

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
CELG(4)-15-15 Papur 5 / Paper 5



Private Rented Sector
Housing Policy Division
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Dear Sir/madam,

RE: Codes of Practice Consultation on a Private Rented Sector Code of Practice for Landlords and Agents.

Please find enclosed our response to the consultation regarding the Code of Practice for Landlords and Agents. I would be pleased to make myself available to discuss our response in more detail, or to consider how we can support you to develop any revisions or additions.

Yours sincerely

Steve Clarke, MD
Welsh Tenants

1. Welsh Tenants support for the code of practice

- 1.1. We recognise that a code of practice should aim high but be achievable. As well as statutory provisions relating to what a landlord/agent 'must' do, it should also aim to drive up standards of professionalism given the gravity that providing a home has for its occupants, be they disabled, young, vulnerable or old.
- 1.2. The code as presented is a missed opportunity to ensure that the vision for private landlordism in Wales is conveyed both in deed and practice. Welsh Tenants are therefore **unable to support the Code of Practice as presented**.
- 1.3. The COP is very different to what we envisaged given the input that we have received from tenants and other stakeholders. The Code of Practice needs to be clear about **to whom it is directed and to what purpose**. It reads as a poorly drafted manual, and for Welsh Tenants it does not convey the vision or the aspiration of private landlordism as drafted. The code in our view, needs to address the 'ethics' and 'practice' of the private landlord and letting agent sector in Wales. It does neither. But more important, it fails to inspire confidence in the PRS market as a renter.
- 1.4. On detailed elements there appears to be too much '*should*' where it needs to state '*must*'. If the document is intended to have reference to 'statute' then this needs to be clearly stated and referenced to what those obligations are.
- 1.5. What we have is a poorly written manual for how to be a landlord, not a clearly defined code of practice that improves the ethicacy and practice of the sector.

2. Language

- 2.1. Language should include where appropriate principles of Blooms taxonomy¹ to remove any doubt about what should be done. Sentences should relate to, knowledge, and comprehension of the landlord and use action verbs where appropriate such as *arrange, order, identify, locate, review, apply, produce, show et cetera*.
- 2.2. We would want the code to 'reflect accurately' the entitlements and the responsibilities of landlords and agents. There are missing obligations that we would want to see included. It does not for example discuss the professional development of people who work in the sector as employees of landlords or their conduct.
- 2.3. On the specifics, we would want to remove any ambiguity or doubt about what should be expected. Where it is a 'legislative compliance matter' it should state "must or "must rectify" and where it is 'desirable', it should say "landlords are encouraged" through best practice. Having the two elements listed separately is also confusing.

3. Structure Style, and substance

- 3.1. The draft Code needs to be restructured and rewritten to be much clearer and more easily navigable. In its current form we do not believe it is capable of supporting compliance, best practice or the vision for landlordism in Wales.

¹ <http://www.fresnostate.edu/academics/oie/documents/assesments/Blooms%20Level.pdf>

- 3.2. It does not discuss the Welsh Government's expectation's on customer service, courtesy, complaints and redress, the avoidance of court action or the mental health or vulnerability of clients, the outlawing of bad practice or the continual improvement of services and support. Neither does it provide an opportunity to sign post to areas where assistance could be sought relating to illegal subletting, overcrowding or overcoming problems for disabled tenants, mental health or discrimination.
- 3.3. Although it may be a matter of style, it is important that the document is presented as readable for the most inexperienced as well as experienced of landlords/agents. If the current emphasis is to be retained much could be done on the structure. We would prefer to have a structure that states statutory obligations, ethical matters, consequences of non-compliance and good practice relative to that section. Not separately listed.
- 3.4. For example (Access to Property, p17), we would have wished to see the structure as follows:

Statutory provision ref:	<i>Narrative:</i> Only in extreme circumstances should access to the property be required once let. It is an offence to gain access to the property without the consent of the occupier(s). <<List reference to the statute>>
Ethics:	L and A must arrange reasonable access with the contract holder(s) with due consideration for their life circumstances and well-being.
Consequence:	Access to the property without consent may constitute trespass or harassment, and may result in your licence being revoked.
Good Practice:	<ol style="list-style-type: none"> 1. Advise to have someone else present with the contract holder as a safeguard measure. 2. Clearly define when access must occur. 3. Negotiate reasonable arrangements for weekends or out of hours prior to signing the contract with the occupier. 4. Detail agreed access arrangements in the occupation contract.

- 3.5. Note: If the code is too '*prescriptive*' it may be vulnerable to constant amendment via developments in common law. This is something that may need to be considered.
- 3.6. As Ministers have the powers to issue 'affirmative measures' in many areas of both the Housing (Wales) Act 2014 and the Renting Homes (Wales) bill, this should be stated in the section. The code should also have reference to guidance issued by the Welsh Government,
- 3.7. It also needs to make clear what force the code of practice has either as a voluntary code or as a statutory provision / guidance, many people are confused about the enforceability of guidance. If the licensee has to comply with the code then this should be clearly stated. The removal of any ambiguity is important as failure could result in revocation of the licence.
- 3.8. In our view the effectiveness of the codes intent is also something that we need to consider. Not just its take up.
- 3.9. We have also suggested that an easy read '*charter*' be devised to accompany the code of practice for landlords/agents and for occupation contract holders. This should support the Code of Practice.

4. Distinctions between landlord and agent

- 4.1. It is confusing to have the code for both the landlord and a letting agent in the same document, the evolving roles are we believe separate and distinct as the letting agent has a duty to both occupier(s) and owner(s) as landlords. Quite often both can play one off against another. What we need on the codes is clarity between who is the responsible person. We need not create confusion between what is a code of practice for people who are the landlord and people who are the manager of properties and deal with the public. We would prefer to see a clear distinction between the two in the structure. One section on landlords one section on agents.
- 4.2. Welsh Tenants would also like to see the devolvement of a private rented sector charter that links to the code of practice for the sector so that tenants are clearly aware of what their obligations are and that of the landlord/agent.

5. Tenant engagement

- 5.1. We recognise that it is for government to set the standards of practice they would wish to see developed via the code of practice. We of course welcome the collaborative nature of the development of the document with providers. However, it is a missed opportunity not to have engaged tenants also. We would wish to see tenants also consulted and then to have brought the two approaches together to develop a document that is amenable to all. But more importantly encourages improvement by all.
- 5.2. Welsh Tenants have used the term 'good to know' which addresses an obstacle and how it was overcome using principles of co-production between providers and customers. We are concerned there has been no tenant involvement (that we are aware) in the 'best practice' section or even how best practice is defined or evidenced.
- 5.3. We believe that if tenants were involved, the content and structure of the Code as drafted would have been very different. We would therefore support a more collaborative approach to drafting between stakeholders that would produce a more 'action centred' document that will be actively read to ensure continual development as a landlord / agent or contract holder.

6. Repairs and improvements

- 6.1. If we are to rely upon the private rented sector to provide accommodation for our citizens of every ability, age, character, and vulnerability and to provide significant subsidy through tax advantage, housing benefit subsidy and grants in order to grow the sector, then it is a legitimate aspiration to ensure that comprehensive repair, improvement and protections are included in any code of practice for the sector, and for the Welsh Government to provide leadership on those issues through the code.
- 6.2. There is, we believe a missed opportunity to better define what we should expect from repair and improvements standards as providers.

6.3. A Code should have force and intent – We do not believe that the document provides either. We believe the document should clearly indicate where there are penalties, what those penalties are, and how it would impact on the licensed landlord/agent.

7. Timescales

7.1. We would wish to see the inclusion of timescales where appropriate for response to complaints and or repair / improvements. Particularly where these are supplementary terms negotiated between contract holder and provider.

8. Enforcement

8.1. There is no section within the code on the enforcement of statutory provisions and believe that this also needs to be include in a Welsh Government section.

9. Information provision

9.1. As the advertising of contracts are covered by Advertising Standards Authority. We would wish to see provisions that make it clear of what should be provided and how. We would also wish to see more information regarding other languages and cultures.

10. Charges levied on the occupier

10.1. There is no mention of Unfair Terms in Consumer Contract regulations 99 where excessive charges may be considered a breach and should be included as a statutory requirement.

11. Seeking to terminate a contract

11.1. The current Code does not refer to evicting '*without a possession order and following due process*'. There is no mention of harassment or undue influence. The Code needs to make it clear that harassment and illegal eviction are criminal offences that carry a significant penalty.

12. Ethical gaps

12.1. The document is an opportunity to list the issues the Welsh Government would consider unethical and immoral (but not necessarily illegal). This would signal a clear intent of the Welsh Government to drive up standards through periodical revisions of the code. A section should also be included about what the Welsh Government expects to happen as a result of the code.

13. Professional conduct of individuals acting on behalf of the landlord

13.1. As a principle, we would have expected the Welsh Government to have included a section on the appointment of people who act on behalf of a landlord or agent, to be of good character for example and perhaps a commitment to their competency development, support and improving knowledge skills and values in relation to landlordism or its sub functions.

14. Security of tenure

- 14.1. Given the opposition to reduced security, landlords and agents should be made aware that best practice is to offer tenancy lengths that meet the needs of the household, including offering longer fixed terms to tenants who have passed a probationary period and who want long-term security.

15. Double charging

- 15.1. We would have liked to have seen the issue of double charging addressed where occupiers surrender fixed term contracts early and the landlord or agent finds a replacement yet still charges for the full fixed term to maximise profit for itself.
- 15.2. We would have liked to have seen an expectation expressed by the Welsh Government that landlords and agents should not apply fixed terms as a blanket policy, in order to maximise renewal fees.

16. Rights to improvements

- 16.1. We know there is a significant issue where occupiers make improvements to their home and then are served a no fault default notice because the tenant refuses to pay excessive increases or the landlord now wants to pass on the improved property to their relatives. There is no mention of allowing tenants to improve the property and have the ability to reclaim costs for that approved improvement if they have to surrender the tenancy early, thus reclaiming a percentage of the investment they have made. There is no mention of the ethicacy of this practice and the encouragement of opportunities of occupiers to invest in improvements in a fair, transparent manner.
- 16.2. There is no mention of tenants using their welfare recipient status to apply for significant energy improvement grants and then be kicked out once the grant has been received. Or the welsh Government taking leadership and ethicacy of hiking rents as a consequence.

17. Disabled occupiers

- 17.1. There is no mention of landlords obligations to make reasonable adjustments for disabled tenants or to enable contract holders to make responsible adjustments through a right to make improvements (with permission)
- 17.2. Landlords should be asked to consider consenting to adaptations being made for occupiers who require them, and should be reminded of the benefits of setting up a longer-term tenancy in these circumstances.

18. Link between homeless prevention

- 18.1. There is no mention of the processes involved to assist with the prevention of homelessness for landlords. They still have to comply with pre-court action protocol

as responsible landlords. We would wish to see this included to reduce access to the courts or presentations to local authorities.

18.2. We would encourage officials at the Welsh Government to engage with Homelessness policy team on the best practice elements of the Code relating to contract termination and section 73, 75 duties in Part 2 of the Housing (Wales) Act and seek to include both information provisions in order to ensure early intervention.

19. Mediation

19.1. Many landlords do not understand the steps they can take to avoid costly litigation. We would therefore wish to see the inclusion of mediation as a step to preventing disputes arising in the first instance.

19.2. We also wish to see an opportunity to improve standards within the code on how to deal with vulnerable tenants. The code should encourage signposting to potential sources of independent housing advice and tenancy sustainment support.

20. References used in the code

20.1. The How to Rent guide issued by the DCLG is a reasonably good guide. It does seem bizarre however, that we should refer to guides that are prepared for England (How to Rent²) that does not relate back to the situation that reflects the Housing (Wales) Act 2014 and the Renting Homes (Wales) Bill or the mechanisms for access to justice or support provisions in Wales.

21. Right to adequate Housing

21.1. Finally, Welsh Government within the UK, is a signatory to a number of conventions that seek to improve the standards and accessibility of housing. The Right to Adequate Housing³ provides some important treaty obligations. There is significant read across to the legitimate expectations that we should practice as a modern wealthy state within the European Union.

21.2. The right to adequate housing places obligations on the member states among these are, protection against enforced eviction and arbitrary destruction and demolition of one's home, the right to free from arbitrary interference with one's home privacy and family, and the right to choose one's residence, to determine where to live, and to freedom of movement. The right to adequate housing contains entitlements such as security of tenure, housing, land and property restitution, equal and non-discriminatory access to housing and participation in housing related decision making at national and community levels. The right to adequate housing also clearly defines what these mean in terms of standards and security.

21.3. There are landlords and letting agents in Wales now larger than some of the registered social landlords. We would wish to see the Welsh Government enliven these treaty obligations through the code of practice to ensure that all people who rent can enjoy the standards expressed within the treaty.

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/358454/How_to_Rent-The_Checklist_for_Renting_in_England_FINAL_V5_Links_update_Sept_2014.pdf

³ http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

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