

PE1706/D

Petitioner submission of 20 December 2018

Thank you for the opportunity to submit a response. I have consulted with the academic Debbie Rook from Northumbria Law School who is an expert in this area of law and whose article I cited in my petition¹.

PE1706/B Scottish Government response

The brief response from the Scottish Government is unsatisfactory as it has not taken recent and relevant significant information into account. This includes:

1. The change in the housing landscape: Due to housing shortages and austerity measures more people now rent privately for long term. Private rentals in the UK doubled in 12 years from 2000 to 2012 and are continuing to rise². Some people will live all their life in private rental housing. The housing shortage causes significant unequal bargaining power between landlords and tenants which means that any freedom of contract for tenants to negotiate terms acceptable to them (e.g. a positive pets policy) is illusory. The Government in the state of Victoria, Australia acknowledged similar changes in their housing situation and, after extensive consultation with stakeholders, passed legislation in 2018 to allow tenants to keep pets in rental housing (subject to exceptions).

2. The change in the way people perceive their pets (and the consequent benefits to individuals and society): Research shows that the majority of pet owners now see their cats and dogs as family members. This has had a positive impact on the health benefits to individuals and the economic benefits to society.

Health benefits: There is now an extensive body of research demonstrating the physical, psychological, therapeutic and social health benefits of the human-companion animal bond. Examples include:

- Pet owners have lower risks of heart disease (Anderson, 1992) are less likely to suffer a heart attack or stroke (Quereshi, 2009) and in the event of a cardiovascular attack are significantly more likely to survive (Friedman). A study in Sweden in 2017 involving 3.4 million people over a 12-year period found that dog ownership lowered the risk of dying from cardiovascular disease³.
- Exercising dogs helps maintain a healthy weight, thus mitigating against the development of common chronic diseases including arthritis, diabetes and osteoporosis. Studies have found higher levels of physical activity in children with dogs leading to the reduced risk of being overweight⁴.

¹ Rook, 'For the Love of Darcie: Recognising the human-companion animal relationship in housing law and policy' (2018) *Liverpool Law Review* 29.

² Beckett *Trends in the UK Housing Market* (2014) Office of National Statistics.

³ Mubanga et al, 'Dog ownership and the risk of cardiovascular disease and death – a nationwide cohort study' (2017) *Scientific Reports* 7.

⁴ Owen et al 'Family dog ownership and levels of physical activity in childhood: Findings from the child heart and health study in England' (2010) *American Journal of Public Health* 1669.

- Studies show that the negative health effects of loneliness can be mitigated by pets, especially for people living with mental health illnesses⁵.
- Children growing up with pets are less likely to suffer allergies in later life (McNicholas, 2004).

In 2018 the statutory corporation and Crown agent that provides state housing in New Zealand adopted a positive pets policy in all its housing relying on research on the health benefits of living with pets.

The economic benefits to society: The Scottish Government response only refers to individual benefits of pet ownership and fails to consider the wider societal benefits. In the UK it has been estimated that *pet ownership saves the NHS £2.45 billion a year* due to the reduced number of visits to the doctor by people with pets⁶. Because people see their companion animals as family members they are willing to spend more money on them. Recent figures from the USA estimate that Americans will spend a staggering US\$72 billion on their pets in 2018 demonstrating that pets are good for an economy such as the UK⁷.

3. The Social Capital Effect: Pets have been identified as very effective creators of social capital i.e. the creation of safer, friendlier neighbourhoods⁸.

4. The Impact of negative pet policies on individuals: Those forced to relinquish pets may suffer severe psychological effects (Ormerod). Those who would like to adopt an animal are denied the plethora of documented health and social benefits, thereby negatively impacting their life.

Wider effects of ‘no pet’ covenants:

The Government should also consider the wider detrimental effects of ‘no pet’ covenants as these go beyond the loss to individual tenants:

- 1) Creating a market for poor quality housing:** Research shows that due to less choice pet owners seeking pet-friendly property may be reduced to letting poorer quality housing⁹. There is a risk that landlords fail to keep their property in good repair because they know that desperate pet-owning tenants will take the property in order to keep their pets with them.
- 2) Increasing rental insecurity:** Research shows that some tenants keep pets in breach of ‘no pet’ covenants which perpetuates feelings of rental insecurity for the tenants¹⁰. Such tenants may delay or forgo essential repairs in order to avoid

⁵ Brooks et al (2018) ‘The power of support from companion animals for people living with mental health problems: a systematic review and narrative synthesis of the evidence’ BMC Psychiatry (2018) 18:31; Society of Companion Animal Studies submission to the Jo Cox Commission on Loneliness.

⁶ Hall et al, *Companion Animal Economics: the economic impact of companion animals in the UK* (CABI publishers, 2016).

⁷ Watson, ‘Pet care is a recession-proof industry’ (2018) *Business Insider*.

⁸ Wood et al, ‘The ripple effect of companion animals on neighbourhood interactions and sense of community’ (2007) *Society and Animals* 43.

⁹ Graham et al, ‘“Pets Negotiable”: How do the perspectives of Landlords and Property Managers compare with those of younger Tenants with Dogs?’ (2018) 8 *Animals* 32.

¹⁰ Power ‘Renting with pets: a pathway to housing insecurity?’ (2017) 32(3) *Housing Studies* 336.

the landlord entering the property which can be detrimental to tenants' health and the landlord's interest in the property.

- 3) **Cost to cat and dog shelters:** Landlord restrictions on pets is one of the main reasons for owners relinquishing cats and dogs to shelters in the UK (Coe et al, 2014). Thousands of pets are surrendered and this constitutes a cost to society. It is an unnecessary expense to rehome pets that already have families who want to keep them.
- 4) **Animal welfare:** Animal welfare is a Government consideration. In those instances where pet-owning tenants are forced to surrender their pets for rehoming, the animal's welfare is compromised.

The legality of 'no pet' covenants

In her forthcoming article¹¹, Rook challenges the legality of 'no pet' covenants under Human Rights law and Consumer Rights law.

Article 8 ECHR:

Rook argues that pets come within Article 8 of the European Convention on Human Rights which protects a person's home, family and private life against intrusion by the state. The Belgian courts have recognised this and it is argued that the UK courts could do the same¹². The nature of the close social bond many people develop with their companion animals is akin to close human-human supportive social relationships, for example, pets provide a source of attachment, reassurance of worth and opportunity for nurturance. This means that local authority landlords can only prevent a tenant keeping pets where it is justified to protect the right and freedoms of others, for example, where a pet causes harm or nuisance to others. France and parts of Canada and Australia have enacted legislation to prohibit 'no pet' covenants but include exceptions to address the need to balance the interest of others, especially the landlord. For example, in Ontario, Canada the landlord can evict the tenant where the animal:

- (i) substantially interferes with the reasonable enjoyment of other tenants or the landlord;
- (ii) causes other tenants or the landlord to suffer a serious allergic reaction;
- (iii) is of a breed that is inherently dangerous.

This demonstrates that Article 8 compliant legislation can be drafted that enables people and their pets to live together while balancing the interests of others to ensure proportionality. Further challenges to 'no pet' covenants exist under Article 1, Protocol 1 ECHR which protects property rights and the Consumer Rights Act 2015 which ensures good faith in consumer agreements.

The need for legislation

Legislation is needed because it is for Parliament to decide where to strike the proper balance between the respective human rights of pet-owning tenants (Art 8 and Art 1, Prot 1) and private landlords (Art 1, Prot 1) whilst also considering the

¹¹ Rook 'Goodbye Theo: Challenging the legality of 'no pet' covenants in the UK and beyond' (forthcoming, 2019).

¹² Civ. Liege 21 October 1986, J.L.M.B., 1987.

public interest in pet ownership¹³. In the absence of legislation to redress the imbalance caused by the housing shortages, the personal autonomy of the landlord, to decide the terms of the tenancy agreement, is prioritised over all other interests (including the public interest in pet ownership).

PE1706/C Scottish Federation of Housing Associations response

It is encouraging to see that the majority of Housing Associations in Scotland have positive pet policies. Their strategy to allow tenants to keep pets combined with policies to safeguard people and property from irresponsible pet owners sets an excellent precedent. Unfortunately, there was no response from COSLA so it is difficult to know whether this applies to local authority landlords. Research shows that 48% of private renters in Scotland cannot keep a pet¹⁴. This means that without legislation a two-tier system will exist, allowing those in the public sector to live with pets (and enjoy the health benefits of pet ownership) while many of those in the private sector will be denied this opportunity. Legislation is therefore needed to redress this inequality.

PE1706/A Shelter Scotland response

Shelter's conclusion that it is best to adopt 'softer measures' in the first instance does not reflect the contents of its 'Paws Clause' consultation. In the consultation their stakeholders wanted to be able to live with pets and some admitted to sleeping on the streets to keep their pet. Shelter's report states "*It is not fair that those in the private rented sector are denied the right to have a pet*". The most effective mechanism for achieving equal treatment for tenants in the public and private sector is legislation similar to that used in France, Canada and Australia. Shelter's suggestion to provide further guidance to landlords is unlikely to be effective. There is already detailed guidance on the Dog's Trust website. Shelter's suggestion to include pet friendly clauses in the Scottish secure tenancy agreement is unlikely to be effective unless the clause is mandatory. In England the Model Agreement for an Assured Shorthold tenancy¹⁵ includes a pet covenant but it is often removed by landlords. Therefore, these softer measures are unlikely to be effective in enabling tenants in the private sector to live with pets.

¹³ Rook 'Goodbye Theo: Challenging the legality of 'no pet' covenants in the UK and beyond' (forthcoming, 2019).

¹⁴ Shelter Scotland, 'Living Home Standard' (2018) p 13.

¹⁵ Department of Communities and Local Government, Model Agreement (2016).