

Written evidence from Shelter (NDS0001)

1. Are “no DSS” policies operated by either mortgage lenders or letting agents/landlords legal?

Policies which prevent people in receipt of housing benefit from accessing homes are likely to be in breach of the Equality Act 2010. The Equality Act 2010 makes it unlawful to discriminate against anyone with a ‘protected’ characteristic – such as sex, disability or race. Under this law, you are protected from discrimination across a number of areas, including at work, in education and importantly, when buying or renting a property.

Looking at the demographic of who claims housing benefit there is evidence to suggest that some groups – for example women and people with a disability – are disproportionately affected by ‘No DSS’ policies. Analysis by Shelter shows that people claiming housing benefit are 2.5 times more likely to be in receipt of disability benefits than the general population¹. Our analysis of official figures from the Department for Work and Pensions suggest that 59% of adults on housing benefit and living in private rented housing are women. Additionally, these figures show that 95% of single parents receiving housing benefit are female.²

In light of this analysis, we believe bans on renting to tenants in receipt of housing benefit indirectly discriminate against women and people with disabilities. This is true whether the ban applies to just an individual property being marketed or across multiple properties being marketed by an organisation. Therefore, these policies could be unlawful and open to legal challenge under the Equality Act. This argument was recently tested by Rosie Keogh, who with support from Shelter and the Bar Pro Bono Unit, took legal action against her letting agent. The letting agent admitted to indirect discrimination and agreed to settle out of court, and Rosie was awarded compensation.

In the first instance, legal challenges are likely to be against a landlord or letting agent, who are directly turning away renters in receipt of housing benefit. However, Shelter has received independent legal advice from a barrister which suggests that if a landlord blames their mortgage lender for their decision not to let to someone in receipt of housing benefit, the lender could be brought into the case as a second defendant.

As well as being open to legal challenge, restrictions on landlords letting to people in receipt of housing benefit may also be unenforceable in the eyes of the law. Section 142 of the Equality Act 2010 provides that a term of a contract that constitutes, promotes or provides for unlawful discrimination, may be unenforceable. We take the view that this may apply to mortgage terms.

¹ Due to the inability to cross refer disability and housing benefits on the DWP stats tool this data is taken from wave 7 of Understanding Society. Tenure data was matched to the Household identifiers for the individual respondents, and filtered by those within the PRS and claiming Disability Living Allowance. Total unweighted base is c.4,000 within this group. Data was collected January 2015 – January 2017. 12.7% of the HB population claimed a disability benefit, compared to 5.2% of the overall public.

² These statistics were calculated using caseload data published by the Department for Work and Pensions. Data is as of March 2018. The 59% of adults on housing benefit who are women is the estimated proportion of adult women in a private renting household with a housing benefit claim and assumes that half of the people in couples are women.

2. What or who drives the adoption of “no DSS” policies?

There is no excuse for ‘no DSS’ policies and nor do we believe there is a rational basis for them. In most cases we think that they are adopted or defended by irrational prejudice against people who are receiving benefits or simply because of inertia in the system and actors not really the damage which they do.

We conducted a mystery shopping exercise with letting agents, posing as both prospective tenants in receipt of housing benefit and prospective landlords considering letting a property. In both cases and across multiple agents we found evidence of widespread prejudice against people receiving housing benefit which we believe is at the heart of the continued adoption of these policies. Examples of quotes from letting agents as part of this mystery shopping exercise illustrate the way in which prejudice feeds into this form of discrimination.

Letting agent advice to prospective landlord caller:

“I’m sure you see those programmes with nightmare kind of tenants... a lot of them are usually DSS tenants. In my experience, I recommend not going down that route”

Quotes from mystery shopping callers:

“Once I mentioned housing benefit she was abrupt and wanted to end the call. She was very dismissive and unhelpful”

“Their tone of voice changed to unfriendly as soon as I mentioned housing benefit and they did not treat me with respect or dignity”

“I felt like I was a second-class citizen and that he wanted to get off the phone to me as soon as he could”

Quote from Tam, a woman who started receiving housing benefit after an accident left her unable to work. She has just been offered a council flat after nearly two years of searching for a privately rented home:

“I looked daily for places to rent and I did so for months, but I couldn’t find anywhere even to view because no landlords would accept housing benefits. In all I spent nearly two years looking for private rental properties but got nowhere because everywhere said ‘no DSS’”

However, whilst we believe there is no rational basis for these policies, several reasons have been used to justify them and contribute to their prevalence.

The Government’s recently published private landlord survey asked landlords and agents for their reasons for not letting to households on housing benefit. It found that the main reason given for ‘no DSS’ policies were problems with payment and level of Housing Benefit/Universal Credit. Three of the top four reasons related to the benefits system, including fear that benefits won’t cover the rent, greater risk of delays in payment or unpaid rent and benefits not paid direct to the landlord.

The other leading reason identified by the government’s survey was a preconception about the character of tenants on Housing Benefit. After issues to do with the benefit system itself, this represents the second significant category of justifications given for ‘no DSS’ policies. More than half of landlords and half of agents stated justified their ban because of a ‘greater risk of disturbance or anti-social behaviour or damage to property or furnishings’.

Preconceptions about tenants' characters were also identified in independent research for Shelter by YouGov³. In 2017, we commissioned YouGov to survey more than 1,000 private landlords, including questions about motivations behind 'no DSS' policies. 18% of landlords said that they had heard stories from other landlords or in the media, which suggested that renting to people receiving benefits was a bad idea.

Although significant progress has been made in changing the policies of mortgage lenders, we also know that a significant number of landlords also state that mortgage or insurance policies forbid them from letting to someone on housing benefit. The government's landlord survey found that 24% of landlords and 38% of letting agents gave this as a reason for not letting to someone on Housing Benefit.

This is consistent with a general pattern of actors at one point in the letting process justifying a 'no DSS' policy by pointing to another actor in that process, which represents the third major area of reasons given for 'no DSS' policies.

In addition to pointing to mortgage or insurance policies, landlords also point to the advice they receive from agents. Although the government's landlord survey provides the most comprehensive and up-to-date account of landlords' reasons for not letting to people on housing benefit, it did not investigate the role of letting agents' advice in landlords' decisions.

In YouGov survey of private renters commissioned by Shelter⁴, we found that agents' advice was playing a significant role in landlords' decision-making, with 36% of landlords who use an agent on all properties citing 'my letting agents advised against it' as the reason for barring housing benefit tenants.

However, we have also found agents pointing to landlords to justify their advice. A mystery shopping exercise conducted by Mystery Shoppers Ltd⁵, on six leading letting agent brands across England, found that the leading reason agents gave for not offering homes to people on housing benefit, was the landlord's instruction.

In conclusion, therefore, in addition to issues with the housing benefit system and preconceptions about the characters of tenants on housing benefit, we are concerned that discrimination has continued because too few actors have taken individual responsibility for ending it. Thankfully, we are now seeing positive signs that this is changing.

3. How valid are the reasons given by lenders, insurers, agents and landlords for operating "no DSS" policies?

As set out in our response to question 1, 'no DSS' policies & practices cannot be considered legally valid as they risk being unlawful.

Beyond that we consider them to be an unethical form of institutionalised prejudice.

Returning to the first of the three types of justification for 'no DSS' policies outlined in our response to question 2, Shelter recognises that there are legitimate concerns about the

³ YouGov, survey of 1,137 private landlords in the UK, online, July–August 2017

⁴ YouGov, survey of 3,978 private renters in the UK, online, weighted, August 2017

⁵ https://england.shelter.org.uk/_data/assets/pdf_file/0009/1581687/Stop_DSS_Discrimination_-_Ending_prejudice_against_renters_on_housing_benefit.pdf

benefits system. We share many of these concerns and are actively campaigning for improvements to it. In particular, the freeze on Local Housing Allowance Rates means that rent rises have outstripped benefit payments, making it ever harder for people on low incomes to find an affordable private rented home. However, these problems do not legitimise 'no DSS' policies and practices

Despite the problems with the benefits system, the clients we have supported with legal challenges could afford the advertised rent, had guarantors and sometimes savings too. The possibility that a tenant may be able access to savings or other voluntary income means that it is never possible to conclude *a priori* that a tenant on housing benefit will be unable to afford a given rent. This conclusion should only be made after assessing their individual circumstances, judging their application on its own merits. To do otherwise treats income from the welfare state as a second class form of income and those receiving help through the welfare state as a second class form of consumer. We do not believe this is the intention of the welfare state or an acceptable outcome.

Likewise, drawing conclusions about a tenant's character based solely on the fact that they receive Housing Benefit or Universal Credit is plain prejudice. We understand that some landlords will have had bad experiences with tenants who happened to claim Housing Benefit or Universal Credit, but assuming that all tenants on benefits will act the same is both lazy and the definition of prejudicial stereotyping.

Landlords and agents will have processes in place to reassure themselves about the character of any prospective tenant. As long as they are not themselves discriminatory, these same processes should simply be equally applied to tenants on Housing Benefit.

A letting agent claiming that they are just following instructions from a landlord is not a valid defence ethically or in law. Guidance from the Equality and Human Rights Commission to estate agents, letting agents and property management companies confirms that:

“as well as not unlawfully discriminating against a client yourself, you must not accept an instruction to discriminate from a property seller or landlord. If you accept an instruction from a property seller or landlord to discriminate in disposing of housing premises (which includes letting or selling), this would be against equality law, and the person could bring a legal claim against you.”⁶

The largest lenders, most recently NatWest, have recognised the unfairness of 'No DSS' policies; particularly given the growing number of households in receipt of housing benefit who rely on the PRS as their only option for somewhere to live, and removed these discriminatory policies from all existing and future buy-to-let mortgages.

Citing a buy-to-let mortgage term or condition as justification for a 'no DSS' policy is generally not a valid defence. According to UK Finance, 80% of the market (according to market share) **do allow** landlords to let to people in receipt of housing benefit. So, we believe that only a very small number of lenders still have these restrictive clauses. We do not recognise the claims made by The RLA that 66% of lenders, representing approximately 90% of the buy-to-let market, **do not** allow properties to be rented to people in receipt of housing benefit⁷. The UK Finance data debunks this statistic that has been widely reported.

⁶ <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-law-estate-agents-letting-agents-and-property-management-companies>

⁷ <https://news.rla.org.uk/rla-win-as-natwest-scraps-no-dss-rule/>

Landlord insurance terms & conditions are not a valid defence either. Section 142 of the Equality Act 2010 provides that a term of a contract that constitutes, promotes or provides for unlawful discrimination, may be unenforceable. We take the view that this may apply to both mortgage & insurance terms and conditions that are unlawfully discriminatory.

4. How do “no DSS” policies affect the availability of housing for benefit claimants?

In our experience of working with those struggling with bad housing and homelessness, ‘no DSS’ policies and practices are both the most reported problem our clients face, and the most difficult problem for our support services to tackle.

A recent survey of almost 4,000 private renters by YouGov found that almost a third of people receiving housing benefit said they hadn’t been able to rent a home due to a ‘No DSS’ policy in the last five years⁸. We believe that this is likely to be an underestimate – ‘No DSS’ adverts have become so normalised, that many people who’ve been deterred from applying by them, may not even consider it discrimination.

Given that there are over one million private renting households in England who receive housing benefit, this means that the equivalent of hundreds of thousands of people may have come up against this type of discrimination in recent years⁹.

Additionally, another YouGov survey of more than 1,000 private landlords¹⁰ confirms the difficulty of finding housing available to anyone receiving housing benefit – showing that six in ten landlords would prefer not to rent to tenants on housing benefit, and four in ten landlords operate an outright ban¹¹.

Recent government figures¹² reflect this, with over a third of landlords not willing to rent to people receiving various types of state support:

Table 3.2: Types of tenants not willing to let to

all landlords and agents; weight: tenancy weight.

	landlord	agent	total
			<i>percentages</i>
people receiving Housing Benefit or Local Housing Allowance	53.2	31.8	37.4
people receiving Universal Credit	49.6	30.1	35.2

⁸ YouGov, survey of 3,978 private renters in the UK, online, weighted, August 2017

⁹ YouGov, survey of 3,978 private renters in the UK, online, weighted, August 2017

¹⁰ YouGov, survey of 1137 private landlords in the UK, online, July–August 2017

¹¹ YouGov, survey of 1137 private landlords in the UK, online, July–August 2017

¹² <https://www.gov.uk/government/publications/english-private-landlord-survey-2018-main-report>

couples/lone parents with dependent children	20.3	1.7	6.6
non-UK passport holders	21.4	7.3	11.0
single occupants aged 18-21 receiving Universal Credit	60.7	38.1	44.1
single occupants aged under 35 receiving Housing Benefit	51.4	30.5	36.0
willing to let to all of the above types of tenants	23.0	43.9	38.4
other	8.2	7.6	7.8
weighted base	883,564	2,487,515	3,371,079
<i>sample sizes</i>	<i>6,584</i>	<i>1,115</i>	<i>7,699</i>

excludes a small number of answered 'none'.

Total adds to more than 100% as respondents could select more than one answer

In our analysis of around 86,000 letting agent adverts, conducted in partnership with the National Housing Federation, we found that at least one in ten properties listed on Zoopla's website ruled out tenants on housing benefit. The analysis also revealed that the discrimination was far more prevalent in some parts of the country.

Top 10 worst areas

Area	Percentage of adverts that said 'No DSS'
North Cumbria	59%
West Cumbria	38%
Gloucester	35%
Lincoln	34%
Halifax	32%
Worthing	31%
Weston Super Mare	29%
Oldham & Rochdale	29%
Thameside & Glossop	29%
Wolds & Coast	27%

We have supported clients who are in receipt of ample benefits to cover rent on a property, enough savings to pay a deposit and great references from a previous tenancy. In these circumstances, it would be understandable for the client to discuss their situation with the landlord directly, who could easily see that they are not a risk to their property. Open Rent's

website completely blocks a user who claims benefit from even contacting a landlord displaying a 'no DSS' property.

Your application does not meet the requirements set by this landlord: This landlord has told OpenRent they won't accept enquiries from DSS / Housing Benefits tenants. Around 33% of our properties do accept DSS, but you should check the property before enquiring. When you search on OpenRent, you can specify certain filters that will help you only find appropriate properties. All property details are also listed below the description on the property page.

5. What impact is the roll-out of Universal Credit having on the availability of housing for claimants?

We have received feedback from our services that clients are increasingly seeing adverts specifying "must be in receipt of a live UC claim" when looking for properties.

The 5-week wait for initial payment causes extreme hardship; claimants are left with no money to survive or pay rent and bills. This puts their tenancy at risk.

Research undertaken by the Smith Institute in Southwark Council showed that their tenants were more likely to be in arrears under UC than housing benefit and the arrears were more likely to be higher. National Housing Federation have also found this to be true in their research.

Inside Housing obtained figures demonstrating that UC claimants could be up to twice as likely to become homeless than those on the previous benefit system. In their sample, under legacy benefits, one in approximately 79 households became homeless, under UC it is now one in 34.

Administrative errors are still widespread in UC and lead to delays and incorrect payments. Nearly a quarter (24%) of claims that include the housing element are not paid in full and on time¹³.

However, in addition to the design of the benefits system, it must be reiterated that deficient benefit levels for help with paying private rent – set through Local Housing Allowance – place an absolute restriction on the amount of the market that tenants can access. Unless LHA rates are increased tenants on low incomes will struggle to find an affordable home, no matter how the design of the system is improved.

a. What impact are other changes to the benefit system (eg. the LHA freeze) having on availability of housing?

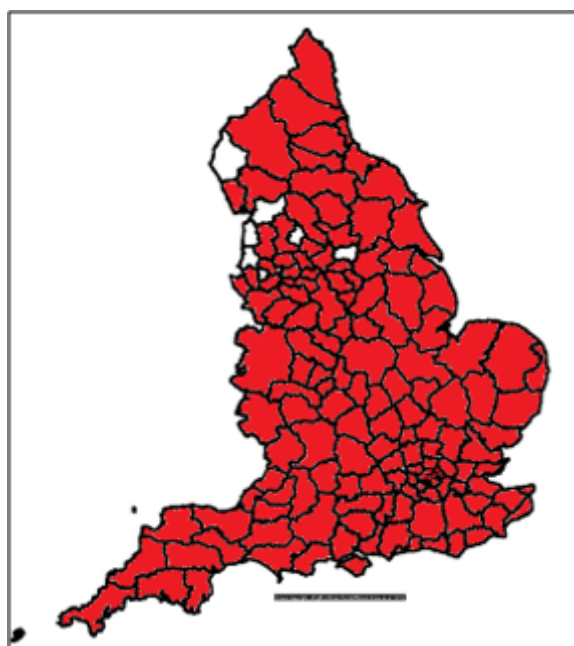
The ongoing LHA freeze means housing benefit does not cover the cost of renting across the vast majority of the country. For the upcoming LHA rate for 2019-2020 our analysis

¹³ <https://www.nao.org.uk/wp-content/uploads/2018/06/Rolling-out-Universal-Credit.pdf>

shows that for a modest 2-bedroom home, there is a shortfall between LHA rates and rents in 97% of areas in England.

In 2019-2020, in one in five areas of England (21%), a family with one or two children living in a two-bedroom home will need an extra £100pcm, on top of their LHA, to cover their rent.

Map of areas in 2018/19 in England where LHA rate covers the bottom third of private rentals highlighted in white



In more than half (51%) of the BRMAs in England, families are seeing a shortfall of more than £50 a month between the maximum amount of LHA that they can receive for a 2-bedroom home and the actual rental cost of such a home at the 30th percentile.

In almost a quarter (23%) of the BRMAs, families are seeing a shortfall of more than £100 a month between the actual cost of renting a two-bedroom home at the 30th percentile and the maximum LHA they can receive.

Charities working with people in debt have reported that the shortfalls are affecting their clients. StepChange, the UK's largest specialist debt advice charity, recently found that almost three-quarters (72%) of their clients claiming housing benefit said that it did not cover the full cost of their rent and this was a particular problem for those renting in the private sector (90%).¹⁴

¹⁴ Blackwood, A. (2018) Locked out: How problem debt affects people's housing situations, London: StepChange Debt Charity

The inadequacy of LHA makes it difficult for local authorities to prevent or relieve homelessness, making it challenging to fulfil their new duties under the Homelessness Reduction Act (2017). More than 80% of local authorities say they have found it difficult to help homelessness applicants access private rentals to prevent or resolve homelessness.¹⁵

LHA rates must be fit for purpose if the housing crisis is to be tackled. With social rents unavailable, more families are renting privately, relying on LHA to bridge the gap between their income and the often-higher cost of private rents. The LHA freeze must come to an end as soon as possible and the rates restored to at least the 30th percentile (i.e. cheapest third) of local rents.

6. What action should the Government take on “no DSS” policies?

The Government can take several actions on “no DSS” policies:

- The Government’s support for the view that ‘no DSS’ policies and practices constitute indirect discrimination is useful. Many perpetrators of housing benefit discrimination want to see clarification of the law.
- The House of Commons briefing paper, ‘Can private landlords refuse to let to Housing Benefit claimants?’ to be amended, removing reference to discrimination against people on benefits ‘sometimes being justified’.
- The Government can also issue best practice advice to the industries involved, on how to avoid discrimination and stay on the right side of the law.
- An amendment be added to the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 to include a court finding of indirect discrimination under the Equality Act as a potential banning order offence.

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¹⁵ Fitzpatrick, S, Pawson, H, Bramley, G, Wilcox, S, Watts, B, (2017), The Homelessness Monitor: England 2017, https://www.crisis.org.uk/media/236823/homelessness_monitor_england_2017.pdf