionality test so that the tribunal is able to properly test intention. As the bill is drafted, there is an issue with how the tribunal would assess whether an intention had a real prospect of coming to fruition.

Many people—including those on the previous panel—have commented, on the difference between institutional landlords and landlords who have only one property. That could be dealt with through the introduction of the concept of reasonableness, because that would allow the tribunal to assess the landlord's circumstances and weigh them against the tenant's circumstances. The tribunal might make a different decision for a landlord who has only one property from the decision that it might made for a landlord who has multiple properties. The latter could perhaps bear the brunt if, for example, a tenant fell into rent arrears for a couple of months but, with the right support, advice and representation, made a proposal to pay them back. It is about giving the tribunal that discretion.

We are creating the tribunal, and responsibilities are being transferred to it. Members of the tribunal will be specialists, with vast experience of housing law and knowledge of social welfare law. At the moment, however, there is a real risk of the tribunal simply rubber-stamping eviction actions, although its members will be able to test reasonableness, go into the detail of those disputes and make balanced decisions, as they will have knowledge of landlord-tenant disputes.

11:15

Clare Adamson: I have a short supplementary on the refurbishment ground. Is there a definition of refurbishment? What would the extent of any refurbishment have to be in order for it to qualify as a reason for eviction?

Mike Dailly: As I recollect, there is no definition in the bill at the moment. You have hit the nail on the head. That is the problem. I can see why the draftsperson has come up with the refurbishment ground—they did so because the bill gets rid of the no-fault ground. The challenge then is how we enable a private landlord to deal with a property in a reasonable and balanced way. It is a balancing exercise, but the way in which that provision is currently drafted means that it would be open to abuse.

I appreciate that the committee heard evidence last week from the private landlord sector, which painted a particular picture about that sector. I suggest that it is much more complicated. The idea that I present is that it is a tale of two cities. There is the executive who is looking to move for a job and has the power of choice because they have a good income, a good credit rating and so on. As we heard from the previous panel, lots of people end up in the private rented sector because they have no other choice—they have been evicted from the social rented sector or they have lost their house, which can happen for all sorts of reasons, such as family or relationship breakdown.

At the end of the day, the private rented sector is a business—it is a commercial entity. In my respectful opinion, we should be looking at that sector from the viewpoint of the tenant—the consumer. What difference should it make whether their landlord has 100 properties or one property? Why should the tenant be treated any differently? Let us think about consumer protection law. If I buy a kettle from a wee shop down the road, I have the same protection that I would have if I had bought it from Tesco. I am presenting an interesting dilemma: who are we trying to protect, and in what way?

Alex Johnstone: The question that I have in front of me has been addressed to some extent, so I will replace it with a slightly different question. Do the witnesses believe that there are any reasonable grounds for a landlord to reclaim a property?

Chris Ryan: I do not think that there is any real dispute that there can be reasonable grounds for a landlord to take back a property. However, those should be balanced against the rights and interests of the tenant. That is the concern.

The previous panel mentioned antisocial behaviour cases, where the test for establishing grounds will be broadly the same as it is in the current regime. However, in the current regime there is discretion. In making a decision, the court can take into account all the facts and circumstances. We are not saying that there will be no situations in which eviction is reasonable and eviction orders should be granted, but the failure to allow the tribunal the opportunity to consider all the circumstances—

Alex Johnstone: I interpret your answer as being, "It depends." If I was a landlord who was about to enter into a contract to let a property, I would expect some clarity at the outset about the rules. What I am getting is a description of a situation in which no landlord would know what the rules were at the outset.

Mike Dailly: To answer your question head on, the landlord must be able to get the property back if somebody is not paying their rent. That is particularly true if they are financing the whole deal through a buy-to-let mortgage. How can someone run a business without money coming in? Nobody has any qualms about that.

All that I and my colleague Chris Ryan have suggested is that there should be some reasonableness test, otherwise it is a potential sledgehammer. A landlord needs to be able to get the property back if somebody is not paying the rent or if they are causing mayhem and chaos through antisocial behaviour—although we should remember that such behaviour can sometimes really be a dispute between neighbours. Indeed, the reasonableness test would make sure that we do not end up identifying someone as a bad person when they have mental health problems, are not well and might need help.

The final ground is that the landlord needs to sell the property. I accept that that might have to happen. However, why have ground 14, which says that if the landlord is not registered, it means mandatory eviction for the tenants? It is almost like saying, "Your landlord does not bother to respect the law of the land, so you will be evicted." That does not make any sense. Let us make the grounds fair and business-savvy. To do that, we need much more finessing of the drafting.

Chris Ryan: The one-size-fits-all approach just does not work in the sector. There are different landlords and diverse landlord-tenant relationships. There are different types of landlord and many different types of tenants in different circumstances, so it is vital that the tribunal is allowed the discretion to weight those interests properly.

For example, under the rent arrears ground—ground 11—the tribunal must establish that the tenant has been in arrears for three or more consecutive months, and that the total arrears equates to one month. That is a very low threshold. Under the current drafting, although a landlord might decide not to go ahead with eviction action at that stage, the ground could still be established two years later, so there could be a retaliatory eviction a couple of years later—the ground could be established because the tenant was in default previously. That must be looked at.

The Convener: What should the threshold be?

Chris Ryan: Under the current regime, arrears over three months in total are a mandatory ground for eviction. However, under the bill, if the rent is £500 a month and you are behind on your rent by even one day over three months, as long as the arrears equate to £500, the tribunal must grant the eviction order unless there is a delay in the payment of housing benefit. Such a delay is a delay by the housing benefit office; the ground does not take into account tenants who might have mental health difficulties and might not have supplied the right information to the housing benefit office, so although the fault really lies with the tenant, there are justifiable reasons for that delay.

Each week, we represent approximately 30 tenants in the eviction court at Glasgow sheriff court, involving mainly social sector tenancies. With appropriate advice, assistance and representation, most of the cases are resolved; the difference between a represented tenant and one who is not can be stark. You should look at the funds that the Government has put in place in

relation to welfare reform to ensure that there is appropriate advice.

We are not saying that the introduction of a reasonableness test is a tenant's charter that will mean that the landlord cannot take back their property. We need to put in place the appropriate safeguards—advice, assistance and representation—to allow landlord-tenant issues to be resolved. The new tribunal provides a real opportunity to achieve that.

Alex Johnstone: Regardless of whether you think that it is a good thing or a bad thing, it has been suggested to us that the no-fault clause has been used in the past to substitute in some more difficult cases for grounds that already exist. We have already mentioned antisocial behaviour. Landlords' representatives have put it to us that requiring a landlord to prove antisocial behaviour—if the alternative no-fault ground no longer existed—could be very difficult, because neighbours will be unwilling to give evidence and, as a consequence, it may actually result in additional friction between landlords and tenants.

Mike Dailly: I am not convinced that that would be the case. I say that because the drafting of the antisocial ground—ground 13 in schedule 3 of the bill—makes it mandatory. All that someone has to establish is some antisocial behaviour; if that is established, a first-tier tribunal will have to grant an order to eject.

The reason why it is so complicated in the social rented sector is because eviction actions are often able to be defended on the grounds of reasonableness when it comes to antisocial behaviour. For example, we see lots of cases where someone has been engaged in taking drugs or even, in some cases, dealing drugs on the premises. They are prosecuted and fined and perhaps even go to prison. What happens is that by the time the case gets into court, the tenants defend it on the basis that they have modified their behaviour and are able to say that they have stopped doing the things that caused the problem. It then becomes an issue of whether it is reasonable to evict that person.

The way that the antisocial behaviour ground is drafted in the bill means that it is simply mandatory; that in turn means that it will not create the difficulty that you describe, Mr Johnstone. However, I would say that, if we do not have some checks and balances on that ground, the danger is that people could be evicted unfairly. Over the years, I have seen cases where people have just never been liked by their neighbours, who have decided to put in complaints about them, saying that they did this and that. Someone could find themselves being evicted in that situation, because their neighbour could present the evidence and be believed and they would not be able to defend it on reasonableness.

At the end of the day, if someone is genuinely antisocial and are being very unpleasant and causing grief and misery, they need to be dealt with and removed. However, under the provision as currently drafted, we could end up with people being removed who—I hesitate to say it—are ultimately innocent.

Chris Ryan: There is a further issue in relation to the criminal behaviour and antisocial behaviour grounds. There was reference in the earlier session to victims of domestic violence. We can envisage a situation in which the perpetrator of domestic violence is convicted of a domestic violence offence, which gives rise to an automatic ground for eviction of the victim. That cannot be Parliament's intention in such a case and is something that requires consideration.

Siobhan McMahon (Central Scotland) (Lab): I have a point of clarification. Mr Dailly, you said that the antisocial behaviour ground is mandatory, but in evidence last week we heard that it was discretionary and the people giving evidence were asking for it to become mandatory. Why do you think that it is already mandatory?

Mike Dailly: I am looking at paragraph 13 of schedule 3, where it simply says:

"It is an eviction ground that the tenant has engaged in relevant anti-social behaviour."

It then sets out what is meant by antisocial behaviour. That is that.

Chris Ryan: It is also my understanding that the ground is mandatory. Again, my experience of defending antisocial behaviour cases is that there is a low threshold to establish antisocial behaviour. Acts that may or are likely to cause someone alarm and distress are enough to establish the ground. Often the cases are defended on the basis of reasonableness, and we will find that the tenant who is accused of the antisocial behaviour has their own issues and with the right kind of support they can resolve the problem. We think that reasonableness in relation to the conduct grounds should be included in the bill.

John Sinclair: There might be a slight blurring between mandatory and discretionary in terms of what they mean in the real world. My understanding of the ground for eviction for antisocial behaviour is that it requires a finding of antisocial behaviour. Therefore, if antisocial behaviour is found by the first-tier tribunal, it is a mandatory ground, although an element of investigation is required. There is a step that makes it not entirely mandatory, but not discretionary.

I am sorry if that was rather badly explained. Basically, it is not a question of tick box and evict: there is a process of investigation.

The Convener: I knew that there was a reason why the Law Society had to be here today.

John Sinclair: I may have peaked.

The Convener: I am sure that that is not the case.

11:30

Adam Ingram: There has been some dispute about which of the grounds are mandatory and which are discretionary. We heard earlier that 12 grounds are mandatory and four grounds are discretionary. Is that your interpretation or does the explanation of the antisocial ground that has just been given apply to many or all of the grounds?

Mike Dailly: The easy way to look at it is that there is an element of discretion only when the word "reasonable" or "reasonableness" is mentioned in one of the paragraphs in schedule 3. All the other grounds say that there is a need to establish a fact, such as the intent to sell or antisocial behaviour. John Sinclair is right to say that that means that the tribunal has to have evidence and has to accept whether that evidence is credible in order to consider that the fact is found, in which case the result is eviction. However, the grounds that talk about something being "reasonable" give the tribunal the discretion that we are referring to. You are right to say that there is that split.

The point that I made at the outset is that, when we look at the reference to how the word "reasonable" is used in the bill, it means reasonable only with respect to the establishment of that fact, whereas in the Home Owner and Debtor Protection (Scotland) Act 2010 and the Housing (Scotland) Act 2001 the reasonableness test is very sophisticated. It is the same in both acts: the test requires the court to look at a number of factors and then consider all the circumstances in the case. We do not have that in the bill, even in the reasonableness grounds.

That is why I would say that the pendulum in the bill has swung far towards the landlords. You might say that the price for that is the removal of the non-fault ground, but that price is too high if ultimately the balance has swung too far.

Adam Ingram: Perhaps Mr Sinclair can expand on his definition. Mr Dailly seems to be saying that there will be an investigation up to the point where a finding is declared, as it were—it is either antisocial or it is not. Mr Dailly argues that, thereafter, there needs to be consideration of the circumstances and the reasonableness of eviction on the basis of that finding. Is that correct?

Mike Dailly: It is not currently in the bill, but we would argue that it should be.

Adam Ingram: Would your explanation in respect of the antisocial ground apply to other grounds, Mr Sinclair? Would the tribunal have to make a finding and would there be an investigation up to that point?

John Sinclair: It is probably better that we come back in detail, in writing, on that point. For the purposes of this morning's meeting, I point out that, by its nature, eviction ground 13 on antisocial behaviour involves an assessment of facts that are theoretically capable of objective determination but in practice are probably not. In comparison with eviction ground 1—the landlord's intent—eviction ground 13 is inherently a much harder concept for the tribunal to test. Therefore, there is a difference in the effect of the various mandatory grounds.

Alex Johnstone: Of the 16 grounds for terminating a tenancy, only five would be available during the initial period of a lease. Some of the groups representing landlords suggested that they would like more of the grounds for terminating a tenancy to be available to them in the initial period. What do you think about the five grounds that have been singled out to be used in the initial period? Are there arguments for some of the other grounds to be brought into that period?

Mike Dailly: Given that the worthy intention of the bill was to simplify, I am not convinced that having an initial tenancy and then another on-going tenancy will necessarily do that. It would be simpler to have one tenancy and certain grounds of eviction that would apply to it across the board.

When I answered Mr Johnstone's question earlier about the circumstances in which someone should be removed from a tenancy, we talked about very serious acts of antisocial behaviour and where rent had not been paid without reasonable explanation. Those circumstances should apply as a general proposition in relation to the original tenancy. I am not convinced that simplification is achieved by introducing the complexity of an initial and an on-going tenancy.

Chris Ryan: If discretion is built in, there can be an assessment in that initial period of whether it is reasonable that someone who has recently entered into a tenancy should lose it for whatever the purported ground is.

The Convener: If Alex Johnstone has no further questions, we move to Mike MacKenzie.

Mike MacKenzie: Thank you, convener. I have three questions but, with your indulgence, I will wrap them up into one. Some of the territory has already been well covered.

Do you have any concerns about whether the wrongful termination provisions in the bill are adequate and whether they are sufficient to prevent a moral hazard? Should third parties be able to raise a competent action on behalf of tenants? Looking at the other side of the coin, will the new tribunal improve access to justice for landlords?

Mike Dailly: It is clear what the bill is trying to do with the wrongful termination provisions. Those who drafted the bill realised that many of the grounds in schedule 3 are based on intention, which we have already said is a very difficult concept. They came up with the wrongful termination provisions to counterbalance that.

I do not see the provisions working or having any teeth. First, if a landlord lies to the tribunal and says that he or she is going to move a member of the family into the property as an excuse to get rid of the tenant for whatever reason—perhaps they did not like the tenant or the tenant was late in paying—it will be incumbent on the tenant to ingather the evidence, like a private detective, to be able to prove that the tribunal had been duped.

In the private rented sector that I described at the outset, in which tenants have no choice and are pretty desperate, when someone is evicted that person will not in reality look for evidence. Instead, the person will be looking for somewhere to live as their number 1 priority. Finding evidence will be the last thing on that person's mind in their moment of crisis. Six months down the line, the person may think about it and wish that they had done something. I cannot see in practical terms that evidence coming to light in the tribunal.

Secondly, it is crazy that the penalty is only the equivalent of three months' rent. At present, if someone lied and evicted a tenant with no due process, it would be considered unlawful eviction and statutory damages, which could be many thousands of pounds, would be imposed. Some people who were running HMOs in Scotland were happy not to have a licence because the fine was such that they considered it worth paying, given the money they were making. Setting the penalty at three months' rent is completely wrong; in fact, I would go further—I cannot see that the idea would work in real life.

We could remedy that, make it all work and deliver the Scottish Government's aims, by getting the grounds of eviction right. Everything else then fits into place.

Mike MacKenzie: Thank you. Are there any other comments?

Chris Ryan: Similarly, I believe that the sanction is not high enough if the grounds are to remain as they are. Currently, there is a sanction against landlords whereby the courts can award up to three times the deposit if a landlord does not comply with tenancy deposit regulations. A similar figure could be considered for someone being wrongfully evicted and losing their home, with all the costs that go along with that, including having to find another property and a deposit. It would be a real deterrent to a bad landlord if utilising the grounds incorrectly meant that they faced a penalty of three months' rent if a tenant followed up, made the inquiries and application, and so on. If the grounds for eviction are properly addressed and the court or tribunal has discretion to weigh up the balance, that will avoid having to look at the issue at the end of the process.

On access to justice, an accessible tribunal would be appropriate for both landlords and tenants. From the tenants' perspective, it will be key that there is an opportunity to get advice, assistance and representation and that legal aid is available—it is not currently available for the first-tier tribunal. Some of the grounds will be disputed, either in the facts or if there is an aspect of reasonableness, and tenants who are at risk of losing their homes, which is an extreme form of interference with their right to have their home respected, should have the opportunity to have appropriate representation. On the face of it, an expeditious process of resolving disputes such as a tribunal is a positive aspect, but that must go hand in hand with the fundamental principles of the right to a fair hearing and access to support.

Mike MacKenzie: I have one brief further question, with which I hope to get some perspective on the problem of antisocial behaviour. It is on criminal justice generally and the typical penalties for bad behaviour. How bad a boy would I have to be for a judge to evict me from my home, given that it would not be just me getting evicted—I suppose that I could sleep under a tree or a bush—but my family as well? Are the provisions in the general body of criminal law for dealing with antisocial behaviour not sufficient to deal with the problem? Should we be trying to deal with it at all within the scope of the bill?

Mike Dailly: You raise a fascinating ethical dilemma. What you have described could be thought of as double jeopardy, and the courts have grappled with that in the social rented sector. Often, people who are taken to court facing eviction for antisocial behaviour in the social rented sector have been to prison or have been found guilty of something—the issue is often drugs, although it could be other things. In our experience, the number of such cases is small but the impact that they have is much bigger than their number suggests, because the behaviour can have a huge impact on a neighbourhood. The question is whether that should be the case.

At the moment, applying the reasonableness test, the courts take the view that, even if somebody has served time or paid a penalty, that is not enough to get them off the hook and avoid eviction. You are asking whether, given that the person has done the crime and done the time, they should then be evicted. It all depends on whether the person comes back and continues with that course of behaviour. It is a complicated issue, and I am not giving you a coherent answer because I am thinking off the top of my head.

As a community law centre, we are asked to help the victims, and the only time that we will defend an antisocial behaviour case is when we think that the person has mental health problems. If we think that it is a criminal case, we will refer it on to a criminal defence firm. We see ourselves as being different—we are a community law firm, and we are there for the community.

Your question raises deep, complicated issues of justice.

Mike MacKenzie: Thank you. That is interesting.

11:45

Chris Ryan: It is a complex area, because a whole range of alleged behaviours in criminal activities may occur. Obviously, sheriff courts deal with common types of action. Another available tool to deal with the issue is for local authorities to seek antisocial behaviour orders from the court. If you are talking about landlords who own only one property and need assistance, that avenue would perhaps allow support to be provided to them. There is perhaps room to tie up the issue with what the local authority can do, considering the question of whether there are resources to assist in such cases.

Clare Adamson: I have a couple of questions. Mike Dailly mentioned a situation in which someone was experiencing domestic violence. That issue also came up in the previous session. Could the initial six-month tenancy period be a problem for people who need to vacate a property for whatever reason?

Mike Dailly: The most sensible and easiest solution to that would be to include, with proper safeguards, the ability to deal with that category of occupier in the bill. It can be done with proper checks and balances. You raise an important point in that, if someone needs to be in a particular place for two or three months only, it would not make any logical sense for the bill to prevent that. Therefore, consideration should be given to allowing that to happen, but with checks and balances to ensure that the ability is misused.

Chris Ryan: If you are talking about someone who is fleeing a domestic violence situation, perhaps the bill could incorporate a provision in which an application to the tribunal could be made to allow an early termination where certain matters were established.

Clare Adamson: In the previous panel, Councillor McGuigan said that where there is a will, there is a way, and the same point was made at the evidence session last week. Are landlords reasonable and flexible in such circumstances?

Mike Dailly: No. A lot of people in the sector rent one property. All that they want—for perfectly good economic reasons—is for that money to come in. Their approach will be different than, for example, a company that has a number of properties.

In my written submission, I have said that our experience of working across Glasgow is very much that our clients are incredibly vulnerable. They do not have any choice; they are powerless. We have produced a report—there is a link to it in our submission—that describes the finding of our south of Glasgow survey that the law is being broken and people are not enforcing their rights because they do not have any choice. They do not want to upset their landlord, because they might not have anywhere else to go. We need to bear in mind that while some people are able to live in a nice flat and get everything done for them, with repairs done the next day, that is not the reality of what a lot of other people must endure.

Clare Adamson: My second question is on student accommodation and the landlords who are in the student market. It is proposed that the institutions will have a separate tenancy from other landlords who provide multiple occupancy temporary accommodation. Is the bill's approach reasonable?

John Sinclair: We have concerns about that. The student accommodation sector is provided both by universities and other higher education institutions and by private companies. Sometimes, the accommodation is provided by private companies in partnership with universities. In such partnerships, there may be a nominations agreement in which the private landlord will undertake to provide a set number of beds for the university to place students. We do not consider that it will be good for the market to have a restriction on what is a private residential tenancy based on the nature of the landlord rather than on the nature of the tenant.

Mike Dailly: That approach sounds reasonable—we would agree.

David Stewart: I would like to hear the witnesses' views on the bill's provisions on rent increases.

Mike Dailly: This is another area in which what the bill is trying to do is very good. With regard to the provision for rent pressure zones, the Scottish Parliament information centre produced a briefing that showed that rents had increased in the four-year period from 2010 to 2014 by almost 40 per cent in Aberdeen and Aberdeenshire and by 17.2 per cent in Lothian. What is interesting is that the SPICe briefing highlighted that the comparative consumer prices index increase was 11.7 per cent. That is true, but CPI is based on everything that is thrown into the basket. The Bank of England's base rate has been at 0.5 per cent for a very long time. When CPI goes up by 11 per cent and rents in Aberdeen go up by 40 per cent, an argument can be made that rents should go up by only 11 per cent. However, I would ask why rents are going up by any amount, given that the Bank of England's base rate is 0.5 per cent and a landlord will have a buy-to-let mortgage that is linked to that rate.

The measures in the bill would be very helpful—for example, if someone gets notice of a rent increase, they can take their case to the rent officer. However, that does not help all the people who are sitting there and currently being overcharged. We suggest in our written evidence that the bill should allow a tenant who has a prima facie case that they are paying more than the market rent to take their case to the rent officer.

I add a note of caution for the committee. None of these provisions will help if there is an increase in the Bank of England's base rate. Once that happens—we are told that the rate might go up next year, although we hope that, if it does, the rise will be incremental—the folk in the buy-to-let mortgage market will be paying more money, and they will put their rents up. The problem with the bill is that it provides for a market test, so if the market goes up, the provisions will not help. At the end of the day it will be the tenants who have to pay. We are quite concerned about that scenario—it is something to think about.

David Stewart: You have predicted my second question, so I will extend the opportunity to answer to the other witnesses.

You will have heard from my comments in the previous evidence session that, ironically, CPI does not include housing costs in its current index. The last time I looked, which was yesterday, CPI was running negatively to reflect the inflation level. Be that as it may, the bill offers a system for protecting tenants in certain areas. As I said in the previous session, rents in Aberdeen and Aberdeenshire were very high, but in the past year and a half they have fallen away because of the lower oil price. There are regional variations throughout Scotland, but the key point is that local authorities must push for rent pressure zones. If there are issues within a local authority area, is there a danger of there being a flight of capital from one part of the area to another? You will have heard me ask the same question earlier.

Mike Dailly: I will quickly answer that. I noticed from reading the *Official Report* of the committee's evidence session last week that the private landlords were trying to present a bogeyman, and wave the threat that the bill as currently drafted would drive out investment. I find that claim staggering, because the bill as it is currently drafted is a Christmas wish list for private landlords.

Even if the Parliament was to swing the pendulum a little closer to tenants, would that drive out investment, and would investors move from local authority areas? I am not convinced that they would. I say that because, looking at the current housing market, I think that it is clear that we have not regained the position that we were at before the bubble burst in 2007-08. The people who have bought those properties are investors—the property is an investment. The idea that they will suddenly sell their properties en masse and flood the market, which would then respond by saying, "If there is a such a supply, we will pay you less," is unrealistic. We need to be realistic and not allow ourselves to take on board the assertions that the whole sector will somehow pull out its investment. That is nonsense, and it is not going to happen.

John Sinclair: The market impact would be very complicated. Unfortunately, it is not something that the Law Society knows anything about. In the one representation that we made, we said, with regard to the pulling in of information and evidence by the Scottish Government to decide whether to create a rent control zone, that there should be a slightly higher benchmark for demonstrating the weight of evidence in favour of such a zone. It will not ever be done lightly. The potential consequences will always be unknown, so it looks like a measure that will only ever be kept in reserve for a very dark day.

David Stewart: You will be aware that the initial trigger comes from the local authority. The 32 authorities across Scotland will take the matter very seriously. What is not clear—the witnesses may be able to correct me on this—is that, when the Scottish Government makes the final decision, it will presumably have to weigh up the evidence too; it will not simply rubber-stamp an application. There is not much in the bill about that. If the witnesses have further information, I would be glad to be enlightened on that point.

John Sinclair: The bill provides that the Scottish Government is under an obligation to consult. The first threshold comes from the local authority, but the Scottish Government has a duty to consult. It must also decide how, where and

when to consult. At a practical level, it will be quite difficult to work out whom to consult among not only landowners and tenants but potential landowners and tenants.

David Stewart: The other issue is that the zone can be as small as an estate, or a village or town, or it could cover an entire local authority area, which would obviously be a big decision.

John Sinclair: Again, if we track the market in any given area, we see that market areas can be incredibly sensitive, right down to individual streets and even different sides of the same street. It will never be an easy thing to get right, but that does not mean that it will not be necessary.

David Stewart: I will just remind Mr Ryan of my question, because we have had a few diversions. I asked about rent increases, and we have moved on to cover the rent pressure zone proposals too.

Chris Ryan: Broadly, we support the opportunity to control rent increases. I am not in a position to go into great detail on the measures in the bill. From the perspective of the tenants whom we represent, who may be in receipt of local housing allowance or housing benefit, it would be interesting to see the link between the capped levels that apply in that respect and the rent control mechanism. We often find in any event that, because of the high rents in the private rented sector, people are having to subsidise their local housing allowance with their income benefits such as employment and support allowance and jobseekers allowance. Essentially, local authorities cap the amount of benefit that is given to tenants to pay the rent; I would be interested to see whether that is taken into consideration on the rent side of things.

David Stewart: I suppose there is a general problem. If someone's rent is excessive anyway, the fact that there is subsequently a cap, or they can get a rent officer to assess a fair rent, will not necessarily help them, will it?

Mike Dailly: No. Technically, at present, short assured tenants can apply for a fair rent, but that does not happen in real life. That is because the tenant can simply be removed on the no-fault ground, and someone else can be brought in, and nobody is any the wiser as to whether a rent has been fixed.

I keep going back to some of the practicalities. When we create a new system, we must always bear in mind the question of whether it will work in practice. The provision for rent pressure zones is a good measure that will provide a safety valve. It will be interesting to see how it develops. As you rightly say, Mr Stewart, it will be up to local authorities to take the initiative, and I hope that they will do so.

David Stewart: If none of the witnesses wishes to add anything, I will move on to my final question. Is there a need to improve the operation of the private landlord registration scheme?

12:00

Mike Dailly: Yes. It is interesting that the private rented sector lobby, if I can describe it in that way as a group, has been writing to newspapers saying that Scotland is the most heavily regulated private rented sector in the United Kingdom. I was flabbergasted when I saw that assertion because, from our experience as practitioners advising and representing tenants, there is not really any regulation in the private rented sector. There is the private registration scheme, which was introduced by the Antisocial Behaviour etc (Scotland) Act 2004. Local authorities will tell you that, when that was introduced, they had the mammoth task of finding out who all these people were, because nobody had ever done that before. A few years went by in which local authorities were just mapping that.

In Govanhill in Glasgow, we have maybe a dozen cases in which we are pursuing unlawful eviction actions against private landlords. The sort of thing that we are dealing with is somebody going out to get a pint of milk and coming back to discover that not only has their lock been changed but there are new tenants in the property. We have taken such landlords to court and we are suing them for statutory damages. In the meantime, we say to the local authority that surely those people are not fit and proper persons to be landlords, which we might think is a bit of a no-brainer. In cases in which the Procurator Fiscal Service is taking prosecutions in the sheriff court against such folk, councils often say that we should wait until the end of the criminal proceedings. Really?

In our experience, the private registration scheme has not worked in the way that the Scottish Parliament wanted it to work. The evidence from the earlier witnesses was that there are not enough resources for it, but I am not convinced that it will ever be capable of working in the way that we need it to work. We need a body that has teeth and legal powers and that can set the strategy across Scotland.

David Stewart: Mr Sinclair, do you want to answer?

John Sinclair: I have no comments on that.

David Stewart: Okay. Mr Ryan?

Chris Ryan: I echo the point that the registration scheme appears not to have any teeth to deal with the sort of unscrupulous bad landlords that we find. I do not get a sense that there is a

process to be followed to ensure that the local authority looks at those issues. I do not know whether that could be developed under the bill. One of the eviction grounds is that the landlord is not registered. Therefore, if a tenant wants to raise the fact that their landlord is not registered as an issue, they could be causing their own demise, so to speak.

David Stewart: They could be making a rod for their own back.

Chris Ryan: Yes.

The Convener: I have a question for Mr Sinclair on the written evidence from the Law Society. This goes back to the issue of the grounds for eviction. On page 11, you comment on section 44 and the restriction on applying to evict a tenant during the notice period. You say that that could

"create a disproportionate financial burden where the 84 day period applies."

I assume that that is a burden on the landlord. What is your understanding of the circumstances in which the 84-day period will apply, which you think would create a "disproportionate financial burden" on the landlord? The bill is clear that the 28-day period will apply in the case of five eviction grounds: where the tenant is not occupying the let property as the tenant's home, has failed to comply with an obligation under the tenancy, has been in rent arrears for three or more consecutive months, has a relevant conviction or has engaged in relevant antisocial behaviour. In those circumstances, the 28-day period will apply. In other circumstances, an 84-day period will apply. What is your understanding of those circumstances?

John Sinclair: We will come back to you in writing on that. The general thinking is that, for a very small-scale landlord, any period of recurring rental delay, even if it does not meet the rental ground for eviction, might be difficult. One issue with the bill is how a single piece of legislation can apply to the wide variety of tenants and landlords that exist.

The Convener: Thank you—written clarification would be helpful.

Alex Johnstone has a supplementary question.

Alex Johnstone: It is really just a comment on the system of regulating landlords. Do the witnesses agree that the bill is in the mould of the classic pieces of legislation in the area, in that the good landlords will buy in and the bad landlords will look the other way and, consequently, it just cannot work?

Mike Dailly: That is a fair analysis. In our experience, there are a lot of bad landlords, although—do not get me wrong—I am sure that there are a lot of good landlords. The difficulty is that dealing with those bad landlords requires a lot of effort. One of the greatest examples of how the system has not worked is that it has been a criminal offence to unlawfully evict a tenant since 1964, but how many prosecutions do we ever hear of? For a time, the police were not recording such cases as a specific category, although thankfully that has now changed. Very few people are sued or arrested for unlawful eviction.

Just the other week, somebody was referred to me—through Twitter, bizarrely—one evening at the weekend. It was a young veterinary student in Glasgow who had gone back to her flat on a Saturday night and discovered that she had been unlawfully evicted. She contacted the police and they said, "It's a civil matter—it's nothing to do with us." I gave her some advice via the medium of Twitter and she went back to the police and got them to go to the property and sort things out. The fact that the police are getting it wrong shows us that the whole sector has been in need of regulation for a long time.

Alex Johnstone: But tightening up things for those who are already registered will not actually achieve much.

Mike Dailly: No, it will not, because the people who have bought into the system and who are doing things properly are not the problem.

The Convener: As members have no more questions, I ask the witnesses whether they have any further comments about any of the other provisions in the bill. This is your last chance.

As there are no comments, it just remains for me to thank the witnesses for their comprehensive evidence.

I suspend the meeting briefly to allow the witnesses to leave.

12:07

Meeting suspended.

12:08

On resuming—

Petition

Freedom of Information (Scotland) Act 2002 (Housing Associations) (PE1539)

The Convener: Agenda item 3 is consideration of petition PE1539, by Anne Booth, on housing associations coming under the Freedom of Information (Scotland) Act 2002. I welcome the members of the public who have joined us in the public gallery. This is the committee's second consideration of the petition. Attached at annex B of the clerk's note on the petition is a letter from the Scottish Government in response to correspondence that was issued by the committee, which is attached at annex A. In that letter, the Scottish Government has confirmed that it will formally consult the registered social landlord sector on extending the Freedom of Information (Scotland) Act 2002 to registered social landlords in 2016, with a view to extending the act in tandem with complementary changes to the Scottish social housing charter.

I invite comments from members.

Adam Ingram: It seems that the petitioners are making significant headway on their requests. The Scottish Government seems to have accepted the case and that is why it is going to have a consultation on it. I do not know what is required of us here today other than to note that and to welcome the Scottish Government's action.

The Convener: There are two options available to the committee. We can agree to close the petition or we can agree to keep it open. I invite members to consider whether they wish the committee to take any further action in relation to the petition.

Siobhan McMahon: I would be reluctant to close the petition, because we do not have a definite answer about where this is going. We have seen significant progress from the Government in relation to its initial response on the issue, but we do not have a conclusion. The consultation is not an answer to the petition. The petitioner asked for specific action to be taken. It might be that it will be taken after the consultation. Unfortunately, we do not have that answer yet and I would be reluctant to firmly say that we should take no further action. We should wait for the findings of the Government consultation and come back to the petition then.

David Stewart: Are we likely to get any action from the Government before the election next year? Clearly, there are issues about petitions overlapping election periods. Along with Siobhan McMahon, I would like to see the petition succeed. It is a good petition and, as members know, I am a great fan of the petitions system. Perhaps you could give us some advice, convener, on whether you think that it is likely that there will be some further action on the matter before the election.

The Convener: I think that you have touched on a key issue. We would not expect the consultation to have concluded this side of the election and therefore the petition would have to be carried over into session 5. We would find that difficult to justify, but I do not wish to pre-empt the decision of the committee.

Siobhan McMahon: We have processes in Parliament and I think that it would be a disgrace, frankly, for this Parliament to stop a petition just because a session ends—

The Convener: There is no—

Siobhan McMahon: If you would let me finish, convener—I have not made my point yet. It would mean that the person has not got an answer because of timescales. We have taken the petition to the Government and the Government has had ample opportunity to get back to us. The issue has gone to consultation. That means that because of the Government's response and its timescales, the petitioner has not got the answer that they require. That would be unfortunate for us to take a decision on.

The Convener: I think that there are a range of views on the issue. There is no suggestion that the Government has behaved unreasonably as regards the process that has been adhered to to date.

Siobhan McMahon: I did not say that. No one is implying that it has behaved unreasonably. I am saying that it would be unfortunate if we decided to end the petition based on timescales—based on parliamentary sessions—rather than on the merits of the petition, because those are two different questions. Do we agree with the merits of a petition? That is one question. Unfortunately, the timescales, as Dave Stewart has pointed out, do not allow us to make any decisions before the end of the session, so should we close the petition because we cannot take it into session 5? Those are two separate questions that we are being asked. They are not the same question.

The Convener: The issue that we should be aware of as a committee before we take any decision is that it would, of course, be entirely open to the petitioner to introduce a new petition in the next parliamentary session should they so wish, if they felt that the issue had not been dealt with sufficiently through the consultation process. That is certainly an option that would be available to the petitioner.

Mike MacKenzie: I was of the understanding that the Government response in ordering a consultation was exactly what the petitioner was seeking, so I am wondering what point there is in leaving the petition open. If the petitioner has achieved what they were seeking, what merit is there in leaving the petition open?

Siobhan McMahon: The petition was not about a consultation. It was about adding housing associations to the list of the Scottish public authorities covered by the FOI act; it was not to ask for a consultation on the issue.

Mike MacKenzie: If I could just make one further point. I have sympathy with the petitioner's view, but before the Government acts, it would be normal process and procedure for it to have a consultation to examine the issue thoroughly in order to discover whether there were any unintended consequences and, indeed, to carry out a thorough exploration of the whole issue. That seems only right and proper before a Government of any shade takes any action on the issue.

I think that it would be unreasonable for petitioners to think that they could basically force the Government into taking action without undertaking a consultation. I am really not quite sure what we gain in keeping the petition open. I cannot understand what is gained.

12:15

The Convener: I will bring in a former convener of the Public Petitions Committee, who might be able to shed some light on these matters.

David Stewart: Thank you, convener. Certainly, my experience over four years was that when we were looking to close a petition, if the petitioner said that they were happy that their objectives had been reached and they were happy for the petitions committee to close the petition, I recommended to the committee that it did so.

You may have raised this, convener—do we have any comments in writing from the petitioner?

The Convener: I was going to make that very point and ask the clerks whether they could advise us on that. I know that we have the petitioner in the room, but our procedures do not allow us to invite participation from the petitioner this morning. I think that the formal process is that if we want to defer a decision, we can write to the petitioner and ask whether they are content for us to close the petition and then we would be able to make an informed decision.

David Stewart: I recommend that we defer the decision until we get something in writing from the petitioner so that we can make a more informed decision, knowing the petitioner's view.

The Convener: That is an entirely reasonable suggestion. I appreciate that Siobhan McMahon is seeking to defend the interests of the petitioner, but it may be that we are going beyond the wishes of the petitioner in this case. We would need to clarify—

Siobhan McMahon: You have missed the point completely, convener. That is not what I am doing. I am asking for the process to be followed. The petition asked for one thing; the Government response is entirely different. That is what I was saying to you. Those are two separate things.

The Convener: I understand your point; I just think that it is entirely reasonable if the committee wants to take a view based on the wishes of the petitioner.

Siobhan McMahon: Absolutely. I am not disagreeing with that in the slightest.

The Convener: I think that we are at cross-purposes then.

Siobhan McMahon: Yes, but you have just decided to have another go, so that is fine.

The Convener: I am not quite sure what point you are making now.

Siobhan McMahon: Okay.

The Convener: Do we agree that we will write to the petitioner and ask for their views on whether to close the petition or to keep it open?

Members *indicated agreement.*

Subordinate Legislation

Private Rented Housing Panel (Tenant and Third Party Applications) (Scotland) Regulations 2015 (SSI 2015/369)

12:17

The Convener: The fourth item is consideration of a negative instrument—the Private Rented Housing Panel (Tenant and Third Party Applications) (Scotland) Regulations 2015 (SSI 2015/369). Paper 4 summarises the purpose and prior consideration of the instrument.

The committee will now consider any issues that it wishes to raise in reporting to the Parliament on the instrument. Members should note that no motions to annul have been received in relation to the instrument. I invite comments from members.

Mike MacKenzie: Did the Delegated Powers and Law Reform Committee make any comment on the instrument?

The Convener: I am not aware of any comment having been made by any other committee of the Parliament.

Is the committee agreed that it does not wish to make any recommendation in relation to the instrument?

Members *indicated agreement.*

12:18

Meeting continued in private until 12:30.

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