

# **HOUSING LAW PRACTITIONERS ASSOCIATION**

**Pay to stay: Fairer Rents in Social Housing**

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## About HLPA

The Housing Law Practitioners Association (HLPA) is an organisation of solicitors, barristers, advice workers, environmental health officers, academics and others who work in the field of housing law. Membership is open to all those who use housing law for the benefit of the homeless, tenants and other occupiers of housing. It has members throughout England and Wales.

HLPA has existed for over 25 years. Its main function is the holding of regular meetings for members on topics suggested by the membership and led by practitioners particularly experienced in that area, almost invariably members themselves. Presently, meetings take place every two months and are regularly attended by c.100 practitioners.

The Association is regularly consulted on proposed changes in housing law (whether by primary or subordinate legislation or statutory guidance). During 2015 it has given oral evidence to committees of both the Welsh Assembly (on the Renting Homes (Wales) Bill) and the House of Commons (on legal aid reforms) and has given written evidence in response many other consultations. HLPA's responses are available at [www.hlpa.org.uk](http://www.hlpa.org.uk).

Membership of HLPA is on the basis of a commitment to HLPA's objectives. These objectives are:

- To promote, foster and develop equal access to the legal system.
- To promote, foster and develop the rights of homeless persons, tenants and others who receive housing services or are disadvantaged in the provision of housing.
- To foster the role of the legal process in the protection of tenants and other residential occupiers.
- To foster the role of the legal process in the promotion of higher standards of housing construction, improvement and repair, landlord services to tenants and local authority services to public and private sector tenants, homeless persons and others in need of advice and assistance in housing provision.
- To promote and develop expertise in the practice of housing law by education and the exchange of information and knowledge.

Justin Bates is a barrister at Arden Chambers (London & Birmingham) and the vice-chair of the HLPA. He is the Deputy General Editor of the Encyclopedia of Housing Law and the author or co-author of various other books on housing law and local government law

## **Initial observations**

The move to differential rents is a significant change in social housing. The consultation document seeks views on, *e.g.* likely administrative costs and generally seems to recognise that the *impact* of this reform is, as yet, unknown to the government.

Ireland has had a system of differential rents for local authority properties since the 1930s.<sup>1</sup> HLPA would suggest that, if the government wants to obtain information about likely costs (and other impacts – positive and negative) of this scheme, then it should commission a report into how differential rents work in Ireland. The Irish legal system is sufficiently similar to allow meaningful comparisons to be made.

We also have concerns about the suggestion that rents would be set with reference to all taxable income in the household. Pensions (both private and state) are *prima facie* taxable income. Certain welfare benefits are also taxable (*e.g.* carer's allowance, bereavement allowance, widowed parent's allowance).

Moreover, we are concerned to see that there is no reference to the 1% social housing rent reduction in the Welfare Reform and Work Bill. How this cut will affect the “pay to stay” policy?

Finally, is it proposed that there should be any right of appeal against the rent set by the authority? What if a dispute arises as to the quantum of the household income? The suggestion is that the household income will be calculated by reference to the two highest incomes, but suppose that only one of those people is the tenant and therefore only that person is *contractually* liable to pay the rent?

## **Question 1: Supporting Work Incentives**

We think it is inevitable that there will need to be tapers or thresholds for the increased rent levels, anything else would obviously act as a disincentive to work.

We are not sure what is meant by “whether the starting threshold should be set in relation to eligibility for Housing Benefit.” Does it mean that the first opportunity for the rents to be increased would arise only once the household ceased to be entitled to housing benefit? If so, we foresee real difficulties with implementing such a policy.

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<sup>1</sup> See *From Asset Based Welfare to Welfare Housing? The Changing Function of Social Housing in Ireland* Dr Michelle Norris and others, University College Dublin.

First, it is not as simple as identifying an income (or saving) threshold to know if a person is entitled to housing benefit; as the government will be aware, there are various “passporting” or “grandfathering” rights to housing benefit which often “trip up” even the most experienced advisor.<sup>2</sup>

Secondly, entitlement to housing benefit is something which people can gain and lose many times during a year depending on their personal circumstances, *e.g.* getting a job, getting a pay rise. If rents are tied to HB entitlement, then, potentially, rent could fluctuate during a year. We cannot imagine that this would be attractive to anyone (central or local government or the tenant) as the administrative costs – and potential for errors – will be significant.

### **Question 2: Evidence of administrative costs**

We refer to our initial observations, above. An analysis of the situation in Ireland is likely to provide the best evidence base.

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<sup>2</sup> And the government – see the bedroom tax debacle caused by the failure to recognise some claimants have their HB entitlement calculated under 4(1)(a) of Schedule 3 of the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006, rather than the main Housing Benefit Regulations 2006. See further, HB U1/2014, 8 January 2014.