About Consumer Focus Scotland

1. Consumer Focus Scotland started work on 1 October 2008. Consumer Focus Scotland was formed through the merger of three organisations – the Scottish Consumer Council, energywatch Scotland, and Postwatch Scotland.

2. Consumer Focus Scotland works to secure a fair deal for consumers in both private markets and public services, by promoting fairer markets, greater value for money, and improved customer service. While producers of goods and services are usually well-organised and articulate when protecting their own interests, individual consumers very often are not. The people whose interests we represent are consumers of all kinds: they may be patients, tenants, parents, solicitors’ clients, public transport users, or shoppers in a supermarket.

3. We have a commitment to work on behalf of vulnerable consumers, particularly in the energy and post sectors, and a duty to work on issues of sustainable development.

4. Consumer Focus Scotland welcomes the opportunity to provide written evidence on the Housing (Scotland) Bill. We have been actively involved in the development of key aspects of this Bill through the Sounding Board on Social Housing Regulation and the Private Rented Sector Group, both established by the Scottish Government. Consumer Focus Scotland supports the general principles of the Housing (Scotland) Bill.

Modernising Social Housing Regulation

5. Consumer Focus Scotland supports the policy intention to create a more proportionate and risk-based system of scrutiny. While service providers often refer to the need to reduce the “burden of scrutiny”, reducing the burden of scrutiny should not be seen as an end in itself, rather as an opportunity to focus more clearly on the needs of consumers.

6. In April 2009, we published a short paper ‘User Focus in the Scrutiny of Public Services’ which outlined seven tests that we think scrutiny bodies should be able to meet in terms of User Focus. These are based on the seven features of User Focus identified by the User Focus Action Group and are:

   - An organisational commitment to user involvement
   - User involvement in the governance structures
   - User involvement in the design of scrutiny
   - User involvement during scrutiny
   - User involvement as members of scrutiny teams
   - Accessibility of scrutiny reports
   - User involvement in improvement action

7. We understand that the Scottish Housing Regulator (SHR) will be included in the general duty to ensure continuous improvement in user focus
contained within the Public Services Reform (Scotland) Bill. However, we very much welcome the inclusion, in the Housing (Scotland) Bill, of a duty to involve representatives of tenants in the work of the Scottish Housing Regulator. This reinforces the importance of user focus in the work of the SHR.

8. The Housing (Scotland) Bill does not specify that users must be involved in governance structures, though it doesn’t exclude tenant representatives from applying for membership of the board through the normal public appointment procedures. The Public Services Reform (Scotland) Bill takes a different approach to the membership of the governing body of Social Care and Social Work Improvement Scotland which, it is proposed, must include a member who uses social services and a member who is a carer for an individual who uses those services. Consumer Focus Scotland would welcome a requirement that the Board of the SHR should specifically include members who have experience of using the services under scrutiny. This would ensure that the second test of user focus was met, rather than relying on the appointments procedure to select a balance of interests on the Board.

9. We also welcome the inclusion of section 45 which requires the SHR to have arrangements for dealing with information from tenants on significant failures. While we support the development of risk-based and proportionate scrutiny of public services, we have been concerned for some time that an over-reliance on self-assessment may impact on opportunities for users of those services to give their views on service quality. We therefore welcome the intention to have arrangements in place to enable and assist tenants to provide information on significant performance failures. We would see benefit in widening this to include the future tenants, homeless persons and other users of the services, rather than limiting it to current tenants only. We would be happy to work with the SHR to explore how these arrangements might work in practice.

10. Of course, section 45 does not alter the arrangements for individual complaints about services which will continue to be dealt with by the Scottish Public Services Ombudsman and we can foresee confusion amongst consumers as to who best to contact regarding complaints about housing services. We support the proposal to establish a complaints signposting service for public services, recommended by the Fit-For-Purpose Complaints System Action Group in 2008. It is important that consumers are supported to access the most appropriate mechanisms for raising concerns about public services.

The Scottish Social Housing Charter

11. Consumer Focus Scotland agrees in principle with the approach of creating a Scottish Social Housing Charter. We appreciate that the development of the Scottish Social Housing Charter is at an early stage. However, at present we are unclear as to whether the Charter aims to set out standards that tenants are entitled to from social landlords, or are aspirational outcomes which all providers should seek to meet. The wording of section 31 suggests that ‘outcomes’ under the proposals, would also include ‘standards’ however this is likely to be confusing to consumers.
12. Given the stage of development of the Charter, we would recommend that the Housing (Scotland) Bill does not include examples of what might or might not be included in the Charter on the face of the Bill (as section 32 currently does). We would prefer these to be subject to more detailed consideration and consultation and set through regulations. This would also provide the flexibility to amend the Charter as it develops without requiring changes to primary legislation. We would suggest that the Housing (Scotland) Bill emulates the approach of the Public Services Reform (Scotland) Bill which states that standards and outcomes will be set by regulation for the new scrutiny bodies, Healthcare Improvement Scotland and Social Care and Social Work Improvement Scotland.

Reforming the Right to Buy

13. While it is of benefit to some individuals, we do not believe that continuing the discount for Right to Buy is in the wider consumer interest. As many commentators have noted, the loss of housing stock through the right to buy has significantly impacted on the availability of social housing and increased the outstanding debt to be paid from rental income. We believe that the detrimental effect of the reduction in social housing stock on future and potential consumers outweighs any benefit to current tenants. That effect would be particularly detrimental to vulnerable consumers, at a time of rising unemployment and housing need.

Amending legislation on private landlords

14. Local authorities have been reluctant to use their powers to refuse applications from landlords who they have concerns about or to de-register landlords. This lack of enforcement has contributed to a sense that landlord registration does not have ‘teeth’ as a mechanism for regulation.

15. We welcome the introduction of a power to require some categories of individuals and businesses to provide information on non-registered landlords. In particular, we can see the benefit in compelling lettings agencies and property managers to provide this information. We are however concerned about the power being used to compel tenants to provide this information or to open themselves up to potential criminal charges. We would prefer tenants to be specifically excluded from this provision. While we would not expect many cases to occur, we can anticipate the situation where a tenant is unwilling to provide this information as they may fear eviction and victimisation from a landlord. If the power is to be extended to include tenants, we would welcome a statement clarifying that tenants would not normally be pursued if they failed to provide this information and a duty to be placed on local authorities to provide advice and support to tenants in this situation.

16. We have been concerned for some time that the web-based register is not providing current or future tenants with enough information to provide them with reassurance that their landlord is registered. Similarly, one of the benefits of landlord registration was to assist owners in tenement properties in identifying absent landlords. At present, the gaps in information mean that the system is not meeting these aims. We therefore welcome the inclusion of this additional information on the register.
Modifications of the Housing (Scotland) Act 2006

17. The Housing Improvement Task Force and the Housing (Scotland) Act 2006 both took as their starting position that the maintenance and repair of properties is primarily the responsibility of owners. Consumer Focus Scotland supports this overarching principle and as such is supportive of the proposal to allow local authorities to charge owners if they have to prepare a maintenance plan.

18. We are aware that in some cases significant delays to critical repair work occur because a minority of owners are unwilling to pay their share of the costs. These delays can lead to further costs as the repair becomes more significant or leads to other costs such as repairs to individual flats (for example, a roof repair that is not dealt with is likely to impact on the top floor flats).

19. While other owners, and indeed property managers, can agree to do the work anyway and pursue the owner who has not paid through the small claims procedure, this is costly, confusing and time-consuming meaning that in practice few owners do this. We therefore support an extension of local authority powers to allow them to pay a missing share where an owner is unwilling to pay and recover the costs from unwilling owners.

Protection of Unauthorised Tenants

20. While not currently included in the Housing (Scotland) Bill, Consumer Focus is aware that there are ongoing discussions about introducing provisions that would give additional protection to tenants living in a property which is to be repossessed.

21. Tenants who are renting a property which is being let without the lender’s consent currently have very little legal protection if that property is repossessed. We believe that this situation is unfair and should be addressed. If tenants in this situation can prove that they are a genuine tenant – i.e. they have a written tenancy agreement and can provide evidence of payment of rent – then the repossession process should not discriminate against these tenants because the borrower (their landlord) has contravened the terms of their agreement with the mortgage lender. We believe all tenants should have the protection that they need if the property that they are living in is to be repossessed – regardless of whether or not the lender has given their consent for that property to be rented out.

22. We have responded to the Scottish Government consultation, Repossession of Residential Property – Protection of Tenants, and supported the proposal to extend the protection currently given to authorised tenants to ‘unauthorised’ tenants, which would require lenders to repossess properties subject to the tenancy, enabling all tenants – authorised or ‘unauthorised’ – to remain in the property until the end of their lease.

23. This option would appear to offer the best level of protection to tenants living in properties rented out without the lender’s consent, and would bring
parity to the level of legal protection provided to authorised and 'unauthorised' tenants.

24. We look forward to seeing the Scottish Government proposals following the recent consultation and would welcome amendments to the Housing (Scotland) Bill to provide protection for 'unauthorised' tenants.

Additional proposals
25. We are aware of proposals from Shelter Scotland regarding access to support for homes persons and pre-action requirements for social housing evictions. While we have not had the opportunity to consider these proposals in detail, we endorse the aim of the proposals to support consumers to access housing and other services and ultimately to assist them in maintaining their tenancy.

Consumer Focus Scotland

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