

COVID-19 AND THE PRIVATE RENTED SECTOR: STATE OF THE SECTOR REPORT

Over 800,000 of those living in the private rented sector in England and Wales have built arrears since lockdown measures started last year which still need to be paid off. Of this group, over 80% had no arrears prior to lockdown.

Landlords are also under pressure, with 60% now saying their lettings business will be negatively affected as a result of the pandemic.

The Chancellor is making landlords the scapegoats for the rent debt crisis, putting them in the position of either having to shoulder the cost of mounting rent arrears or having to resort to repossessing their property and potentially making a person homeless.

The current crisis is one of the Government's own making as a result of its failure to provide the modest sums needed to support tenants who, through no fault of their own, have found themselves in debt as a direct result of COVID.

Background

This paper draws on data from a number of sources:

- A survey the NRLA commissioned the research consultancy, Dynata, to undertake of private renters. It questioned 2,022 private tenants in England and Wales in May 2021.
- A survey undertaken by the research consultancy, BVA-BDRC, of 895 members of the National Residential Landlords Association between the 14th March and 5th April 2021.
- Data from the Department for Work and Pensions Stat-Xplore website[1].
- The Ministry of Justice's Mortgage and landlord possession statistics for January to March 2021[2].

For the purposes of extrapolation, we start from the position of there being 11.7 million people living in the private rented sector in England and Wales. This is calculated as follows:

- There are 4,438,000 private rented households in England[3], with an average of 2.52 people living in each[4]. This comes to 11,163,600 people.
- There are 204,955 private rented households in Wales[5] with the average household size being 2.26 people[6]. This would come to 463,199 people[7] (rounded to the nearest whole number).

7%

of private sector tenants in England and Wales have built rent arrears since lockdown measures started in March 2020 which remain to be paid off. That comes to almost 820,000 of those living in the sector.

82%

of those tenants who have built rent arrears since lockdown measures started and who have yet to pay them off did not have arrears prior to lockdown.

£900

The average amount of rent owed by those in arrears during the pandemic is now almost £900. 30% of those currently in arrears owe £1,000 or more.

26%

For those tenants still facing rent arrears built since March last year, 26% said that their landlord had attempted to reclaim these arrears through a court order (Money claim).

Landlords Are Struggling



60% feel their lettings business will be negatively affected as a result of the pandemic.



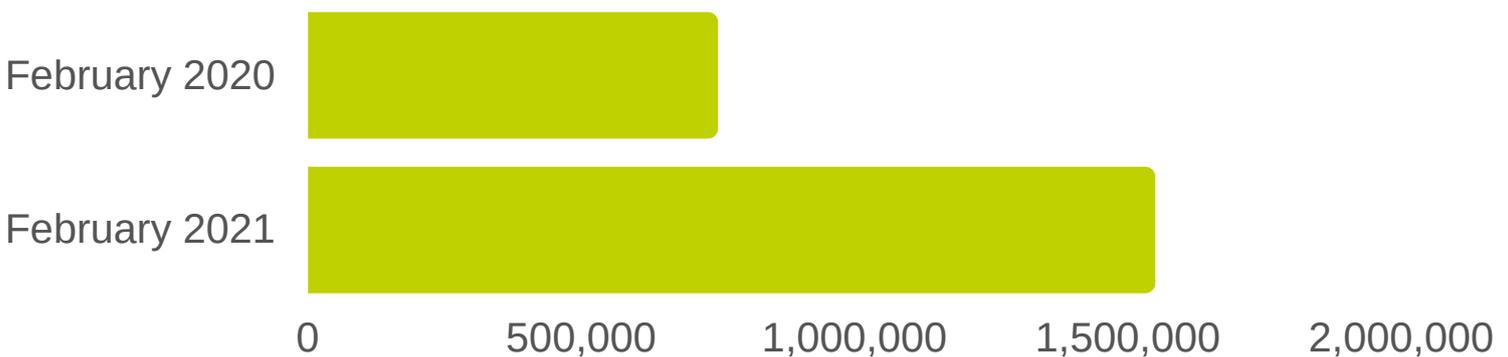
34% said their rental income had been affected with 13% having experienced an increase in properties being empty as a result of lockdown.



Among those landlords who had offered at least one tenant a rent-free period or allowed rent to be deferred, 58% absorbed the losses from their savings.

Tenants Are More Reliant on Universal Credit

There has been a 107% increase in the number of private rented households across the UK in receipt of Universal Credit with an entitlement to housing support as part of the payment between February 2020 and February 2021.



Graph 1: Number of private rented households across the UK in receipt of Universal Credit with an entitlement to housing support as part of the payment in February 2020 and February 2021

As of February 2021, just over 55% of these households (858,606) have a gap between their housing cost support and the rent they had to pay. The Work and Pensions Minister, Will Quince MP, has noted that in such cases the average shortfall is £100 a month[8].

The Resolution Foundation has reported that 56% of all private renter families with arrears are not in receipt of benefits, leaving them ineligible for a Discretionary Housing Payment[9].

Possession Cases in the Courts

In the fourth quarter of 2020 and the first quarter of 2021 Possession Warrants granted by the courts were able to be enforced in certain (limited) serious circumstances such as instances of tenant anti-social behaviour and where tenants had committed fraud in order to gain a tenancy agreement. Against this backdrop:

- In the first quarter of 2021, the number of claims to repossess a property brought to the county courts in England and Wales by private landlords fell by almost 22% compared to the fourth quarter of 2020.
- During the same period:
 - The number of possession claims brought under the 'accelerated procedure' (used by both private and social landlords) fell by almost 60%.
 - The number of possession claims brought by social landlords increased by just over 12%.
- The average time between a private landlord making a claim to repossess a property to it actually happening in the first quarter of 2021 was 47.7 weeks using the mean and 49.9 weeks using the median. The figures for the same period for claims brought under the accelerated procedure were 76.7 weeks and 62.4 weeks, respectively.

Landlords Are Being Made The Scapegoats

By failing to provide the means to pay off arrears built since lockdown measures started, the Chancellor is making landlords the scapegoats for the COVID rent debt crisis. He is putting them in the position where they have two choices:

1. Continue to accept mounting rent arrears with, in many cases, no hope of getting back payments even where affected tenants are able to re-start paying the rent in full.
2. Having done all they can to sustain a tenancy, in desperation being faced with no choice but to seek to repossess their property. This is because it is impossible for them to continue receiving no or a reduced rental income with no prospect of financial support to address this. Since the first lockdown and ban on repossessions in March 2020, landlords have been asked to shoulder the burden of renters falling into difficulties because of the impact of the pandemic.

In September 2020, the Housing Secretary, Robert Jenrick MP, stated in a written statement: *"I would like to express my thanks to landlords for their forbearance in many cases, and my sympathy to smaller landlords and buy-to-let landlords, who in some cases have experienced hardship as a result."* [10]

Expressing thanks provides no practical assistance or comfort whatsoever to those private landlords being forced by the Government's lack of action to shoulder the cost of rent arrears built as a direct consequence of the pandemic.

The Government had admitted that given the profile of landlords across the country, many *"are highly vulnerable to rent arrears."*[11]

The vast majority of private landlords are not wealthy property tycoons with deep pockets to sustain arrears mounting indefinitely[12]:

94% of landlords rent property out as an individual

45% rent out just one property

44% became a landlord to contribute to their pension

The Government's own data shows clearly that private renters have been one of the worst affected groups throughout the pandemic. Its most recent Household Resilience Study[13] has reported that across England the proportion of private sector tenants in arrears increased threefold from 3% in 2019-20 to 9% in November-December 2020. In contrast, the same study noted that *"mortgage arrears have returned to pre-pandemic level, following a significant increase in June-July 2020"*, whilst *"over the course of the pandemic, the proportion of social renters in arrears has not changed."*

This is happening despite the financial support the Government constantly refers to including the furlough scheme and increases in the both the Local Housing Allowance and Discretionary Housing Payments, which the majority of tenants now in arrears cannot access.

Those who rely on benefit payments to cover housing costs face seeing its value being cut as a result of the decision in the Spending Review last year to freeze Local Housing Allowance rates in cash terms. We agree with the assessment of the Institute for Fiscal Studies that this is policy is “*arbitrary and unfair*”.[14]

Support for Landlords is Not All It Seems

Landlords cannot be expected indefinitely to bear the cost of mounting rent debts. Whilst Ministers have persistently spoken about mortgage holidays being available to landlords where tenants have had problems paying their rent, we are troubled at the way this has been mischaracterised. Rather than a ‘holiday’ it is a mortgage deferment. As the Economic Secretary to the Treasury has noted, those landlords who have secured one: “*will still need to repay the full balance of their loan and will continue to accrue interest during the payment holiday, unless the lender has indicated otherwise.*”[15] This creates a perfect storm of tenants who have built arrears and landlords who need to begin catching up on missed mortgage payments.

The sad but inevitable result is that many more tenants will be forced to leave their home through no fault of their own. Some will give up their tenancy, but others will choose to stay until their landlord has no choice but to make a repossession claim. The result is, as the Joseph Rowntree Foundation has recently noted over 400,000 private rented households have either been served a notice for a property to be repossessed or had it indicated to them that they may do[16].

Policy Responses

The data presented in this briefing throws up a number of policy challenges which Ministers need to address – namely tackling COVID related rent arrears and getting the courts operating at capacity as we leave lockdown.

Tackling Rent Debts

There are many who have argued that what is needed is simply to get rid of Section 21 ‘no explanation’ repossessions. The Government has committed to end this and the NRLA has published a comprehensive plan for the system that should replace it that is fair and workable for both tenants and landlords[17]. However, even if Section 21 was to be got rid of now, it would still do nothing to address the underlying problem of rent arrears that have built since lockdown measures started in March last year.

For those tenants in arrears and in receipt of benefits, at the very least the Local Housing Allowance should return to the 30th percentile, rather than being frozen in cash terms. The very fact that the Government felt compelled to return it to the 30th percentile rate as lockdown measures began last year was a sign that it did not feel the rate, as it was previously, was sufficient to provide the protection that tenants needed. We see no reason

why that position has changed. More broadly, we believe it vital that the benefits system provides a proper safety net to those who need it most. As such, we are calling for the Government to set out a path to ensure that housing allowance rates meet average rents in any given area. We recognise, however, that this would require changes to the benefit cap to ensure that recipients felt the full benefits of such a move.

The second group, for whom a bespoke package is needed, is the majority of private tenants now in arrears who are not claiming benefits.

We are calling for the development of a hardship loan scheme to support those tenants ineligible for benefit support to pay off rent arrears built since lockdown measures started last year. Similar schemes are already in operation in Scotland[18] and Wales [19].

Details of our loans proposal can be found on the next page. However, the Housing, Communities and Local Government Select Committee has put the cost of tackling COVID related arrears at £200 - £300 million[20], a small amount in Treasury terms. Furthermore, as the Committee rightly notes: “*Given the number of potential evictions this would prevent, it would likely save the Exchequer a substantial amount in homelessness assistance.*”

How a Tenant Hardship Loan Scheme Would Work

- Loans should be available to cover rent arrears built since lockdown measures started in March last year.
- Given the circumstances of individuals and households likely to apply for hardship loans, the standard affordability criteria is unlikely to be a useful measure of the risk of default. Applicants will seek a loan because their income has been disrupted. As such, eligibility should be assessed on the basis of prior affordability of the tenancy by demonstrating that the household was able to meet a standard affordability assessment prior to March 2020.
- Repayments should be made in line with the recovery of the tenant's income using a similar model to that used for student loan repayments.
- The loans should be interest free. This is a principle the Government appears to have already accepted elsewhere. The 2021 Budget Red Book notes: *"The government will provide up to £3.8 million of funding to deliver a pilot no-interest loans scheme. The scheme will help vulnerable consumers who would benefit from affordable short-term credit to meet unexpected costs as an alternative to relying on high-cost credit."*[21].
- Loans should be guaranteed by the Government. Again, there is already precedence in respect of current mortgage guarantee schemes.

Our proposal would not increase debt for tenants since by having built arrears, the tenant would already be in debt. It would simply transfer the existing debt from the landlord to the loan scheme. In fact, if there is no interest it would reduce the debt compared to if the tenant had to borrow the money to pay it off from other lenders who would charge interest.

Court Reform

There is also an urgent need for the courts to speed up the way in which they handle legitimate possession cases. The current average of around a year for such cases to be enforced is simply too long and does not bode well for how the courts will be able to respond to the end of Section 21 and the need for more cases to be processed through them.

Alongside that, the House of Lords Constitution Committee has rightly observed that the stay on possession claims during lockdown: *"has contributed to the backlog in the courts, further undermining the timely delivery of justice and placing additional pressure on the justice system."* [22]

It is essential that the courts modernise and are fit for the 21st century. The impact of the pandemic provides an opportunity for a generational shift and the process should be 'digital by default' unless there are clear reasons, in the interest of justice, as to why this would not be appropriate. Such reform would not only address the unique challenges posed by the pandemic but could play a major role in meeting the Government's clear commitment *"to improve the court process for landlords to make it quicker and easier for them to get their property back sooner."*[23]

The House of Lords Constitution Committee has noted that: *"Remote hearings can significantly improve the delivery and accessibility of justice in appropriate cases."*[24] Making use of technology would make it easier for tenants to take part in hearings, addressing concerns expressed by the Housing Law Practitioners Association (HLPAs) and others that the low number of tenants attending court for possession cases creates a *"massive access to justice issue"*. [25]

It would also address the safety concerns of duty advisers, as a result of the pandemic, about cases being heard face-to-face. According to a survey of such advisers by the HLPAs, 61% did not believe their court was safe to work in. [26]

As part of this move to 'digital by default' it is vital that tenants are offered advice at an early stage. Currently, many first access legal advice only on the day of the court hearing via the duty solicitor or organisations supporting tenants who are present at court on the day. Providing such advice much earlier in the process would avoid last minute adjournments which further increase the burden on the courts, tenants and landlords. As a result, we propose that information be included with the notification to the tenant that a claim for possession has been made to the court, directing them to an online portal which provides access to an online duty solicitor, for which qualifying tenants should be able to claim legal aid.

Importantly, given concerns about disparities across the country in the ability of tenants to access such advice, providing this remotely would enable them to access support from across the country, rather than being constrained by what may, or may not, be available locally.

The courts further need to ensure a far more consistent approach to the definition it is adopting of serious rent arrears. Whilst the Government, and therefore Parliament, through regulations, has confirmed that landlords will now need to give 4 weeks' notice to repossess a property where a tenant is in 4 months'

worth of rent arrears or more[27], the courts have committed to prioritising cases related to alleged rent arrears in situations where the arrears are equal to at least: (i) 12 months' rent, or (ii) 9 months' rent where that amounts to more than 25% of a private landlord's total annual income from any source[28]. Such differences of approach are causing unnecessary confusion and therefore represent a barrier to justice. We argue that it should not be for the courts to determine how much landlords may, or may not, be able to afford to go without in unpaid rents. The Government and Parliament have made their will clear and the courts should respond accordingly.

The COVID Recovery Plan

Our five-point plan for recovery in the private rented sector calls for:

- The Local Housing Allowance rate to be returned to the 30th percentile, and preferably brought into line with average rents in any given area.
- The majority of private sector tenants now in rent arrears who do not qualify for benefit support to be able to access a government guaranteed, interest free hardship loan scheme to help pay off arrears built since lockdown measures started. Repayments should be made as incomes recover.
- The development of a landlord/tenant conciliation service, with teeth, to provide a realistic alternative to the courts to hear and deal with cases more swiftly, with a focus on sustaining tenancies where at all possible.
- Possession hearings to take place using video technology as the default position unless it makes it more difficult for either the tenant or landlord to access justice.
- The courts to adopt the same definition of serious rent arrears as that used by the Government.

**For further information, please contact Chris Norris (Policy Director for the NRLA)
Email: chris.norris@nrla.org.uk; Tel: 0300 131 3603**

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