



# RentBetter

## Wave 2 - Final Report

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**indigo**house

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## Foreword

The private rented sector has expanded significantly over recent decades and is now home to over five million households across the UK. Despite the increasing number of families with children, older people, and households in financial precarity who rent privately, housing in the sector remains unaffordable, insecure, and unsafe for many.

When major private renting reforms were introduced in Scotland from 2017, a key rationale of the new tenancy regime was to balance the power relations between landlords and tenants in Scotland, so that tenants could better assert their rights, challenge rent rises, and ask for repairs.

The Nationwide Foundation wants to understand how the changes in Scotland are impacting tenants and landlords and learn from the Scottish experience of renting reform. That's why we are pleased to fund the RentBetter research from Indigo House and see the wave two findings, which focus on the experiences of tenants on lower incomes and those in housing need. These findings come at a useful time, as Scottish Government develops plans for further tenancy legislation in 2024, and the government in Westminster prepares to reform private renting in England.

This report shows that more needs to be done to support low-income private renters to ensure that they are able to benefit in practice from increased rights in legislation. Local authorities and the tribunals system should ensure that renters' rights are upheld, but it's clear that they require more capacity and resources to meet demand. The private renting enforcement system needs to target poor standards at the bottom of the market, where low-income tenants have less power to challenge landlords.

While the same number of landlords interviewed expected to stay in the market as those that expected to leave, those renting to parts of the market considered to be riskier, in particular student housing and the low income/benefits market, were more likely to be considering leaving. Policymakers across the nations should also consider the implications of stock reduction, which could adversely impact on low-income tenants due to reduced housing options.

While the reforms in Scotland have improved the rights of private renters overall, the RentBetter research demonstrates that improving the rights and experiences of private renters is complex and requires addressing challenges that sit beyond the confines of private renting policy. These challenges include the enforcement and justice system, the benefit system, and social housing supply.

Five years on from tenancy reforms by Scottish Government, this report is a valuable barometer of the impact of changes for tenants and landlords. We look forward to learning from the final wave of RentBetter research in 2024.

Hannah Slater  
Transforming the Private Rented Sector Programme Manager  
The Nationwide Foundation

## Executive Summary

'RentBetter' is a research programme funded by the Nationwide Foundation to evaluate changes in the Scottish Private Rented Sector (PRS) regime, and in particular the impact of the Private Residential Tenancy (PRT) introduced in 2017. The Foundation commissioned [Indigo House](#) in 2019 to undertake research to learn from the experiences of households living in, and landlords providing, private rental properties in Scotland. The aim is to help identify any further changes that may be needed in Scotland, and to share lessons learned for the benefit of private tenants and landlords across the UK. The Foundation wants to understand the impact of change on security of tenure, access to justice, affordability, and landlord and tenant conduct. The focus of the research is on the impacts of these changes on tenants on a low income and/or in housing need. [Findings from the Wave 1 Baseline \(2019/20\)](#) were published in 2020 and the endpoint of the evaluation is projected as 2024.

This RentBetter Wave 2 Final Report is one of a series of reports [published for Wave 2 of the research \(2021-22\)](#), bringing together findings from secondary data analysis, and mainly qualitative research with tenants, landlords and letting agents, and wider stakeholders. The focus of the Wave 2 research is on supply - landlord 'leavers and stayers'; rent affordability; disputes and access to justice; and the impacts of the pandemic. While the Wave 1 Baseline study considered the whole population of tenants, this Wave 2 research has an emphasis on the experiences of tenants on lower incomes, and those in housing need. Tenants interviewed had average incomes of net £17,000 per annum, most were claiming benefits, and were renting at the lower end of the market. The landlords and letting agents interviewed provided insights from across different parts of the market.

### PRS housing supply, and the 'leavers and stayers'

This Wave 2 research points to increasingly constrained PRS housing supply, and it is likely that the **PRS stock in Scotland is beginning to reduce**. Broadly equal numbers of landlords participating in this research said they were staying or leaving the PRS market over the next 2-5 years. Importantly, **new landlords are not joining the market** in the same volume as experienced a decade or so ago. 'Hard-to treat' properties being sold due to unfeasible energy efficiency targets are less likely to be sold within the PRS onto other private landlords, and are more likely to be sold for ownership or may be sold into the 'shadow PRS' i.e. to unregistered landlords who have no intention of meeting climate change targets.

**Reasons for landlords intending to leave the market** showed a combination of factors: Scottish PRS reform with '*constant tinkering*' increasing the weight of regulation; the less favourable UK PRS tax regime; the challenging energy efficiency requirements; the benefits system (for those in this market); the Coronavirus legislation impacts and prospect of more regulation; the "vilification" of landlords; personal decisions around 'age and stage' in landlords' careers; and for some, personal experiences, perhaps around one 'bad' tenant with significant financial losses being the final straw. Bringing these factors together mean that for many, the risks in the PRS – financial and non-financial – are now too high.

While we can confidently conclude that landlords are leaving the market and new landlords are not joining at the same rate as a decade ago, **we cannot be confident about who the leavers are**. This Wave 2 qualitative research has shown the potential 'leavers' are diverse, reflecting the complexity of the market, ranging from 2 to 30 in portfolio size (median of 6), who were mainly 'investment' landlords. Some of the larger landlords may sell parts (not all)

of their portfolio in markets which are now riskier e.g. student housing, or housing focused on the lower income/benefit market. The determining factors on whether landlords are staying or leaving the PRS market are around the balance of investment risk: the part of the market landlords are in; how all the various factors have impacted on individual landlords; and whether, taking these in the round their investment could be better placed in lower risk alternatives.

### Access to the PRS for tenants and affordability

The 2019/20 Baseline research showed that the PRS is mainly used as a short-term transitional tenure. This Wave 2 sample of low-income tenants showed a stark difference, where there was a clear sense of being **'trapped' in the PRS** where they could not get access to social renting and could not save for ownership. Many of these households had been renting for long periods (over ten years), not out of choice, but because they couldn't access a better alternative.

The research shows there are **huge challenges for low-income tenants to access or move within the PRS, with affordability challenges getting worse over time**. There was fear from tenants about the prospect of moving due to potentially higher rents for the equivalent (or slightly bigger/better) property. Tenants were expecting to pay unaffordable rents, and getting suitable accommodation was especially hard for families and those claiming benefits. Navigating the benefits system added to affordability problems for tenants, and to operational and financial risk for landlords and letting agents. For those with less financial power and certain demand groups, there is also evidence that **access to the PRS is becoming even more restricted**: some landlords are leaving the student mainstream PRS market under the PRT; some are leaving the housing benefit market as it is more challenging under Universal Credit, and there was an overall sense of increased caution from landlords applying stricter eligibility criteria for tenants, especially those in precarious work.

Most of the low income tenants in this Wave 2 research were **paying a third to half of their income on rent**. Some tenants were paying more than this and other tenants were struggling against poverty even when paying private rents that were within Local Housing Allowance levels (and so would attract benefits to pay all the rent if they were claiming benefits). The scale of difficulties faced **suggested that tackling affordability problems is beyond the confines of policies for the PRS, but also involves tackling wider problems of poverty** - the challenges of precarious low paid work, the barriers of the benefit system and wider cost of living. It was clear that the PRS was not the right place for many of these financially vulnerable households, who would benefit from living in the social rented sector where there is more support to navigate the benefit system.

Rent increases within tenancies were rare amongst the Wave 2 sample of tenants, and the RentBetter 2019/20 Tenant Survey showed that for most tenants - 59% - their rent had stayed the same since they had moved in. Lack of annual rent increases means that in turn there is a limited role for rent adjudication in its current form in Scotland which requires a rent increase at least one year after the last increase in a PRT. The overall impact therefore is that **there is very little challenge of rent levels in the PRS**.

The research shows that challenges of affordability results in an **unwillingness from tenants to challenge landlords** or to 'rock the boat'; for example, about property condition for fear that this may result in rent increases, or worse, loss of the tenancy. This unwillingness to challenge is not necessarily about lack of awareness or about methods of access to justice

(which is also true) but is about fear. This fear of rent increases is leading households to more financial difficulty, or at worst losing their home in a housing system where there is very little and reducing choice for poor tenants that have very little financial power.

### Disputes and access to justice

The Wave 1 Baseline research showed that most tenants are satisfied living in the PRS.<sup>1</sup> This Wave 2 sample of tenants suggests **lower satisfaction is more likely for tenants on lower incomes and in housing need**. The relationship and the level of trust established between the individual tenant and landlord is important, and for tenants, trust was generally built by the landlord getting things done quickly and properly (mainly repairs), and unlikelihood of the property being sold. From this sample of low income tenants, there is evidence of **greater satisfaction from smaller landlords where there is a direct relationship with tenants** compared to renting from remote larger landlords or through letting agents.

Many of this Wave 2 sample of tenants were dissatisfied with repairs and the condition of their homes and there was **low awareness of rights including the Repairing Standard** (a finding repeated from Wave 1), and there was also lack of confidence and/or fear in exercising their rights due to the potential repercussions of rent increases or losing their home in a housing system where there is very limited choice for people on low incomes. This conclusion is supported by very low numbers of repair cases taken to the First Tier Tribunal, 4% of all applications in 2019-20, despite conditions in the PRS being worst across all tenures in Scotland, and many of this sample of tenants complaining about property conditions.

The research shows that higher service satisfaction equates to trust and the *feeling* of security of tenure, but this does not equate to actual security of tenure. While the PRT has increased legal rights, there was a sense from these tenants at the lower end of the market that if the relationship didn't work or trust broke down for whatever reason, then security of tenure may be jeopardised. Examples of the **contract being governed by a subjective tenant landlord relationship rather than through an objective, commercial contract**, included: feeling that the rent hadn't gone up because they had been a 'good tenant'; fear of telling the landlord that they had moved to Universal Credit; feeling that continued complaints may result in increased rents or notice to leave; experience of notice to leave being served after pursuing formal justice routes. The theme from these lower income tenants was that the **overall the balance of power lay with the landlord**.

As with the Wave 1 Baseline findings, all the Wave 2 sample of **tenants with experience of the First Tier Tribunal (Housing & Property Chamber) felt that the system was too formal, lengthy and not easily accessible**. There was general dissatisfaction with what was considered a stressful process for less than satisfactory outcomes for tenants and which often resulted in poorer relationships with their landlord or letting agent. Landlords also considered taking the formal route to justice as time consuming, slow and inaccessible, although letting agents who had more experience of the Tribunal process felt cases were dealt with fairly and with rigour, but also highlighted the delays and damage this could cause for tenant and landlord, especially in rent arrear cases.

The **value of independent expert advice** in helping tenants navigate the law is clear from this research and encourages tenants to exercise their rights. However, numbers of reported

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<sup>1</sup> The RentBetter 2019/20 tenant survey and the Scottish Household Survey shows most tenants in the PRS are satisfied with private renting.



advice cases (excluding self-help web-based advice) are relatively low and have been falling over the last three years. While the demand side may be assisted by better access to information and advice, **enforcement of existing laws for non-compliant landlords** was a key theme from the research. Tenants living in poor housing want repairs done and quality improved, and compliant landlords pointed to the need for much more enforcement of existing laws, especially in the lower end of the market where tenants are more vulnerable to non-compliant landlords.

### Experience of private renting through the pandemic

The research shows that many **tenants and landlords suffered severe financial impacts from the pandemic**; this brought the fragility of the lower end of the PRS market to the fore. Precarious work resulted in loss of earnings for tenants and increased rent arrears. A few substantial arrear cases were reported (between 12-24 months and up to £20k) which had severe financial consequences for landlords. Tenants who had to claim benefits for the first time found the experience stressful, as did landlords when the system resulted in loss of earnings. Those landlords with more negative experiences suggested future **implications for more restricted access to the PRS for lower income tenants** and/or those in precarious work, especially if discretionary eviction grounds continued.

On the question of **effectiveness of the extended eviction notice periods**, it is clear from the research that the Coronavirus legislation served to reduce evictions and prevent homelessness from the PRS during the pandemic. These interventions benefited tenants during the crisis period. However, this finding does not mean that evictions did not occur, and evidence shows in this research that illegal evictions increased during the pandemic. Legitimate evictions are now increasing again, and recent evidence provided to the Scottish Parliament shows landlords have been using a wider range of grounds to evict tenants than had been used previously. This may be explained by the fact that landlords are frustrated with the rent arrears ground in particular, evidenced in both Wave 1 (2019/20) and this Wave 2 research, with the impact of this ground exacerbated by the Coronavirus legislation. The research also shows the impacts of the extended eviction notices in increased rent arrears and concludes that the **longer-term impact of the extended notice periods is that evictions can be expected to increase over the coming months and years**. The Scottish Government tenant loan and grant may mitigate against eviction for some tenants, but only for a very small proportion compared to the estimated number of tenants in arrears. In terms of whether making all the grounds discretionary deterred unreasonable evictions, there is insufficient data to conclude on this question and further research is required to track the longer-term impact of making all grounds discretionary.

In respect of **implementation of pre-action requirements<sup>2</sup>** in the PRS during the pandemic, the extent to which these changes were welcomed by landlords was mixed and experience varied for tenants. There was evidence of some good practice with tenants around managing rent arrears and putting arrangements in place which tenants needed and wanted, typically for arrears of less than 3 months. But the research also showed the different attitude of a small number of 'non-payer' tenants who would not pay no matter what information, advice or arrangement was put in place.

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<sup>2</sup> Pre action requirements apply where a landlord is seeking to end the tenancy in the case of rent arrears and require the landlord to provide clear information in relation to the tenancy and arrears, to make reasonable efforts to agree a payment plan with the tenant, and give reasonable consideration to steps taken by the tenant and any changes in the tenant's circumstances which may affect their ability to comply with the agreed plan.



## Overall conclusions and recommendations

In overall terms, RentBetter Wave 1 (2019/20) and Wave 2 (2021/2022) research has indicated the differences between the positive experience of most tenants in the PRS population in Scotland, compared to the poorer experience for lower income tenants, and those in greatest housing need living in the lower end of the market. All tenants in Scotland on the PRT now have stronger rights than through the previous tenancy regime, but the experiences of the 2021/22 sample of tenants suggests that this is unlikely to have had much impact for lower income tenants. Renters at the lower end of the market have to tolerate lower affordability, poorer housing conditions, and have much less choice in the market which results in less market power. This lack of choice is critical in the power relationships between tenant and landlord, because lack of suitable alternatives means fear of consequences of rent being increased or losing your home, and therefore landlords are challenged less. For the few who do chose to pursue formal justice through the First Tier Tribunal this experience is generally intimidating and unsatisfactory.

There are clearly unintended consequences of layer on layer of regulation from different legislators on different things – tax, tenancy law, climate change, Coronavirus legislation. As legislators in Scotland plan to introduce more regulation, they should consider the findings of this research and the potential negative impact on supply and access to the PRS. Reduced supply and access to the PRS will have a disproportionate impact on lower income and other demand groups in housing need, compared to the general PRS population. Strong and targeted enforcement should be prioritised to mitigate market failures at the lower end of the market.

## Recommendations

- **Early information and advice for tenants** - There should be greater capacity created for early and ongoing information and advice for PRS tenants. There should be a plain language, accessible information leaflet provided at the start of each tenancy, and a verbal walk-through provided by the landlord and letting agent on the key tenant and landlord rights and responsibilities. To support tenants in potential disputes there should be more PRS ring-fenced resources for independent advice and for local authorities' advice and PRS regulatory services.
- **Enforcement** – there should be much greater emphasis placed on strong, and targeted enforcement of existing legislation in the lower end of the market where tenants have less market power to address failings, and less choice to move elsewhere. Scottish Government should support targeted enforcement through additional ringfenced funding for existing enforcement routes – local authorities and the First Tier Tribunal.
- **Training and support for landlords and letting agents** – landlords should be supported in compliance through continuous awareness raising of Letting Agent registration, Landlord Registration, and Government should support the landlord and letting trade bodies that promote compliance.
- **Access to justice** – capacity should be increased in the First Tier Tribunal system, and the system should be simplified to encourage tenants and landlords to seek formal justice when necessary. This should be accompanied by awareness raising, and support through information, advice and advocacy.

- **More supply of affordable housing** – there is a vicious cycle of power imbalance in the PRS at the bottom of the market. This is ultimately due to inadequate supply of good quality affordable housing for people who are living in poverty. Scottish Government should continue to fund the new supply of social and other affordable housing, including purchases of PRS stock by housing associations, and local authorities should release generous land supplies to enable new housing supply across tenures.
- **Addressing poverty** – this research has shown how tenants were struggling against poverty even when paying private rents that were within Local Housing Allowance levels. The scale of difficulties faced suggests tackling affordability problems is beyond the confines of policies for the PRS but requires Government to tackle the challenges of precarious low paid work, the barriers of the benefit system, and wider cost of living.
- **Climate change and energy efficiency** – Scottish Government should support landlords by providing them with clear and accessible information and advice and provide financial grants to landlords to enable them to bring properties up to climate change compliance. This should also help tenants with energy costs and help deter sales out of the PRS or to non-compliant landlords.

## 1. Introduction and methodology

### Aims of the research

'RentBetter' is a research programme funded by the Nationwide Foundation to evaluate changes in the Scottish Private Rented Sector (PRS) regime. The Foundation commissioned [Indigo House](#) in 2019 to undertake a three-year study to learn from the experiences of households living in, and landlords providing, private rental properties in Scotland. The timescale for the research has since been extended due to the Coronavirus pandemic and is now projected to complete in 2024.

The Foundation's key aims for this research is to understand the impacts of recent changes that have been made within the PRS in Scotland, in particular the introduction of the Private Residential Tenancy from 2017. This research helps identify any further changes that may be needed in Scotland, and to share lessons learned for the benefit of private tenants and landlords across the UK. The Foundation wants to understand the impact of change on security of tenure; access to justice; affordability; and landlord and tenant conduct. The focus of the research is on the impacts of these changes on tenants on a low income and/or in housing need. [Findings from Wave 1](#) of the research were published in 2020.

This **RentBetter Wave 2 Final Report** is one of a series of reports for Wave 2 (2021-22). The report brings together a range of findings from secondary data analysis, and qualitative research with tenants, landlords and letting agents, and wider stakeholders. This report should be read in conjunction with the separate secondary data analysis and qualitative reports. The focus of the Wave 2 research is on affordability, landlord 'leavers and stayers', disputes/access to justice and the impacts of the pandemic. There is a particular emphasis on the experiences of tenants with lower incomes, and those in housing need in this wave of research.

The Baseline Wave 1 findings (2019-20) showed:

- The PRS is mainly a transitional and shorter tenure compared with ownership or social renting. Finding a private rental is generally easy over the whole PRS tenant population, but was more difficult for those with lower incomes, those living in urban and pressured markets, single people, single parents, disabled people and those from Black and Minority Ethnic backgrounds. These groups also tended to live in the PRS for longer periods than average.
- Affordability was the key problem for access to the PRS. A relatively high proportion of income was spent on housing in the PRS across all groups, although only just over 1 in 10 thought rents were difficult to afford – suggesting tenants had low expectations about affordability or were used to paying high rents. From a landlord's perspective, letting to private tenants claiming benefits or on low incomes was largely driven by the type of market, although there were some that were reluctant to rent to tenants on benefits due to the perceived financial risk.
- Most tenants were satisfied with their renting experience, although there was a minority experiencing poor condition and repair services. The importance of maintaining positive, trusting relationships with the landlord was a strong theme from tenants which they linked to the sense of security, and this close contact between landlord and tenant appeared to

be a key driver in there being little appetite from many tenants for lodging formal legal complaints.

- There was a lack of awareness from tenants about their rights. The most important aspects of 'security' from tenants' perspectives were affordability, trust in the landlord and secure employment. The minority that felt less secure were those with less financial power – those living in deprived areas, on lower incomes and/or receiving housing benefit.
- A low proportion of tenants had experience of disputes and there was confidence in the ability to sort these out informally. Awareness of the formal route to justice through the First Tier Tribunal was very low, and experience of it from a small number of tenants suggested there was an asymmetry of access to justice between tenants and landlords, with landlords more able to self-advocate, use the skills and experience of letting agents, or use the resources of professional advisors.
- From the landlords' and letting agents' perspective on the impacts of tenancy reform, most saw 'no impact' of the PRT although at that point there appeared to be a significant proportion of Short Assured Tenancies (SATs) still in use. There was significant negative opinion about the combination of a reduced notice period of 28 day combined with the open-ended nature of the tenancy. Ground 12 (non-payment of rent) was also causing difficulties for landlords with the effect of lengthening the time for eviction.
- In terms of the future of the sector, landlords' and letting agents' opinions about the future of the PRS were broadly equally positive and negative. The single most unpopular intervention in recent years has been the change in tax relief regime. This change, when combined with the wider changes in regulation in Scotland, was considered to be too much for some to stay in the sector – just under a quarter indicated they were considering selling all their properties and leaving the sector and were most likely landlords with between 2 and 5 properties. The research pointed to the cumulative impact of changes in the sector having a more negative impact on smaller 'cottage industry' landlords, many of whom are seen as quality providers by tenants, providing a more person-centred service, compared to larger, more institutional landlords.

## Hypotheses and research questions for Wave 2

Wave 2 has concentrated more on tenants with lower incomes and those in housing need, and has explored the following hypotheses:

- Leavers and stayers – Landlords with fewer than 5 properties in their portfolio are more likely to leave the sector as a result of PRS reforms in Scotland.
- Affordability – Tenants in higher rent markets have low expectations of affordability. This hypothesis is based on the baseline findings which appeared to show a disconnect between high rents in some markets and tenants' perceptions of affordability.
- Justice – Service provision, security of tenure and dispute resolution is considered more favourable by tenants of landlords with small portfolios (fewer than 5 properties). This hypothesis is based on the baseline finding that suggested better quality services and favourable dispute resolution was more common from smaller landlords.

In bringing these findings together, of particular interest is whether the smaller ‘*cottage industry*’ landlord is more likely to provide a better service than other larger landlords/letting agents, but are in fact the most likely negatively impacted by PRS reform, and more likely to leave the sector.

## Research questions for the Coronavirus legislation impact

During Wave 1 of RentBetter programme, the Coronavirus pandemic hit the UK in spring 2020. Scottish Government responded in the PRS by introducing temporary legislation which meant that from 7 April 2020 landlords had to provide extended periods of notice to leave (increasing from three to six months, except 28 days for antisocial behaviour and those with criminal convictions), the grounds for eviction were made discretionary, there was a temporary ban on the enforcement of eviction orders (in areas where there was a Coronavirus protection level 3 or 4), and landlords were required to adopt pre-action requirements<sup>3</sup> before seeking to end a tenancy. The provisions for the extended notice period expired on 30th March 2022. As set out in the Coronavirus Recovery and Reform Scotland Bill<sup>4</sup>, the eviction grounds will remain discretionary and the pre-action requirements will remain in place, and based on the [Scottish Government’s New Deal for Tenants consultation](#)<sup>5</sup> (December 2021) these provisions may become permanent.

Given the major impact of the pandemic on all aspects of life, the Nationwide Foundation decided to extend the research to explore the impact of the Coronavirus legislation on the PRS. The research questions for this part of the research were:

- Was extending the eviction notice period beneficial for tenants/landlords? What difficulties can be foreseen in extending eviction notice periods for tenants/landlords? Are there specific circumstances where landlords would be more amenable to lengthening notice periods?
- To what extent did making all grounds for eviction discretionary deter unreasonable evictions during the pandemic? Are there mandatory grounds for evictions that should now be discretionary?
- How did the implementation of pre-action requirements for evictions affect landlords in the PRS during the pandemic? Were these pre-action requirements commonly practiced by private landlords before their introduction in law? What were the benefits of these pre-action requirements for tenants?

## Structure of this report

The following chapter sets out the research methodology. The research findings are then structured as follows:

- PRS housing supply, and the ‘leavers and stayers’

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<sup>3</sup> Pre action requirements apply where a landlord is seeking to end the tenancy in the case of rent arrears and require the landlord to provide clear information in relation to the tenancy and arrears, to make reasonable efforts to agree a payment plan with the tenant, and give reasonable consideration to steps taken by the tenant and any changes in the tenant’s circumstances which may affect their ability to comply with the agreed plan.

<sup>4</sup> <https://www.parliament.scot/bills-and-laws/bills/coronavirus-recovery-and-reform-scotland-bill>

<sup>5</sup> <https://www.gov.scot/publications/new-deal-tenants-draft-strategy-consultation-paper/>

- Access to the PRS for tenants, and affordability
- Experience of living in the PRS, disputes, and access to justice
- The impact of the pandemic on tenants and landlords
- Conclusions and recommendations.

## 2. Methodology

The Wave 2 research has been mainly qualitative with tenants, landlords and letting agents, and wider stakeholders. This study has been supplemented by secondary data analyses.

This qualitative research with 48 landlords and letting agents (37 landlords and 11 agents), 65 tenants and seven wider stakeholders was conducted through semi-structured in-depth telephone/MS Teams interviews, undertaken between September 2021 and February 2022. A typology of landlords developed by Rugg and Wallace of the University of York<sup>6</sup> was used to categorise landlords in the recruitment and analysis as follows:

- Accidental - 1 or 2 properties, not intending to remain as a landlord
- Investment - employed elsewhere in addition to being a landlord, or other income/retirement income
- Portfolio - no other employer and is actively involved in managing properties.
- Business – large number of properties and have created ancillary property companies with employees, or have a large portfolio of businesses, of which property is one.

Participants were recruited through advertising the research as widely as possible with representative organisations, local authorities, third sector organisations including charities working with tenants, and a general call for tenants and landlords was issued to stakeholders and was available on the RentBetter [website](#). Tenants with experience of the First Tier Tribunal (Housing and Property Chamber, FTT) were recruited through direct letter<sup>7</sup>. A record was kept of interviews as they happened with gaps in recruitment identified to ensure that the sampling framework was achieved as far as possible. The separate qualitative reports provide details of the profile of landlords and tenants interviewed, and the topic guides used for interviews.

The purpose of qualitative research is to provide in-depth understanding into particular issues, by exploring experiences, characteristics or behaviours. As is typical, the sample sizes are smaller than those used for quantitative surveys, and the intention is not to be statistically representative. Reporting of qualitative findings has been done through analysis and description of opinion, rather than counts or measures. The following descriptions are used here in reporting qualitative findings in descending order of the prevalence: all, most, many, some, several, a few, and one or two. Some comparisons have been made throughout the report between the Wave 1 general PRS population findings (based on large scale quantitative findings) and the qualitative findings from this Wave 2. It should be remembered that the qualitative findings are not representative of the whole PRS population, but rather illustrative of experiences from a smaller sample, and so direct comparisons between Wave 1 and Wave 2 should be interpreted with caution.

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<sup>6</sup> Rugg, J. J. and Wallace, A. (2021) Property supply to the lower end of the English Private rented sector. Nationwide Foundation and Centre for Housing Policy, University of York.

<sup>7</sup> Name and address of tenants and landlords involved in Tribunal cases are a matter of public record at <https://www.housingandpropertychamber.scot/previous-tribunal-decisions>



Throughout this report, anonymised and non-disclosive quotes and mini case studies are provided to illustrate key points. Landlords and tenants have been categorised throughout the analysis to provide context.

## Limitations

The qualitative research approach allows for intensive exploration and description of key issues, thus providing insights into participants' views. This approach allows the researcher to make reasonable judgements as to the prevalence of such views, although the nature of qualitative research (i.e. the number of interviews typically achieved, the free-form nature of responses, etc.) means that it is not possible to generalise the findings of the qualitative research in a statistical sense to that of the wider population. The qualitative approach allows us, given the number of interviews involved in this research and the recurring themes found, to summarize and develop general propositions and conclusions on the basis of the most common themes and experiences found. While this is not a statistically representative methodology, 65 tenants and 48 landlords/letting agents were interviewed, which is a large sample for qualitative research and is sufficient for the researchers to draw conclusions about notable characteristics of a particular experience.

It should also be noted that there may be opt-in bias in any type of qualitative research. Research ethics require that we ask people to voluntarily opt-in to the research, and the participants can choose to withdraw at any time. It is usual that participants will wish to participate in the research because of their experience, and for some, they have something in particular they wish to say and offer to the research. In the context of this topic, this is true of both sides of the market – tenants and landlords/letting agents. The sampling framework mitigates against opt-in bias to some extent by ensuring that the researchers have achieved balanced sample around the specific research objectives. However, it is striking in the qualitative research that tenants interviewed (who were purposefully recruited from lower income tenants and those in housing need) appeared to be mainly living in the lower end of the PRS market, while the landlords interviewed were more evenly spread across the market and appeared to be broadly compliant, with a few exceptions. This means we may, to some extent be exploring opinion and experiences from tenants and landlords/letting agents in different parts of the market. Although we have captured a couple of non-compliant landlords, we have only had access to a very small number of landlords apparently acting illegally. Though this was not the aim of the research, it is a gap.

There are also secondary data limitations which are described in full in the separate published secondary data analysis report. The timing of the study means the secondary data available at this mid-point will still cover some PRS tenants (although a reducing proportion) on the previous assured and short-assured tenancy regime. The 2020 Scottish Household Survey report became available in late January 2022, but the data was collected using a telephone survey method rather than the usual face-to-face survey, due to the pandemic, so caution is needed in interpreting results. There may also be limitations in the SHS for the PRS. For instance, data collected on rents and income were not intended to be used for detailed analysis. Administration data is not readily accessible – Landlord Registration Data (LRD), Rent Deposits Data and information on decisions and outcomes made as part of the First Tier Tribunals data are not currently available as datasets available for research purposes. The annual report of the First Tier Tribunals includes more data analysis for Wave 2. In Wave 2 we collected anonymous case study data from a total of 28 of 32 local authorities who provided data on stock estimates and/or Section 11 notifications for this Wave. There is a lack of 'whole

stock' information – much of the analysis of supply and rents is based on industry datasets – e.g. Citylets and RightMove, although Scottish Government Private Rent Statistics data aims to collect a representative sample of c.10% of all PRS stock. There is also a lag in the provision of whole stock estimates – the latest available estimates of dwelling tenure at the time of writing were for March 2018 while the latest household estimates (not split by tenure) were for 2020. This limitation poses challenges for understanding the current provision.

### 3. PRS housing supply, and the ‘leavers and stayers’

This chapter sets out the estimated number of households living in the PRS, and the stock of dwellings and draws conclusions on how these figures have changed over time. It then moves on to consider landlords’ opinions about their intentions for leaving or staying in the market, and explores their reasons for their intentions, coupled with stakeholder opinion. It explores the evidence to test the hypothesis that landlords with fewer than 5 properties in their portfolio are more likely to leave the sector because of PRS reforms in Scotland.

#### 3.1 Estimated households and stock in the PRS<sup>8</sup>

In 2020, it is estimated that 14% of households were in the PRS – an estimated 340,000 households renting in the PRS (300,000 from a private landlord and 40,000 from family or friends)<sup>9</sup>. This figure is the same proportion found in 2018 and 2019, reducing from 15% of all households in 2017. This change was the first reduction in private renting as a share of household tenure in almost two decades. There is also an overall trend of slowing growth in the private rented sector among younger households (at between 36%-40% private renting), a trend which appears to have held for 2020.

Edinburgh and Glasgow are the largest PRS markets, with each having 17% of all households in the PRS in Scotland. The relative size of the PRS, in terms of the proportion of households within each local authority renting privately varies significantly across Scotland, from 5% in Falkirk to 25% in Edinburgh and 22% in Dundee.

In terms of the stock of dwellings in the PRS, this research provides insights into the overall scale of the stock and the availability of lets and suggests supply issues are becoming more pressing. The fluidity in the stock makes estimates of its size difficult, since this is changing all the time as stock is sold, or properties move out of residential into short-term lets. There are anomalies between national survey-based estimates of the overall volume of the stock and landlord registration data. Although data provided by local authorities showed stability overall in the number of registrations, there was some evidence of reductions in the private rented stock in some areas, with 12 of the 20 local authorities able to provide data reporting fewer properties in 2020 than in 2017, particularly in rural areas. Across Scotland, Landlord Registration Data showed a reduction in properties from around 348,000 in June 2019 to 342,425 properties in Feb 2020. The latest data, for December 2021 shows 339,820 properties on the LRD. However, this overall reduction of around 8,000 properties in the last two years may underestimate the loss of properties if there are landlords who have left the sector that have not de-registered.

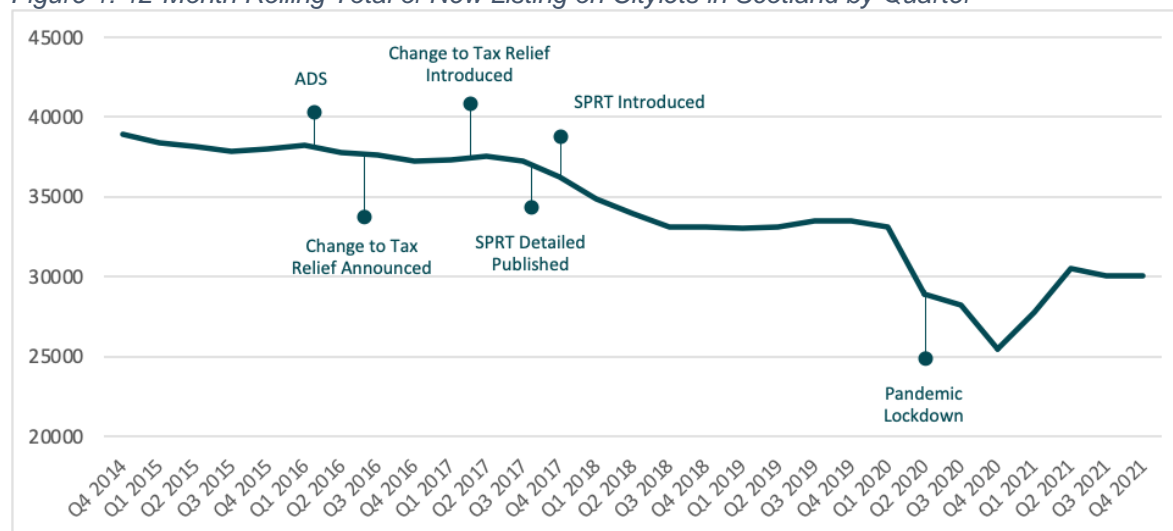
The number of properties being advertised on Citylets fell from over 36,000 in 2017 to just over 30,000 in 2021. Stock levels of larger properties have decreased the most, with the number of 3-bed listings in 2021 down 23% compared to 2017, with 4-beds down 19% and 5-beds down 21% in the same period. This change compares to a 13% reduction for 1-beds and 17% for 2-beds over the same period. These trends have been evident since 2017, but the ‘race for space’ created by the pandemic has increased demand for larger properties over the last year and will be a factor in shrinking available stock for such properties. Reductions in

<sup>8</sup> See RentBetter Wave 2 Secondary Data Analysis Report, March 2022

<sup>9</sup> 2020 figure needs to be viewed with some caution due to smaller sample sizes and the methodological differences in the 2020 Scottish Household Survey.

properties available to let are also evident from Rightmove data which showed that available supply over 2021 has been lower than similar periods in the past two years.

Figure 1: 12-Month Rolling Total of New Listing on Citylets in Scotland by Quarter



Source: Citylets / Rettie & Co.

One indicator of pressure, and impact on the flow of stock in the market is the length of tenure. The overall length of residence in private renting has increased slightly over the past five years from the average of 2.8 to 3.3 years (although it has fluctuated over the long term and was over 4 years in 1999). But the overall picture disguises some variation between urban and rural areas. The length of residence in urban areas has increased from 1.9 years to 2.6 years, small towns from 3.1 to 4.3 years, and in rural areas it is longer at 6.3 and has remained broadly stable over the period 2014-2019.

Most recently, the PRS has seen reduced use for homeless applicants, after a period of increased use. In 2020-2021, 5% of households who had been assessed an unintentionally homelessness or unintentionally threatened with homelessness had an outcome that they were housed in a private rented tenancy<sup>10</sup>. The latest data showed an increased proportion of homeless people housed in the PRS, up to 7% between April to September 2020 before reducing to 3% in April to September 2021<sup>11</sup>.

On balance, the market evidence alongside the reduction in the PRS stock estimates from the Landlord Registration Data points to evidence of increasingly constrained supply. There is some evidence of increased length of tenure from recent SHS data but more variation over the longer-term and variation between types of location. Although there may be slightly less 'churn', there is clear evidence of very high demand.

### 3.2 The 'Leavers' and the 'Stayers'

The Wave 2 qualitative research explored the current position of the market, and landlords' future intentions. It was clear from most of the interviews that landlord and agents could see

<sup>10</sup> Source: Annual Homelessness Statistics 2020-2021; <https://www.gov.scot/publications/homelessness-scotland-2020-2021/> (Table 48a)

<sup>11</sup> Source: <https://www.gov.scot/publications/homelessness-scotland-update-30-september-2021/> (Chart 8)

pressure on supply, particularly in the pressured and city markets. This observation of pressure in the market was also illustrated by one letting agent in the latest Citylets report<sup>12</sup>:

*“When commenting on the market I feel like a broken record. High demand, low stock. Post-lockdown we experienced a 100% increase of enquiries from people looking for properties across Scotland, especially family sized homes. This demand has continued throughout Quarter 3. With insufficient properties to meet demand it leaves many people feeling upset and frustrated because they can’t find a home. The PRS in Scotland is the most heavily regulated in the UK therefore is a matter of deep concern to hear increased anti-landlord rhetoric from the coalition. If this continues, I fear many landlords will leave the sector reducing further the choice of properties available.”*

Around half of participants in the research suggested that the ‘*balance had tipped*’ for them and they would be leaving the sector, although not immediately and typically over the next 2-5 years. This sentiment compares with a quarter of landlords in the Wave 1 survey. Landlords planning to leave the sector ranged from 2 to 30 in size, with a median of 6 properties, therefore potentially slightly larger portfolio than the hypothesis proposed. They were mainly ‘investment’ landlords but also included a few portfolio and business landlords with larger stock of 12-30, and the location of their stock varied across all types of areas - urban, city and rural, and in pressured and unpressured markets. It should be noted that the hypothesis that mainly smaller landlords would be leaving the market was based on Wave 1 large scale survey results involving 483 landlords across Scotland, whereas these Wave 2 results are based on qualitative research. The differences in findings may reflect different methods but may also suggest that landlords’ responses to leaving the market are to do with their assessment of business risk, rather than to do with size of portfolio.

Some letting agents also stated that they saw an increase in the number of landlords that were leaving the market (again across different types of areas and markets), although some other letting agents disagreed suggesting landlords were not necessarily leaving at an increased rate, but more importantly that new, accidental landlords were not coming onto the market (like a decade or so ago). These letting agents were of the view that these individuals were selling successfully into the ownership market. This could also mean that the supply of the smallest one property landlords will reduce as a share of the market.

The main reason landlords said they were leaving the PRS market was due to the weight of regulation exposing landlords to what they considered as unacceptable levels of risk, compared to other investment options. The Wave 1 research analysed the scale of regulatory change in the PRS in Scotland which showed that since the early 2000s there have been at least 10 different pieces of legislation or regulations in the PRS<sup>13</sup> covering landlord registration, Houses in Multiple Occupation, the Repairing Standard, discharge of homeless duties into the PRS, tenancy deposit schemes, the Private Residential Tenancy, rent pressure zones, the First Tier Tribunal and Letting Agent regulation.

Most of these landlords also had recent, and very difficult experiences of disputes with tenants, particularly relating to rent arrears, some exacerbated by the pandemic regulations. Others that focused on the student market discussed how the PRT had in their opinion adversely impacted the student market and so were now selling their student HMO properties. These views were closely related to assessment of financial risk, including removal of the mortgage interest tax relief, and the potential expenditure required to meet energy efficiency

<sup>12</sup> <https://www.citylets.co.uk/research/reports/property-rental-report-scotland-2021-q4/>

<sup>13</sup> <https://rentbetter.indigohousegroup.com/findings/then-and-now/>

requirements. At the same time Capital Gains Tax (CGT) was said to be ‘locking landlords in’. Several landlords stated that they would prefer to sell their properties quicker, but that CGT meant they would phase sales gradually – some said they would prefer to wait until their tenants moved, rather than giving notice and a few said they would sell with sitting tenants.

Landlords also reported that the enforcement of regulations was lacking and not reaching the ‘bad landlords’, and meanwhile was impacting on compliant landlords. Others reflected on the prospect of more regulation, and in particular the potential for rent control which for them was a ‘*step too far*’ and so planned to sell. There was frustration about the ‘vilification’ of landlords, the scale and speed of regulation, and on balance many saw the cumulative effects of regulation, combined with the Coronavirus legislation and prospects of further regulation as too much to bear.

*“It’s just too much, and the rogues will just keep on being rogue” (Landlord, Investment, 2)*

*“Well, I just plan now to start selling off my properties. I’ve now got a private tenant in X but once he leaves, and if my other tenants that I’ve got, if any of them left now, I would just start selling the properties off. Because of the hassle that I’ve had with X and with the Tribunal, the length of time, just the stress, and I just think, do you know what, it’s time now”. (Landlord, Portfolio, 5)*

*“I’m just watching the horizon at the moment. I don’t know whether I can get there with the energy requirements, I had five “Es” [energy ratings] and I’m now down to one. So I’m in a situation where I might sell, certainly the one E and to do with my age as well but the CGT might hold me in a bit longer” (Landlord, Portfolio, 15)*

Landlords who planned to sell properties that were not feasible to reach the new energy efficiency target of Level C by 2025<sup>14</sup> argued that when sold these are unlikely to remain within the PRS, but likely would move into the ownership market.

### **Meeting energy efficiency requirements**

A rural landlord on an agricultural estate with 20 properties is considering the options for meeting the energy efficiency requirements. These are old stone-built properties that were originally built for farm workers in the early 20<sup>th</sup> century. But as agricultural methods have changed the farm does not need as many workers based on the farm and these properties are now let to households on the open PRS market. The energy efficiency requirements are a big concern. While the estate can see the benefits of meeting climate change targets, and increasing energy efficiency for tenants, meeting level C is not feasible for these properties. They tried internally insulating one cottage but had to wait for it to be vacant first as tenants didn’t want the upheaval and change to their home. When it was treated after a few years it had to be stripped out due to the damp it caused as ‘*old stone buildings need to breath*’. The family is waiting anxiously to see the detailed Scottish Government regulations and guidance, and what, if any financial support is provided before deciding whether to keep or sell the portfolio on the open sales market.

<sup>14</sup> The Scottish Government’s Heat in Buildings Strategy published in October 2021 confirmed that all private rented sector properties must reach a minimum standard equivalent to EPC Level C (changed from previous proposal of Level D) from 2025 where technically feasible and cost-effective, at change of tenancy, with a backstop of 2028 for all remaining existing properties.



There was also a common view that the Scottish Government undervalued the PRS and the role it played in the overall housing system, arguing that the PRS had an important role for people who are unable to buy, or who don't have enough priority for social housing.

However, a similar proportion of landlords said they planned to stay in the market, although some of these caveated their response that it was less attractive financially as it used to be. Those that wanted to stay in the market had a wide range of circumstances and motivations, including altruistic (landlords typically saying they wanted to continue providing a good quality home for families), and tended to be smaller landlords with a median of five properties. This finding was supported by a few letting agents who considered that many small-scale landlords 'wanted to keep their property for their pension'.

*"Yes, I would like to keep my property. I would like the family that are in it to see it as their long-time home, you know, so, no rush to get away from being a landlord." (Landlord, Investment, 1)*

Wider stakeholders voiced some caution around impacts of ongoing and increasing regulation on landlords including the Scottish Association of Landlords (SAL)<sup>15</sup> which recently published the results of a member survey of 635 of its members. This study found 34% are planning to reduce their portfolio in the next ten years with two most commonly given reasons being increased regulation in the sector (62%) and perceived hostility from government (60%).

Several other stakeholders also suggested that availability in the PRS had reduced, and voiced concern about the impact on the wider housing system. Those working in rural areas reflected on the change in the wider housing market during and since the pandemic with higher demand in the sales market as remote and hybrid working pushed up demand. One participant noted a recent increase in homeless presentations in their area which they considered to be as a result of PRS sales into the unusually buoyant ownership market for that particular area. Looking at this trend on a national level, reasons for losing previous accommodation through 'other action by landlord resulting in the termination of the tenancy' (which includes selling a property) increased from 4% in April to September 2020 to 6% in the same period in 2021 – although still lower than 9% in the same period in 2019.<sup>16</sup> The perceived recent increase in sales of PRS properties was also observed by other stakeholders, some challenging the discretionary 'intention' grounds (intention to sell the property by the landlord or lender, to live in the property by the landlord or relative, or to refurbish the property), countered by others around the potential unintended consequences i.e. reducing the number of PRS tenancies.

*"It's about prioritising the right to housing rather than prioritising the right to profit from housing." (Representative organisation)*

*"I think we need to be careful to strike the right balance between supporting the tenants and balance and avoiding any unintended consequences." (Representative organisation)*

In addition, wider stakeholders interviewed reflected on the possibility of a Private Sector Regulator for the PRS for which there was mixed opinion. The over-riding concern was that

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<sup>15</sup> <https://scottishlandlords.com/news-and-campaigns/news/cut-of-36000-homes-to-rent-in-scotland/>

<sup>16</sup> See RentBetter Wave 2 Secondary Data Analysis Report, March 2022, source <https://www.gov.scot/publications/homelessness-scotland-update-30-september-2021/>



there should be more enforcement to tackle the ‘bad’ landlords, particularly those affecting poorer tenants at the lower end of the market. There was concern that sufficient resources should be applied to this aim, which may not necessarily require a new structure to be put in place.

*“If a Regulator is going to be given proper enforcement powers and proper resources to achieve their mission, great. But we’re not too sure that it would. So, we’d rather see strengthening of the powers of the Tribunal and strengthening the powers, enforcement and resources of local authorities rather than create another layer.” (Representative Organisation)*

### 3.3 Summary – Supply and the ‘leavers and stayers’

This research provides insights into the overall scale of the stock and the availability of lets and suggests supply issues are becoming more pressing. On balance, the market evidence alongside the reduction in the PRS stock estimates from the Landlord Registration Data points to evidence of increasingly constrained supply. There is some evidence of increased length of tenure but more variation over the longer-term and variation between types of location.

The qualitative research shows that some landlords may be leaving the market for a range of reasons over the next 2-5 years, although a broadly equal number of landlords said they intended to stay. Letting agents argued that importantly, new ‘accidental’ landlords were not coming onto the market, suggesting they were able to sell properties into the sales market, rather than renting the property out that they could not sell. The ‘leavers’ had varying sizes of portfolio, not only the smallest landlords, and some suggested they would sell once tenants moved on, or with sitting tenants. It was also argued that more ‘difficult-to-treat’ properties in relation to energy efficiency would not be sold on within the PRS due to lack of feasibility of meeting the Level C standard required by 2025. Wider stakeholders agreed with the perceptions of supply constraint and sales out of the PRS sector with the impact this may have on the wider housing system. Enforcement of existing laws for rogue landlords was a key theme from landlords, and some wider stakeholders queried the merit of a new regulator but rather erred towards more targeted resources through existing enforcement mechanisms.

## 4. Access and affordability in the PRS

The previous chapter looked at supply aspects of the private rented sector including estimates of stock, and indicators of supply constraints, with opinion from stakeholders on whether landlords are likely to leave or stay in the market. This chapter considers the demand side including tenant's experience of finding a place to live in the PRS and rent affordability.<sup>17</sup> It explores the evidence to test the hypothesis that tenants in higher rent markets have low expectations of affordability.

### Access to the PRS

#### 4.1 Demand pressure

The RentBetter Baseline survey (2019-20)<sup>18</sup> found that most tenants thought finding a private rental was very easy or easy (66%) but it was more difficult for those on lower incomes and benefits, those living in urban and pressured markets, single people, single parents, disabled people and those from Black and Minority Ethnic backgrounds. Affordability was the key barrier to access.

From the Wave 2 qualitative research, it was clear that there was significant demand pressure relative to supply particularly in cities and rural areas, highlighted by tenants, and all other stakeholders in cities and rural areas. As illustrated by one city letting agent:

*"85% of the calls that we got were not our customers, they were not our landlords, they were not our tenants, they were not our suppliers, they were prospective tenants who were looking for properties in the market [they would say] I've seen this flat you've got advertised, can I put in an application? And we're saying, I'm sorry, we've got 20 applications already, or, I'm sorry, that one's been let. So, they were saying, well what do we have to do? And we were like the tenants' Samaritans. You know, we then spent the rest of the day just on the phone to people going, this is...it's really tough out there, it will get...September's not a good time, it is going to get easier, but these are the steps you can go through, these are the alerts you can register for, but there's just not enough property out there.' (City Letting Agent, 1,600)*

Most tenants interviewed (who were lower income tenants and/or in housing need) reported living in pressured areas, and said the main reason for private renting was that they had no other choice; many had lived in the PRS (in various places) for around 10 years - some said they '*felt trapped*' - they couldn't access social housing and couldn't save the deposit to get a mortgage for their own place, with their wages or benefits barely covering the cost of living. Most said finding their place to rent was hard, or very hard, with some reporting having to look for six months or more. The cost of renting and affordability was the main obstacle, and for a few families it was also about the lack of space available, and/or the safety of the area. One family provided an example of looking for a year and a half, with nothing in the local area within their budget, and were currently tolerating overcrowded conditions. Finding a place to live, especially in cities and across all household types, was described as being a 'full time job', with competition fierce and people having to 'jump' at any chance, even if they were not keen or sure it was what they wanted.

<sup>17</sup> For all secondary data analyses see the RentBetter Wave 2 Secondary Data Report

<sup>18</sup> <https://rentbetter.indigohousegroup.com/wp-content/uploads/sites/3/2020/11/Tenant-survey-report-Wave-1-published.pdf>

*“I would say it has been a negative experience, trying to find accommodation is very difficult. Trying to find a flat that is affordable is really difficult. There is always competition. They can raise the price to what they want. Our current flat was posted with no photo, it was risky to go for it but there was 8 people there on the day, so you had to call right away to get it.” (Couple, urban, renting from national Letting Agent)*

Several disabled people explained that they needed level access ground floor accommodation, but that there was very little choice, in the social or private rented sectors. Other examples of the demand pressure, and competition for property was where people had to pay very large deposits, or deposits on application, including non-returnable<sup>19</sup> deposits for making applications. A few people that had pets said that this was a particular barrier to getting properties to rent and had to pay an extra deposit if pets were accepted.

In the rural areas, rental properties were described as being as rare as ‘*hen’s teeth*’. It was notable that in the rural areas, properties were often found informally through friends or family, rather than through more formal routes such as the internet or being openly advertised. Interviewees lamented increasing demand in rural areas, with holiday accommodation and second homes were said to be pushing local people out. They said this changed the dynamics of the area, so that the feeling of a local community was being lost or compromised.

*“It is horrendous. I don’t know how to begin to describe the housing problem. Local people have to go away. I know someone who has been living three years in a van to get a deposit for a place... I see so many people struggle with rent here. The Airbnb and tourism is insane. Local people have to move away! They can’t afford to live where they work.” (Couple, rural, small landlord)*

#### **Selina, highlighting the complexity of relationships between landlords and tenants in rural areas**

Selina lives in the Highlands and is disabled. A third of her income is spent on rent. Her landlord is a friend who lets her stay there on a short-term basis when she became disabled and needed to be closer to medical services and ease of access to shops. However, she has been there now a few years. Repairs are needing to be done but Selina feels she can’t ‘push it’ and she explained about how for people living in rural areas, there is an awkward dynamic with knowing the person who is your landlord, and things not being done, but also there is limited housing stock and alternative options.

Across all types of areas (urban and rural) only a small number felt that it was easy to find a property where they lived. They based this judgement on them taking less than a month to find the accommodation they were in now. However, it was notable that for most of this group, they last looked for a property more than three years ago. Some observed that should they now be looking for accommodation, they expected that the area they currently rented in would be more expensive to rent than what they currently paid, and this apprehension made them acutely aware of their limited options.

<sup>19</sup> Non-refundable deposits for an application are illegal under the clarification of additional charges set down in the Private Housing (Tenancies) Act 2016.

## Rents levels, rent increases and rent affordability

### 4.2 Rent levels and rent increases

According to Citylets data the average advertised rent in Scotland (across all sizes) was £872 in 2021. In the two largest, most pressured cities rents were £1,191 per month in Edinburgh and £974 a month in Glasgow. According to the Scottish Government data on private rents (advertised levels), based on Broad Rental Market Areas (BRMA) Scotland's average 2-bedroom rent in 2021 was £693 ranging from £477 in Dumfries and Galloway and £500 in the Ayrshires, to £942 in the Lothians demonstrating a large range of rental markets across Scotland.<sup>20</sup>

Rent levels for the Wave 2 qualitative participants ranged £350 to £1,350 per month with the most common rent level being £550. Given that the average rent levels in Scotland in 2020-2021 was £872 in 2021 this level will reflect the lower end of market in large, pressured cities, but may be an average rent in some of the lower priced areas of Scotland.

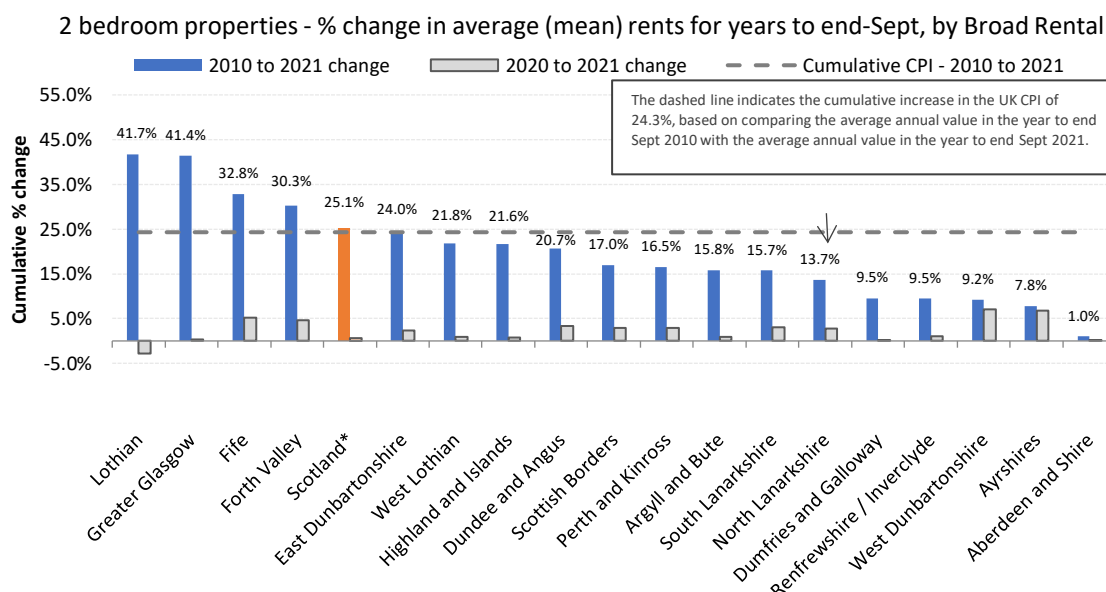
Figure 2 below shows that Scotland has seen an average level of rent increase just above the UK cumulative CPI (24.3%) over 11 years 2010-2021, or around 2% increase per annum. The highest rent increases were in the Lothians and Greater Glasgow at 3.7% per annum, and the lowest in the Ayrshires at 0.1% per annum. Recently Lothian and Greater Glasgow have seen rent decreases (see Figure 2 below). The large range in rent increases (and decreases) again shows the diversity of rental markets across Scotland. These annual increases compare to broadly similar average rent increases in the social rented sector between 2013-2014 to 2018-2019 of 2.8%, then 2.5% in 2019-2020 before reducing to 1.2% in 2020-2021<sup>21</sup>.

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<sup>20</sup> See RentBetter Wave 2 Secondary Data Report

<sup>21</sup><https://www.housingregulator.gov.scot/landlord-performance/national-reports/national-reports-on-the-scottish-social-housing-charter>

Figure 2: Trends in the average 2-bedroom property rents by LA (2010 – 2021)



Source: <https://www.gov.scot/publications/private-sector-rent-statistics-scotland-2010-2021/documents/>

The Wave 1 (2019-20) RentBetter Tenant Survey<sup>22</sup> showed that for most tenants (59%) their rent had stayed the same since they had moved in. The Wave 2 qualitative research showed that experience of rent increases was rarely experienced across this sample of tenants. From the landlord qualitative research this finding was also shown to be the case, with examples of rents not increasing for many years. Landlords interviewed provided a sense that they wanted to keep 'good' tenants and so not putting up rents helped to keep them. At the same time, many landlords voiced concern about rent control, currently being consulted about by the Scottish Government in 'A New Deal for Tenants'<sup>23</sup>. Common concerns were about capping rent levels, but it was also suggested it may require rents to be a higher rate than they had traditionally charged where landlords had kept rents at a certain level for long periods of time. This finding reflects the difficulty in lack of information of actual rents, and current reliance on published advertised rents for properties being relet. A small number of tenants from the qualitative research suggested the Government should implement a cap on rents.

### 4.3 Tenants' income, savings and debt

The Scottish Household Survey 2019 showed that the most common income band for private renters was £15,000-£20,000 net a year<sup>24</sup>. It also showed households tended to be managing slightly less well financially compared with households generally, with 45% managing well, compared with 56% of all households, although there was also an improvement amongst private renters managing well financially compared to 10 years ago (37% in 2009-2010).

The sample for this Wave 2 qualitative research had a lower income profile to that indicated for the whole PRS population by the SHS, with the most common income band being between £12,000 - £18,000 net per annum (£1,001 to £1,500 net per month) or an average of £17,000

<sup>22</sup> <https://rentbetter.indigohousegroup.com/wp-content/uploads/sites/3/2020/11/Tenant-survey-report-Wave-1-published.pdf>

<sup>23</sup> <https://www.gov.scot/publications/new-deal-tenants-draft-strategy-consultation-paper/>

<sup>24</sup> Source: Scottish Household Survey, 2019 (Table 3.3 Household characteristics by tenure)

net per annum. Around half reported that their income varied from month to month, and this was generally down to being in precarious work, such as the hospitality or entertainment industry. Some working households claimed benefits, and the unpredictability of earned income affecting their benefits was very stressful, as illustrated by Jane:

*“My wages are every 28 days, therefore UC, I don’t get paid on the same day, UC wait until my wages are in and then they judge what to pay me. I am paid 13 times in the year, there is a month when my UC was dramatically cut by £600 and I had to borrow money for the rent from my sister and then had to pay her back. My work pay me at the end of year and twice in April. I couldn’t understand what was happening. Why don’t they judge me over 13 pays? I was in tears when it happened... When I spoke to them (UC) they told me that is how it is.” (Single mother, urban, renting through letting agent).*

Several people said that they were able to save, and most of these were paying less than half of their income on rent and were generally older and single. However, the overwhelming majority from across participants described living from month to month and being careful or doing without. Single mothers, families and pensioners emerged as especially struggling.

Only a few participants, (single people, single mothers and pensioners) reported being in debt or having to use loans to manage. Using a credit card was mentioned to afford food, feeling too stigmatised to use food banks. Rather than rely on loans or credit, a small number reported relying on family for financial support.

#### 4.4 Rent arrears

Some participants had experience of being in rent arrears, with the main reasons being a change in financial circumstances related to work or having unexpected bills and being unable to subsequently pay rent. For a small number of others, it had been a mistake made by Universal Credit. In most of these cases the rent arrears were between one and three months unpaid rent and was a one-off experience. The cases emphasised the fragility of financial circumstances, with interviewees living from month to month. None could comment on whether their experience was different being on a PRT compared to a SAT, with most unaware what contract they were on and the differences between the two in relation to notice for non-payment of rent.

Interviewees prioritised rent and were on the whole diligent about paying the money back, with the majority having an ‘arrangement’ with the landlord to do so. There were notable examples where landlords had been particularly understanding of arrears, but there was also a sense of fear from most tenants about the consequences of rent arrears.

##### **Brian who is in arrears and struggling**

Brian is a pensioner living with his wife who has a disability. They live on the state pension and are in receipt of pension credit. Brian pays £60 towards his rent and, overall, struggles financially. He is a couple of months in rent arrears and is applying to charitable foundations for support. His landlord has been very understanding but Brian is frustrated that this is their situation. He is concerned about the rise in heating costs and what this will mean for him and his wife.

There were only two cases in the sample who were in much higher arrears. These tenants ignored the notices about arrears and said ‘*they had no intention of paying*’. In both cases there were tenant complaints about the condition of the property and ongoing Tribunal cases.



*“It is cold, and I am having to fork out a lot on heating. I am not paying rent at the moment. When I first moved in here it was so hot. Come winter it is so cold. The heating needs replaced and there is no electrical certificate now. There were no fire detectors until I moved in. I have had problems with the storage heaters too. There are no circuit breakers...I have not paid rent in 18 months. The rent was £450 in month.” (Single, urban, renting through letting agent)*

A later chapter explores the impacts of the pandemic on tenants and landlords and considers the incidence of rent arrears over that period in more detail.

#### 4.5 Renting while claiming benefits

Overall, across Scotland DWP Housing Benefit (HB)/Universal Credit (UC) statistics show that financial support in the PRS has fluctuated from 25% in 2018, to 35% in May 2021 and back down to 30% in August 2021 demonstrating the changing financial circumstances of PRS tenants pre- during and emerging out of the pandemic. There is considerable variation by local authority, ranging from 21% of PRS tenants on HB/UC in Orkney Islands to 73% in East Ayrshire and demonstrates the different types of PRS markets across Scotland.<sup>25</sup>

Most tenants interviewed in the qualitative research were in receipt of benefits to some extent. Several people discussed how over this past year they have come onto Universal Credit for the first time (due to a drop in income or loss of their job over the pandemic). It was common for people not to report this, or a change of financial circumstances generally to their landlord, due to fear from tenants that this may affect their tenancy.

*“They don’t know that I am on UC because they don’t accept people who are on it, so I am not saying. I wasn’t on it when I moved in and I pay them directly from the money that is sent to me.” (Single mother, urban, renting through local letting agent)*

Many tenants described the challenges in navigating the benefit system with delays or changes in benefit payments. These tenants explained that the initial gap in payment of six weeks when going onto benefits meant that they had to borrow money or rely on savings to cover their rent. A few also mentioned that the drop of £20 in Universal Credit would really affect them in being able to afford food or heating.

A small number of tenants had their housing benefit paid directly to the landlord or letting agent, and in all of these cases they said they preferred not to have the responsibility for rent payment. However, other tenants claiming benefits had their money paid to their own bank account and then they paid the landlord or letting agent. Tenants viewed this money as theirs and it appeared to work well for tenants with no issues reported. Tenants liked that having control this way meant that if their circumstances changed, they were in control of whether or not the landlord or letting agent found out. For these tenants that had all the benefits paid to them (including housing costs), they were able to reflect on the affordability of rents and made judgements about what had priority for payment – whether rent, food or other living costs.

Most people claiming benefits reported that getting a property whilst on benefits was difficult. From the interviews, it appeared for those on benefits that their housing choices were even more limited than it was for others on lower incomes searching for housing. A few tenants reported discriminatory practice of what they called ‘no DSS’ (both verbal and advertised on some websites) mainly by Letting Agents in pressured urban areas.

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<sup>25</sup> See the RentBetter Wave 2 Secondary data analysis report, 2022



*"I think it would be nice if landlords understood more about people who claim Housing Benefit, we are not all going to destroy the property. Most people I know are working part time. I feel like people on benefits get labelled and it is not right or fair. People are demonised and I blame Channel 5. People think it is a choice and that is not the case." (Single mother, urban, single property landlord)*

The interviews with landlords and letting agents enabled understanding of their appetite and approach to letting to tenants claiming benefits. Landlords and agents were categorised as: specialists in low-income/benefit market; experienced of letting to benefit claimants, driven by property/market (rather than being the landlord's main focus); preference for letting to working households but with experience of tenants' change in circumstance and subsequent claiming benefits; a property/portfolio location and rental value which meant letting to benefit claimants was very unlikely (but not adverse to letting to low income/benefit claimants in principle); and those landlords that would definitely not let to benefit claimants driven by either perceptions of financial risk, or outright prejudice. The lowest prevalence were the specialists and the discriminators. Over much of the sample there was a neutral or positive (certainly not discriminatory) attitude towards potential tenants who had low incomes and were claiming benefits. However, as with the tenants' experience, the benefits system often caused problems due to delays in payments, errors, and difficulty in reaching the DWP to resolve issues with UC. It was these problems which often put some landlords and lettings agents off letting to those on benefits. This all meant increased operational and financial risk.

*"You can pretty much guarantee you're going to be two months in arrears very soon. And it's just about managing it from there on in." (Letting Agent 1,600)*

One of the low income/benefit specialist landlords said she was leaving this part of the market due to her frustrations with the UC system, compared to her long-established expertise in HB tenants and working in partnership with local authorities.

#### **Specialist in low income/benefit tenants moving away from UC tenants**

*"Over the last 2 years I have been moving away from benefit tenants as UC makes it so difficult. The HB and the LHA system were better. I would regularly, every week be into the Council's customer information centre to discuss and sort changes to the HB for my clients, and we could get everything sorted between the tenant, Council and me. But since UC it is very unfriendly for tenant and landlord. They [DWP] don't like speaking to landlords, even if you have consent from your client. I've got hundreds of examples of trying to work with them, and all the while the arrears are stacking up. So, for that reason I'm moving away from UC. I have been licking my wounds for years over UC since it started. It's Ok for existing HB tenants who are not moving over to UC. If someone comes to me on UC then I now do enhanced credit checks, and make sure there is a homeowner guarantor, even before I consider them further. There is substantial financial risk in letting to UC tenants now. It is not about discrimination as I have let to HB tenants for 30+ years, it is about the financial risk of UC and the systems not being right for more vulnerable tenants. (Landlord, Business, 50+)*

Those landlords that were more comfortable in this housing benefit market were those with more experience of navigating the system, more often with larger portfolios. Interestingly, two different rural landlords with relatively large stock saw this part of the market as core to supporting local communities.

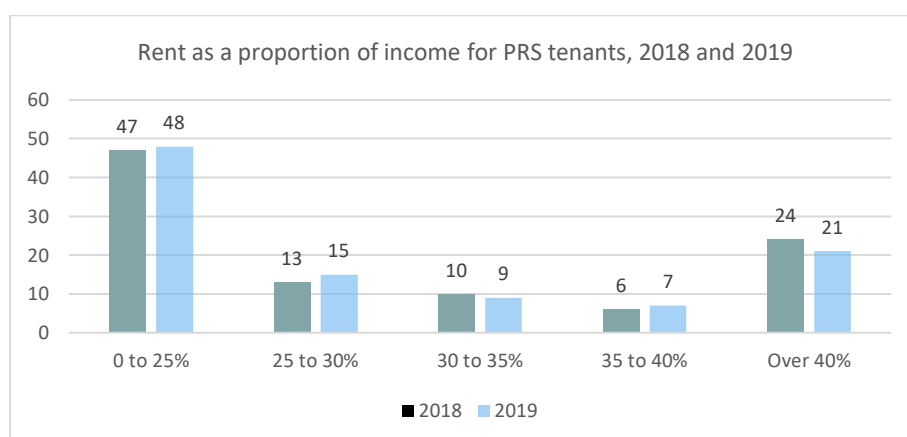
*"We have a very traditional 'patron' view, favouring families with children at primary school. It's positive discrimination. It is good for the local community, putting more children into the local*

*rural school, which was at one stage under threat. In the rural context there are fragile communities and we don't want to lose facilities. Families are more likely to be on some kind of benefit while also working.” (Landlord, Business, 100+).*

## 4.6 Rent affordability

The Scottish Household Survey 2019 showed that taking account of all income and benefits suggested that 48% of private renters were paying a rent that was less than 25% of their net income, while 15% paid between 25%-35%, and 37% paid more than this.

Figure 3: Rent paid as a proportion of net income (%)



Source: Scottish Household Survey dataset 2018 and 2019<sup>26</sup>

This is a slight improvement in affordability between 2018 and 2019, but still indicates that around 1 in 3 tenants paid a significant proportion of income on rent (more than 30%). At the same time the SHS found that 45% of PRS renters were managing well financially, despite the relatively high costs, compared with around 1 in 7 private renters (14%) saying they ‘did not manage well’ financially.

For comparison, the consultation paper on the New Deal for Tenants<sup>27</sup> suggested that over the latest period 2017-20, at a national level, private rented sector households in the lowest income quintile were paying an average of almost half (47%) of their household income on housing costs with the equivalent figure for social rented households in the lowest income quintile being 38%, which is much higher than for households in higher income quintiles<sup>28</sup>. This finding shows that people on lower incomes are more likely to be paying a higher proportion of their income on rent.

The qualitative interviews with tenants showed that the most common proportion of net income being paid on rent was between a third and a half, although a few were paying at least two thirds of their income to rent. When discussing affordability with tenants, most viewed that their rent was not affordable and ‘not fair’, relating to common problems they were experiencing around condition and outstanding repairs. Those that stood out in terms of the challenges they faced were most families, single mothers and some pensioners.

<sup>26</sup> Based on analysis by the SHS data analyst team. It is also important to note that the SHS is not designed to provide reliable statistics on income or housing costs. The income and housing costs information collected through the SHS is only intended to provide estimates by income and housing cost bands.

<sup>27</sup> <https://www.gov.scot/publications/new-deal-tenants-draft-strategy-consultation-paper/>

<sup>28</sup> <https://www.gov.scot/publications/additional-poverty-analysis-2021/>

*"It is not affordable at all...I do live month to month, pay cheque to pay cheque. I know where to shop and get the best deals. You are on a knife-edge. One thing comes up and things are messed up...UC have been ok, I just set it up when my boy was born. It was ok...If a bill comes in and then another that is hard. I needed a new tyre last week and it just put me completely out. If my wee boy needs new clothes I have to budget it all in... It is just the costs are so high. I have to plan so much, and it is penny to penny. The wages aren't going up at all either and so I am concerned. I am trying to future plan. I have to pay the nursery fees. I am looking forward to him getting his free hours in January so then I can go back to full time. I feel like you are punished for working. I could quit my job but I don't want to. I couldn't never not work for my sanity, but it ends up costing you. If I wasn't working, I would be doing better financially. I hear from everyone that it is like that. People fall through the net when you are a single parent. I can't qualify for social rent. I was on a council list and was away down at the bottom." (Single mother, renting through local letting agent)*

Many participants identified trade-offs they made to be able to afford their rent, compromising on location, indoor space, outdoor space and managing financially by prioritising rent, shopping around to buy food, rationing heat, not buying clothes and what one called 'living life in permanent lock down' by not going out or having holidays. Several said that for them there was not so much of a trade-offs, as it was really about what they could get for their budget and their expectations were low. For families, space and having an adequate number of bedrooms was most important, to the extent that they were at the top of their budget or had even moved to a different area, compromising on location. The main trade off people reported was the condition of the accommodation, but across the groups, the key message was that people really got what they could get within their budget.

*"Location was a factor; it is near my daughter's nursery and it is only one flight up and had a garden. It is also near my mum, so near my family." (Single mother, urban, single property landlord)*

*"I just needed a place with a bed." (Single, urban, small portfolio landlord)*

#### **Tenant who is concerned about his past, unable to provide references and has no choice but to tolerate being in a flat share and poor conditions**

Other than a year renting with his ex-girlfriend, Gary has been flat sharing in a city for over ten years. He has a problem with drinking and his employment history is patchy and he has been unemployed for the past two years. Getting a flat is difficult because of the costs involved and his problematic past, and he has got a room wherever he can, for the cheapest amount and where they ask the least amount of questions. He explained that many of the places he has stayed have not been above board and he has often paid the landlord in cash. He rents through Gumtree mainly. He hates flat sharing and does it because he feels he has to. In his current flat, he rents a room and each tenant had a separate agreement with the landlord but this property is now being managed by a letting agent. When he first moved in, he met with the landlord directly and explained his circumstances, namely his past substance use and inability to provide references, and they were understanding. The landlord then sold the flat during the pandemic but reassured all the tenants they would only sell to someone who also allowed them to stay on. The letting agent that has taken over wants credit checks done and Gary is avoiding replying because he is worried he will fail and become homeless. He explained that there is mould in the bathroom and he isn't reporting anything because he doesn't want to be 'visible' to the letting agency. He is not aware of his rights. At present he gets around £800 in benefits and around half of this goes on rent. He describes himself as not having a life, just an existence.

However, some did feel that on balance the cost of their rent was ‘fair’ when they looked at the wider market but affording their rent under their individual circumstances was still a challenge. This situation was especially the case for single parents, single people, people currently unemployed and a few pensioners. There were also a few single mothers that observed that when they were earning a certain level this meant that they were actually ‘worse off’, losing benefit entitlements and making rent unaffordable.

*“It is affordable for this area; it is just the issue is that there are not enough options. My wage should be decent and looks decent on paper but when you are a single mum, it isn’t enough.”*  
(Single mother, urban, small portfolio landlord)

Some people’s benefits did not pay all their rent, with an average of £155 per month ‘top-up’ from their other income with a range of £55 to an outlier of £500. Many of these were disabled people who needed a certain type of property to meet their requirements, and others paid the extra for the space needed by the family, or because the location was ‘so good’. It was generally felt that paying extra to subsidise the benefits was a struggle but was reluctantly accepted to get the home needed.

Only a small number said that they found their rent affordable – they said this was because they carefully managed their money and had made certain trade-offs in internal and external space to be able to afford the rent. This included fewer bedrooms, or less garden space. All those in this small group, who were mostly older, stressed that they valued their ability to manage within their means, no matter how tight.

A few reflected that financially their situation had never changed and had always been hard. Despite rent increases within tenancies being rare in the qualitative sample, most felt rent had become less affordable. In the pressured areas most people observed that they strained to afford rents just now, and they felt that affordability was even less likely in the future as the pressure on rents appeared to be continuing. Participants that considered they may need to move in future felt the rent in a comparable property would be more expensive and unaffordable. Apart from the wider market rent increases, other reasons for concern about ongoing affordability problems were driven by general increases in the cost of living, loss of income (often related to the pandemic), illness, or relationship breakdown and no longer being able to share housing costs.

#### 4.7 Summary – Access to private renting and rent affordability

This chapter outlines reported high demand in the sector, particularly in city and rural environments which resulted in considerable challenges for tenants to find a property which meets their needs. Survey evidence suggests that while around 1 in 3 PRS tenants paid more than 30% of their income on rent those in the lowest income quintile were paying far more - an average of almost half (47%) of their household income on housing costs.

Affordability of rents was a problem for most tenants in the Wave 2 qualitative research on low household incomes (average £1,400 net per month, or £17,000 net per annum), most of whom were claiming benefits. On average, most were paying a third to half of their income on rent, although rent increases were rare. Saving was not possible for most of the group, who described living from month to month, struggling, and being careful or doing without to even manage that. Families were especially strained financially. Finding a property that was affordable took months of searching, and the trade-offs made were mainly around condition, but also settling for less space (inside and out) and poorer locations. Rather than expecting to pay high rents, people were just ‘getting what they could get’ within their modest budgets. Most disabled people found it difficult to find properties that met their accessibility

requirements (also the case in the social rented sector), often supplemented their housing benefit/housing allowances with other income to get what they needed, but still with compromises. Getting the right accommodation seemed especially hard for those of benefits, and a few people reported what appeared to be blanket discriminatory ‘no DSS’ practices, mainly from letting agents in urban/city pressured areas.

Navigating the benefits system (especially UC) was said to be very difficult for both tenants and landlords, exacerbated for tenants who had precarious work and fluctuating income. Tenants and landlords explained problems with delays of payment, errors and difficulty in communication with the DWP. There was some stigmatisation associated with being on benefits for tenants and many didn’t tell their landlord about (particularly new) claims, due to fears that this may affect their tenancy. While many landlords said they were amenable (or certainly not averse) to renting to tenants on low incomes who needed to claim benefits, it was bad experiences of the benefits system which presented financial risk and lower appetite for this part of the market, rather than outright discrimination of individuals claiming benefits which was rare amongst the sample.



## 5. Disputes and access to justice

This chapter considers tenants' overall experience of renting, and then explores both tenants and landlords experience of disputes, and access to justice. The evidence presented is used to explore the hypothesis that service provision, security of tenure and dispute resolution is considered more favourable from landlords with small (fewer than 5) portfolios.

### Tenant landlord relations and the nature of disputes

#### 5.1 Tenants' experience of renting, and tenant and landlord relationships

The RentBetter Baseline Tenant Survey<sup>29</sup> showed that the large majority of tenants responding to the survey were satisfied with the property and the level of service they received, with the minority of tenants experiencing poor service around repairs. This positive opinion of private renting was also confirmed through the Scottish Household Survey<sup>30</sup> (2019) which showed that around 4 out of 5 PRS tenants were satisfied with the service they received.

From the Wave 2 qualitative research with low-income tenants and those in housing need, findings were less positive - satisfaction and dissatisfaction was more evenly split. The interviewees that showed higher levels of satisfaction in their renting experience, and who said the relationship was 'good' with their landlord were more often those who lived in rural areas; those who rented from landlords with one property or a small portfolio; and those who rented from small landlords directly. Satisfaction was lowest for those renting through letting agents, or large landlords. Like the Wave 1 Baseline research, it was shown that the levels of satisfaction were underpinned by the relationship and the level of trust established between the tenant and landlord. For tenants, trust was generally built by the landlord getting things done quickly and properly (mainly repairs). Whether the property was likely to be sold or not was also often related to trust in the landlord.

*"He is very friendly. He gets things done quickly... There have been a few things, so for example, there was a storm and it led to a leak in the casement windows and in the bedrooms. I messaged him, he spends a lot of time away as he is in oil and gas. His response was very swift and got someone round the next day. It was sorted quickly... The shower as well, when we moved in, he got that sorted. He has been very responsive." (Pensioner in a couple, urban, small portfolio landlord)*

*"The relationship I have with his pretty good... He is good with repairs. Even throughout this time [the pandemic] he has been quick... I feel I can trust him and he means what he says about him [not] selling." (Single, rural, small portfolio landlord)*

It was generally the case that where landlords and tenants were known to each other and there was less 'distance' between them, then the relationship and the service was better. In terms of forms of communication, there were indications that where the relationship was purely down to remote email or texts for reporting repairs or any other tenancy issues, this felt distant for tenants, and satisfaction was lower. A more 'hands-on', personal and proactive approach appeared to generate more trust and satisfaction for many tenants.

<sup>29</sup> <https://rentbetter.indigohousegroup.com/wp-content/uploads/sites/3/2020/11/Tenant-survey-report-Wave-1-published.pdf>

<sup>30</sup> See RentBetter Wave 2 secondary data analysis report 2022

*"I sent them an email when I lost my job and said I would do all I can to keep up with the rent and was on UC. I flagged it to them. All I got back from them was if you are going to get into difficulties let us know. There was nothing proactive. In fairness they probably got loads of those emails.." (Single, urban, letting agent)*

*"I don't feel like I have a relationship with the landlord, it is all on their terms. I am sorry for the people who are dealing with them, as the Factor is never given the go ahead. They must be banging their heads against the wall. It is such a massive international company, why can't they look after their tenants? If it had been the old company they would have done it for us. They were local, you could see them face to face. The company now – it is out of sight, out of my mind." (Single pensioner, rural, landlord has many properties)*

Where tenants had experienced a dispute, they described the relationship with the landlord or letting agent as being difficult, challenging or even 'fractious'. A few stated that the relationship was non-existent and was driven by the ongoing disputes that they were trying to resolve with the landlord or letting agent.

*"The letting agent – the new people don't speak to me. I sent them a letter detailing that they don't respond to my emails or calls. The only time I have heard from them was when they needed to get in for some landlord related things, to do an inspection for insurance purposes. So, I showed them that my ceiling is leaking and I have reported this for three months... The relationship with the letting agents, the ones before at least I could argue, but these ones they don't communicate at all. One time I got through on the phone but then they never called me back." (Single, urban, national letting agent)*

The importance of positive relationships was also voiced by landlords. Most frequently landlords spoke of having good relations with their tenants. Small landlords in particular spoke of knowing their tenants well, responding quickly and helpfully and going 'out of my way to make them happy'. Critically, the importance of good communication was seen as essential to tenancy sustainment, and these landlords had relatively limited experience of conflicts. They emphasised the importance of engagement from tenants:

*'I try to avoid [disputes] occurring. I normally know the people, they are not complete strangers to me. There is still a lot of informal dialogue, a lot of communication'. (Landlord, Investment, 3)*

*'if people don't communicate, we can't do anything to help' (Letting agent, 150)*

As noted above, effective communication was seen by many landlords as key in preventing disputes from escalating, and most landlords wanted to avoid conflict. Small landlords in particular expressed a preference for taking advantage of informal routes to dispute resolution. When a problem was identified (usually rent arrears) most landlords and letting agents discussed that their approach involved a gentle first email, which then would be repeated, accompanied by a phone call and/or text, and then face-to-face visits. The use of phone calls and texts were more common earlier in the process from landlords with direct relationships with their tenants. However, several also talked about things now moving to more 'formal' written approaches earlier in the process so that there was proof from the start of a dispute, including proof of pre-action requirements being followed. It was clear from many of the more 'hands-on' landlords that building trust was very important from the start. A few also talked about having a 'settling in' visit after a few months of a new tenancy, and 6-monthly inspections to check in with the tenants. The feeling of a more hands-on approach was less prevalent amongst letting agents. One letting agent described his experience in not being alerted to a tenant abandoning their tenancy – communication had been solely via email, and there was



ultimately a ‘*dissatisfactory outcome*’. This respondent regretted not having a face-to-face discussion.

*“There is never a problem if people communicate and engage, even if there is an issue with rent, it’s when people stick their head in the sand when becomes a problem”. (Letting agent, 360)*

*“Transparency is really important. The relationship breaks down when tenants feel “they are over the barrel”. Telling them that they have access to independent help (i.e. ombudsman, FTT) really helps to build trust”. (Letting agent, 1600)*

Many landlords were anxious to make a distinction between their (good) practice and that of other, irresponsible landlords. As one small landlord suggested: ‘*We are not all crooks, we do provide a housing service*’. At the same time many landlords acknowledged that there was evidence of bad practice in the sector, and that a number were guilty of a lack of care at best, and outright victimisation at worst: as one medium sized landlord commented ‘*there are some truly horrid landlords out there*’. There was one example of a landlord helping tenants (not their own) with poor landlords and expressing a strong sense of social justice. She explained that he had acted as an advocate for a tenant who had experienced problems with her landlord, ‘*I can’t stand by and watch tenants suffer like that*’. Some landlords expressed support for legislation designed to tackle poor landlords or as one landlord put it to ‘*weed out arsehole landlords*’.

Some (often small, investment) landlords reported that disputes were very rare, which they considered was due to their rigorous vetting processes. However, there was also evidence of considerable difficulties experienced with some tenants, and resentment (again mainly among small landlords) about the negative behaviour of these tenants. Some landlords expressed cynicism about the inability of their tenants to use support mechanisms as an excuse to behave irresponsibly.

*“They wreck it and leave in the night. I deal with the aftermath of that.” (Landlord, investment, 10)*

*“Oh I destroyed the place and left it an awful condition; but it is not my fault because I have mental health problems.” (Landlord, investment, 10)*

### **Lack of engagement and rent arrears**

One small landlord provided an account of how the pandemic exacerbated problems with a tenant who had previously been on good terms. The landlord explained the situation: ‘*I encouraged him to get advice – I sent him links to the CAB, details of government help, including help with rents but he didn’t engage at all. I asked various people for advice about Universal Credit rent payments but he didn’t take any of the advice. There was no formal payment plan because he didn’t engage. He said he lost his job and it was not his fault and he blamed Coronavirus. But I was trying to help him – I was on the phone once a week, I was trying to encourage him as the arrears were piling up. By then it was very difficult to communicate with him, so I had to get some help and got the letting agent. I don’t know what I would have done without them. They tried to get engagement but they also had difficulties. They took all the necessary steps, they tried to engage with him anyway they could. He made promises but he never kept them. They took steps for eviction with the lawyer. There will also be procedures to try and get the money back – I understand a charge on his account so can get money back in future. He was really got into a state of ‘being in arrears’. He didn’t really*

*try there was so much help on offer, but he didn't do anything. When the Sherriff Officers came to evict him it transpired he had a sub-tenant in one of the bedrooms which I knew nothing about and he (the sub-tenant) had no idea what was going on and was evicted too. My lost rent and costs were over £20,000 and I don't know if I'll get any of it back."*

## 5.2 Knowledge of rights and responsibilities, and sense of security

At the Wave 1 Baseline stage, the tenants survey showed low awareness of the type of tenancy that tenants were on, or the rights and responsibilities that these provided. Those interviewed in the Wave 2 qualitative research were more aware of their rights; they were fairly evenly split between those that were aware of their rights and those that were not aware or were really vague about their rights as tenants. When asked about what tenancy they were on, some tenants admitted to choosing one of the options of Private Residential Tenancy (PRT) or Short Assured Tenancy (SAT) without really understanding what they meant. Those that didn't know about their rights confirmed that they didn't read their tenancy document fully, or not at all. Only a few interviewees understood the differences in rights between the types of tenancies PRT or SAT. Those that were aware of their rights generally either had issues with past landlords and therefore made sure they understood their rights in this new tenancy, or they had obtained advice and support from advice agencies such as Shelter or Citizens Advice. Again, in line with the Baseline findings, only a small minority consulted the local authority in relation to any rights or disputes. This higher prevalence of understanding of rights amongst the Wave 2 group probably reflects a higher proportion of tenants that were purposely recruited that had had disputes with their landlords, including experience of the First Tier Tribunal<sup>31</sup> compared to the general population of tenants surveyed and interviewed at Baseline stage.

The RentBetter Wave 1 Baseline tenant survey and qualitative work (2019-20) showed that even though there was lack of awareness from tenants about tenancy rights, there was a high level of confidence of being able to work through any disputes and being able to stay in their home. The most important aspects of 'security' from tenants' perspectives was around affordability, trust in the landlord, whether the landlord was likely to sell, and secure employment, rather than legal rights. The importance of maintaining positive, trusting relationships with the landlord was a strong theme from tenant respondents, and this appeared to be a key driver in there being little appetite from many tenants for lodging formal legal complaints. The minority that felt less secure were those with less financial power – those living in deprived areas, on lower incomes and reliant on housing benefit. Across this group of Wave 2 participants, the sense of security was less positive; indeed, the feeling of security of tenure was rare. Tenants were concerned that the landlord might decide to sell or that they would be asked to leave for other reasons, and some were therefore unwilling to complain, for example about outstanding repairs. Some tenants reported prioritising rent above all else to safeguard their housing security.

*"I am worried about him deciding to sell that is why I don't want to rock the boat. When he had someone check for damp I was worried. We wouldn't get what we have for the price we pay if he sells. I would say it could be a £1000 a month at least for rent. All of us are autistic and we just don't want to have to change."* (Single mother, renting through local letting agent)

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<sup>31</sup> 16 out of 65 tenants (around a quarter) had experience of disputes with their landlord in this qualitative research. This compares to a lower 15% of tenants saying in the RentBetter Baseline survey saying they had experienced a recent dispute with their landlord or letting agent.

*“I have gone without food to pay the rent. I worry about being homeless. I have nowhere to go.” (Single, urban, renting from local letting agent).*

It is worth noting that most of the landlords and letting agents interviewed presented as complying with regulations. However, there were also some landlords who gave the impression that either they didn't know the law/regulations or didn't wish to follow it. For some, they were not interested in the legal requirements so long as these were covered by their letting agent – several mentioned intentionally moving to a letting agent *‘to keep them right’*. There was an impression of ignorance from a few others, albeit unintentional, possibly due to *‘not being able to keep up with all the changes’*. There were two small landlords (one with one property, another with a few properties) who gave the clear impression of non-compliance, who conducted their business as they wished to, disregarding the law on specific things that they didn't agree with or thought they were above - one involved changing the locks in a way that sounded unlawful, and another did not appear to go through due process after a tenant abandoned the property.

### 5.3 Reasons for disputes

Many of the Wave 2 group of tenants had dissatisfaction and frustration around repairs, maintenance and the condition of the property. In terms of national context and looking at the condition of properties generally in the PRS, while there have been some signs of improvement (2019 compared to 2018), the Scottish House Condition Survey (SHCS)<sup>32</sup> showed that condition of private rented properties was still worse than any other housing tenure in Scotland, with over a third of dwellings in critical and urgent disrepair. Furthermore, thermal efficiency in the PRS is worst across all tenures with 10% of properties being in the least efficient ratings (compared to 1% of social renters and 3-6% of owners).

There were 16 tenants interviewed that had experienced a dispute with their landlord or agent, and most related to repairs or the wider condition of the property. Other reasons for disputes for a small number related to not returning a deposit, a rent increase, and in one case a disabled woman who had been refused adaptations to be made to the bathroom. In 10 cases the tenants took the landlord to the First Tier Tribunal (discussed further below). It was striking through the recruitment of tenants for this research that it was difficult to find tenants who said that they had experienced a dispute with their landlord. This difficulty was surprising given the frequency of complaints the researchers heard from many tenants about repairs and condition. This finding suggests that either tenants are not aware of their rights, and about the Repairing Standard<sup>33</sup> in particular, or they did not want to exercise their rights in formal process. As discussed further below, most Tribunal cases raised by tenants are around repairs, but looking at all the cases taken to the Tribunal, the proportion of all Tribunal applications that related to repairs is very small (4% of all cases in 2019-20, excluding cases relating to Property Factor, 9% including Property Factors).

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<sup>32</sup> See RentBetter Secondary data analysis report 2022

<sup>33</sup> The Housing (Scotland) Act 2006, later amended by the Housing (Scotland) Act 2006 (Modification Of The Repairing Standard) Regulations 2019, covered the legal and contractual obligations of private landlords to ensure that a property meets a minimum physical standard – landlords were required to meet the Repairing Standard from 2007. A home meets the repairing standard if it is wind and watertight and fit to live in, the structure and exterior must be in a reasonable state of repair, it must have suitable plumbing and electrical installations for sanitation and space heating, there must be suitable fire detection and carbon monoxide detectors, has electrical safety inspections and meets the Tolerable Standard.

For the majority of disputes, where repairs were not done quickly, or were done cheaply and inadequately, or in some cases not at all, tenants reported that trust had been lost. Several tenants, most of whom had the property managed by a letting agent, had stopped reporting repairs unless they were absolutely necessary as they didn't think they would be done anyway, and they were also worried that making these calls would risk them having their rent increased.

*"My daughter's window is broken permanently in terms of the lock but I have not reported that. I don't want to be constantly asking for things so I am worried they would put up the rent."*  
(Single mother, urban, local letting agent)

*"I was worried that he would kick me out. It has made me hold back from asking for repairs... I feel like he could just turn around and tell me to get out... I am not asking anymore about repairs unless they need to be done."* (Single in flat-share, urban, small portfolio landlord)

However, for most of the group, outstanding repairs were a problem they were trying to address through repeated calls, texts or emails with the letting agent or landlord. This was not only linked to delays caused by the pandemic, but rather long-standing issues, and many discussed this as affecting them physically and mentally. Common complaints were around damp, mould and a lack of ventilation not being dealt with so getting worse. Many reported the landlords putting the issue back onto the tenant saying that they were not ventilating the property, despite them having no means to do so. Many issues related to heating, with electric heaters being expensive, boilers not working or single pane windows/lack of double glazing being a problem. Some tenants, renting from what they considered to be ineffectual letting agents had called workmen directly or contacted the landlord directly (rather than through the agent) when the boiler had stopped working or a leak needed to be reported.

#### **Cara who has had significant personal expense to make accommodation habitable**

Cara is a single mum of two girls and one boy who has been diagnosed with ADHD. She moved into the property two years ago. The main issue is that repairs never get done and there were even mushrooms growing in her bathroom at one stage because of the mould. She has carried out extensive renovation to the flat at her own personal cost, putting down new carpets, and installing a new bathroom. She doesn't know her rights and at the moment a third of her income is going on rent alone. She is on the council housing waiting list but has no priority points and cannot afford to move into another rental as she cannot save the deposit, and feels stuck.

For landlords and letting agents, the most common reason for disputes was around non-payment of rent, followed by neighbour nuisance and repairs. Some problems with rent arrears were attributed to problems with benefit payment and in particular, the move to Universal Credit which was seen as responsible for a high number of failures to pay rent on time. As discussed previously, some landlords expressed deep frustration with the bureaucracy of UC and their failure to respond to complaints with '*months and hours*' on the phone to relevant agencies, with the resultant financial and operational risk.

There was considerable stress for landlords experiencing rent arrears and some respondents felt that the legal framework for non-payment of rent maximised tenant debt. Most took legal proceedings as a last resort, as many argued this resulted in no rent payment at all as soon as notice was issued. Landlords also expressed frustration that even if or when the Tribunal ruled in their favour, there was little chance of getting the rent arrears back. One suggested that '*only lawyers gain from evictions*'.

*"We are at the mercy of the tenant"..... If the tenant stops paying the rent you cannot evict him until after a long legal process, which is unnecessarily longer in Scotland of around two years. If a person had saved his earnings for many years and bought a house on mortgage and paying the mortgage continuously, abruptly the rent is stopped. Now, his whole life savings are at stake." (Landlord, Investment, 2)*

Many landlords said that they provided advice, support and payment options as their standard practice in relation to rent arrears. This was discussed in the context of the Coronavirus legislation introduction of pre-action requirements and is discussed further in the next chapter. Landlords and letting agents also said that the long period of time associated with repossession for non-payment of rent caused difficulties for both landlords and tenants. They argued that the 'system' was not helping people with very high levels of rent arrears who wanted and needed assistance to leave a tenancy they couldn't afford.

#### **Assistance for those where the PRS is unsustainable**

A tenant was in severe difficulty with rent arrears and although she was communicating with the letting agent got to a point where the arrears were unmanageable. The tenant said she wanted to move into council housing but had very low priority on the waiting list. She also approached the homeless service but said to the letting agent that *"they won't house me until there's a repossession order on me"*. Eventually, repossession proceedings commenced for non-payment of rent but due to the lengthy and delayed repossession proceedings and protracted wait for the Tribunal, all exacerbated by Coronavirus legislation, the arrears increased by another 12 months, with no payment of rent at all. The tenant was evicted with very high levels of debt, and the landlord had lost over £20,000 in rental income, plus legal costs. He had little hope of recovering the unpaid rent and costs.

While some landlords discussed repairs disputes, a frequent response from landlords was that the system was unfair and that tenants had much greater leverage in disputes. As one commented of a tenant *'I couldn't fall out with him because he had the upper hand... he was in the flat'*. As another (small landlord) expressed it: *'it is too easy for cynical tenants to abuse the situation'*.

#### **Repairs**

One small investment landlord with one property spoke of their experience in dealing with water ingress in a flat. The landlord was dealing with the issue (caused by a flat two floors above). However, the tenants *'constructed a whole narrative that sounds like you're renting a slum'*. As the landlord described *'it was so traumatic for me...it just caused me so much stress and unhappiness. It was absolutely horrible. So they started saying that the electrics weren't fit for purpose, that there was a problem with this and the next thing, and they just stopped paying the rent altogether'*. The landlord went to the Tribunal and incurred £12,000 costs (to get £12,000 back). In their words: *'I think I behaved reasonably as a landlord. I play by all the rules and I think the landlords that survive are the ones who ignore the rules and go round with big, burly men and knock on the door'*.

### **5.4 Support and advice**

Most of the tenants interviewed that had experienced disputes (including those that went to the First Tier Tribunal) had sought advice from advice agencies, mainly from Citizens Advice or Shelter, and in all cases this was found to be helpful. Only a few tenants had been in touch with the local council but in their opinion thought they were ineffectual (although some others



that had raised Tribunal cases also noted involvement from the local authority around repairs). One woman was going to approach a local councillor for support.

*I contacted Shelter and they were really helpful about the repairs and my rights. They said I would have to get a lawyer because it had become serious. The lack of washing facilities, it is human rights. I then contacted an agency, I basically got a lawyer who will help to fight the eviction. I am looking at getting legal aid for that...It has been so stressful. I am very vulnerable. The lack of support of services. I struggle with forms and having to apply for things...The whole thing is awful...Just not being able to wash – so hard...I had begged someone to take me into a home. I asked if I could get someone to help me...I just feel like the stress is all so much! (Single, urban, renting from local letting agent)*

The value of independent, expert advice was also noted through interviews with wider stakeholders, who suggested that more accessible means of outlining tenants' rights should be provided at tenancy sign-up, for example through an easy-to-read tenants' charter accompanying the tenancy document, supported by verbal explanation. The value of independent advice is further illustrated through case studies provided by Shelter Scotland which show their homelessness prevention role, in some cases providing tenants with more time to find alternative housing in the case of pending evictions.

#### **Getting tenants more time**

A client had a PRT managed by a Letting Agent. She lived in tenancy with husband and four children and had been there since 2019. They were issued with Notice to Leave, citing the ground of landlord requiring property back for family member to live in. There was 3 months' Notice to Leave issued, which would be correct – however, the notice was served by email and this requires 48 hours extra to be added to the first date on which case can be enrolled with Housing and Property Chamber (HPC), to allow time for service and the 2 days were not added. The landlord submitted application to the HPC and the Case Management hearing was set. Defences submitted by Shelter stipulated that the Notice was incorrect and HPC accepted that this was the case and no Order for Eviction could be granted. The landlord had to start whole procedure again which allowed client and family some further time to look for another property.

#### **Supporting vulnerable tenants to avoid homelessness**

A vulnerable private rented sector tenant on a low income contacted Shelter Scotland for assistance. He had been served a notice to leave by his landlord who wanted to move into the property. The tenant was extremely anxious about the prospect of being evicted, as due to his lack of other options it would mean having to apply as homeless, and he was very concerned both about the prospect of being in temporary accommodation and of being accommodated outside his current area, away from his support network. Shelter advised him that the Notice to Leave was not valid under the law and that he was not required to leave the property. When the landlord applied to the Tribunal for the eviction order, Shelter supported the tenant to highlight to the Tribunal that the landlord had not followed the correct protocol, which resulted in the landlord's application for eviction being dismissed. This bought the tenant a crucial extra few months in the property, which allowed him to find another affordable private rented property in his desired area, thus avoiding the need for a homeless application.

While the support from Shelter Scotland and Citizens Advice and other advice agencies is clearly valuable, Shelter's own data shows that calls to its helpline from private tenants have been in the region of 35% of all calls to its helpline reducing from 2,630 in 2019 to 2,088 in 2021, and the trend has been reducing over that period (with the exception of increases during



the pandemic which then quickly fell back again). This excludes PRS tenants that may self-help through the Shelter advice website. The proportion of housing-related calls to CAS for the private rented sector increased from 18.6% of calls in Q1 of 2019-20 to 26.5% in Q1 2020-21 before falling back to 20.9% in Q4 of 2020-21<sup>34</sup>. This raises questions as to whether private renters could be made more aware of the advice services that are available to support tenants, for example when they sign up to a tenancy, including advice through the local authority registration and other council advice services which were hardly mentioned by tenants interviewed.

In comparison to tenants, landlords interviewed generally felt unsupported by the 'system' and felt there *'was no-one there to listen'* to them, although some positive mentions were made of the role of the SAL and a few had approached Citizens Advice during the pandemic. This support was important for those landlords that had experienced significant stress through rent arrears disputes. Some small landlords stated that letting agents were skilled at managing problems and resolving conflicts and acted as a valuable sounding board and as one put it was *'someone to whinge at, so I didn't feel so helpless'*.

*"When things got difficult, I got a letting agent to take over the management to keep myself right. The letting agent was very helpful. I went to a few different letting agents but because [the tenant] was in arrears not many of the letting agents wanted to take it on, but then I found one. They were very helpful and took over the communication. Kept me right on what further steps were needed. They took over all the inspections and communication". (Landlord, investment, 1)*

### **Isolation and lack of support for landlords**

One medium sized landlord gave the example of a single mother, who after a year stopped paying rent. She owed £10,000 and caused significant damage to property (including cat urine on the carpet despite no pets allowed), and the landlord suspected drug abuse. The tenant sent aggressive emails and wouldn't answer the door. The tenant wouldn't talk to her, and police couldn't help as they said it was a civil matter. This tenant had also stolen furniture but there was no proof: *'you can have an inventory, but it means nothing'*. The landlord took the tenant to Tribunal but *'she didn't turn up... we were put through hell... we were asked to leave the room'*. As the landlord suggested: *'it was quite daunting, we felt like we were the criminals wanting our flat back'*. Following the judgement against the tenant, the landlord expressed indignation that the tenant still had six weeks to leave the property after a year of no rent. After the ruling, she also had to arrange Sherriff Officers to recover possession. This landlord described a strong sense of isolation during the process: *'There is no-one to help you. Somebody should have been there for me'*.

## **Formal routes to justice**

Formal routes to justice in the PRS in Scotland are through two methods: rent adjudication for rent increases, and the First Tier Tribunal (Housing and Property Chamber) which adjudicates over the tenancy legislation.

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<sup>34</sup> See the RentBetter Wave 2 secondary data analysis report, 2022; <https://www.cas.org.uk/publications/annual-housing-data-briefing>

## 5.5 Rent adjudication<sup>35</sup>

Private tenants can take a rent adjudication case to Rent Service Scotland (RSS) where RSS looks at the proposed rent compared to the market rent for the area; the adjudication may result in an increased or decreased rent. It is important to note that the sample for rent adjudication is not the whole of the PRS or the people paying a high proportion of their income on rent. To be able to refer a case for rent adjudication, a tenant must have a PRT, have been in a tenancy for 12 months and have had a rent increase notice. Rent increases are commonly made on the turnover of the tenancy so many tenants may never get a rent increase notice or have the right to seek adjudication. There is no legal right for tenants to ask for an adjudication if they are paying a certain percentage of their income on rent.

It is striking that although data from the Scottish Household Survey suggests that 1 in 5 private renters are paying more than 40% of their net household income on their rent, very few cases come to rent adjudication. In relation to rent adjudications that have occurred, the rent adjudication register for 2018-19 (20 cases) and then 2020-21 (59 cases) shows a very small number of cases, relative to the total possible, although the numbers have increased over the two years. Therefore, those reporting high rents as shown in the Scottish Household Survey may not have been able to seek adjudication as it was a relatively high initial rent, rather than a rent increase. There may also be tenants that should be able to get an adjudication of their rent increase but do not chose to do so.

Where cases do come to adjudication, they tend to be for larger properties, and more commonly in Edinburgh and Glasgow, although 2020-2021 saw cases more widely spread across the country. Still, less than half of local authorities have seen adjudication cases. In the majority of cases in 2018-2019, the adjudication decision has been that the proposed rent is too high, but in 2020-21 they were more commonly judged to be at the correct rate. One of the criticisms of the process was that as RSS could potentially increase the proposed rent it would put people off making an application for adjudication. However, this has only happened in one case where the adjudicated rent was higher than the proposed rent.

Only one tenant interviewed had experience of rent adjudication. This was a private tenant renting from a Registered Social Landlord private subsidiary and has been interviewed in Wave 1 and Wave 2 as a longitudinal participant.

### **Complaints about rent increases and dissatisfaction with service**

Aaron has been renting from Scotia Homes for the past four years. He challenged the rental increases and was told by the Rent Service that the rent was comparable to other properties in Edinburgh and therefore fair. This happened before the first interview for the research in 2019. Over the past year Aaron has had two further increases amounting to an extra £40 and is now paying £602 a month. He noted that throughout this time the Council has had very low rent increases. He is in his 60s and self-employed and over the pandemic has barely had any work and has been living on only a few thousand pounds a year, which are his savings. He has not applied for benefits because he does not trust them. He suffers from anxiety and is very concerned about his work for the future which is in TV and filming. He has had issues with his neighbours (a break-in and suspected drug dealing), and he has also had issues with seagulls nesting, fought to get a refund back because stair cleaning was not done, and received a formal apology from the landlord for the poor service. He has joined a group to

<sup>35</sup> See RentBetter Wave 2 Secondary data analysis report 2022

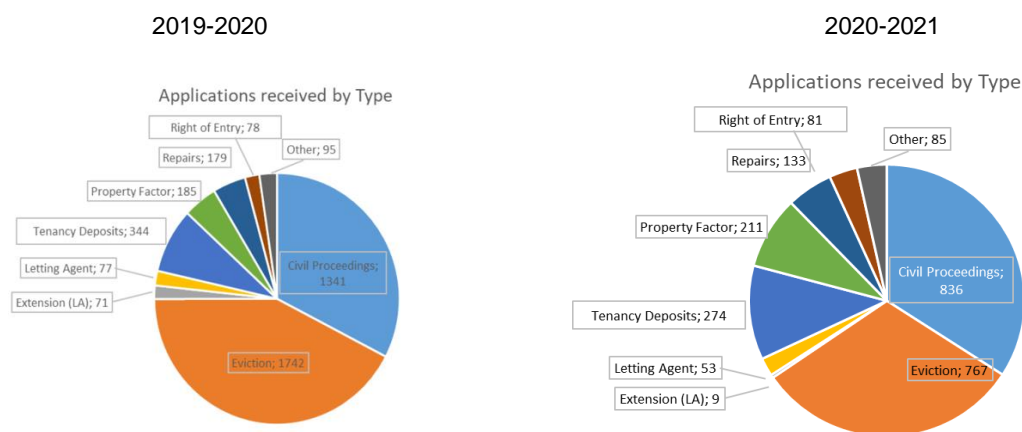
support him but feels they are getting nowhere, and it is just Zoom meetings with Scotia Homes making excuses.

## 5.6 The First Tier Tribunal<sup>36</sup>

The First-Tier Tribunals system is the main vehicle through which tenants and landlords get access to justice. The stated intention of moving to the Tribunal system in the PRS was to increase access to justice and to make it more accessible. The Tribunal is by design more inquisitorial or investigative rather than the traditional adversarial approach of the Sheriff Courts with a sifting process to reject erroneous cases before hearings.

The Housing and Property Chamber (HPC) has a very wide jurisdiction, covering 51 different application types. These involve the application of over 12 different statutes. During 2019-2020, the Chamber received 4,112 applications across all jurisdictions, a 9% increase on the previous year. This suggested an improved access to justice. However, the number of applications fell by 40% in 2020-2021 caused by the pandemic and Coronavirus legislation.

Figure 4: Property chamber applications by type (2019-2020 and 2020-2021)



Source: [https://judiciary.scot/docs/librariesprovider3/judiciarydocuments/scottish-tribunals-publications/annual-report-19-20.pdf?sfvrsn=8fec267b\\_2](https://judiciary.scot/docs/librariesprovider3/judiciarydocuments/scottish-tribunals-publications/annual-report-19-20.pdf?sfvrsn=8fec267b_2)

Overall, the First-Tier Tribunal applications are more commonly initiated by landlords than tenants. The largest proportion of applications were for civil proceedings (mainly rent arrears and/or damage to rented property, although applications by tenants seeking damages are also included); around a third in the past two years, and these are often accompanied by eviction applications. After these two the next most common applications were from tenants for return of their deposit (11%). Where evictions cases go to a Tribunal decision, the vast majority are decided in the landlord's favour (but only half reach Tribunal). Looking at 2019-20 compared to 2020-21, despite the Covid pandemic and smaller numbers of cases being heard, the types of decisions in 2020-2021 appeared to be consistent with the previous year. Civil proceedings outcomes tended to favour the landlord, while tenancy deposit proceedings tend to favour the tenant. As already discussed, it is notable that the main area of concern for tenants around repairs only accounted for 4% of applications in 2019-20, or 9% if Property Factor cases are also included (which may or may not relate to repairs).

<sup>36</sup> See RentBetter Wave 2 secondary data report 2022

Looking at more recent data<sup>37</sup> it can be seen that the pandemic has impacted on cases, with a notable difference in the grounds used between May to November 2021. While previously (2019-20 and 2020-21) cases most commonly relied on ground 12 'rent arrears', ground 11 'breach of tenancy agreement' and ground 1 'landlord intends to sell', the later analysis presents a more varied picture, indicating that cases were relying on a much wider range of grounds than in the previous time period. Although there were fewer cases based on ground 12 (arrears) in the latter period, these cases were slightly more likely to result in an eviction order in the most recent time period analysed, (69% compared to 62% previously). Cases based on ground 1 (landlord plans to sell) were also more likely to result in an eviction order in the May-November 2021 period (81% compared to 50% previously).

The 2018-2019 annual report of the Tribunals noted that the introduction of the new private rented sector (PRS) jurisdiction had continued to present significant challenges. In the first year of operation, the Chamber received over 3 times the number of applications originally projected. The high volumes caused significant delays and measures were put in place to address the issues and the 2019-2020 report indicated that case disposal times had reduced. For applications where an order for recovery of possession was granted during the period covered by the 2019-2020 report, the average number of days from lodging the application to the granting of the order was 92 days, or just over 13 weeks.

The 2020-2021 report from the First-Tier Tribunals showed that in eviction and civil cases less than half of applicants (landlords) were represented (down from 75-80% in 2019-2020). The proportion of respondents (tenants) who were represented in eviction cases was also down on the previous year, but only marginally (down from 6% to 5%). This shows this is less representation than previously among landlords and tenants, but landlords were still much more likely to be represented than tenants.

## Tenants and landlords' experience of the First Tier Tribunal

The RentBetter Wave 1 findings showed that awareness of the Tribunal amongst tenants was extremely low, but greater for landlords and letting agents. At that stage, tenants with experience of the Tribunal did not find the process accessible, although it was more so for those with professional advice. Landlords' and letting agents' experiences appeared to be smoother than for tenants who had much greater reliance on professional advisors than tenants. Landlord and letting agents' complaints about the Tribunal appeared to be mainly related to complaints about the law, rather than the Tribunal process itself, although initial delays and backlogs were highlighted. This was specifically about ground 12 and the impact of longer notice periods in the PRT compared to the assured tenancy regime for raising applications for eviction for rent arrears.

### 5.7 Tenants' experiences of the Tribunal

For this Wave 2 qualitative research with tenants, 10 tenants had experience of making applications to the Tribunal. Most interviewees from this group had sought advice from an advice organisation before proceeding with their case, one of whom also had someone support him during the case and said he would not have been able to go to Tribunal without

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<sup>37</sup> Recent analysis provided within the Scottish Government consultation document 'A New Deal for Tenants' 2021 (see RentBetter Wave 2 Secondary Data Report).

them. Tenants said that advice agencies affirmed their rights and also made them clear about the legal points in question.

*“I had some conversations with Shelter and CAB. I was able to get signposted to the right place. I didn’t want to go to a lawyer...I thought I could manage it myself.” (Single father, urban, renting from local letting agent)*

*“CAB and Shelter – they were useful. They helped me to know about the language.” (Single, urban, renting through local letting agent)*

Most of those who took a case to the Tribunal reflected how, had they not had the assistance from the advice agencies, and had not been confident in being their own advocates, they would have found the system daunting and inaccessible. Some also felt that if tenants did not have a ‘*university level of education*’ engaging in the process on your own would be ‘*impossible*’. All felt that it was too formal, and one person openly said they thought the Tribunal made them feel inferior. There was a clear sense from tenants that they did not feel on an equal footing with landlords or letting agencies in the Tribunal, and they found the experience stressful and lengthy.

*The Tribunal were looking down their nose at us. I felt threatened because of what they feel is their superiority. The Letting Agent had a lawyer as well. I could see from the looks of the lawyers ... the Tribunal they need to be clearer about the law to lay persons like myself. There should be someone there to help me to understand what I want to say. I am not good at English and grammar, and I must be heard, but the Tribunal think they know better. (Couple pensioner, urban, small portfolio landlord)*

*It is 100% in the landlords favour and not in the tenants at all. It is disgraceful. These are people’s homes. I am fortunate that I have the money, experience and patience to go through this, but others often don’t. The vast majority of people don’t have those things, so it is desperately unfair. Those who don’t have the education or money, or able to take the time off work for this, it is not what they can do. The landlords I think rely on that. I have had a look at the cases, and there are so many cases where the complainant has not turned up and can’t use this. Why should it be a hearing anyway? Why can’t it be emails and case notes review. (Single, urban, renting through local Letting Agent).*

**Kate, who feels the outcome of the Tribunal was not satisfactory but does not feel capable of taking the case again**

Kate moved into the property and soon discovered it was not ‘water-tight’, with poor electrics and unsafe gas fire heating. She took the case to the Tribunal and was awarded £650 in damages but never received them. She wanted to pursue the case in court, but the lawyer dropped the case and asked for £12K in legal fees, which Kate is unable to pay. Kate has now moved. She would like to take the case again to the Tribunal but does not feel she is capable and the stress from before was too much. She feels the Tribunal is not inclusive but is an intimidating forum.

Views about fairness of the Tribunal process were mixed, but the majority felt that the outcome of Tribunal was ineffective. Of the ten interviewed with experience of the Tribunal, one thought the FTT’s decision was fair and effective, four that the decision was fair but ineffective, and four that it had been unfair and ineffective. One woman felt it was fair because the landlord responded to the demand to have the electrics repaired within the time frame that had been set by the Tribunal. In the four cases where they were felt to be fair but ineffective, the Tribunal had determined that repairs should be undertaken, but these were still outstanding or had not



in their opinion been fixed properly, and the situation they had tried to resolve, remained outstanding.

*“We have been waiting for a year for the landlord to sort out this so this is up to property standards. Today was the last day the Tribunal said we have to have the works done, but it is still not done. We don’t even get an apology. There is water running down the walls. I am an asthmatic. They (the landlord) don’t care...I have not had a satisfactory outcome. The work has not been done and there is no compensation. Although the Tribunal made it clear that his excuses are not ok, they gave him 8 weeks and nothing has been done. The first hearing was August. I had to give him two months before that. I had reported it all to him a year ago!”*  
(Couple, urban, renting through local letting agent)

Where individuals felt it was unfair and ineffective, their case had not been successful, apart from one complex case, where the person was awarded damages, but had never received these. Despite not being successful, one man from this group was in the process of taking another case to the Tribunal about damp in the house and was continuing to fight for justice.

**Shane, who felt the outcome of his first case at the Tribunal was unsatisfactory, is now taking another**

Shane is an older single man living in a rural area, with a disability and literacy issues. With support from an advice agency, he has taken a case to the FTT about the septic tank leaking. At the last minute he was offered £500 by the landlord in light of the £2,000 he had spent on the costs relating to draining the septic tank, but Shane refused this and went on with the case. At the Tribunal he was awarded £800 in damages, so half the amount he expected, and the issue relating to the septic tank remained unresolved. Shane explained that one expert said that the tank was not sealed right and the other that the opening is to let gases out, which Shane states is not correct and is the reason why the tank is leaking and continues to leak. Shane’s house is also ‘full of damp’ and as a result he has slept on the sofa the past four years, as the living room is where the damp is least. He had thought the issues about the damp were in the paperwork for the former case, but as it was not, despite feeling the outcome in the last case was unsatisfactory, he is taking another case about the damp to the Tribunal. Shane did not feel heard in the last case and did not feel that he could have taken the case without support from the agency. One of the benefits is that he is now more aware of his rights. In his original contract it stated that he was responsible for the maintenance of the drains and pipes, but he now knows this is not the case, and this is at least one expense that he is not responsible for.

The interviews explored with tenants how the relationship was with the landlord or letting agent following the Tribunal experience. Most people felt that the relationship was as bad or worse, but a few felt that the relationship had improved. One person added that they felt as a result of the case the landlord now had more ‘respect’ for them, because he felt they now realised they were dealing with someone who was not afraid to stand up for their rights.

*“They have more respect for me. They have gone away with a bloody nose. The Letting Agent was shocking, because they were basically backing up that I was a nuisance. My neighbours get on well with me, I am a decent tenant...The behaviour on their part has improved because they know what they have to do...I see the landlord’s partner and he couldn’t be nicer. When the Tribunal came around, they sent a surveyor, they were always respectful of me. The landlord and partner never had respect and saw this as their property. I think that has changed since the Tribunal. The landlord’s partner is very deferential.”* (Single father, urban, local letting agent).



Two people had been served eviction notices following their cases at the Tribunal and felt this was directly related. Both these cases involved the tenants raising Tribunal cases against landlords over repairs which both had won, but they had then subsequently received notices to leave (both during the pandemic) with reasons being to sell the property, or for a family member moving in. In one case the tenant had got to the stage that he was fed up of the hassle and wanted to leave. In both these examples, the tenants felt their experiences showed that the power lies with the landlord, and even though the Tribunal exists, they felt it did not hold landlords to account and ultimately that there was no security of tenure.

*“I really don’t feel satisfied at all by it all. I can’t complain about the landlord. I can go to the letting agent to say there are repairs outstanding, but it is not the letting agent’s responsibility to do that... The repercussions for the landlord are non-existent. This is about the tenacity of tenants having to keep on about the process. I am livid about the current system. It puts the burden on tenants. It is easier for a tenant to move and take on all the repercussions of that and the stress of that, than it is to hold a landlord to account for the minimum standard, in the place that you live, it is a damning indictment of the current system, which has been recently improved.” (Single, urban, letting through local Letting Agent)*

*“I have low expectations of the landlord. Dealing with the letting agent – I just don’t trust them. I suppose the ultimate line here is going to court and that is so stressful, particularly when defending yourself. It is not something I want to do or enjoy. I don’t ever feel secure renting, because my tenure here is in the hands of the landlord. They have the ability to chuck me out. To be honest I am leaving.” (Single father, urban, local letting agent, single property landlord)*

Interestingly, most of the tenants that had taken a case to the Tribunal felt that through the experience they were now more aware of their rights, but that awareness alone was not enough to safeguard rights and security of tenure.

*“I have become more aware of my rights through this. I feel like in the past there have been issues I have downplayed, but when I brought them this time, when the landlord made out it was nothing. The landlord came in with wet wipes and was trying to rub off mould when they were in as though I was exaggerating. I feel a lot more aware of what is acceptable. There is a boundary of when the property is not meeting standards.” (Couple, urban, renting through local letting agent)*

## 5.8 Landlord and letting agents’ experience of the Tribunal

As noted above, as seen in RentBetter Wave 1, landlord and letting agents’ complaints about the Tribunal appeared to be mainly related to the law, rather than the Tribunal process itself (although delays and backlogs were highlighted). This complaint was specifically about ground 12 and the impact of longer periods in the PRT compared to the assured tenancy regime for raising applications for eviction for rent arrears. Through this Wave 2 qualitative research, this finding held true but was clearly exacerbated by the Coronavirus legislation and impact that had on timescales and level of rent arrears.

There were still complaints about the so called ‘normal’ delays of the Tribunal, and landlords explained that for each procedural step of the FTT (whether or not there were delays because of the backlog of cases) there is another month of the rent not being paid, which were accrued on top of the extended notice periods of the PRT. This would be exacerbated by tenants having time to appeal. Several landlords and letting agents gave examples of losses of £20,000 or more over the past two years. It should be noted however, that most of these complaints appeared to be a function of the law rather than the Tribunal processes in themselves.

*"I gave the eviction notice just before Covid, but had to wait for hearing of Tribunal for the panel to start sitting again. It takes too long, even without that. And then the tenants have time to appeal". (Landlord, accidental, 1)*

*"Six months of no rent and a massive bill at the end". (Landlord, investment, 1)*

As discussed above, small landlords in particular expressed a preference for good communication and relationships, and informal routes to dispute resolution through discussion and rent arrangements. This route was considered more straightforward and easier, and they were clear that they wished to avoid formal, legal routes. When discussing the formal route of the Tribunal some landlords expressed a high degree of scepticism about the usefulness of it. Although comments were highly critical (mostly from small landlords), it was noticeable that few had direct experience of it. However, some had had advice from landlord colleagues in their network, with some sharing experience in the case of rent arrears of using professional debt collectors rather than taking the Tribunal route.

*"FTT is a problem. It is massively under resourced and therefore doesn't work. It only deals with extreme circumstances e.g. arrears. It isn't available in the way it was designed to be for all housing matters e.g. when a landlord is taking too long with repairs. Increasing the bandwidth of the FTT would make a big difference to tenants, to empower them. This is not a legislative issue, it is a resource issue". (Landlord, business, 18)*

#### **Slow Tribunal process on sub-letting**

One letting agent with 500 properties provided the example of a property which was let to a tenant who then rented out rooms on Airbnb. The sub-letting temporarily stopped when they were warned to stop, but started again one month later. When Coronavirus hit the tenant couldn't pay his rent, because he wasn't getting the income from Airbnb. This was a high value property, and amounted to £30,000 in lost rent for the landlord by the end of FTT proceedings. The interviewee felt that FTT was unnecessarily slow – they had to go back for a separate hearing on application to retrieve unpaid rent, and another hearing for the actual eviction. *'When you go to the FTT you expect that the adjudicators will be sitting in the middle, weighing the case 50/50. But when you are there, you realise that it doesn't feel like that. It feels like the FTT is sitting on the tenant's side and the landlord is sitting on the other'.*

Many smaller accidental and investment landlords expressed concern about the onerous nature of the Tribunal process and the burden of proof making successful action very difficult. A range of responses from those with experience suggested it was formal, lengthy, slow and inaccessible (including the language used by the officials). Many spoke of the under-resourcing of the Tribunal which some argued put tenants and landlords off, and overall did not serve the aims of enabling better access to justice. One landlord characterised the process more cynically as *'deliberately slow as possible'* and designed to *'avoid the cost of assessing and rehousing homeless people'*. The length of time in hearing cases was a particular problem for small landlords, lacking resources and facing considerable constraints. For example:

*"On average it takes me one entire day to get my evidence together, everything has to be completely water-tight – it is an arduous process, time is money, if I spend my entire day doing that". (Landlord, investment 10)*

One case study provided by a letting agent illustrated the difficulties associated with delays of the Tribunal, but also raised an important issue regarding false information. This type of experience, and identity fraud generally was raised as an increasing problem by a few letting agents which they thought should be legislated against.

### Delayed Tribunal case and false information

One business landlord (30 properties) described a case where tenants had arrived with good references, stating that they were employed and known in the community. However, at least one reference later transpired to have been bogus. From the start tenants were not paying rent in full or on time. *'It was a catalogue of lies'*. The property became damaged and the landlord felt that there was no choice but to move to an eviction notice, but due to Coronavirus legislation this was not served, giving them *'6 months sitting pretty'*. The FTT process was seen as very slow with a high backlog of cases, some for over 12 months. They employed a private debt collection company to pursue arrears *'but with little chance of getting funds back'*.

For the small number of landlords and agents that mentioned Repairing Standard cases going through the Tribunal, these were seen as especially problematic. One letting agent gave an example where the original issue had been rectified, but the tenant added further (genuine) complaints and the reassessment case took eighteen months to be resolved.

In marked contrast, a few landlords and several letting agents who had direct experience of the Tribunal, provided positive feedback. While there were frustrations with delays, most stated that once they got to the FTT, the vast majority of cases were dealt with fairly, and some pointed to the procedural rigour. This thorough approach sometimes resulted in rejected applications initially which then had to be resubmitted, but it meant most applications were then successful. The difference between the positive and negative experiences of the Tribunal appeared to be down to the level of experience of the process (with letting agents having taken many cases, but small landlords taken very few).

*"I have had a very positive experience of FTT, I found it an easy and fair process...despite frustration over delays. It was no more taxing than the previous system." (Letting agent, 1600)*

*"I think it's very good. Having previously been up in front of sheriffs who had very little understanding of tenancy law, it was really a hit or miss on what happened when you went to get an eviction". (Letting agent, 1600)*

One letting agent spoke about the Tribunal moving to virtual hearings over the pandemic which they found to be more efficient than in-person hearings and hoped this would be continued. Virtual hearings could also facilitate more engagement from tenants in the formal process.

## 5.9 Summary – disputes and access to justice

This sample of tenants on lower income and those in housing need showed a broadly even split between satisfaction and dissatisfaction in their private renting experience – this split is different to the wider population of tenants who are generally satisfied or very satisfied with their experience (Scottish Household Survey 2019 and the RentBetter Baseline survey 2019-20). The interviews showed that satisfaction was underpinned by the relationship and the level of trust established between the tenant and landlord. For tenants, trust was generally built by the landlord getting things done quickly and properly (mainly repairs), and there being no prospect of the property being sold. This sense of security led to trust in the landlord and sense of security. Higher levels of satisfaction were more often reported by those who lived in rural areas; those who rented from landlords with one or a small portfolio; and those who rented from the small landlords directly. Satisfaction was lowest for those renting through letting agents, or large landlords.

There was a relatively small number of tenants from the sample that had had disputes with their landlord/letting agent. However, many were dissatisfied with repairs and the condition of

their homes and evidence suggested links to low awareness of rights including the Repairing Standard, and lack of confidence (or fear) in exercising their rights for fear of repercussions for their security of tenure. This conclusion is supported by very low numbers of repair cases taken to Tribunal (4% of all applications in 2019-20), despite condition in the PRS being worst across all tenures in Scotland.

The value of independent expert advice to help tenants navigate the law is clear, although numbers of reported advice cases (excluding self-help web-based advice) are relatively low compared to the total number of tenants in the PRS, and advice cases have been falling.

All tenants with experience of the Tribunal felt that the system was too formal, lengthy and not easily accessible. In overall terms most tenants were dissatisfied with the process and outcomes. Following their Tribunal cases, two tenants had been served notices to leave and they felt the notice was directly linked to them bringing a case against the landlord and the relationship being poor.

There was a diverse experience of disputes reflected in the responses of private landlords, although a focus on non-payment of rent which caused many landlords high level of stress and anxiety. Most respondents argued strongly for the need to address '*rogue*' landlords operating in the sector and questioned the effectiveness of regulation, with enforcement and interventions only reaching compliant, registered landlords. Good communication was seen by landlords as essential to tenancy sustainment, and avoiding conflicts, with most small landlords preferring informal routes to dispute resolution. Engagement with tenants was seen as critical, and some highlighted the consequences of lack of engagement from tenants inevitably resulted in formal routes to justice. Taking the formal route of the Tribunal was seen by many landlords as time consuming, slow and inaccessible although in contrast letting agents with more experience of the process felt cases were dealt with fairly and with rigour, although also highlighting the delays. For landlords, the pandemic experience exacerbated many issues for access to justice which is discussed in more depth in the final chapter.

## 6. The impact of the pandemic on tenants and landlords

This chapter explores the impact of the pandemic on tenants and landlords. It considers the immediate financial impact, including the impact of the Coronavirus legislation on tenants and landlords. It discusses the support mechanisms put in place by Scottish Government, and concludes by reflecting on the potential application of the Coronavirus legislation for the long-term.

### 6.1 The Coronavirus legislation

During Wave 1 of RentBetter programme, the Coronavirus pandemic hit the UK in spring 2020. Scottish emergency legislation was put in place (through two Coronavirus Acts and regulations) to protect tenants from 7<sup>th</sup> April 2020 from eviction by lengthening the notice periods landlords needed to give their tenants to end their tenancy. In many cases, including where eviction was sought for rent arrears, landlords needed to give their tenants six months' notice. It also allowed the First-tier Tribunal (Housing and Property Chamber) to use its discretion in deciding whether to issue an eviction order for private rented housing cases. From 30<sup>th</sup> March 2022 the provisions for the extended notice period expired. The provisions for the extended notice period expired on 30<sup>th</sup> March 2022. As set out in the Coronavirus Recovery and Reform Scotland Bill<sup>38</sup>, the eviction grounds will remain discretionary and the pre-action requirements will remain in place, and based on the [Scottish Government's New Deal for Tenants consultation](#)<sup>39</sup> (December 2021) these provisions may become permanent.

### Financial impacts for tenants and landlords

This section sets out the main financial impact of the pandemic for tenants and landlords. For tenants these stemmed from changes to employment and therefore reduced income, and for landlords the impact came mainly from increasing rent arrears, the remedies for which through formal eviction proceedings were limited through the Coronavirus legislation.

### 6.2 Precarious work and financial impacts for tenants

From the full sample of tenants interviewed around half were affected financially as a result of lost work during the pandemic. Most of these tenants lost work entirely and had reduced hours, others were not able to find work and a few were put on furlough. Other impacts which had financial implications included one person who had to care for an older relative and another person's flatmate moved out. All of this group were in precarious employment, working in industries such as hospitality, entertainment, arts, education and several were self-employed. It was also notable that some people had to move rapidly at the beginning of the pandemic - within Scotland or from elsewhere in the UK either back to where they originally came from, or to parents, or from city to rural areas to get more space.

*"I had literally just changed jobs. I was in hospitality up North in the previous place and I moved back down and I wanted to get a job here after the breakup. So, it was in hospitality again. I did 10 shifts in the hotel and I didn't qualify for nothing. The timing was shite. Really unlucky." (Single, urban, renting through local letting agent)*

<sup>38</sup> <https://www.parliament.scot/bills-and-laws/bills/coronavirus-recovery-and-reform-scotland-bill>

<sup>39</sup> <https://www.gov.scot/publications/new-deal-tenants-draft-strategy-consultation-paper/>



The way in which most tenants coped with the financial impact was by living frugally, buying only the basics to live, rationing heating, and shopping around for the best deals for food. It was interesting that no one from this group reported using food banks and it appeared that for this group, accessing and getting support from the Government, charities or other institutions was not something they considered. Rather people drew on support from family or used credit cards.

The profile of tenants struggling during the pandemic was also acknowledged by landlords, specifically retail and hospitality industries. As one letting agent commented:

*“We have one chap works in the hospitality industry - he was absolutely struggling to get any support. We put him towards the hardship loan. He couldn’t get anything...he was on a decent salary and he was staying in a decent flat, but the rent was north of £1000 and he couldn’t afford it, and he couldn’t move out. He had nowhere to go. He had no parents to fall back on, no relation or anybody could just move in with. Eventually the landlord said to him that if he could recover the property by a specific date, he would not pursue for the arrears. That was an agreement reached with all parties, it was nearly £7000 written off by the landlord.” (Letting agent, 1600)*

However, the scale of the problems faced by tenants in insecure employment meant that some landlords said they would be reluctant to let property to such groups in the future. As one letting agent explained: ‘I have noticed that since the start of the pandemic, landlords are now likely to look at the sector of work that people are in - e.g. hospitality or retail they will be less likely to rent to’ (letting agent, 750) – suggesting that the pandemic might have long lasting consequences for intensified vetting processes in the sector.

### 6.3 Increased reliance on benefits and financial support for private renters

As outlined previously, the DWP statistics relating to Scotland shows increases in benefit claimants over the pandemic from 25% of private renters in 2018 to 35% in May 2021, and then back to 30% in August 2021 signifying some economic recovery. In addition, there was a significant increase in demand for Discretionary Housing Payments – awarded by local authorities to cover the rent where this exceeds the Local Housing Allowance rate. The Scottish Welfare Funds awards to PRS tenants were also significantly higher in 2020-21, particularly for crisis grants which were up 49% between 2019-20 and 2020-2021, and Community Care grants increased by 35% over the same period.<sup>40</sup>

Most tenants interviewed were already on benefits and the pandemic did not affect their benefit eligibility, apart from the extra £20 per month they received. This was confirmed by landlords that specialised in the HB/UC market who said there was little financial impact for their tenants and themselves as landlords. However, for some the loss of their job during the pandemic meant this was the first time they applied for Universal Credit. Although they found the system fairly straightforward, the whole process was felt to be demeaning and stressful, not least the six weeks gap in payment at the start. Some also chose not to tell their landlords about the change in their financial circumstances for fear of the implications. The interviews also revealed the reluctance of some to apply for benefits, even when desperate for money, and

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<sup>40</sup> See RentBetter Wave 2 Secondary data report 2022, page 61



even though numbers were small there appeared to be a tendency from people from Black and Minority Ethnic backgrounds not to apply for benefits.

#### **Leanne who works in hospitality and lost her job two weeks into the pandemic**

Leanne's relationship ended and she moved to a different area where she got a new job in hospitality and a one-bedroom flat, two floors up despite her disability. Two weeks later the pandemic hit and she lost her job. She was on UC for the first time and had no money for six weeks. She should have been entitled to some form of disability payment but was underpaid £400 a month during the next year, and each month received £625 in benefits and her rent was £425 a month. She feels without the support from her family she would have been 'screwed.' Leanne described claiming for benefits as 'demeaning', and feels UC is not enough to live on. Leanne reflects that had she been on benefits when she originally took the flat, she would not have been able to afford this one, and may have had to take one of the 'scuzzy' flats she saw. She worries about what people's mental health is like living in these types of poor flats, especially over the pandemic. Leanne is now back in work and has been looking again for a new place because of her disability which is getting worse, and she needs a ground floor property. She had no support from the letting agent in terms of financial discount. She knew about the hardship entitlement funds and even got the forms but felt they were so difficult she couldn't bear to have another 'fight' to prove her disability.

### 6.4 Support from landlords for tenants

Many tenants described the support given by the landlord or letting agent as being 'non-existent' throughout the pandemic and felt that there should have been some contact made from them. Several tenants did report being in touch with the landlord with examples of rent reductions and for those that had arrears, repayment arrangement, but others said there were offers of help but nothing materialised.

*"The letting agent gave no support, they sent a letter to say they would close the office and a list of numbers about emergency. Just no help there really." (Single mother, urban, renting through local letting agent)*

*"I was supported by silence. The daughter asked if I was well, but that was it. There was no suggestion to drop the rent." (Single, city, single property landlord)*

However, these accounts were different to those provided by landlords and letting agents interviewed. Many landlords acknowledged the economic consequences for their tenants, including a loss of income, ending of employment as well as impacts on stress and mental health. Many of these landlords and some letting agents expressed a strong sense responsibility, directing tenants to appropriate support services and signposting resources provided by the Scottish Government. Examples of support included offering rent holidays, discounts, delayed payments, payments spread over longer terms and in some cases releasing tenants from contracts quickly where the tenant wanted this. These were strategies used by small and large landlords and letting agents alike, and many letting agents interviewed commented that they were surprised at the large proportion of landlords that proactively helped tenants during this time.

*"We offered furloughed tenants a 20% reduction for 3 months then review. We would continue if needed, but if income came back up then back to full rent at that point. We reduced the rent to see everyone through it, who needed it. But some people didn't want to pay any rent but before you know it, you're up to £2,000 in arrears and it's out of control and they freak out. You have to keep on top of it." (Landlord, business, 150)*

*"She couldn't pay the rent so I let her stay for six months (rent free), didn't cancel the tenancy...she is still a tenant, went straight back to paying rent now she is working again."  
(Landlord, investment, 4)*

Support was not only confined to financial, but also included social and wider economic support. Landlords noted that working at home presented specific challenges for tenants often linked to their use of technology. This was a specific issue for those living in rural areas where broadband was said to be a challenge, and one large rural business landlord (100+) acted as an advocate for improved access to 4G technology and even assisted in erecting a mast to achieve this.

*"[We were] contacting more vulnerable tenants (elderly, ill) on a weekly basis and worked with other local organisations such as the church and village shop to make sure that they were looked after". (Landlord, business, 100+)*

In relation to the introduction of Pre-Action Requirements, many landlords said they undertook these processes in any case, and others saw these as sensible in principle. However, some others criticised the requirements for adding bureaucratic demands, and were less sympathetic. Two different letting agents illustrated the divergent views:

*"If you are a good landlord you would have been doing these sort of things anyway" (letting agent, 400)*

*"It is just another form filling exercise, more legislation to get to the same end result – and it just ends up prolonging the issue for the tenant and landlord" (letting agent, 400).*

Tenants were not aware of these new requirements specifically, although they discussed the landlord's level of support, as outlined above, which most tenants affected by the pandemic thought was lacking. Wider stakeholders generally viewed the move to PARs as positive, and most suggested that they would be supportive of this remaining a permanent legislative change. Some stakeholders suggested that this would result in parity with the social rented sector, where PARs were already a legal obligation prior to the pandemic, and that it provided a robust process for landlords to follow. Nonetheless, it was described by one participant as a 'paper exercise' and was argued that landlords were already engaging with tenants who were not paying rent. In addition, questions were raised over whether landlords may need to be supported with PARs.

*"Someone losing their home should absolutely be the last resort... if that [pre-action requirements] is something that happens in the social rented sector then why can't it happen in the PRS?" (Representative Organisation)*

*"A lot of smaller landlords would have been ignorant on what they need to do" (Local Authority).*

## 6.5 Increase in rent arrears and financial impact for landlords

Some of the tenants affected financially by the pandemic talked about struggling with rent and the impact this had on rent arrears. As illustrated by Nasir who was trying to cope with combination of unaffordable rent, and arrears resulting from a drop of income during the pandemic meant he was re-examining his housing options.

**Nasir who had his employment moved from being full time to part time as a result of the pandemic and is in arrears with rent**

This is Nasir's first time living in own place away from parents, near the city, and he has struggled to pay rent and bills. As a result of the pandemic his employment moved from being full time to part time and this has significantly impacted on his finances. He has taken out a loan to cover costs and fell into arrears. He was earning £1,600 a month but this can drop to £1,400 due to the change in hours available and is paying £1,000 in rent and now an additional £100 per month for the arrears. He is really struggling. He didn't want to live in this area, but it was hard to get anywhere else. It took him a year to get this flat and because he has put in new furniture he feels he should stay, but he does not feel it is sustainable.

Recent research by CaCHE<sup>41</sup> from a survey of 1,745 landlords found that around one in five landlords (18%) reported tenancies in arrears at July 2021, which was an estimated 45,000 landlords across Scotland. The arrears had an average duration of 5 months (median 3.4 months) and an average value of £2,800 per tenancy (median £1,900). It estimated that around 25% of tenants were in arrears and the researchers calculated that this would imply a total value of current arrears in the Scottish PRS in the region of £126m. The study also noted that these figures were substantially higher than earlier estimates from tenant surveys which suggested around 8-10% of tenants were in arrears with an average arrears of £900-£1000.

Research by SAL<sup>42</sup> based on analysis of the outcome of eviction applications made to the Tribunal between October 2019 and March 2021 pointed out that pre-pandemic, tenants being evicted for rent arrears owed on average 8.9 months' rent at the point at which the Tribunal granted an eviction order. For the same period during the pandemic in 2020-21 this had risen to 13.3 months' rent. The number of months' rent owed had increased by about the same as the notice period for an eviction on the rent arrears grounds had been increased by the Coronavirus (Scotland) Act. The SAL noted that these very significant amounts of debt not only have a huge financial impact on landlords but also burden tenants with debt which is due for repayment long after the tenancy has ended.

Interviews with landlords and letting agents for this Wave 2 research showed that around half experienced financial difficulties during the pandemic as a result of tenants being unable (or sometimes unwilling) to pay rent. This was exacerbated by the extended notice period and ban on enforcement of eviction which had substantial financial impact on some landlords. The pandemic was described by one letting agent as '*a game of two halves; either it's affected you not at all, or massively*'. Some landlords reported significant problems, particularly with rent arrears and a number spoke of accruing significant levels of personal debt as a result. As outlined above, many landlords expressed considerable understanding with the difficulties experienced by their tenants, but there were several examples where landlords had to deal with significant problems and lack of engagement from tenants for 12 to 24 months, accruing arrears of between £10,000 and £26,000 with additional costs. Some had themselves been directly and adversely affected by the pandemic, and the loss of rental income caused significant financial stress. As one letting agent commented:

*"A lot of landlords themselves were also furloughed. There was anxiety for landlords returning from overseas and not able to get back into their properties. A lot of landlords ended up renting themselves" (Letting agent, 1500).*

<sup>41</sup> <https://housingevidence.ac.uk/publications/the-pandemic-arrears-crisis/>

<sup>42</sup> See RentBetter Wave 2 Secondary data report 2022, page 56

For many landlords experiencing these levels of arrears, the extended notice period caused considerable frustration, and many felt the balance of rights between landlord and tenant had gone too far in favour of tenants. A few landlords felt that a small proportion of tenants had used the extended notice to their advantage, a view that was also confirmed by some wider stakeholders. It was reflected that this approach was in no-one's interest with the consequences being long term for tenants who would be left with high levels of debt.

*"Some people will use any situation to their advantage...and because of Scottish legislation, they have the law on their side." (Letting agent, 140 )*

*"There's always going to be the scenarios where you have the tenant who use it as an excuse not to pay rent. It's not that they can't pay, but they won't pay. That's an on-going issue, but in extreme cases that has got worse during the pandemic." (Representative Organisation)*

*"Most of those type of queries [from landlords] were wrapped up in queries about evicting their tenants, and not wanting to evict their tenant, but saying 'I am in financial difficulty myself paying my own cost and my own mortgage, so need to know what to do about this.'" (Advice Agency)*

#### **Arrears exacerbated by the extended eviction periods and eventual repossession**

In one arrears/ repossession case a tenant had applied for homelessness assistance, but the council wouldn't help him until he had an eviction notice. The letting agency (1,600 properties) eventually served notice because the tenant wasn't paying rent, took the case to the FTT but there was a minor error with the notice, so that delayed things. It was a small technicality, and all parties were in agreement to proceed with the case. However, the case '*rumbled on*' for 9 – 12 months. At least 50% of that length was to do with Covid delays at the Tribunal. '*The snail's pace racked up the bill*', until in the end the landlord was £26,000 out of pocket, with very little hope of getting the money back, and the tenant now had this level of debt hanging over him.

A few respondents stressed how they relied on rent to cover shortfalls in income elsewhere, particularly for investment landlords supplementing limited (or non-existent) pensions: '*The loss of income was difficult as I rely on rental for pension income*' (Investment landlord, 12). Additionally, there were specific problems for some who provided student accommodation, as outlined in previous chapters on supply:

*"When Covid hit in March 2020 all the students went home. All properties void for 3 or 4 months, but then by July they started to come back. To get them back/ to keep their tenancy they were offered a month's rent holiday at Christmas and reduced rent for a few months".*  
(Investment landlord, 20)

## **6.6 Support for landlords**

As discussed in the previous chapter on disputes and access to justice, landlords interviewed generally felt unsupported by the 'system' and felt there '*was no-one there to listen*' to them, although some positive mentions were made of the role of SAL and a few had approached Citizens Advice during the pandemic. Others had moved from managing their property themselves and sought the services of letting agents to give them the support and expertise they needed. Wider stakeholders (including representative organisations and local authorities involved in landlord registration) noted that landlords felt unsupported by local and national government during the pandemic. One possible reason for this, as suggested by one participant, was that not all local authorities have private landlord fora, which makes it difficult to keep landlords informed and disseminate information and advice. This was contrasted to

the social rented sector, which has far smaller in terms of volume of landlords and has a better infrastructure to gather and disseminate information and guidance.

*“A lot of landlords felt like there wasn’t much help for them out there. They felt that the [tenants] problem became theirs.” (Local Authority)*

*“If you’re a council tenant you have one place to go to complain or to get something done. With 17,500 private rented properties and upwards of 10,000 landlords, how do you keep all of them informed?” (Local Authority)*

In overall terms, therefore, there were clearly financial impacts for both tenants and landlords as a result of the pandemic, the extended notice periods and ban on enforcement of eviction. Wider stakeholders tended to take the overview for both sides, with one summarising a situation of ‘*financial instability*’ in parts of the PRS which was more exposed through the pandemic, with many lower income tenants probably trying to pay unsustainable high rent relative to their income, with the knock-on effects for some landlords unable to pay their mortgage.

## Evictions during and after the pandemic

### 6.7 Evictions during the pandemic<sup>43</sup>

Tribunal data shows that there was a significant decrease in eviction applications in 2020-21 (767 applications and 969 eviction applications closed during the year), compared to pre-pandemic levels in 2019-20 (1,742 applications and 1,780 applicated closed). The number of homeless applicants assessed as homeless during 2020-2021 who were private renters reduced by 42% from pre-pandemic levels in 2019-20.

Research by the SAL found that pre-pandemic 2019-2020 it took on average 95 days from the time a landlord applied to the Tribunal to the point the Tribunal made a decision to grant an eviction order. During the pandemic 2020-21 this had increased significantly to 134 days. SAL noted that this is likely to be because a number of applications were held up by the cessation of face-to-face hearings and case management discussions over the period 19 March to 8 July 2020. For those applications submitted after 8 July 2020 the average timeframe was 90 days and the quickest case was decided on within 5 weeks of an application being made. It should be noted that eviction orders do not equate to enforcement, and during most of 2020-21 there will have been a ban on enforcement in most areas of Scotland.

Taken together, this data suggests that the impact of the Coronavirus legislation was to lengthen the period to grant eviction, reduce the number of evictions (around half cases being brought to Tribunal), and reduce homelessness over the period 2020-2021, therefore meeting the Scottish Government’s objectives of protecting tenants during the pandemic. As discussed below, this does not mean evictions did not occur, and the longer-term impact of the arrears that may have been built up is also discussed below.

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<sup>43</sup> See RentBetter Wave 2 Secondary data report 2022, page 63



## 6.8 Tenants' awareness of rights during the pandemic, and illegal evictions

The interviews with tenants explored their awareness of the Coronavirus legislation during the pandemic. Most of those affected by the pandemic were aware about the change in legislation by extending notice periods, and at certain points banning enforcement of evictions. A small number reported that they had been given notice to leave during this time – given the timing of these notices to leave these would have been illegal evictions if they had proceeded. For all, the notice to quit came as a surprise. The reason given was that the landlord wanted to sell, but some suspected the 'real' reason was that they had complained about repairs needing to be done including taking cases to the Tribunal. Two of these tenants knew their rights and stayed on in the property, eventually they did leave but had waited until they found somewhere else 'suitable' to live. For two others, as the quote shows below, they felt a sense of urgency to get out as soon as they could, putting them under considerable stress. One other person explained that they ignored the notice to quit, which had been sent by text and it was through support from a friend that he and the landlord then came to an agreement, and he was able to stay on.

*"I felt like it was secure until he gave me the notice to quit, and I was shocked. I thought we are going to be homeless. I went to the Council and explained and then they put me on the priority list. I was able to stay in the flat until I got the place with the Council, I was waiting about four or five months for that though and I was worried about him kicking me out. The Council told me though he can't kick me out, I don't know why...It was so unexpected. I was pregnant and the pandemic was happening...I think it was about me complaining about the damp. It was all so quick...I moved in December, so it was two days before Christmas. I would never private rent again. They can ask you to go when they want." (Single mother, urban, single property landlord)*

Shelter Scotland data for the last three years show that illegal evictions reported through its advice line have increased through the pandemic – from 12 in 2019, increasing to 45 in 2020 and falling back slightly to 37 in 2021 (January to December). The following provides two case studies of illegal evictions reported to Shelter Scotland over the pandemic.

### **Illegal evictions during the pandemic**

A tenant lost their job due to the coronavirus pandemic and, due to a miscalculation of previous earnings, he was not granted Universal Credit. The tenant was appealing this decision on Universal Credit and had asked their landlord for more time to pay rent while the appeal was considered. The landlord refused and stated that if the tenant did not pay their rent for that week on the Friday (the tenant was paying weekly and had always paid rent on time) they would be thrown out. That Friday the landlord sent someone to physically confront the client. The next day the landlord disconnected the power from flat and took the keys, so the client was unable to come and go from flat. The tenant was made homeless and was supported by Shelter Scotland to make a homeless application.

A Tenant was in a private tenancy in Glasgow and had lost his job as a due to the lockdown. This resulted in him missing one rent payment. Due to the Coronavirus legislation in place at the time the landlord should have been prevented from evicting the tenant. One evening the letting agent turned up, took the door of the property off its hinges and left with it. The tenant contacted the police and was told it was a civil not a criminal matter (incorrectly), and the landlord had the right to do what he wanted to his property. The tenant then called Shelter Scotland for advice, who advised that it was a criminal matter. The tenant decided to leave to property and stay with friends until he could afford his own tenancy again.



## 6.9 Evidence of recent and pending evictions

Summary data from most recent Tribunal data shows that there has been a significant increase in eviction applications between 1<sup>st</sup> April 2021 and 17<sup>th</sup> February 2022 (1,056 application) compared to 2020-21 (767 applications and 969 eviction applications closed during the year), but not as high as applications pre-pandemic in 2019-20 (1,742 applications and 1,780 applied closed). Homelessness statistics for the period from April to September 2021 also showed that the proportion of homeless applications that were private renters had increased again from the reduced level during the pandemic.<sup>44</sup> As discussed in the supply chapter, wider stakeholders also commented on their perceptions of change in the private rented and sales market since the Scottish Government restrictions were lifted, citing high demand in the sales market and response from landlords to 'cash-in' on their investment.

The CaCHE study of landlords in July 2021<sup>45</sup> found that one in five (21%) landlords with current arrears (4% of all landlords overall) were at the stage where they have issued a Notice to Leave for one or more tenancies. A further 8% of landlords with arrears (2% of all landlords) had applied or are applying for an eviction order. This group could be viewed as the potential 'pipeline' for evictions over the next six months, although not all of these tenancies will reach the eviction stage and the Tribunal still has discretion when it did not previously.

The combined secondary and qualitative evidence above therefore suggests an increase in evictions is expected over coming months, with an associated impact on homeless applications. However, the Scottish Government's Tenant Grant scheme may mitigate against this, albeit to a small extent based on current uptake as discussed below.

## 6.10 Mandatory and discretionary grounds for eviction

The PRT has 18 grounds for eviction. Usually, there are ten 'mandatory' grounds, where the Tribunal must grant the order for eviction if the ground is proved – these include the so called 'intention' grounds including intention to sell the property (by the landlord or lender), to live in the property (by the landlord or relative), or to refurbish it. Mandatory grounds also include rent arrears and a number of other grounds. The other eight grounds are 'discretionary' grounds. This means the Tribunal need to decide whether it is 'reasonable' to grant an eviction order even if the ground is proved. The Coronavirus legislation made all grounds discretionary until end of March 2022, and although the regulations to extend notice periods and the ban on enforcement of eviction have ceased, Scottish Government has extended the regulation for all the grounds being discretionary pending the outcome of the Coronavirus (Recovery and Reform) Scotland Bill<sup>46</sup> which proposed permanent or temporary extension of discretionary grounds. Similar principles are discussed in the Scottish Government's a 'New Deal for Tenants' consultation closing in April<sup>47</sup>.

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<sup>44</sup> See RentBetter Wave 2 secondary data analysis report 2022, page 17. Note There is some variability in homelessness statistics since the pandemic, so these more recent increases need to be considered over time to see whether they return to pre-pandemic levels.

<sup>45</sup> <https://housingevidence.ac.uk/publications/the-pandemic-arrears-crisis/>

<sup>46</sup> [https://www.gov.scot/news/covid-recovery-and-reform-bill-introduced/#:~:text=The%20Coronavirus%20\(Recovery%20and%20Reform,between%20July%20and%20November%202021.](https://www.gov.scot/news/covid-recovery-and-reform-bill-introduced/#:~:text=The%20Coronavirus%20(Recovery%20and%20Reform,between%20July%20and%20November%202021.)

<sup>47</sup> <https://www.gov.scot/publications/new-deal-tenants-draft-strategy-consultation-paper/>

The qualitative research explored whether mandatory grounds for evictions should now be discretionary. Many landlords and letting agents experience on rent arrears over the pandemic demonstrated that they did not wish this ground in particular to remain discretionary, with arguments including enabling tenants to be burdened with debt, providing ‘non-payers’ with the excuse not to pay rent, and putting landlords’ own financial position at risk.

Other former mandatory grounds, in particular the ability to sell the property, or for a family member to move in were also fiercely resisted. It was highlighted as a problem on the basis that: *‘It leaves the landlord in limbo for longer – if a landlord is moving back into their property, it should really be a cut and dried case rather than discretionary’* (Letting agent, 500), and as illustrated by this example:

#### **Discretionary grounds**

One respondent Landlord had one property co-owned the flat with her son which was rented out but the son wished to return to live in the property during the pandemic from elsewhere in the UK. If possession had been mandatory the landlord believed the process would have been straightforward. However, as grounds were changed to discretionary, the tenant remained in the property until the point of eviction. The extended notice period caused significant delays. The Tribunal process was described as *‘lengthy as hell’*. As the landlord commented *‘it is costly, unjust and unfair that a tenant can manipulate the process to his own advantage’*. The landlord had to pay £800 in legal fees, and the landlord felt that the tenant would have received financial help and represented himself in court.

Overall, there was a strong consensus against the extension of the emergency measures, and the discretionary grounds becoming permanent. Some respondents suggested that such an extension might lead to landlords at best becoming more discerning about eligibility or at worst exiting the sector:

*“it is all one sided and many landlords will leave or have stricter rules/credit checks for taking on tenants .....landlords accepted the changes during the period as a response to a temporary, unusual situation. Making them permanent would be a step too far. I don’t understand why they would be extended, and am not aware of tenants’ rights groups pushing for this. I think that it wouldn’t be evidence based and would be politically motivated.”* (Letting agent, 360).

Another questioned *‘how far does the pendulum have to swing in the tenants’ direction?’* In contrast, one (accidental) landlord expressed support for the continuation of emergency measures: *‘I am quite happy for those things to be a permanent thing. It goes with being in a relationship. You need to be reasonable and fair.* However, this was an exceptional response (even though this landlord had also been affected by the pandemic) which was not replicated by other respondents.

Wider stakeholder opinion about mandatory and discretionary grounds attracted mixed views from participants. One argued that all ‘intention’ grounds (such as landlord’s intention to sell, refurbish or move in), should be made discretionary as it would allow for each possible eviction case, with its own set of unique circumstances, to be examined and considered by the Tribunal.

*“It’s trying to make sure that every case is treated as an individual case... and I think those two grounds together, discretionary grounds and extending the notice periods, it feels like those are really quite key to making sure we strengthen rights in the PRS”* (Representative organisation)

*“Intention is not proof, and what if that intention changes?” (Representative Organisation)*

Some other participants were unsure on whether mandatory grounds for eviction should be amended with the suggestion that more research was required. Other stakeholders were opposed to the change, arguing that it was a further erosion of landlords’ rights – this was viewed as crippling for smaller landlords who may be forced from the sector should it become more difficult to evict tenants for valid reasons. The potential negative impact of supply in the PRS was also discussed, as outlined in the supply chapter.

*“The biggest impact [of all grounds becoming discretionary] is landlords feeling less and less secure” (Local Authority).*

## Other pandemic impacts on tenants and landlords

### 6.11 Impact on repairs and maintenance

Some landlords and lettings agents, and a few tenants, and wider stakeholders noted the impact of getting repairs completed during the pandemic. Tenants noted that repairs had stopped entirely which was a source of stress for them, although others were concerned about providing access for essential repairs and safety checks. Landlords and letting agents experienced considerable challenges, unable to undertake repairs due to the restrictions in place, which they acknowledged resulted in some tenants living in poorer conditions as a result. Safety checks were also difficult for many due to lack of access. Apart from restrictions and lack of access, getting trades staff was difficult - larger landlords noted that maintenance staff were furloughed, or had difficulty in sourcing trades people, and smaller landlords mentioned the lack of maintenance staff affected their ability to relet properties.

#### **Undertaking repairs and refurbishment during the pandemic**

One investment landlord (with 6 properties) explained how maintenance was a particular difficulty, owing to the pandemic: *‘During lockdown, you couldn’t get anybody to do the repairs to get it turned over, couldn’t find anybody who’d go out to the refurbishments, so you’re stuck there with an empty flat and you end up having to apply for exemptions for empty properties. Even when the restrictions lift it’s difficult to get anybody because everybody’s been hard pressed to catch up with the work they haven’t done. It’s very difficult to find people who can get out to do stuff. Then lockdown was over, but there were still restrictions, so you really have to hunt around for somebody who could do work. Then we had to find a letting agent, somebody competent to take it over because it was just too much for us’.*

This evidence is supported by recent research<sup>48</sup> involved interviews with 40 tenants and 10 homeowners in Greater Manchester and West Yorkshire during the period of May-June 2020 which found that housing quality and disrepair issues worsened through lockdown and concluded that *“the experience of confinement over many weeks in poor-quality housing had a grinding effect on participants”*, with peoples’ physical and mental health put under stress.

The landlords and letting agents interviewed for this Wave 2 research also identified another area which was significantly affected by lockdown which was the process for emergency rehousing – for example in cases where a boiler broke or there was a flood. This was illustrated

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<sup>48</sup> Lockdown. Rundown. Breakdown. The COVID-19 lockdown and the impact of poor-quality housing on occupants in the North of England. (University of Huddersfield, Commissioned by Nationwide Foundation and the Northern Housing Consortium: Brown, P., Newton, D., Armitage, R., and Monchuk, L.)

by one letting agent commented that normally a family was rehomed in four hours – for example into Airbnb or B&B accommodation. However, this was much more difficult through the early part of the pandemic:

*“Three families were in expensive hotels as everything else was all booked up. The landlord pays for the emergency rehoming costs, including any additional travel of tenants. Most landlords would claim this on insurance, but at the moment insurance companies are being more cautious.” (Letting agent, 150)*

## 6.12 Tenant and landlord wellbeing

Although not the focus of this study, the interviews with tenants and landlords revealed wider wellbeing impacts of the pandemic. Tenants said that the impact of the pandemic on their mental health was significant. Households especially affected by mental health issues and isolation were those living in cities in overcrowded conditions and without ready access to outside space, single parents, disabled people, people who already had mental health issues, and parents who had children with disabilities and had lost their access to support. A couple also reported having issues with their neighbours over this time, with one person’s neighbours partying and having strangers visit despite the restrictions. A single mother who had to give up her work and take on the full care of her children had neighbours complain about the noise the children made in the flat, being ‘hyperactive’ and having no outside space.

*“At the beginning of the pandemic my kid lost her support work, so eight hours a week and I lost mine for 16 hours a week. You couldn’t send them to be cared for. Being a single mum, I felt isolated.” (Single mother, city, renting through local letting agent)*

*“I was working 7.5 hours before and getting £312 a month. The nurseries were closed so I had to take on full care of my kids. I got in so much debt...It has been such a hard time. My kids are so hyperactive when they are stuck in the house and that is why the police are being called. The police were sympathetic. I explained to them and I started crying. I don’t drink or hurt my kids, I am being made to feel like I am doing something wrong. They said there is nothing you can do to prove harassment.” (Single mother, urban, single property landlord)*

These findings are supported by a CaCHE study<sup>49</sup> on the experience of private renters during lockdown which pointed to other research highlighting economic disadvantage and vulnerability of renters in PRS during the pandemic, with historically disadvantaged groups (low-income households, non-white renters, single parents, women, disabled and young people) having been more negatively affected. Age UK London<sup>50</sup> also found that the impact of the pandemic exacerbated existing challenges faced by older tenants living in the private rented sector.

Again, while not the focus of the research, it was clear from discussions with landlords that for many experiencing high levels of rent arrears this caused significant levels of stress and anxiety, including impact on personal finances.

*“I think the last year has been torrid, very difficult. And I would say up until then, I’ve really enjoyed interacting with tenants and they become friends. It’s the last year that’s been very, very, very tough” (Portfolio landlord, 25)*

<sup>49</sup> <https://housingevidence.ac.uk/publications/renting-during-the-covid-19-pandemic-in-great-britain-the-experiences-of-private-tenants/>

<sup>50</sup> <https://www.ageuk.org.uk/bp-assets/globalassets/london/covid-19-and-older-private-renters---briefing-note-with-survey-results.pdf>

## Scottish Government support

### 6.13 The Scottish Government support schemes<sup>51</sup>

The Scottish Government Tenant Hardship Loan Fund was designed to help people who had their finances impacted by the coronavirus pandemic and did not have other means of housing support. The PRS Landlord (non-business) Covid 19 Loan Support was opened in May 2020 to assist private landlords experiencing interruption to normal monthly rental payments. The deadline for applications to both of these loans was December 2021. Some applications are still being processed, but Scottish Government data up to 17 February 2022 showed that for the Tenant Loan a total of £733,212.41 had been paid or offered across 268 loans indicating an average of £2,735.87 per loan. For the PRS Landlord (non-business) Covid Support Loan a total of £208,372.44 had been paid or offered across 61 loans – an average of £3,415.94 per loan.

The Tenant Grant Fund, administered by local authorities, aims to support private and social rented tenants who have incurred rent arrears as a direct result of the Covid-19 pandemic. The grant is closing at the end of March 2022. As at 31st December 2021, 93 Tenant Grant Fund payments had been made for PRS tenants to the value of £115,551.42 across 12 local authorities, with more funds allocated by East Ayrshire Council (£26,813.86 across 22 grants), South Lanarkshire Council (£26,225.24 across 18 grants) and Perth and Kinross Council (£23,074.44 across 9 grants) compared with elsewhere. Glasgow City Council and City of Edinburgh Council, the two largest PRS markets had not issued any Tenant Grant Fund payments to PRS tenants by the end of December 2021, along with 18 other local authorities. However, there are a number of local authorities that had reported a nil spend as of 31 December but had confirmed that applications were being considered and payments were pending. The sum across the Tenant Hardship Loan and the Tenant Grant fund is 345 payments to tenants, equivalent to around 0.1% of all PRS tenants (although the fund is open to social tenants also). This will therefore have a modest impact on rent arrears overall, when considering the projected scale of arrears accrued over the pandemic as discussed above.

The qualitative research undertaken with tenants, landlords and wider stakeholders explored awareness of the Scottish Government support funds and opinions on their effectiveness. Most tenants did not know about the Scottish Government support that was available and a few commented that this information should have been publicised and more accessible.

*“I wish I had known about the things you mentioned. I think there should be a portal for renters... I was living on about £20 a week.” (Single, rural, small portfolio landlord)*

Only a very small number were aware of the Tenant Loan scheme or DHPs. Two had applied for the loan scheme, saying it was a hassle, and they had been unsuccessful and were not sure why, and another was just outside the threshold of applying. Two others had got the forms but said they ‘*didn’t have the energy to fill them*’ and found them to be too intrusive.

Wider stakeholders, and landlords and letting agents that had a view, agreed with the tenants’ opinion that the loan scheme was inaccessible due to strict eligibility criteria, lack of information and guidance provided by the Scottish Government, and fundamentally that it was not fit for purpose as a loan would not be suitable for low-income tenants who were probably

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<sup>51</sup> See RentBetter secondary data analysis report 2022



the group that needed support most, and delayed rather than eradicated indebtedness for tenants:

*“We assisted three tenants through the tenant hardship loan whereby we worked with the tenant to help them complete the application. I think it was worrying that the government suggested that there was help out there for tenants. I know of two tenants who were rejected - one because they have poor credit history.” (Letting agent, 600)*

*“At the time we had said loans weren’t ideal – better than nothing – but for people already financially struggling a loan was probably not the best solution.” (Representative Organisation)*

*“As time went on it was quite apparent that some tenants were unable to access the loans because of affordability reasons, so people were failing credit checks, which didn’t seem particularly conducive to keeping people in their homes.” (Advice Agency)*

In comparison, the Tenant Grant Fund was viewed more positively by stakeholders, although with the caveat that it was closing too soon in March 2022 to cater for the scale of demand. There were also reservations about the burden placed on local authorities by Scottish Government to administer the scheme with resultant delays and concerns raised around inconsistency of practice across local authority areas.

In relation to the PRS Landlord Loan scheme most small landlords were unaware of measures instituted by the Scottish Government to support landlords; those that aware of it dismissed the support offered in the form of loans.

*“[the Scottish Government] help isn’t really beneficial. The mortgage holiday extended mortgages and interest payments. Loans just add to debt.” (Letting agent, 140)*

Some wider stakeholders shared these views. For those who were interested in the scheme, access to the scheme was deemed to be problematic for landlords including the limit on the amount that could be borrowed, and exclusion of landlords with a portfolio size larger than five properties. One interviewee suggested landlords with larger portfolios who carried greater risk and should have been targeted for the fund. The same point about increasing, and delaying indebtedness was made for landlords as it was for tenants.

*“The landlords that we spoke to who were affected were larger portfolio holders, because they had more properties and there was more risk involved there.” (Representative Organisation)*

*“The fact that it’s a loan scheme is just delaying landlords having to pay the money back.” (Representative Organisation).*

## 6.14 Summary

It is clear that precarious work, particularly in the service industries, put tenants at financial risk, many of whom suffered through loss of earnings which for some translated into rent arrears. Tenants already on benefits were largely unaffected, but those new to claiming benefits found the experience stressful due to DWP procedures and delays, and concerns over landlords’ perceptions of a change of circumstances. While the tenants interviewed said their landlords were unsupportive during the pandemic, landlords and letting agents provided clear evidence that they were – perhaps demonstrating that there were different parts of the market reflected in the tenant and landlord interviews. At the same time, landlords and agents pointed to lack of support for the supply side of the market, including the Scottish Government loan scheme for landlords.



The financial impact on landlords during the pandemic was also clear with several examples provided of very large arrears building over two years, supported by secondary data around the building arrears situation across the sector. For some this was on top of landlords' other loss of earnings which occurred over the period. Given the profile and scale of tenants that struggled during that period and the impacts on landlords, there were suggestions this may have implications for access to the PRS in future for tenants on lower income or in precarious work.

It is clear that the Coronavirus legislation served to reduce evictions, and homelessness also reduced from the PRS during the pandemic. This did not mean that evictions did not occur, and illegal evictions increased. Evictions are now increasing again, and the longer-term impact of the extended notice periods and increase in arrears means that evictions can be expected to increase over the coming months and years. The Scottish Government Tenant Loan and grant may mitigate against the prospect of eviction for some tenants, but only a relatively small number compared to the estimated scale of arrears. In any case, these schemes were met with a generally poor reception from tenants and landlords, both claiming lack of promotion and guidance, and strict eligibility criteria which meant lower income tenants were not reached.

Overall, there was a strong consensus from landlords against the extension of the emergency measures, and the discretionary grounds becoming permanent, with the suggestion that an extension might lead to landlords at best becoming more discerning about eligibility, or at worst exiting the sector. Wider stakeholders were more mixed in their opinion with suggestions of positive impacts of discretion for tenants, but on the other hand potential negative impacts for access to the sector including reduction in supply.

## 7. Conclusions and recommendations

RentBetter Wave 2 research has concentrated on tenants on lower incomes and those in housing need. Tenants interviewed were on low incomes (average net £17,000 per annum), most were claiming benefits, and were renting at the lower end of the market. The landlords and letting agents interviewed provided insights from across different parts of the market. This mainly qualitative research has provided rich insights of experiences from landlords, letting agents, and mainly lower income tenants. We cannot generalise for the whole PRS population from qualitative research by saying that all low-income tenants in Scotland will have similar experiences to those interviewed, in the same way as we could for large scale, statistically representative surveys. That said, the qualitative samples for both tenants and landlords were large, and the common themes drawn can provide useful illustrations of experience for comparison with the whole population surveyed in Wave 1.

It should also be remembered that the original aims of the research programme were to assess the impact of PRS reforms in Scotland, and in particular around the PRT. The introduction of the Coronavirus legislation in 2020 means that it is difficult to be clear on what are impacts of the 'original' Scottish PRS reforms, and what are Coronavirus legislation impacts.

The Wave 2 research explored the following hypotheses:

- Leavers and stayers – Landlords with fewer than 5 properties in their portfolio are more likely to leave the sector as a result of PRS reforms in Scotland.
- Affordability – Tenants in higher rent markets have low expectations of affordability. This hypothesis is based on the baseline findings which appeared to show a disconnect between high rents in some markets, and tenants' perceptions of affordability.
- Access to justice – Service provision, security of tenure and dispute resolution is considered more favourable by tenants of landlords with small portfolios (fewer than 5 properties). This hypothesis is based on the baseline finding that suggested better quality services and favourable dispute resolution was more common from smaller landlords.

In bringing these findings together, of particular interest has been whether the smaller '*cottage industry*' landlord is more likely to provide a better service than other larger landlords/letting agents but are in fact the most likely negatively impacted by PRS reform, and more likely to leave the sector.

The research also explored the impact of the Coronavirus legislation on the PRS. The research questions for this part of the research were:

- Was extending the eviction notice period beneficial for tenants/landlords? What difficulties can be foreseen in extending eviction notice periods for tenants/landlords? Are there specific circumstances where landlords would be more amenable to lengthening notice periods?
- To what extent did making all grounds for eviction discretionary deter unreasonable evictions during the pandemic? Are there mandatory grounds for evictions that should now be discretionary?
- How did the implementation of pre-action requirements for evictions affect landlords in the PRS during the pandemic? Were these pre-action requirements commonly practiced

by private landlords before their introduction in law? What were the benefits of these pre-action requirements for tenants?

## 7.1 PRS housing supply, and the 'leavers and stayers'

The Baseline Wave 1 findings (2019-20) showed that landlords' and letting agents' opinions about the future of the PRS appeared to be broadly equally positive and negative, and just under a quarter said they were considering leaving the market due to the weight of regulation in Scotland, and changes in the mortgage interest tax regime set by UK government.

This Wave 2 research has provided insights into the overall scale of the stock and the availability of lets. The secondary data evidence, from a combination of PRS stock estimates, a range of market data, and qualitative opinion points to increasingly constrained supply, and we conclude that it is likely that the **PRS stock in Scotland is beginning to reduce**. The qualitative research showed that some landlords may be leaving the market over the next 2-5 years (and so there is unlikely to be an immediate surge to evict tenants), although a broadly equal number of landlords said they intended to stay in the PRS market. However, most importantly letting agents argued that **new landlords are not joining the market** in the same volume as experienced a decade or so ago. In addition, 'hard-to treat' properties being sold due to unfeasible energy efficiency targets will be less likely sold within the PRS onto other landlords, but are more likely sold for ownership (or to the 'shadow PRS' or unregulated landlords who have no intention of meeting energy targets).

**Reasons for landlords intending to leave the market** showed there was a combination of factors: Scottish PRS reform with '*constant tinkering*' increasing the weight of regulation; the less favourable UK tax regime; the challenging energy efficiency requirements; the benefits system (for those in this market); the Coronavirus legislation impacts and prospect of more regulation; the 'vilification' of landlords; personal decisions around 'age and stage' in landlords' careers; and for some, personal experiences, perhaps around one 'bad' tenant with significant financial losses being the final straw. Bringing these factors together meant that for many, the risks – financial and non-financial – were now too high.

While we can confidently conclude that landlords are leaving the market and new landlords are not joining at the same rate, **we cannot be confident about who the leavers are**. The Wave 1 quantitative survey showed that the 'leavers' were mainly those with portfolios of under 5 properties. Wave 2 qualitative research (while not directly comparable with the Wave 1 survey) has shown the leavers are more diverse, ranging from 2 to 30 in portfolio size, with a median of 6 properties, who were mainly 'investment' landlords but also included a few portfolio and business landlords with larger stock of 12-30. Some of these larger landlords may sell parts (not all) of their portfolio in markets which are now riskier e.g. student housing, or housing focused on the lower income/benefit market. The picture is likely therefore to be more nuanced and reflects the diversity and complexity of the large range of PRS markets in Scotland. It is concluded therefore, that there is no common pattern in terms of who is likely to leave the market by size of landlord. Rather, the determining factors on whether landlords are staying or leaving the PRS market are around the balance of investment risk: the part of the market landlords are in; how all the various factors listed above have impacted on the individual landlord; and whether, taking these in the round their investment could be better placed in lower risk alternatives.

In overall terms, taking all the quantitative and qualitative data together from various sources, it is concluded that the supply of PRS housing in Scotland has peaked under the current fiscal,

regulatory and wider housing market environment. Further changes could impact of market appetite; through the concept of economic scarcity this could result in further rationing of supply and price inflation, unless prices are managed through rent control measures, in which case there will be more rationing – whether through supply and/or quality of housing provision.

## 7.2 Access to the PRS for tenants, and affordability

The Baseline Wave 1 findings (2019-2020) found that most private tenants (looking across a representative sample of the whole population of tenants) were using the PRS as a transitional tenure typically for 2-3 years. The indications from this Wave 2 sample of low-income tenants shows a stark difference, where there was a clear sense of being **‘trapped’ in the PRS** where they could not get access to social renting and could not save for ownership. Many of these households had been renting for long periods (over ten years), not out of choice, but because they couldn’t access a better alternative. Tenants with an average net monthly income of £1,400 were paying on average £550 rent per month, or a third to half their income on housing. Some tenants were paying more than this amount, and it was clear that the PRS was not the right place for many of these financially vulnerable households. However, tenants were struggling against poverty even when paying private rents that were within Local Housing Allowance levels (and so would attract benefits to pay all the rent if they were claiming benefits). The scale of difficulties faced therefore suggests tackling affordability problems is beyond the confines of policies for the PRS, but also involves tackling the challenges of precarious low paid work, the barriers of the benefit system and wider cost of living.

The Baseline Wave 1 findings concluded that access to the PRS was generally easy across the whole general PRS tenant population, but this was not the case for lower income tenants with less financial power. This Wave 2 qualitative research illustrated the **huge challenges for low-income tenants to access or move within the PRS with affordability challenges getting worse over time** with fear about the prospect of moving due to potentially much higher rents for the equivalent (or slightly bigger/better) property. Finding a suitable property that was affordable took months of searching and compromising, mainly on property condition, but also settling for less space (inside and out) and poorer locations. **Tenants expected to pay unaffordable rents and were ‘getting what they could get’**. Getting suitable accommodation was especially hard for those claiming benefits, and these tenants commonly felt stigmatised. Tenants that were new to claiming benefits feared what the consequences may be if they told landlords of a change in financial circumstances. **Navigating the benefits system added to affordability problems for tenants and added to operational and financial risk for landlords and letting agents**. Rent increases within tenancies were rare amongst the Wave 2 sample of tenants<sup>52</sup>. Lack of annual rent increases means that in turn there is a limited role for rent adjudication in its current form which requires a rent increase at least one year after the last increase in a PRT. The overall impact therefore is that there is **very little challenge to rent levels in the PRS**.

**There is evidence of access to the PRS becoming even more restricted for those with less financial power and for certain demand groups:** some landlords are leaving the student PRS market; housing outcomes for homeless households moving to the PRS have reduced; the challenges in the benefits system means some landlords are leaving this part of the market; and there was a sense of **more caution from landlords applying stricter eligibility criteria** for tenants, especially in the wake of negative pandemic experiences.

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<sup>52</sup> The Wave 1 (2019-20) RentBetter Tenant Survey<sup>52</sup> showed that for most tenants (59%) their rent had stayed the same since they had moved in the property.

Discussions around affordability with tenants showed general **unwillingness from tenants to challenge landlords** or to 'rock the boat'; for example, about property condition for fear that this may result in rent increases, or worse, loss of the tenancy. It is concluded that this unwillingness to challenge is not necessarily about lack of awareness or about methods of access to justice (which is also true), but rather it is about fear. This is a fear of rent increases leading households to more financial difficulty, or at worst losing their home in a housing system where there is very little and reducing choice for poorer tenants that have very little financial power.

### 7.3 Disputes and access to justice

The Wave 1 Baseline research (2019-2020) and the Scottish Household Survey (2019) showed that the vast majority of tenants across the whole PRS population were satisfied or very satisfied with their PRS experience, although less so for those on lower incomes and in housing need. The Wave 2 sample of tenants illustrates in more depth the more negative experiences of tenants on lower incomes and in housing need. The interviews showed that satisfaction was most commonly underpinned by the relationship and the level of trust established between the individual tenant and landlord. For tenants, **trust was generally built by the landlord getting things done quickly and properly** (mainly repairs), and there being **no prospect of the property being sold**. Higher levels of satisfaction were more often reported by those who lived in rural areas; those who rented from landlords with one or a small portfolio; and those who rented from the small landlords directly. From this group of tenants, satisfaction was lowest for those renting through letting agents, or large landlords who were more distant.

Many of the Wave 2 sample were **dissatisfied with repairs and the condition of their homes** and evidence suggested links to low awareness of rights (including the Repairing Standard, also raised in Wave 1 findings), and lack of confidence and/or fear in exercising their rights. As discussed above this was fear of repercussions of potential rent increases or losing their home in a housing system where there is very limited choice for people on low incomes. This conclusion is supported by very low numbers of repair cases taken to Tribunal (4% of all applications in 2019-20), despite conditions in the PRS being worst across all tenures in Scotland.

The hypothesis being tested around justice was that service provision, security of tenure and dispute resolution is considered more favourable from landlords with small (less than 5) portfolios. There is evidence that there is **greater satisfaction from smaller landlords where there is direct relationships with tenants** compared to renting from remote larger landlords or letting agents. Where there is satisfaction there is greater trust in the landlord, matters get more easily resolved and there is a greater feeling of security (especially where the tenant understands the landlord is unlikely to sell). However, while higher service satisfaction may equate to the *feeling* of security of tenure, it does not equate to actual security of tenure. Indeed, there was a sense that if the relationship didn't work or trust broke down for whatever reason, then security of tenure may be jeopardised. Examples of the contract being governed by a subjective tenant landlord relationship rather than through an objective, commercial contract, included: feeling that the rent hadn't gone up because they had been a 'good tenant'; fear of telling the landlord that they had moved to Universal Credit; feeling that continued complaints may result in increased rents or notice to leave; experience of notice to leave being served after pursuing formal justice routes. The theme from these lower income tenants was that the **overall the balance of power lay with the landlord**.



As with the Wave 1 Baseline findings, all this Wave 2 sample of **tenants with experience of the First Tier Tribunal (Housing & Property Chamber)** felt that **the system was too formal, lengthy and not easily accessible**. It was clear that there was general dissatisfaction with what was considered a stressful process for less than satisfactory outcomes for tenants and which often resulted in poorer relationships with their landlord or letting agent. **Landlords also considered taking the formal route to justice as time consuming, slow and inaccessible**. The damage of delays in the case of rent arrears was highlighted – for both landlords in loss of earnings, and for tenants in substantially increased indebtedness. In contrast, letting agents who had more ‘distance’ from tenants, had more experience of the Tribunal process and felt cases were dealt with fairly and with rigour, but also highlighted the delays and damage they could cause. This experience for both tenant and landlord raises questions about the formal justice system - is the process and style of the Tribunal appropriate to encourage tenants to make applications? Is the capacity of the Tribunal sufficient to meet potential demand (assuming a revised process encouraged more applications from tenants) and therefore enforce improvement in repairs and condition in the PRS? Is the follow-up process for enforcement of repair decisions fit for purpose? What other sanctions are required to make non-compliant landlords meet their obligations? How can capacity and speed be improved for landlords to access justice quicker in large rent arrears cases?

Apart from formal justice routes, other ways of helping to address power imbalances between tenant and landlord include information and advice, and increasing understanding of local authorities’ enforcement role. The **value of independent expert advice** in helping tenants navigate the law is clear from this research in encouraging tenants to exercise their rights. However, numbers of reported advice cases (excluding self-help web-based advice) are relatively low and have been falling.

While the demand side may be assisted by better access to information and advice, **enforcement of existing laws for non-compliant landlords** was a key theme from the research. Tenants living in poor housing want repairs done and quality improved, and compliant landlords queried the value in more laws when there was already inadequate enforcement, pointing to more and targeted resources on the ‘rogue’ landlords through existing enforcement mechanisms.

In conclusion, on access to justice, there should be **adjustments to the existing system by increasing capacity** for early information and advice (both at the start of a tenancy, and when disputes arise), assistance, formal justice routes and **targeted enforcement at the lower end of the market where conditions are likely to be poorest, and tenants have least power**. The over-riding conclusion is that there is a **structural market imbalance** which negatively impacts those on lower incomes or in housing need, most of whom have less choice living in the lower end of the market, where there is much greater vulnerability to less compliant or illegal landlords. There is a **vicious cycle of power imbalance** where there is a lack of affordable choice, poor quality high-cost housing, fear of consequences of challenge because there is lack of good quality, affordable alternatives to move to. This imbalance will not be addressed by more blanket regulation (and may even exacerbate injustice) but requires much more targeted enforcement through all the available mechanisms, coupled with more supply of good quality affordable housing to give low-income tenants more choice, and so help adjust the imbalance in the market.



## 7.4 Experience of private renting through the pandemic

From the qualitative research it was clear that many **tenants and landlords suffered severe financial impacts of the pandemic**; this finding brought to the fore the fragility of the lower end of the PRS. Precarious work, resulted in loss of earnings for tenants and increased rent arrears, a few reported as substantial (between 12-24 months and up to £20k) which had severe financial consequences for some landlords. Tenants who needed to claim benefits for the first time found the experience particularly stressful, as did landlords when the system resulted in loss of earnings. As discussed above, given the profile and scale of tenants that struggled during that period and the impacts on landlords, there are suggestions that this experience and prospect of more discretionary grounds for eviction will have **implications for more limited access to the PRS in future for lower income tenants** and/or those in precarious work.

On the questions around the **effectiveness of the extended eviction notice periods**, it is clear from the research that Coronavirus legislation served to reduce evictions for the short term, and homelessness also reduced from the PRS during the pandemic. This intervention benefited tenants during the crisis period. This does not mean that evictions did not occur, and evidence shows that illegal evictions did increase during the pandemic. Legitimate evictions are now increasing again, and recent evidence shows landlords have been using a wider range of grounds to evict tenants than had been used previously. This finding may be explained by the fact that landlords are frustrated with the rent arrears ground in particular, evidenced in both Wave 1 (2019/20) and this Wave 2 research, with the impact of this ground exacerbated by the Coronavirus legislation. The research also shows the impacts of the extended eviction notices in increased rent arrears and concludes that the **longer-term impact of the extended notice periods is that evictions can be expected to increase over the coming months and years**. The Scottish Government tenant loan and grant may mitigate against eviction for some tenants, but only for a very small proportion compared to the estimated scale of arrears. Overall, there was a strong consensus from landlords against the extension of the Coronavirus legislation measures. None of the landlords or landlord representative organisations interviewed were amenable to lengthening notice periods for any reason.

In terms of whether making all the grounds discretionary deterred unreasonable evictions, there is insufficient data to conclude on this question. However, there is evidence of increased illegal evictions during the pandemic when grounds were discretionary, and that the change in legislation has resulted in some landlords applying stricter eligibility for letting. Further research is required to track the longer-term impact of making all grounds discretionary.

In respect of **implementation of pre-action requirements** for evictions during the pandemic – some landlords claimed that this was practice they were conducting in any case and saw the benefits, but some only saw these as formalising an audit trail for inevitable eviction for ‘non-payers’ i.e. those that would not pay rather than could not pay. There was evidence of some good practice with tenants around managing rent arrears and putting arrangements in place which tenants needed and wanted, typically for arrears of less than 3 months. But the research also showed the different attitude of a very small proportion of ‘non-payers’ who would not pay no matter what arrangement was put in place.

## 7.5 Overall conclusions and recommendations

In overall terms, RentBetter Wave 1 (2019/20) and Wave 2 (2021/2022) research has indicated the differences between the positive experience of most tenants in the PRS population in Scotland, compared to the poorer experience for lower income tenants, and those in greatest housing need living in the lower end of the market. All tenants in Scotland on the PRT now have stronger rights than through the previous tenancy regime, but the experiences of the 2021/22 sample of tenants suggests that this is unlikely to have had much impact for lower income tenants. They have to tolerate lower affordability, poorer housing conditions, and have much less choice in the market which results in less market power. This lack of choice is critical in the power relationships between tenant and landlord, because lack of suitable alternatives means fear of consequences of rent being increased or losing your home, and therefore landlords are challenged less. For the few who do choose to pursue formal justice through the First Tier Tribunal this experience is generally intimidating and unsatisfactory.

There are clearly unintended consequences of layer on layer of regulation from different legislators on different things – tax, tenancy law, climate change, Coronavirus legislation. As legislators in Scotland plan to introduce more regulation, they should consider the findings of this research and the potential negative impact on supply and access to the PRS. This will have a disproportionate impact on lower income and other demand groups in housing need, compared to the general PRS population. Strong and targeted enforcement should be prioritised to mitigate market failures at the lower end of the market.

### Recommendations

- **Early information and advice for tenants** - There should be greater capacity created for early and ongoing information and advice for PRS tenants. There should be a plain language, accessible information leaflet provided at the start of each tenancy, and a verbal walk-through provided by the landlord and letting agent on the key tenant and landlord rights and responsibilities. To support tenants in potential disputes there should be more PRS ring-fenced resources for independent advice and for local authorities' advice and PRS regulatory services.
- **Enforcement** – there should be much greater emphasis placed on strong, and targeted enforcement of existing legislation in the lower end of the market where tenants have less market power to address failings, and less choice to move elsewhere. Scottish Government should support targeted enforcement through additional ringfenced funding for existing enforcement routes – local authorities and the First Tier Tribunal.
- **Training and support for landlords and letting agents** – landlords should be supported in compliance through continuous awareness raising of Letting Agent registration, Landlord Registration, and Government should support the landlord and letting trade bodies that promote compliance.
- **Access to justice** – capacity should be increased in the First Tier Tribunal system, and the system should be simplified to encourage tenants and landlords to seek formal justice when necessary. This should be accompanied by awareness raising, and support through information, advice and advocacy.
- **More supply of affordable housing** – there is a vicious cycle of power imbalance in the PRS at the bottom of the market. This is ultimately due to inadequate supply of good

quality affordable housing for people who are living in poverty. Scottish Government should continue to fund the new supply of social and other affordable housing, including purchases of PRS stock by housing associations, and local authorities should release generous land supplies to enable new housing supply across tenures.

- **Addressing poverty** – this research showed how tenants were struggling against poverty even when paying private rents that were within Local Housing Allowance levels. The scale of difficulties faced suggests tackling affordability problems is beyond the confines of policies for the PRS but requires Government to tackle the challenges of precarious low paid work, the barriers of the benefit system, and wider cost of living.
- **Climate change and energy efficiency** – Scottish Government should support landlords by providing them with clear and accessible information and advice and provide financial grants to landlords to enable them to bring properties up to climate change compliance. This should also help tenants with energy costs and help deter sales out of the PRS or to non-compliant landlords.