

A decade of deposit protection

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Steve Harriott looks back on 10 years of tenancy deposit schemes

Tenancy deposit schemes were introduced in England and Wales in April 2007, but you need to go back further to understand why they were established.

In June 1998, the [National Association of Citizens Advice Bureaux](#) (NACAB) published a damning report based on its clients' experience of getting deposits back from landlords. NACAB researcher Liz Phelps reported that half of all private tenants who paid a rental deposit 'may have experienced their deposit being unreasonably withheld'; in many cases, she found landlords made little or no attempt to justify withholding the deposit.

The association concluded that the case for reform was overwhelming and failure to regulate deposits damaged the reputation of the private rented sector. The feeling was that unscrupulous landlords were making spurious claims to retain deposits.

You could argue that the NACAB figures were exaggerated or only reflected the people who were seeking advice. Nonetheless, the report was solid enough to make policymakers sit up and take notice.

A 2-year pilot scheme to test the appetite for tenancy deposit schemes was launched in 2000 by the then Deputy Prime Minister John Prescott, with both custodial and insured schemes being offered. This pilot operated on a voluntary basis, and agents and landlords much preferred the insured option because this meant minimal disruption to their existing deposit protection set-ups. Its success encouraged RICS and the [Association of Residential Letting Agents](#) to form the [Dispute Service](#) in 2003, which operated a voluntary tenancy deposit scheme for regulated agents (TDSRA).

Tenancy deposit protection became mandatory with the [Housing Act 2004](#) and deposits started being protected from April 2007. Having been involved in the pilot and the TDSRA, TDS ? which is the only not-for-profit scheme ? had a bit of a head start.

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Potential disputes

I find it interesting that when the schemes were introduced, landlords thought disputes were going to be commonplace, but this did not prove to be the case. There were certainly

examples of bad practice among landlords before 2007 and problems with tenants sometimes not paying the final month's rent and telling the landlord to use the deposit, which meant there was no money left for damage or repairs.

At the time, there was talk of around 20% of tenancies ending in dispute, yet the actual figure has been nowhere near that. It has been close to 2-3%, and the situation was similar when TDS launched tenancy deposit schemes in Scotland ? [SafeDeposits Scotland](#) ? and Northern Ireland ? [TDS Northern Ireland](#) .

Tenants generally are decent people who want to look after their home and protect their deposit; similarly, most landlords want to provide a safe and secure home for their tenants. The evidence confirms that the overwhelming majority of tenancies have no problems that end up in a dispute.

Because it was feared that disputes would clog up the county courts, all deposit schemes were required to offer free alternative dispute resolution to review cases long before they reached a judge. This is a very useful by-product of the schemes that could be extended to many other sectors.

True, some landlords still do not appreciate that they need to allow for fair wear and tear, and that there should be no betterment from a claim against a deposit. This can be why some claims can be inflated, but the system works well to remove these.

The formalisation of arrangements for deposits has raised standards in many areas; for example, tenancy agreements are now much better worded, with explicit deposit use clauses. There is also much more extensive use of professional inventories, check-ins and check-outs.

Only around 3% of tenancies end in dispute over return of the deposit

Improvements

As tenancy deposit schemes have developed, there have been significant improvements in the quality of dispute evidence being submitted, which protects landlords and tenants alike.

The [TDS Charitable Foundation](#) has been directly involved in improving the sector, funding such initiatives as training for landlords, students and young people.

There have also been better arrangements for the handling of monies by agents, with the spread of client money protection (CMP) schemes. In March this year, the government announced that it intends to make CMP schemes mandatory for all letting agents in England, following the examples adopted in Wales and Scotland.

The TDS has also been investing heavily in software development and pioneered online evidence portals for disputes that do away with paper-based systems. This has been universally well received and is now used throughout the UK. Gone are the sacks of mail

with thousands of pages of disputes evidence. Everything can be done online and both landlords and tenants can see what the other party is saying. More than 95% of disputes are now handled via the portal; 5 years ago, nearly everything came by post.

Courts and tribunals are interested in this model, and TDS has been sharing its methods with other potential users. The process is quicker and much more manageable for everyone involved.

The future

Looking ahead, could there be fundamental changes to tenancy deposit schemes? Possibly.

While the numbers suggest that most landlords and agents prefer insurance-backed schemes, others feel that the custodial model is safer because deposits are held directly by the scheme. It may be that the requirement for agents to undertake CMP will shift the argument back in favour of the insured model. Most agents have good processes in place, and CMP gives greater comfort to their landlord and tenant clients.

TDS? business is largely in schemes backed by insurance, but responding to the market, the custodial scheme launched last year in England and Wales has seen steady growth. Many agents do not know [TDS Custodial](#) is on offer, so expect to hear a lot more about it. When Scotland introduced tenancy deposit protection 5 years ago, it only allowed custodial schemes, and SafeDeposits Scotland is now the biggest.

Conversely, when Stormont decided on a tenancy deposit scheme for Northern Ireland 4 years ago, it opted for both custodial and insurance-backed approaches. TDS Northern Ireland now has a 79% market share.

Custodial schemes are where TDS holds the deposit during the tenancy and releases it in accordance with the landlord and tenant's instructions when the tenancy comes to an end. TDS is not currently permitted to charge a fee for deposit protection, but retains the interest on the deposits it holds. Given that custodial schemes' operating costs are paid for by the interest made on deposits held, the bank rate of 0.25% makes self-funding much more difficult. Even a rate rise to 0.5% would make the custodial model look better. If not, then UK government might have to let the custodial schemes charge a modest fee.

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With insurance-backed schemes, the landlord holds the deposit and handles its release directly with the tenant when the tenancy ends. If there is a dispute then, the disputed amount is transferred to TDS and only returned by agreement of the parties, adjudicator or court; dispute resolution is provided free by TDS. Landlords or agents pay a small fee to TDS to let it hold the deposit and fund its operation. If a landlord will not repay a tenant, TDS will, and then reclaim the amount it holds from the insurance.

There is an increase in deposit replacement insurance products, but TDS has not yet

seen a policy that works from a landlord's viewpoint. There is also little evidence that UK landlords want to give up the confidence that their property is safe thanks to a cash deposit.

A decade after tenancy deposit schemes were introduced, and almost 20 years on from the ground-breaking NACAB report that prompted it, I wholeheartedly believe that the private rented sector is the better for them. Tenants and landlords are secure in the knowledge that deposits are safe, there is a quick and easy way to resolve disputes, tenancy management standards have improved, there is a growing acceptance of the value of CMP and the adoption of new technology is driving down the costs of deposit protection.

I look forward to the next 10 years.

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Further information

- More information on tenancy deposit schemes can be found [here](#)
- Related competencies include [Housing management and policy](#) , [Landlord and tenant \(including rent reviews and lease renewals\)](#)
- This feature is taken from the RICS *Property journal* (July/Aug 2017)