Newsletter No 13 Spring 2012

# SOUTHERN LANDLORDS ASSOCIATION

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| **Tel:** | **0845 475 3583** |
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## HM TREASURY RECOGNISES THAT LANDLORDS ARE BUSINESSES, BUT …..

The Treasury Department has now clearly stated that it regards landlords as businesses. That, perhaps, is the good news. The bad news is that it regards landlords as an investment business and not a trading business.

Members may well have read of the appeal made by a European immigrant, under human rights, that by selling the Big Issue she regarded herself as being a business. Under human rights' law it has been agreed that by doing so she is, in fact, a trading business and therefore she is entitled to claim assistance with her housing costs, which she was not able to do if it was not the case!

It seems, however, that as a landlord who during the Christmas period received 12 emergency calls from tenants requiring letting in, electricity cards, assistance with restarting gas boilers or regaining pressure, followed by the usual collection and balancing of rents and all associated management tasks, mine is not a trading business but an investment business.

HM Treasury sees the present situation as financially attractive and, it seems, is determined not to concede that private landlords who manage their own portfolios are trading businesses. As a landlord for over 50 years, I do not believe that the Treasury should be in a position to make such decisions, in view of the financial benefits it gains in insisting that private landlords are investment businesses and not trading businesses. This, in my opinion, is a matter of fact, and if a Big Issue seller is regarded as a trading business, then a fully operational landlord could not possibly be regarded in any other way.

It is not in the interests of HM Treasury to change the landlord situation and I believe that the only way to ensure that landlords obtain their proper 'trading' business status is to take a case through the legal process. This may seem daunting, but clearly those who can get the backing of either legal aid or charities to support their cases seem easily able to win, whereas landlords trying to persuade Treasury to accept those that manage properties as trading businesses cannot. The cost of bringing a case and for a landlord to be prepared to act as the example of a trading business appears to be the problem. The cost will not be insignificant, but if we as a group are prepared, with others, not only to support such a case but to pay a significant sum to provide the finances for it, I believe we may succeed in putting right what has been a wrong for as many years as I have been a landlord.

Since the coalition was voted in, the tax position for private landlords has deteriorated considerably. Prior to the changes made in the first emergency budget, a landlord selling an investment property would be entitled to rebasing of the value of the property if purchased before 1972, followed by indexation and then tapering relief, and if the property had been held for over ten years, 40% of the gain would be tax-free. The situation today is very different. Other than rebasing if purchased before 1972, the original purchase price is the base for assessing the capital gain. In other words it is the sale price, less the individual purchase price (to include improvements and legal costs), taxed at either 18% or 28%, dependent on other income, with no allowance for inflation or for the length of time the properties have been held.

What this means, in reality, is that landlords who have purchased properties some time ago will think twice about selling them and moving on to other investments, as the loss through taxation is likely to be very considerable indeed. The situation would change significantly if landlords were trading businesses and their properties business assets.

Mike Stimpson
Chair

## INVESTING IN PROPERTY: HOW TO OBTAIN INDEXATION

Members may not be aware that if you buy a property within a company and then sell it, the capital gain will be offset by indexation, which is not applicable if you buy a property in an individual name.

## DEPOSIT REGULATION

**Please note the changing regulations**

Members will be aware from previous Newsletter articles that there have been a number of Court of Appeal decisions affecting the regulation of deposits. Currently, if a landlord fails to regulate a deposit within the 14-day timescale, he/she cannot be fined three times the value of the deposit, provided it is regulated by the time the tenant brings a court action.

The Government was not happy with the Court of Appeal rulings and took steps to amend the regulations, which will take effect, we believe, on 6th April 2012. Members should now note these new regulations and ensure that they are complied with:

1. For deposits taken on or after 6th April 2012, they will have to be protected within the new time frame of 30 days or face the new law and its penalty regime.

2. For existing tenancies, the introduction of the new law will provide an amnesty period for deposits that have been taken but not protected. Landlords will therefore have 30 days from 6th April 2012 to get them protected before they will be subject to the new law and its penalties.

3. For old tenancies that expire before 6th April 2012, the old law of protecting the deposit within 14 days will apply but so will the Court of Appeal cases that significantly weakened that requirement, for example in not being able to pursue a claim for non-protection after the tenancy has ended.

Although our association was very much in favour of the Court of Appeal decisions that went in favour of landlords, at least the Department for Communities and Local Government (DCLG) has changed the previous unreasonable regulations and has given time for any landlord who has not properly regulated a deposit to do so within 30 days after 6th April 2012.

If any member does not now take the opportunity of ensuring that all deposits are properly regulated, then it must be made very clear that should a tenant bring an action against his/her landlord, the courts will have little scope in not opposing a penalty of between one and three times the deposit if it has not been protected, however good the excuse is from the landlord or his/her agent.

Finally, deposits that have not been protected will not allow the service of a Section 21 course of action to obtain possession of a property.

Mike Stimpson comments: In the past, a number of members have not regulated deposits that they have taken, and then expected to be able to use the Section 21 route to obtaining possession. I should make it clear to all members that if you take a deposit from 6th April 2012 you must regulate it within 30 days and if you already hold an unregulated deposit you must ensure that it is regulated during April.

It is no good seeking helpline assistance when serving Section 21 notices, having failed to properly regulate a deposit. If you do not do it, do not expect to use the Section 21 route for possession and do not expect our association to be able to assist if you haven't followed the regulations as set out above. It is most important to ensure that not only are all deposits regulated within the prescribed period but that tenants are also provided with the required information within the same timescale.

**STOP PRESS**

## LOCAL HOUSING ALLOWANCE CHANGES

Members who take tenants in receipt of Local Housing Allowance (LHA) will wish to know that Government is freezing LHA from April 2012 until April 2013. However, during that period The Rent Service will continue to collect data.

From April 2013, the Local Housing Allowance will either be the last LHA rate uplifted by the Consumer Price Index (CPI) at the time, or the local reference rent, whichever is the lower. It is not known how long this will continue but it is expected to be until April 2015. It is vital therefore that all members continue sending their achieved rents from working tenants to The Rent Service throughout 2012 and up to April 2013.

Members need to take account of what is happening when considering taking tenants in receipt of LHA.

**BENEFIT CAP**

Members will wish to know that Government has succeeded in passing into law the Act of Parliament that caps welfare payments. This is likely to be at £26,000, which is equivalent to a salary before tax of £35,000.

There is little doubt that many persons on benefits will find that the accommodation in which they are currently living becomes unaffordable and they will be forced to move to a cheaper location or cheaper accommodation.

As mentioned in another part of this Newsletter, there is little doubt that the changes to welfare payments, together with the pressure on working families caused by the austerity measures and lack of jobs, will filter through to rents. There is little doubt that the current buoyancy of the rental market will continue, but on the minus side there is no doubt that rents are peaking or have peaked in many areas and will be squeezed in the very near future.

Members may also wish to know that the private rented sector today provides more accommodation than both councils and housing associations together. As private landlords, we are the leaders in providing rental accommodation in this country and there is little doubt that this situation will remain for a considerable time.

## DEPOSITS VERSUS RENT IN ADVANCE

Over the past few months, it has been brought to my attention that some members are concerned, when taking rent in advance, that it might be construed as being a deposit. If members adhere to the following guidance, then I believe that it can be established that it is rent in advance and not rent in advance disguised as a deposit.

Firstly, rent in advance of over two months is considered unreasonable, therefore if you take rent in advance you should confine it to no more than two months' rent.

Rent in advance can only be used as rent and must not be used to cover dilapidations, damage, etc. The usual procedure is to take two months' rent at the commencement of the tenancy and stipulate in the agreement that two months' rent in advance has been taken, one to cover the first month's rent and the second to be held towards the rent for the last month of the tenancy.

It is also reasonable to include a clause to the effect that: 'It is agreed that no deposit in any form has been taken'.

I believe that if members follow these guidelines, then the rent in advance taken cannot be construed as a deposit.

It has also been brought to my attention that some solicitors, acting for members obtaining possession under Section 21, are inferring that rent in advance could be construed by a district judge as a deposit and recommending that the rent in advance that is held be regulated as if it is a deposit.

Members should not be persuaded by such advice and should ring our helpline for assistance before regulating any rent in advance if advised to do so by a solicitor. In one case where a member used a solicitor for the purpose of obtaining possession for rent arrears using the Section 8 procedure, his solicitor recommended that the rent in advance be regulated as a deposit. The member took the solicitor's advice and placed the rent in advance monies with the custodial scheme provider and, once he had obtained possession, together with an order stating that the tenant pay the arrears owing, it took over seven months for that member to regain the money so deposited, as he could only provide one signature, as the tenant had disappeared and, in any event, it is believed, would be most unwilling to sign for its release.

If a court order is sought for return of the property (etc), the return of the deposit should also be added to avoid returning to court to get the deposit back.
*Mike Stimpson*

## MIKE STIMPSON'S COLUMN

Following a couple of weeks of real winter weather, it seems spring has arrived very early indeed and, with it, the coalition's austerity measures really beginning to bite. Most people aged between 25 and under 35 on benefits and living in self-contained accommodation have now had their local housing allowance reduced to the shared room rate and many are finding it difficult, especially in the south-east, to find alternative shared accommodation.

The next austerity measure will be universal credits, whereby the maximum benefit a family can receive will be £26,000. In Brighton and Hove, we are informed that some 400 families will have their benefits reduced to this level, and one can imagine that the highest cost within that will be the cost of housing.

I am sure members will understand that many such people receiving benefits are not necessarily unemployed, and, if such pressure falls on those people to find alternative accommodation within the universal credit allowance, one wonders where they are going to find such accommodation to meet their needs that is affordable to them. Either they will have to move into cheaper areas or landlords will be forced to reduce rents if the accommodation cannot be filled by working tenants able to pay the rents previously charged.

In my opinion, there will eventually be downward pressure on rents as a result of these austerity measures and most of us will be affected by them in one way or another. Shared housing has never been more needed than at present. The level of rents being produced for local housing allowance purposes appears only to be based on the rents of shared housing occupied, in the main, by university students. It certainly does not in any way reflect the rents charged for traditional houses in multiple occupation that are let on individual agreements, where the requirements are far more onerous and costs are much higher. At present, tenants are having to find between £10 and £15 per week if they are on benefits and occupy such properties.

It is becoming evident that even the cheapest rooms in properly established houses in multiple occupation are becoming unaffordable to non-working tenants. In Brighton, the only type of accommodation that appears to be affordable is self-contained studios, and then such accommodation can only be occupied by persons on benefit if they are aged 35 and over.

In summary, and as a result of the coalition's austerity measures, the picture is rapidly changing for tenants in receipt of benefits. But not only that; working people are also finding that they are being affected by these measures, and although the market for accommodation in many areas is buoyant and will continue to be so, one wonders whether the rents currently being charged by landlords are affordable even to working tenants over the next few years.

It does seem, at present, that the only really profitable area is student letting - but will that continue? With the proliferation of purpose-built student accommodation, many local authorities believe that students in the future will occupy such blocks, thus releasing student housing for family use. I personally believe that student accommodation within these purpose-built blocks is not sustainable accommodation. It has one use, namely for students, and with the high cost of that accommodation, coupled with increased student fees being introduced, we may well see more students opting for universities nearer their homes or, alternatively, once they have passed the first year, opting for the usual privately rented student accommodation, which is more affordable.

This brings me to licensing of smaller shared houses. Many local authorities have decided to implement additional or selective licensing and in doing so are imposing onerous conditions on landlords in order for them to obtain a licence. One wonders whether local authorities are implementing discretionary licensing for political purposes, as many appear to fail to acknowledge that there must be either significant low demand or antisocial behaviour (in the broadest sense) occurring to warrant such licensing.

Each local authority must also have examined all alternatives and should only consider introducing discretionary licensing if it believes that the problems can only be resolved by such action, in addition to other measures. One local authority is not only charging a fee for providing the initial licence, it is also charging an additional fee for each year throughout the five-year period. It has also said that the fee includes a cost for inspection of properties, which it is not entitled to charge. Another local authority has already indicated that so far as it is concerned discretionary licensing of areas will be permanent, when Government has made it quite clear that it can only be for a maximum period of five years and cannot be continued after that period, during which time local authorities should achieve their original objectives for introducing it in the first place.

In summary, it seems that many local authorities are bringing in discretionary licensing without first establishing that the reason for doing so is that there is significant antisocial behaviour in the areas, caused by private landlords failing to control their tenants' behaviour within the curtilage of the properties they own. Often, landlords see this simply as political motivation, causing high cost, much work and no benefit to either the landlord, the tenant or the community. It seems that many local authorities believe they can ride roughshod over landlords, with consultations being nothing but a farce, when decisions have already been made.
*Mike Stimpson*

## YET MORE INFORMATION ABOUT TENANCY DEPOSIT REGULATION

Members will be interested to know that the Department for Communities and Local Government (DCLG) is inviting expressions of interest in order to increase the number of tenancy deposit schemes available in respect of the insured option, i.e. the option where the landlord retains the deposit and simply insures it with a provider.

It is believed that up to two new scheme providers will be given contracts and, at the same time, the current providers have to renegotiate their contracts. This should mean that landlords will have wider choice in respect of the insured option and, with added competition, more competitive options. In fact, one existing provider has already reduced its costs and hopefully, with additional competition, others will do the same.

In the case of the custodial scheme, because of low interest rates, the Government has extended that contract and will not offer any additional contracts.

## Looking to save money on your property owners' insurance costs?

**Steve Cox, Landlord insurance expert at Alan Boswell Group, advises you get independent professional advice and ensure you are adequately covered -that'll save you money in the long term**

**Shopping around**

With a number of 'direct selling' internet or telephone based insurance companies offering cheap cover for a range of things like motor, home and some commercial insurances, it can be tempting to see if you can save a few pounds using them.

But if you ask yourself a few simple questions, you might resist the temptation:

1. How can they afford to charge so much less - will they pay all claims, or constantly be trying to wriggle out of them?

2. Will they fully explain to you everything that you must tell them, to avoid your insurance being invalidated through what is called non-disclosure?

3. Will they be on hand to help you if you do have a claim, or need to advise them of a change in tenancy use or contact them for any other reason - or will you have to deal with a call centre, or an unresponsive website?

Insurance is important, because it protects you against the unexpected; cutting corners to save money can cost you more in the end.

**Get independent professional advice**

Consult a specialist insurance broker, like Alan Boswell Group, who really understands the needs of property owners in the broadest context - including liability and legal expenses insurance.

You can secure the most appropriate cover to match your requirements and need not end up paying any more than from a 'direct writer'. This is because reputable insurance companies like working with professional insurance brokers who understand what they are doing and can assess the needs of each client individually, rather than lumping everyone together.

The broker can help you to reduce the risk of a claim and then ensure that you have the full scope of cover that you need. In this way, you can save premiums over the longer term - not to mention minimising the hassle involved in dealing with a claim, should the worst happen.

You can also avoid missing out on essential extensions such as loss of rent and legal expenses cover; these are both potentially complex areas and it is not easy to explain the difference between various types of cover on a website or via a call centre.

If you require assistance, please contact the Alan Boswell Group on 01603 216399 or e-mail us at landlords@alanboswell.com or take a look at our website at www.alanboswell.com/landlords-insurance

## The pitfalls of sub-letting

It is becoming increasing popular for landlords to sublet their properties. From an insurance point of view, this can lead to invalidation of your insurance policy so it is essential that you provide all the information to your broker or insurance company.
Sub-letting issues that will concern insurance companies include:

- That you have lost control over who lives in your property. As long as there is a tenancy agreement in place (for a minimum of 6 months), which is directly between the landlord and tenant, this should be acceptable to the insurance company. If this is not the case, then all cases need to be referred to your insurance company.
- If you sub-let to a local authority/housing association or charity, they may house ex-offenders, homeless people or people with alcohol, drug or mental health issues.
- The property may be used for ad-hoc periods instead of a 6 month period.
- The tenants may not be properly referenced.
- There is an increased risk of malicious damage.
- There is an increased risk of cannabis cultivation.
- That you may not be aware when the property becomes unoccupied so therefore fail to comply

with unoccupancy conditions on the insurance policy which could invalidate certain types of claims.

- Sub-letting generally may invalidate your insurance.

It can be possible to arrange cover for properties that are sub-let to local authorities and housing associations depending on individual circumstances. This type of policy will carry increased insurance premiums, increased policy excesses and in some cases reduced cover may apply.

To recap, if you have any property where the tenancy agreement is not between you and your tenant, then we strongly advise you contact your insurance broker/company to ensure that you have the correct insurance in place.

If you require our assistance, please telephone the office on 01603 216399 or via e-mail on landlords@alanboswell.com
*Steve Cox*

## HMCA (Hospital & Medical Care Association)

HMCA are delighted to offer members of Southern Landlords and their families a range of medical and related products.

We have over 30 years experience dealing exclusively with members of professional groups and associations and offer highly competitive rates and demonstrating over 37% savings for some members. We have built up an enviable reputation within the industry for quality and first class service. We pride ourselves on our levels of personal customer care and service, and all calls are handled by our team of professionally trained staff.

Members who take up a plan will also enjoy other discounted loyalty benefits including hotel, car hire and magazine discounts.

HMCA also pay a 5% sponsorship fee to the Association for each member who subscribes to any of HMCA Plans.. This helps keep SLA membership fees down.

## LETTINGS HAS CHANGED
## New Service for Members

With Upad, landlords get involved in the letting process, doing some of the work themselves. They meet tenants personally for viewings and sometimes even shoot their own photos.

In return, Upad let their properties to fully referenced tenants from just £99+vat. No renewal fees, no surprises.

Upad let over 3,500 properties last year and reviews have been amazing.

SLA has negotiated a discount for members, giving you a £20 on listings using code SLA20.

You can the Upad team 7 days a week on 0333 240 1220 or visit www.upad.co.uk to learn how they can help.

## Awards Ceremony for Llas

**Thursday March 1st saw the first awards ceremony for the UKlap (UK Landlords Accreditation Partnership).**

There were talks from the editor of the Property Investor News, Richard Bowser, giving a relatively upbeat assessment of the Private Rented Sector; followed by the CEO of Orchard & Shipman - a letting company that deals a lot with local authorities, and homelessness.

The final speaker was a minister from the Home Office - James Brokenshire.

Finally, we had the awards for a variety of categories for landlords; agents and local authorities.

Overall, a good evening; plenty of chance to network; be informed; oh, and eat.

Keep your eyes open for next year's event.

## The Landlords & Lettings Show
## The Barbican, London

The recent show at the Barbican had its normal mix of useful stands, and seminars.

The SLA's Shula Rich, our expert on leasehold matters gave a talk on 'Are your services too high? 5 tests for leasehold landlords'.

Peter Littlewood gave a talk 'Sharers: can't live with them; can't live without them'.

If you didn't manage to come to the show, and want to know more about these email us at info@SouthernLandlords.Org

Lots of other good seminars, although many of them seemed to contain the words 'challenge'; 'pitfalls' !

Come to the next one later this year at the Barbican September 4th & 5th.

## BPF Conference

**Some of the SLA recently attended the British Property Federation's (BPF) conference on residential property.**

Entitled 'Home Truths - Investing in 2012' some was about institutional investment; but a lot was about the perceived future of the PRS.

Too long to summarise here, a full account can be found on the SLA website, but in summary here:-

- the government is committed to growth, and recognises the PRS's role in this;
- the Green Deal is a fact, and will not be going away;
- London is still an excellent market, and will probably remain so.

## MEETINGS

Forthcoming events - all details on the web site - www.southernlandlords.org:-

- Wednesday April 4th
  Face to face forum with Newham reference their licensing proposal;

- Tuesday April 17th
  Ealing meeting
  Find out to get overdue money back.

- Thursday April 19th
  Dover landlords forum - jointly with local authorities
  A tax expert will be available to take questions; also, talk on the Green Deal.

- Monday April 23rd
  Brighton and Hove general meeting;

- Tuesday April 24th
  Swale landlords forum - jointly with local authorities;

- Thursday May 10th
  Gravesend landlords forum - jointly with local authorities.

- Thursday May 17th
  Sutton landlords forum - jointly with local authorities;

- Friday June 15th
  Hounslow landlords forum - jointly with local authorities.

## MEMBERS' DISCOUNTS

We remind you that we have negotiated trade suppliers' discounts for members; details in the Members Area of the web site.

## ADVERTISING WITH SLA

We are pleased to offer the facility for both members and non member service providers to advertise here in SLA eNews.

The rate for a quarter page advert is £50 for approved non member service providers. Members get a 20% discount to £40.

## MEMBERS CLASSIFIED ADVERTS

**PROPERTIES FOR SALE**

A member of SLA has a portfolio of properties for sale, from 1-bed flats to 3-bed houses. Also commercial property for sale. Prices from £90,000. The properties are in Worthing, Brighton and Bexhill. For more information please call 07979 805053.

A member has Godalming detached property, suitable for owner-occupation or letting. Has been let as an HMO for 37 years. If interested, please Tel: 01483 422811 / Mob: 07967 300627.

## TELEPHONE NUMBERS

We are fortunate to have several people who help run the SLA. This means that we are not able to give out a geographic number, but have to use non-geographic numbers to allow us to switch the telephone to whomever is manning it at that time.

Note that you should only be charged the local rate for your call, and that the SLA makes no money from their use - it is purely for your convenience. Any other numbers might not be answered. To remind you, our numbers are: -

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| Main number | 0845 475 35 83 |
| Fax | 0845 475 32 83 |
| Help Line | 0845 475 24 83 |
| Landlords Insurance | 0845 475 13 83 |
| Private Health Insurance | 0845 475 23 83 |

| | Bronze – Free (on-line application only):- | Silver - £35 pa:- | Gold - £75 pa:- | Corporate - £195 pa:- |
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| email notification of meetings, etc, in your area; | SLA | SLA | SLA | SLA |
| all member trade discounts; | SLA | SLA | SLA | SLA |
| on-line newsletter; | | SLA | SLA | SLA |
| all documents (AST's/notices, etc); | | SLA | SLA | SLA |
| insurance cover for HMRC investigation | | SLA | SLA | |
| fact-sheets; | | SLA | SLA | |
| posted newsletter; | | | SLA | |
| unlimited use of advice line; | | | SLA | |
| Classified advert and company details and information on our web site | | | | SLA |
| 1/8 page advert in each newsletter | | | | SLA |

## REASONS FOR BEING A GOLD MEMBER

For a low annual membership fee of £75 (£82.50 for couples), (£5 discount if paying by Standing Order) you get all the great benefits of membership of an association dedicated to YOU and your interests:

- representation to government
- excellent expert assistance on our helpline
- web site, including dedicated and secure members area
- free access to quality documentation, including ASTs, Section 21s and Section 8s
- discounted insurance via our insurance partner, Alan Boswell
- insurance to cover the cost of defending an HMRC investigation
- and so the benefits go on - don't delay, join today!

Many members find that they cover the membership cost just on the buildings insurance premium savings.

*If you have any contributions, ideas or wish to communicate please contact editor@southernlandlords.org.*

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