DTP VIEWS

October 2022

The Cost of Living (Tenant Protection) (Scotland) Bill and the impact on rent – Questions Boards and Management Committees should be asking

– Paul Hillard, Director

The Cost of Living (Tenant Protection) (Scotland) Bill has now completed its passage through the Scottish Parliament and will take effect in the next few days. This emergency legislation gives the #ScottishGovernment the right to freeze or cap #rent increases, and to put a moratorium on certain eviction proceedings, for both the social and private rented housing sectors. These measures can be introduced for six-monthly periods up until the end of March 2024.

As has been previously announced, the initial period of a freeze on rent increases and a moratorium on certain evictions will run until 31st March 2023. The legislation requires that any extension to these measures, or the introduction of a cap on rent increases, must be announced by 14th January 2023. The Scottish Government has established a working group with the sector to work on the way forward from January.

It had initially been thought that the first phase of the rent freeze would not impact social landlords as the measures terminated at the end of March 2023, and most increase their rents from 1st April. However, a strict reading of the legislation suggests that no rent increase notices can be served during the rent freeze period, effectively preventing increases taking effect at the beginning of April. If a cap is introduced with effect from 1st April, rent increase notices may be able to be served as normal, provided the rent increase is no greater than the cap.

The result of this is a period of considerable uncertainty for the governing bodies of #sociallandlords with the 'rules' applicable to their 2023/24 rent increases likely to remain uncertain until eleven weeks before the new financial year.

The impacts of a freeze or a cap will be highly significant for most #landlords. The difference between a rent increase freeze and a 5% increase for an #RegisteredSocialLandlord with a rental income of £10m will be £500K income in year one, and multi-million pounds of income translated through a 30-year business plan.

Against the backdrop of sustained high inflation and increasing interest rates, this uncertainty presents significant risks and makes decision making challenging. The variation in potential incomes is likely to mean the difference between maintaining a development programme or not, achieving EESSH2 or not, and maintaining some services that may be particularly important to the most vulnerable customers. For some RSLs, a #rentfreeze or significant cap may make it hard to achieve a viable long term business plan that meets their funders' covenants.

The legislation, therefore, presents a significant strategic risk and challenges for RSL Boards and Management Committees. Against this backdrop, the advice from the @DTP team is be prepared and to start thinking now about the possible impacts, risk, and options available now – and to set these in the context of your purpose and values.

First, the most important thing to do is to engage with lenders at the earliest opportunity about the potential impacts of rent freeze, or impact scenarios, over the medium term – not just 2023/24. The Scottish Housing Regulator has also asked RSLs to advise it of any financial viability concerns that arise.

Second, the SHR has stressed that RSLs must plan for their April 2023 rent increase in the usual way, and honour their obligations to tenant consultation on potential options; the Regulator also asks RSLs to report their proposed April 2023 rent increase as soon as it is decided.

The position will be different for every RSL, but we have set out below the key questions Boards and Management Committees need to ask as they seek to effectively govern their organisations through this period.

Boards and Management Committees need to ask themselves:

- What are the priorities for the RSL? and why are they priorities? Is it affordable rents? Stock investment? New build development? How far are we prepared to reduce our ambitions?
- Do we know and understand the base financial position of our RSL and the key risks and challenges?
- Do we understand how individual risks (such as sustained high inflation or a longer rent cap) will affect our financial strength? Are we getting the right information about these risks?
- Have we stress tested the business plan for the right risks to an appropriate level?
- Lender and regulators increasingly look for multi-variate testing; do we understand how the risks might interact? and, therefore, which combinations of adverse events do we need to test the plan for?
- Have we identified the warning flags that will tell us the plan is being weakened? And have we developed the mitigations that will allow us to contain that damage?
- Do we have good enough data about the RSL's rent levels, service standards, asset management condition and compliance, staff, suppliers and procurement, development projects and contracts and, crucially, its debts and financial performance, to allow us to be confident that the organisation will remain financially viable through upcoming challenges?
- Do we understand the risks that come from any diversification or subsidiaries?
- Have we got the right skills around the Board and Committee table? Are there gaps we need to fill?
- Have we got good quality data about our customers, and their household finances? Can we identify the most vulnerable customers?
- Are we confident that we can withstand scrutiny from lenders and regulators on all these points?

DTP are ready to help RSLs assess and develop their response to these questions, and to help them improve their resilience to any of the threats facing them. For advice on any aspect of your thinking in relation to the impact of a rent freeze or cap, or the questions we have posed above, please do get in touch.