Rogue landlords: Part 2

The Government's view is that:

'A bigger and better Private Rented Sector is good for the housing market; it improves standards and choice for tenants, as well as providing opportunities for investment.'

This Part of the Act is aimed at ensuring that the way housing is managed is improved. And it means that the Government has now '*taken action to tackle bad landlords, so they either improve or leave the sector.'* (my emphasis)

As the Sponsoring Minister, Minister for Local Government Mr Marcus Jones MP, explained:

'We want to ensure that such rogues can be placed on a national database, so that local housing authorities in whose area they operate can identify them and their behaviours and standards can be properly monitored. We also want to ensure that the worst rogue offenders can be removed from the rental market altogether, through banning orders. Rogues who let out unsafe or unhealthy properties or engage in illegal practices such as violent entry, harassment or unlawful eviction of tenants will no longer be able to financially benefit from such activities.'

There were already a number a ways to tackle such behaviour under the Protection from Eviction Act 1977, the Housing Act 1988 and other statutes. Assisting victim tenants to enforce these remedies might have been a way to 'take action' against rogue landlords.

Summary

This Part:

- Allows local authorities to apply for a 'Banning Order' to prevent a particular landlord/letting agent from continuing to operate where they have committed certain housing offences. (sections 14-27)(But, unhelpfully, leaves deciding what the offences are to the Secretary of State).

- Creates a 'blacklist' in a national database of rogue landlords/letting agents which is to be maintained by local authorities (sections 28-39)

- Extends the scope of rent repayment orders, covering up to 12 months' rent, sought by tenants or local authorities where a landlord has committed certain offences (sections 40-52)

This Part of the Act enables the Government to state that it has *'taken action'* but it doesn't, as yet, enable local authorities to actually take action. The Act provides more weapons for a local authority's arsenal but without an instruction manual!

The Act as a whole grants the Secretary of State 34 additional powers meaning that vast swathes of policy has been left to secondary legislation. This approach came in for strong criticism through Parliament and continues the trend towards skeleton bills.

Lord Palmer when noting the lack of published regulations relating to the Act said *'I suspect that that is because they have not even been written yet.'* Baroness Williams of Trafford, who was the sponsoring Minister in the House of Lords stages, explained: '*We are planning to publish the secondary regulations in draft and will consult on these in the autumn before they are laid before the House.'* The Delegated Powers Committee considered '*it inappropriate that the determination of the offences that are to constitute 'banning order offences' should be left entirely to the discretion of the Secretary of State and with only a modest level of Parliamentary scrutiny.'*

So we have some weapons but the instruction manuals will not be printed until spring 2017 at the earliest.

Who is a rogue landlord?

This is not defined in the Act. Some in Parliament felt this was unhelpful. Lord Greaves (LD) said that a rogue could mean a *'scoundrel, villain, reprobate, rascal, good-for-nothing, wretch, rotter, bounder, blighter or vagabond.'* He didn't go on and explain what an *'old rogue'* could mean. But he had '*the distinct impression that the phrase 'rogue landlord' [had] been added to this legislation… by some spin-merchant somewhere in the Government who thought it would be a good idea to get some good publicity to get [the Bill] through. I do not think this is the way that legislation should be written.'*

By contrast, Lord Deben (Con) had absolutely no problem with the phrase. He explained *'It seems a frightfully good word, it says exactly what we mean and it would be very nice if more of our legislation used language which we understood. "Rogue landlord" is a very good phrase to use because it is very important to underline how disgraceful some people are in*

their treatment of other people in this crucial part of their lives. My only objection is that the word is not used more frequently within the Bill… This is one of the best things in the Bill.'

The Government considers that there may be about 10,500 rogue landlords operating and expects about 600 applications for banning orders.

Banning orders

Section 14 introduces the concept of a banning order, which is an order made by the First-tier Tribunal, which has the effect of banning a person from:

- letting housing in England;
- engaging in letting agency work that relates to housing in England;
- engaging in property management work that relates to housing in England; or
- doing two or more of those things;
- being involved in a company or corporate body that carries out activities from which the person is banned.

A banning order can only be applied against someone who has been convicted of a 'banning order offence'.

Section 14 also introduces the concept of a "banning order offence" and provides the Secretary of State with the power to make regulations describing the offences which are to be banning order offences. In particular, regulations made by the Secretary of State may describe an offence by reference to the nature of the offence, characteristics of the offender, the place where the offence is committed, the circumstances in which it is committed, the sentencing court or the sentence imposed.

Although the list of relevant offences has not yet been finalised the Government did indicate at the Report Stage that it envisaged the list to include include repeated offences involving breaches of health and safety requirements under the Housing Act 2004, such as a failure to comply with an improvement or overcrowding notice. It is also envisaged that a banning order offence will include unlawful eviction of tenants or violence or harassment towards them by the landlord or letting agent. A banning order may also be sought where a person has been convicted in the Crown court of a serious offence involving fraud, drugs or sexual

assault that is committed in or in relation to a property that is owned or managed by the offender or which involves or was perpetrated against persons occupying such a property.

A local authority can apply for a banning order from the First Tier Tribunal. It must serve a notice of intended proceedings specifying the length of banning order to be requested. A notice can only be given 6 months after a banning order offence has been committed.

It is not clear why a local authority needs to wait 6 months. If a rogue landlord has committed a banning order offence why can't a local authority seek to stop them acting as a landlord straight away?

Where a banning order is imposed it must last for at least 12 months. (Amended from the original 6 month proposal). A Tribunal must consider:

- The seriousness of the offence;
- Any previous convictions that the person has for a banning order offence;
- Whether the person is or ever was included in the database of rogue landlords and property agents
- The likely effect of the banning order on the person against whom the banning order is proposed to be made and anyone else who may be affected by such an order.

Breach of banning order

It is a criminal offence to breach a banning order i.e. to undertake or be involved in activities that the person is banned from. A person who is convicted of breaching a banning order is liable to a term of imprisonment up to 51 weeks or a fine or both. If the breach of the banning order continues the person is liable for a daily fine of £50.

Importantly, however, a local authority has an alternative to prosecution; instead it can impose a financial penalty. The local authority may determine the amount of the penalty but this may not exceed £30,000 (increased from the £5000 original proposal).

Before imposing a financial penalty on a person, the local authority must give that person notice of their intention to do so. This notice must be given within a period of 6 months, beginning with the first day on which the authority has evidence of the person's breach of the banning order. The notice must set out the amount of the penalty, the reasons for imposing

the penalty and information about the right to make representations. However, for each further 6 month period that the breach continues a local authority can impose a further financial penalty of up to £30,000.

What happens to the penalty? In these cash strapped times local authorities will be pleased to learn that they will be entitled to keep the penalty. The Government recognises that it is much more likely that the financial penalty option will be followed.

Parliament was very concerned. The Delegated Powers Committee was surprised that a local authority could impose a financial penalty as an alternative to a criminal prosecution. This *'empowers an authority to act as if it were prosecutor, judge, jury and executioner"*. (Perhaps that is no bad thing!)

If a person fails to pay all or part of the financial penalty, the local authority may recover the penalty by County Court enforcement.

A banned person is not a 'fit and proper person' for the purposes of the Housing Act 2004 and may not hold an HMO licence. A local authority may also make a management order on the basis that a property is being let in breach of a banning order. The local authority can receive the rent and can keep any surplus after management costs.

Database of rogue landlords and property agents

The Secretary of State will establish and operate a database of rogue landlords and property agents. However (there is a theme here), local authorities are responsible for *maintaining* the content of the database, and are able to edit and update it.

There is a new *duty* (section 29) requiring a local authority to put anyone who is subject to a banning order on the database. There is also a *power* to include a person convicted of banning order offence on the database. A local authority might, for example, decide to make an entry in the database rather than apply for a banning order in a case where a person's offences are slightly less serious and the local authority considers that monitoring of that person through the database is more appropriate than seeking a banning order at that stage. An entry may also be made if a person has incurred two civil penalties in respect of banning order offences within the last 12 months.

If a local authority decides to exercise the power to place an entry on the database it must give the person a decision notice before the entry is made. The decision notice must explain

that the authority has decided to make the entry in the database after the end of a 21 day notice period and must specify the period for which the person's database entry will be maintained, which must be at least 2 years from the date on which the entry is made. The notice must also summarise the person's appeal rights. The authority is required to wait until the notice period has ended before making the entry in the database. A decision notice to make an entry must be given within 6 months of the date of conviction for the offence to which it relates.

As yet it is not known what information is to be included in the database. The Secretary of State may specify by regulations (again, there is a theme here). But section 33(2) of the Act does give a steer. The information will probably include personal address and contact details; banning order history; banning offence convictions and all properties owned, let and/or managed by the person

Rent repayment orders

The Act empowers the First-tier Tribunal to make rent repayment orders to further deter rogue landlords who have committed certain offences; breaches of improvement orders and prohibition notices and of licensing requirements under the Housing Act 2004, violent entry under the Criminal Law Act 1977, unlawful eviction under the Protection from Eviction Act 1977 and breach of a banning order.

An order requires a landlord to repay rent paid by a tenant, or to repay to a local housing authority housing benefit or universal credit which had been paid in respect of rent.

A tenant or a local authority may apply for a rent repayment order against a landlord who has committed a listed offence. A tenant may apply in respect of an offence relating to premises let to the tenant, and committed within 12 months before the application is made.

Where a local housing authority makes an application a notice of intended proceedings must be given. That notice must state that the authority is planning to apply for a rent repayment order and why, and the amount the authority seeks to recover. The notice must be given within twelve months of the offence. It must invite the landlord to make representations within not less than 28 days. The authority must consider any representations made and in any event must wait until the notice period has ended before applying for the order.

The First-tier Tribunal can make a rent repayment order if it is satisfied that a landlord has committed a listed offence. The size of the rent repayment order is calculated in a different

way depending on whether it is the tenant or the local authority that has made the application.

Where the tenant applies the order must relate to rent paid in the 12 months preceding an offence. Then the Tribunal should deduct any benefit contributions to the rent. Then the Tribunal must consider the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has any previous convictions for a listed offence. Perhaps this process means rent repayment orders to tenants will be small if benefit for rent has been received.

Where a local authority applies the order must relate to housing benefit or universal credit paid in respect of rent and received by the landlord in the 12 months preceding an offence. In determining the amount the Tribunal must take into account the conduct and the financial circumstances of the landlord and whether the landlord has any convictions for a listed offence.

A rent repayment order is recoverable as a debt. Money payable to a local authority is not to be treated as recovered housing benefit or universal credit, but the Secretary of State may make regulations providing how local authorities are to deal with money recovered.

Where a local authority becomes aware that a listed offence has been committed it must consider applying for a rent repayment order. A local authority can give advice to a tenant and conduct proceedings for them.

Enforcement of this part

All the applications are to the First Tier Tribunal. Likewise challenges or appeals are to the Tribunal. The Tribunal is generally a 'no cost regime'.

Missed opportunities?

The Shadow Housing Minister, Mr John Healy, said that the Act was *'a huge missed opportunity to reinforce the statutory enforcement powers that local authorities need to deal with problems in private rented housing, especially as it's the most rapidly growing sector.'* He suggested that the best way for local authorities to tackle bad landlords was through selective private landlord district wide licensing. Permission for licensing schemes has become harder. This is not the route the Government wants to follow.

The Deregulation Act 2015 addressed vindictive landlords and sought to prevent retaliatory evictions. It only applies to assured shorthold tenancies created after 1 October 2015. Why not extend this to all ASTs and catch old rogue landlords?

Once local authorities have been given the instruction manuals for these new weapons it will be interesting to see how many banning orders are made. This Part of the Act is really concerned with truly terrible landlords. It probably doesn't promote industry wide best practice. It doesn't address the shortcomings of 'bad' landlords. District wide licensing probably could.

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