



Tenancy Deposit Protection

An evaluation of the legislation, five years on

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The multi award winning Tenancy Deposit Scheme operated by The Dispute Service Ltd

Introduction

The tenancy deposit protection legislation was introduced in April 2007 in England and Wales as a result of the Housing Act 2004 (as amended). This brief evaluation looks at the impact of the tenancy deposit protection legislation in England and Wales since its introduction. It has been written for members of the Tenancy Deposit Scheme and other stakeholders interested in how the tenancy deposit protection legislation has operated over the last five years.

The Size of the Private Rented Sector

The last five years has seen a steady increase in the size of the private rented sector in England and Wales as shown in Figure 1 below.

Figure 1: *Tenure in England and Wales since 2000 (Millions)*

Year	Owner Occupation	Social Renting	Private Renting
2001	15.283	4.226	2.168
2002	15.509	4.211	2.223
2003	15.638	4.038	2.353
2004	15.634	4.024	2.397
2005	15.756	3.919	2.563
2006	15.765	3.958	2.683
2007	15.717	3.976	2.808
2008	15.604	4.018	3.117
2008-09	15.579	4.062	3.228
2009-10	15.466	3.896	3.537
2010-2011	15.395	4.048	3.799

Source: English Housing Survey 2001-11 (DCLG 2012a)
Welsh Govt Dwelling Stock Estimates 2012

This table shows that since 2007 there has been an increase in the private rented stock from 2.808 million in March 2007 to an estimated 3.799 million in March 2011. In the same four year period the numbers of owner occupied homes in England and Wales saw a small decline from 15.717 million homes in 2007 to 15.395 million in March 2011. There was also a small increase in social housing from 3.976 million homes in 2007 to 4.048 million homes in 2011.

Deposits

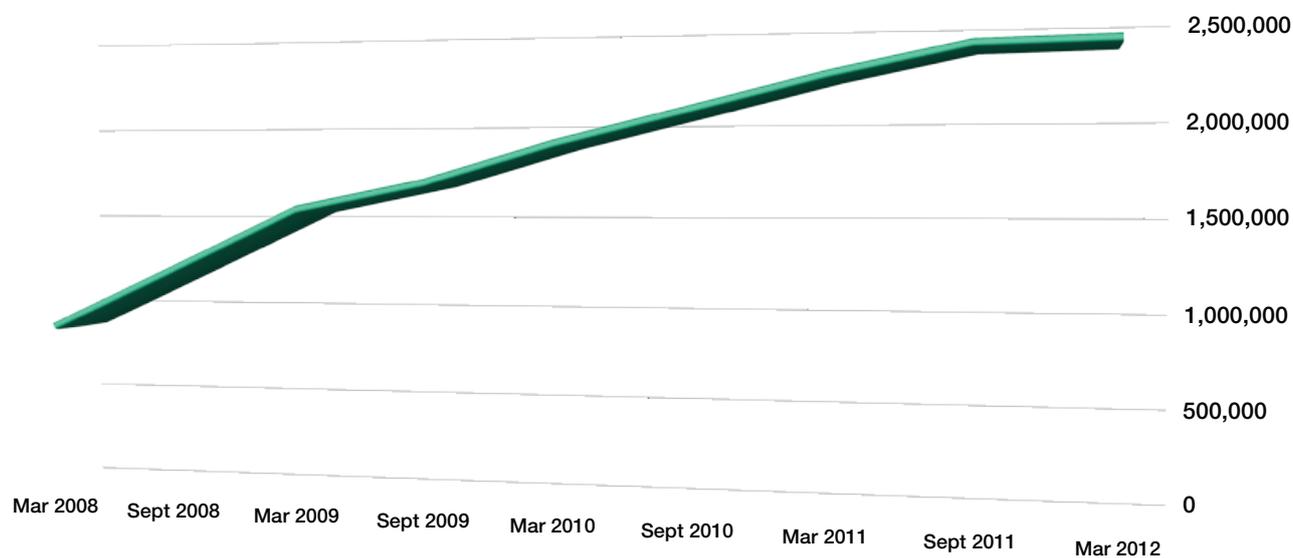
Figure 2: Tenancy deposits protected from April 2007 to March 2012

Deposits Protected (England & Wales)	
March 2008	924,181
September 2008	1,236,497
March 2009	1,553,130
September 2009	1,689,876
March 2010	1,888,532
September 2010	2,053,372
March 2011	2,220,543
September 2011	2,360,178
March 2012	2,374,385

When the legislation was introduced in April 2007 it was not retrospective in that it only applied to new assured tenancies where a deposit was taken after 5th April 2007. As such there was a slower take-up of the scheme in the first year. Since then there has been a steady increase in the number of deposits protected as shown in the chart below.

Source: DCLG 2012

Chart 1: Tenancy deposits protected from April 2007 to March 2012 (England and Wales)



At the time that tenancy deposit protection was introduced into England and Wales in April 2007 there were an estimated 2.808 million homes which were privately rented. Of course not all of these homes came within the remit of the legislation. The government estimates that in the private rented sector 75.3% of homes are assured or assured shorthold tenancies (Source: English Housing Survey 2010-11 DCLG 2012a).

In addition to the legislation not being retrospective, there were rental threshold limits set above which a tenancy deposit did not need to be protected. These were initially set at a rent of £25,000 per annum. This was increased to £100,000 in England on 1 October 2010 and to the same figure in Wales on 1 December 2011.

The Balance of Deposits Between the Three Approved Schemes

The government has not published the statistics relating to how the protected deposits are distributed amongst the three approved schemes. However data published by both TDS and DPS at the end of March 2012 (and by deduction for MyDeposits) indicates the following split.

Figure 3: *Deposits protected by scheme March 2012*

Scheme	Deposits Protected	Value of Deposits	Average Deposit Value
Tenancy Deposit Scheme	870,968	£979,304,718	£1,124
Deposit Protection Service	870,000	£685,000,000	£787
MyDeposits	633,417	£661,012,737	£1,044
TOTAL	2,374,385	£2,325,317,455	£979

Source: TDS March 2012 data, DPS press release May 2012, DCLG stats 2012

Taking Deposits

The English Housing Survey 2010-11 estimated that 75% of all homes which were privately rented (**Source EHS 2012, DCLG**) were let on assured or assured shorthold tenancies. However not all of these tenancies require tenants to provide a deposit. The 2010 Private Landlord Survey (DCLG 2011a) reported that deposits were taken on 84% of tenancies.

Figure 4: *% of Tenancies requiring a deposit, 2010 Private Landlord Survey (based on dwellings).*

	Percentage
Individual Landlords	90%
Companies	68%
New Landlords	89%
Longer Term Landlords	80%
ALL	84%

Source: DCLG 2011a

If this 84% figure were to be applied to the 75.3% of private tenancies assumed to be assured shortholds and the deposits protected applied to this data it suggests that as at 31 March 2011 there was a 92.41% compliance with the deposit protection legislation.

Figure 5: Deposits protected as a % of assured shorthold tenancies

	Private Tenancies	Assured Shortholds (estimates)	Tenancies where Deposit Required	Deposits Protected	% of Tenancies with Deposits with a Protection in Place
2006-07	2,808,492	2,114,794	1,776,427	0	0.00%
2007-08	3,116,673	2,346,855	1,971,358	924,181	46.88%
2008-09	3,228,419	2,431,000	2,042,040	1,553,130	76.06%
2009-10	3,536,993	2,663,356	2,237,219	1,888,532	84.41%
2010-11	3,799,142	2,860,754	2,403,033	2,220,543	92.41%

Source: CLG data

Note: Assured shortholds estimated at 75.3% of private tenancies and 84% take deposits.

Deposits Protected by Value

The table below shows the value of deposits protected, which tend to be between one and two months' rent. In line with the growth in the number of deposits protected the value has also increased. By March 2012 over £2.325 billion deposits were protected by the three schemes.

Figure 6: Value of deposits protected April 2007 to March 2012

	Value of Deposits Protected
March 2008	£885,098,501
September 2008	£1,133,516,843
March 2009	£1,406,482,263
September 2009	£1,625,936,542
March 2010	£1,661,896,693
September 2010	£1,880,132,739
March 2011	£2,104,219,832
September 2011	£2,302,701,868
March 2012	£2,325,317,455

Source: DCLG 2012

Figure 7 shows the average value of deposits protected over time. The average value fluctuated from £880 in March 2010 to £979 in March 2012. These figures hide significant variations between regions in England and Wales.

Figure 7: Average value of deposits protected April 2007 to March 2012

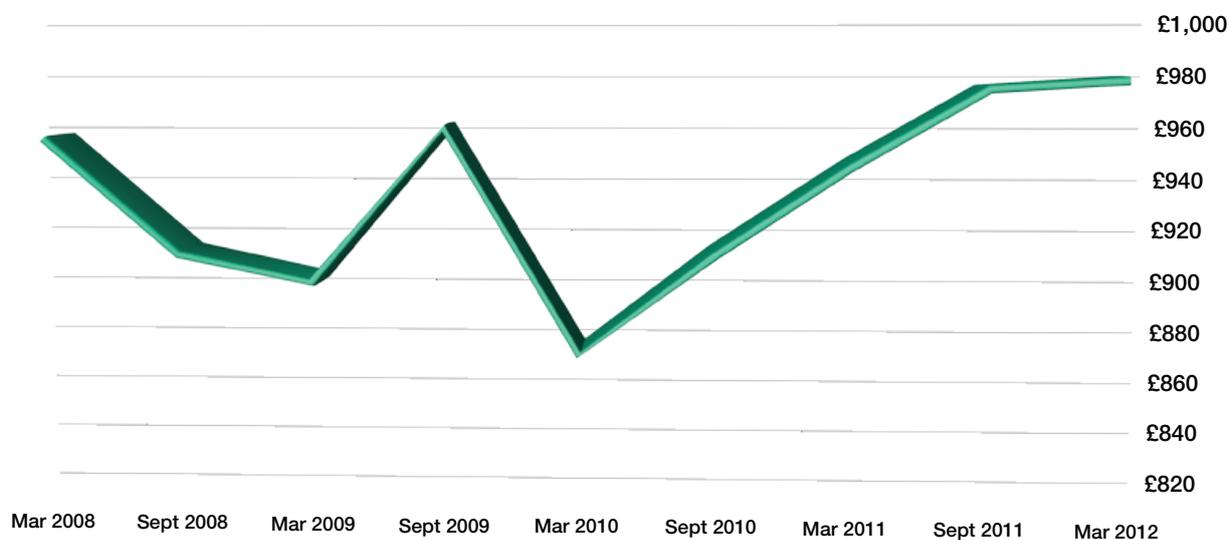
Average Deposit Value	
March 2008	£958
September 2008	£916
March 2009	£906
September 2009	£962
March 2010	£880
September 2010	£916
March 2011	£948
September 2011	£976
March 2012	£979

The 2009-10 English Housing Survey (DCLG 2011) reported that deposit values fluctuated:

- 52.7% of deposits were four weeks/one month's rent
- 35.4% of deposits were greater than this amount
- 11.9% of deposits were less than this amount

Source: DCLG 2012

Chart 2: Average value of deposits protected April 2007 to March 2012



Disputes

Numbers of Disputes

Figure 8: Adjudications completed by year

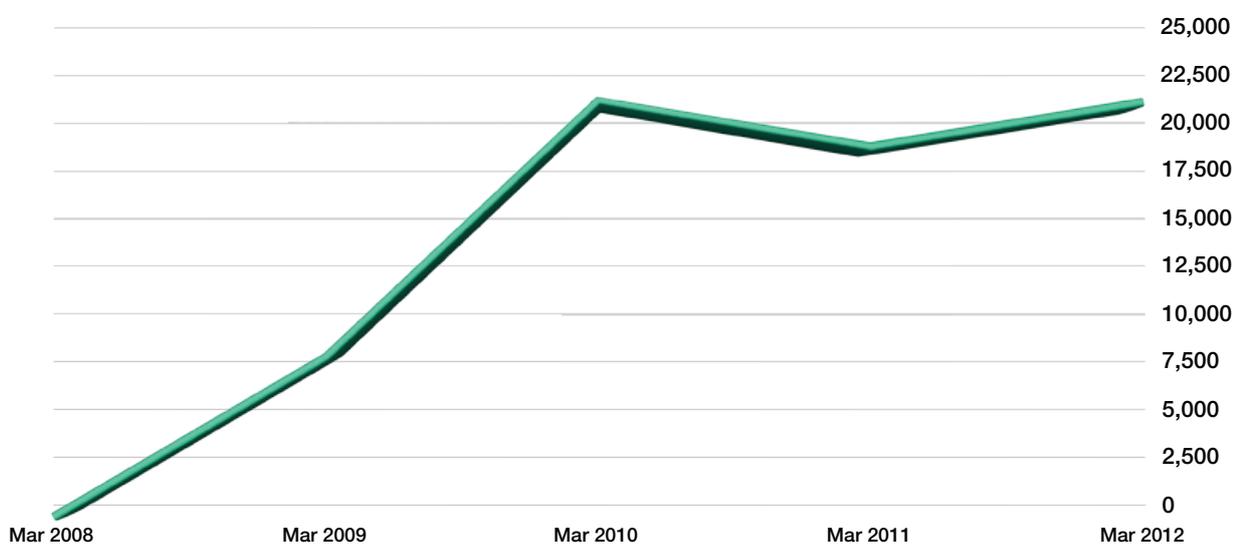
Adjudications completed by year	
March 2008	458
March 2009	8,098
March 2010	20,363
March 2011	18,156
March 2012	20,279
TOTAL	67,354

Source: DCLG 2012

In the first year of the tenancy deposit protection regime there were relatively few disputes as tenancies had not ended. Over time the number of disputes has increased as tenancies end and landlords and tenants cannot reach agreement on the allocation of the deposit.

The chart below shows that the number of disputes reduced in 2010-11 but increased again in 2011-12 to 20,279 across all three schemes.

Chart 3: Disputes adjudications completed by year



Disputes as a Percentage of Tenancies Protected

Before the tenancy deposit protection legislation was introduced, the National Association of Citizens Advice Bureaux said in their 1998 report *Unsafe Deposit* that 48% of tenants in their survey had reported having had a deposit unreasonably withheld and only one in six of these had been successful in getting their money back. This implied that 40% of tenants may have had their deposit withheld by their landlords without the agreement of the tenants. There appears to be little evidence available of the number of disputes that went to the county court.

An analysis of the number of disputes each year compared to the number of deposits protected shows a surprisingly low % of disputes as a proportion of the deposit protected.

Figure 9: *Disputes as a percentage of the total number of deposits protected as at 31 March*

Disputes as a % of deposits protected	
March 2008	0.05%
March 2009	0.52%
March 2010	1.08%
March 2011	0.82%
March 2012	0.85%

This table indicates that in the last two years the dispute rate has been below 1% of tenancies protected.

Given that the evidence from the sector is that tenancies on average are lasting up to 18 months this implies a dispute rate to tenancies ending of some 1.28%. This is significantly below the figures implied by the *Unsafe Deposit* report in 1998.

Figure 10: *Return of tenancy deposits*

	2009-10	2008-09	2007-08	2006-07
Returned in full	70.50%	69.50%	67.00%	70.00%
Returned in part	15.80%	17.40%	23.00%	18.00%
Not returned	13.60%	13.00%	10.00%	12.00%

Source: English Housing Survey 2009-10, English Housing Survey 2008-09 Housing in England 2007-08, Housing in England 2006-07

This table shows whether or not deposits were returned in full and shows a relatively consistent pattern. Tenancy deposit protection was introduced in April 2007 so the results from 2007-08 onwards would include situations where some deposits may have been protected by the legislation.

In 2006-2008 the surveys did ask tenants to give their views as to whether they felt the deductions from the deposit were justified. As seen below around a quarter of tenants felt that their deductions were justified in full. This implies that around three quarters of tenants felt that the deductions were not justified and as such could reasonably be expected to lead to a dispute between the landlord and tenant. The fact that only 1.28% of tenancies ending have led to a dispute being raised with the tenancy deposit protection schemes suggest that either tenants do not know that the schemes can resolve disputes or that landlords are working much harder now to resolve tenancy disputes than perhaps they did before. In reality the answer is likely to be a combination of the two effects but it is surprising that there are so few disputes submitted to the three tenancy deposit schemes for England and Wales so it is likely that landlords are becoming better at resolving disputes rather than simply withholding the deposit.

Figure 11: Views on the non-return of the deposit by tenants who have had a deposit deduction made

	2007-08	2006-07
Landlord should not have withheld any of the deposit	56.00%	48.00%
Landlord was justified in withholding some of the deposit	22.00%	27.00%
Landlord was justified in withholding as much of the deposit as they did	23.00%	25.00%

Source: Housing in England 2007-08, Housing in England 2006-07

Of course what is not clear is the extent to which the existence of a tenancy deposit protection scheme with access to free alternative dispute resolution means that landlords are more willing to enter into reasonable discussions with tenants to resolve tenancy disputes. It is also the case that the Tenancy Deposit Scheme membership subscription regimes reward those agent and landlord members who do not generate disputes and this may also have had some impact in reducing dispute numbers.

Reasons for Disputes

The latest government evidence in the 2009-10 English Housing Survey indicated that the most common reason for the non-return of tenancy deposits was in relation to the property being damaged or requiring cleaning (cited in 55.70% of disputes). Ten per cent of tenants reported that deposits had been withheld because of unpaid rent. In the previous year the figures were broadly similar. In the 2008-09 survey the results showed that damage was cited in 23.5% of disputes with cleaning being a reason in 38.4% of disputed deposits.

Figure 12: Reasons for non-return of deposits

	2009-10	2008-09	2007-08	2006-07
Damage and or cleaning	55.70%			
Damage		23.50%	33.00%	29.00%
Cleaning		38.40%	43.00%	32.00%
Unpaid rent/bills	9.50%	8.70%	8.00%	11.00%
Other	45.90%	28.10%	21.00%	26.00%

Source: English Housing Survey 2009-10, English Housing Survey 2008-09, Housing in England 2007-08, Housing in England 2006-07

TDS has been collecting data on the reason for disputes for the last 5 years. They show that damage, cleaning, redecoration are the most common reasons given for a tenancy deposit dispute. In the cases submitted to TDS in 2012 cleaning appeared in 52% of cases and damage in 45%.

Figure 13: TDS data on reasons for disputes deposits

Types of Dispute	2007	2008	2009	2010	2011	2012
Cleaning	50%	52%	49%	47%	49%	52%
Damage	36%	45%	43%	39%	43%	45%
Decoration	18%	25%	26%	24%	25%	28%
Rent Arrears	22%	18%	16%	15%	16%	18%
Gardening	14%	13%	13%	12%	11%	12%
Other	47%	48%	50%	55%	55%	56%

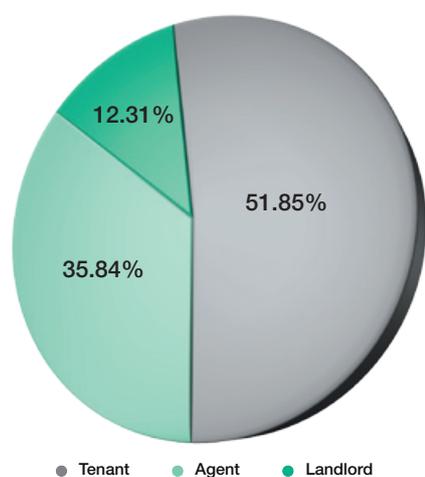
Source: The Dispute Service data 2007-2012

In order to minimise disputes coming through to the Tenancy Deposit Scheme, detailed guides have been produced to show the action which landlords and agents need to take to avoid disputes:

- CLEANING:** Have a good inventory, check in and check out report backed up with photos, video and signed off by the tenant.
- DAMAGE:** Have a good inventory, check in and check out report backed up with photos, video and signed off by the tenant.
- DECORATION:** Have a good inventory, check in and check out report backed up with photos, video and signed off by the tenant.
- RENT ARREARS:** Produce an accurate rent statement showing dates of payments due, made and missing.

Who Submits Deposit Disputes?

Chart 4: Who submits disputes to the Tenancy Deposit Scheme 2011-12



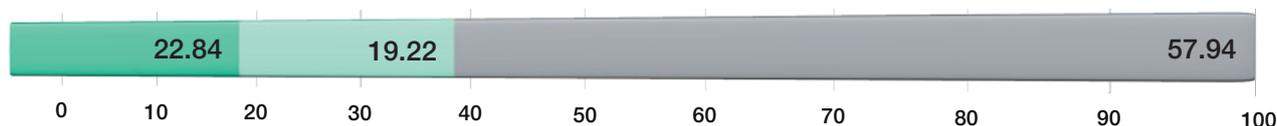
The government does not collect data on who submits deposit disputes but evidence is available from the Tenancy Deposit Scheme which shows that in 2012 the majority of disputes were submitted by tenants with landlords and agents submitting almost 48% of disputes.

Who Gets What?

A key question asked of adjudicators is who gets what when cases are submitted. TDS has been collecting data on this issue over the last 5 years but it is not collated by the government. There is some anecdotal evidence that TDS results are somewhat different from that of the other two schemes as TDS members are predominantly regulated letting agents rather than individual landlords. These agents are likely to be more skilled at handling tenancy deposit disputes and are less likely to submit frivolous or vexatious claims for adjudication.

The chart below sets out the percentage of cases where tenants or landlords are awarded 100% of the disputed deposit or where the disputed deposit is shared.

Figure 14: Allocation of disputed deposits between parties 2007-2012 for the Tenancy Deposit Scheme



- % of disputes where tenant got 100% of the disputed amount
- % of disputes where landlord and agent got 100% of the disputed amount
- % of disputes where the disputed amount was shared between landlord, agent and tenant

As can be seen tenants were awarded 100% of the disputed deposits in only 22.84% of cases whereas landlords got the full disputed deposits in 19.22% of cases. Published evidence is not easily available from the other two schemes and as such reliance has to be placed on their press releases.

The DPS reported that in its scheme 41.5% found in favour of the tenant, 19.1% in favour of the landlord with 39.4% leading to a split award. (Source: Letting Agent Today 7th April 2011).

Information supplied by the CLG shows that with MyDeposits the figures were 48.48% awards made in full to tenants, 7.81% to landlord/agents and 43.7% split.

Figure 15: Comparative awards

	100% Award to Tenant	100% Award to Landlord/Agent	Split Award
TDS	22.84%	19.22%	57.94%
MyDeposits	48.48%	7.81%	43.70%
DPS	41.50%	19.10%	39.40%

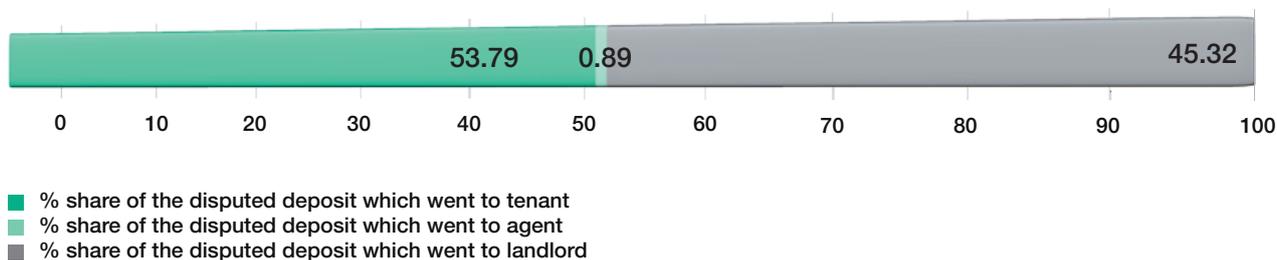
All schemes operate very similar adjudication processes and indeed collaborated in 2011 on a joint guide to deposits, disputes and damages. The lower level of awards to tenants at TDS is likely to reflect the more experienced agent base in terms of membership.

The other two schemes have a much higher proportion of landlord members, a number of whom may not be as experienced in the use of inventories and check in/check out reports, which are often necessary for landlords and agents to demonstrate that deductions are fair. In the case of TDS almost all members are letting agents who are well versed in using these procedures as a matter of course and are therefore much more likely to be able to provide evidence for deductions from deposits.

TDS has completed further analysis on adjudication and has looked at the total value of disputed deposits over the last 5 years and which party got what share of the total pot. This shows an interesting picture with the allocation of disputed deposits broadly equal between landlords and tenants.

This chart shows that of all of the disputed deposits 53.79% went to tenants with the balance of 46.21% going to landlords and agents.

Figure 16: Allocation of disputed deposits 2007-12 in the Tenancy Deposit Scheme



Conclusions

There are a number of conclusions which can be drawn from this brief overview of the tenancy deposit protection legislation. There appears to be a high level of compliance with the legislation with 92.4% of eligible deposits being protected. However this figure does need to be treated with some caution as there is no reliable data on the number of assured shorthold tenancies with deposits. Indeed anecdotal evidence from Shelter and the NUS suggests that there are still pockets of the country where landlords are not complying with the law. This may be an area where the Tenancy Deposit Scheme may commission further research to ascertain the levels of non-compliance with the legislation.

In relation to the enforcement of the tenancy deposit legislation there have been a number of high profile cases which reached the High Court and Court of Appeal (and which ultimately led the government to amend the legislation in the Localism Act 2011). However there seems to be a lack of data about the number of cases coming through the County Court system for non-compliance with the deposit protection requirements and the obligation to supply prescribed information. This may be an area where the DCLG and the Ministry of Justice may wish to discuss better recording of cases.

Even though the insurance schemes both charge a fee for protecting deposits this has been attractive to landlords and particularly agents (even when interest rates are low). Indeed at March 2012 over 63% of deposits were being protected in the two insurance schemes.

There also appears to be little evidence that the development of a tenancy deposit protection scheme has led to landlords deciding not to take deposits. Although there is undoubtedly work involved in registering tenancy deposits, amending tenancy agreements and serving the prescribed information, it would appear that 84% of all landlords in England still want to take a deposit to protect them in case of damage or loss caused by the tenants.

In the 1998 Unsafe Deposits report there was a suggestion that up to 40% of tenants may have had their deposits unfairly withheld. This could therefore have been expected to have led to a deluge of disputes being referred to the tenancy deposit schemes once the scheme was introduced. As we have seen this has not happened and it may be because the original figures were somewhat exaggerated or because the very existence of a scheme where tenants would have access to impartial and free adjudication has led to landlords being more reasonable in their demands at the end of the tenancy. In any event the number of disputes coming through to the schemes has been much less than was anticipated. It is certainly the case at the Tenancy Deposit Scheme that adjudicators are seeing much less evidence of unreasonable claims being made by landlords in the disputes which come through to adjudication.

And what of the future? The government remains committed to tenancy deposit protection and will be procuring new insurance schemes from April 2013. The custodial scheme is due to be procured in 2015 for an April 2016 start.

The amended legislation as a result of the Localism Act 2011 has from 6 April 2012 extended the time limits for protecting deposits and issuing prescribed information from 14 days to 30 days. But the penalties have been tightened with non-compliance leading potentially to the return of the deposit in full and a fine of up to three times the deposit. We will need to see what impact this has and whether the courts or the local authorities take steps to enforce the legislation.

The continuing growth in the private rented sector means that the number of deposits protected is likely to increase.

In Scotland tenancy deposit protection was introduced in July 2012 with three custodial schemes competing in the market place. These are SafeDeposits (a not for profit consortium with the Tenancy Deposit Scheme as a lead partner), MyDeposits Scotland and the Letting Protection Service. In Northern Ireland the Assembly is likely to introduce regulations in 2012 to bring in tenancy deposit schemes in 2013 (probably both a custodial and insurance version). In Eire the government is reviewing how best to introduce tenancy deposit protection in 2013.

One of the problems with the tenancy deposit legislation is that it has not always offered full protection for landlords and tenants when a letting agent goes into liquidation or where the deposit money and other money in the client account is stolen. If the deposit is registered with one of the insurance schemes there is a degree of protection for the tenant but the landlord is unlikely to be able to recover any of the deposit due to them or any rent money owing to them unless their letting agent has client money protection insurance through one of the regulatory bodies (ARLA, NAEA, RICS, NALS, Law Society). The Tenancy Deposit Scheme has urged government to consider making it compulsory for lettings agents to have client money protection and to ensure that consumers have better information about the risks of using a non-regulated lettings agent. The Tenancy Deposit Scheme is also keen to see the courts and local authorities enforcing the legislation and we will be keeping an eye on what happens over coming months.

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About The Dispute Service

The Dispute Service Ltd. is an independent not for profit organisation established in 2003 by the National Federation of Property Professionals and the Royal Institution of Chartered Surveyors. Initially created to provide a voluntary alternative dispute resolution service for regulated lettings agents, it was awarded a contract by the Department for Communities and Local Government to operate an insurance backed tenancy deposit protection scheme in England and Wales when mandatory deposit protection came into effect in April 2007.

The Dispute Service now runs the Tenancy Deposit Scheme, which provides tenancy deposit protection for its letting agent and landlord members in England and Wales. The Dispute Service is also a lead partner in SafeDeposits Scotland which operates a custodial tenancy deposit scheme in Scotland.

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