

BEDROOM TAX FACTS, MYTHS & LEGENDS

The 'No Evictions for Bedroom Tax Arrears' Petition & Campaign in Scotland

1. *Not evicting someone for bedroom tax arrears will mean many people who can pay won't pay, which is unfair for those tenants who choose to pay, or are unable to do so.*



AN URBAN LEGEND. This argument is frequently deployed whenever any progressive reform of debt recovery or enforcement law is proposed in Scotland.

For example, when Govan Law Centre (GLC) drafted the Abolition of Poindings and Warrant Sales Act 2001 those who wanted to retain poindings and warrant sales in Scotland argued that their abolition would mean most debtors would no longer pay their debts and would transfer their assets into moveable goods creating 'Aladdin's Caves'. No-one seriously believed this.

Most people pay their debts in our society, and the vast majority of those who find themselves unable to do so are not willful non-payers. Suggesting that there are a large number of tenants who would willfully not pay bedroom tax arrears if they got a chance is an assertion based upon prejudice and a fundamental misconception of people.

It also completely ignores the fact that under the petition's proposal bedroom tax arrears would still be recoverable as an ordinary debt in law, and that non-payment of any other rent arrears would still lead to eviction.

2. *It would take several years to build up a sufficient level of arrears before a social landlord considered going for eviction, so what is all the fuss about?*



A MYTH. In Scotland, social landlords are obliged to try and prevent rent arrears increasing as soon as possible. From 1 August last year, this has been reflected in the statutory '*Pre-action requirements in rent arrears cases*', which require repayment negotiations and other duties to take place *before* a Notice for Proceedings for Recovery of Possession is served.¹

Eviction actions being commenced for a few hundred pounds are not uncommon in our experience, and it would be bad practice to wait until arrears were high; a few hundred pounds can easily represent the equivalent of the non-payment of 12 months rental contribution after partial housing

¹ <http://govanlc.blogspot.co.uk/2012/11/pre-action-requirements-in-rent-arrears.html>

² <http://www.scotland.gov.uk/Publications/2012/06/2337/3>

benefit. Landlords are not expected to allow rent arrears to accumulate², and are entitled to begin action to recover a property once the pre-action requirements have been undertaken, which can be completed relatively speedily.³

The bedroom tax will have an immediate adverse impact upon the repayment arrangements in the thousands of eviction actions that are currently before the Scottish sheriff courts. In 2010/11, there were 14,601 new eviction actions raised in Scotland by councils and housing associations (RSLs), of which decree occurred in over 5,000 cases.⁴ There are also a very large number of older evictions 'sisted' (stayed) for payment arrangements, and the bedroom tax will create defaults in many of these cases.

3. It would be unworkable for a social landlord to separate 'bedroom tax arrears' from other rent arrears, and therefore not evicting people for bedroom tax arrears cannot be practical.



A MYTH. At present, it would be relatively easy for a landlord to distinguish bedroom tax from rent arrears because housing benefit payments are paid directly to a social landlord, who will know what housing benefit deductions and shortfalls are applicable in any given household.

However, the introduction of the '*Universal Credit*' – where housing benefit will be paid with other unemployment and disability benefits as one combined payment to the tenant directly to a nominated bank account in four weekly arrears – will make it less straight-forward. However, the Universal Credit will only apply to new claimants from October this year, and will not affect all existing claimants until it is fully phased in which the DWP expect to take until the end of 2017.⁵ Thus separation of arrears for the vast bulk of tenants over the next couple of years will not be difficult in practice.

There are several ways to resolve the problem of the Universal Credit. For example, if the social landlord is aware that their tenant is in receipt of Universal Credit and know the household size and property composition they would know whether a 14% or 25% deduction applied. In the vast bulk of cases (81%) a 14% deduction will apply to affected households. Most social landlords already know which of their tenants are affected by the bedroom tax as part of their pre-planning mapping out exercises. So this 'problem' will not arise in all cases.

A simple future legislative solution would be to incorporate a bedroom tax assessment as part of the Pre-Action Requirement (PAR) pre-Notice for Recovery of Proceedings for Possession stage; this would sift out all of those cases where tenants engaged with their landlords (and where the landlord had no prior or sufficient bedroom tax knowledge in relation to that household).

In addition, where landlords were unable to establish a bedroom tax

² <http://www.scotland.gov.uk/Publications/2012/06/2337/3>

³ <http://www.scotland.gov.uk/Publications/2012/06/2337/4>

⁴ http://scotland.shelter.org.uk/_data/assets/pdf_file/0016/414511/EvictionsReport-10-11.pdf

⁵ <http://www.dwp.gov.uk/docs/uc-local-service-support-framework.pdf>

assessment, after making reasonable PAR enquiries, the onus of proof in distinguishing between bedroom tax and rent arrears could be placed on the defender. This already occurs in private sector eviction cases where a mandatory 'Ground 8' eviction case becomes discretionary where the sheriff is satisfied that rent arrears is a consequence of a 'delay or failure in the payment of relevant housing benefit'.⁶ In practice it is a matter for the tenant or his or her solicitor or advisor to provide evidence to establish a section 18(3A) defence in terms of the Housing (Scotland) Act 1988. To look at it another way, social landlords are going to have to do different housing benefit and bedroom tax assessments in relation to the Universal Credit in any event in the future; and the PAR will need to be updated in any event too because of the Universal Credit and bedroom tax.

4. Not evicting tenants for the bedroom tax will damage the revenue streams of social landlords, make their business operations unsustainable, and ultimately damage the interests of other tenants who do pay.



THE GREATEST MYTH. Not evicting tenants for the bedroom tax is more cost effective than evicting them for bedroom tax arrears. The bedroom tax is coming on 1 April 2013 and whether landlords decide to evict tenants for arrears which include the bedroom tax or not, it is absolutely certain their income streams will be damaged, the rates of interest of their bank loans will be adversely affected too; **but damaged by the bedroom tax itself, and not by the issue of whether they evict or not.**

Shelter Scotland have estimated the cost of evictions to a social landlord are on average £6,000.⁷ The cost to the taxpayer is several times more.⁸ Once a landlord evicts a tenant, generally speaking, it has to write off all arrears as a bad debt. It has to pay outlays to solicitors and court dues. Eviction is not a cheap solution. We fully accept there is no easy solution for social landlords, which is why GLC on behalf of the Glasgow Advice Agency obtained a Q.C.'s Opinion to look at the potential for saving tenants and landlords' money by how local authorities approached the definition of 'bedroom' for the new housing benefit regulation.⁹ We believe there is considerable scope for more tenants to be exempt from the under-occupancy charges by how they use particular rooms, subject to good local authority guidance.

What is absolutely clear is that evicting tenants for bedroom tax arrears is not a solution for social landlords on any cost benefit analysis.

Shelter Scotland have recently called for the Scottish Government to make up to £50m available to mitigate the bedroom tax over the first year.¹⁰ Govan Law Centre supports that call, which could operate as direct funding to social landlords across Scotland to off-set the cost of lost revenue from under-occupancy charges. There is no doubt we need to protect our tenants from

⁶ Section 18(3A) of the Housing (Scotland) Act 1988 inserted by section 12 of the Homelessness etc., (Scotland) Act 2003 - <http://www.legislation.gov.uk/asp/2003/10/section/12>

⁷ http://scotland.shelter.org.uk/_data/assets/pdf_file/0016/414511/EvictionsReport-10-11.pdf

⁸ <http://www.govanlc.com/prevention%20of%20homelessness%20evaluation.pdf>

⁹ <http://govanlc.blogspot.co.uk/2013/02/glasgow-advice-agency-calls-for-local.html>

¹⁰ <http://www.scotsman.com/scotland-on-sunday/politics/shelter-calls-for-bedroom-tax-talks-1-2807427>

eviction, and protect the financial sustainability and service of our social landlords in Scotland.

Whatever the Scottish Government, and others choose to do, we should all be very clear that evicting tenants for bedroom tax arrears is not a financially viable or morally acceptable solution.

If you agree please consider signing Govan Law Centre's 'No evictions for bedroom tax' petition in the Scottish Parliament here:

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/bedroomtax>

**Mike Dailly
Principal Solicitor
On behalf of
Govan Law Centre**

**24 February 2013
Glasgow**