

Transcript

RRA Unit 2.2

Rental discrimination

Hello everybody. In this video, which is quite an important one, we're going to look at the changes brought in by the Renters' Rights Act from the 1st of May: the changes around rental discrimination.

The RRA brings in safeguards to try and prevent discrimination in the private rented sector. For many years, as we know, whether you work in housing options services or not, there has been a form of discrimination against people on benefits and against people who may have children. Quite often landlords might have advertisements that say "No children" or, historically, "No DSS" from the days when the Department of Social Security existed instead of the DWP. You still see "No DSS" in adverts now. All of that potentially ends.

This is going to be an incredibly controversial area and there will no doubt be many cases and case law. We're likely to see a lot of landlords prosecuted on the basis of rental discrimination. So this is not the end of the story; we're going to see a lot of case law and guidance from the courts on how these changes are interpreted. So, what is rental discrimination? Landlords cannot, after the 1st of May, reject prospective tenants on the basis that they receive benefits and/or that they have children. A prospective tenant might be on benefits and have children, so both might apply, or just one. You cannot reject prospective tenants on the basis they receive benefits, and you cannot reject prospective tenants on the basis that they have children.

The Renters' Rights Act has a lot of detail behind this. It includes stopping a person on benefits or who has kids from accessing information about a property, including its availability. So if I ring up an agent about a property and they ask, "Have you got kids?" or "Are you on benefits?", and I say yes, and they then say, "Well, we can't send you the information," that will be a civil offence and could potentially lead to a fine. It includes stopping a person on benefits or who has kids from accessing information about a property, including its availability, viewing the property, and signing the tenancy agreement. So you can't prevent someone on benefits from joining a viewing, for example. You might have said, "We're going to have a multiple viewing on Monday; just a final check, are you on benefits?" If they say yes and you then say, "You can't be added to the list," that is unlawful. You can't stop somebody viewing a property,

accessing information, or signing a tenancy because they're on benefits or have children.

Obviously, wording in current advertisements and agreements such as "working households only," "sorry, no DSS or benefit claimants," "professionals only," or "sorry, no children" will not be allowable. A landlord might try to use "professionals only," but then the question becomes what lies behind that phrase and whether it is, in effect, discrimination.

How will the rental discrimination rules work under the Renters' Rights Act? Discriminatory terms such as "no children" or "nobody on benefits" will have no legal effect from the 1st of May, even if they are still in tenancy agreements. So it might still say "no kids" or "nobody on benefits" in an existing tenancy agreement, but those clauses have no legal basis any more. They do not have to be removed from the agreement; they are simply not enforceable.

These terms may also appear in what's called a superior lease. Commonly, a superior lease applies where you have a landlord who is a leaseholder and a separate freeholder. For example, in a block of flats where you don't own the freehold, you have bought the leasehold flat and there is a freeholder above you. The freeholder's lease might say "no kids" or "nobody on benefits" for lettings, but that will no longer be a legally applicable term from the 1st of May. Similarly, if such terms are contained in existing mortgage agreements, especially buy to let mortgages that say "no one on benefits," those clauses will not be legally applicable from the 1st of May 2026.

Importantly, they do not have to be removed from existing agreements; landlords don't need to go back and amend every document. The clauses are simply no longer valid and are, in effect, cancelled.

There is one exception that will still apply beyond May 1st, but not for long, and that is insurance contracts which contain terms such as "no children" or "no one on benefits." For insurance contracts such as buildings insurance, these terms will continue to be valid until the insurance contract runs out and is either renewed or cancelled. So if an insurance contract runs to the end of June 2026 with a clause of "no kids" or "nobody on benefits," that clause remains valid until the policy ends. From then on, any new insurance contract cannot validly contain such terms because of the rental discrimination rules in the Renters' Rights Act.

Because the Act deals with children and people on benefits, it has to define those categories. Children are defined as under 18 years old. So someone who is 18, even if

child benefit is still being paid in respect of them, is not a “child” for the purposes of this Act. The Act and guidance also list the relevant benefits: these include universal credit, jobseeker’s allowance, personal independence payment (PIP), employment and support allowance, income support, and many others. Those are the benefits in respect of which landlords cannot lawfully discriminate.

What can a landlord still do when deciding who to let to? There are many things a landlord can still legitimately consider. The big one is affordability: landlords can still consider whether you can afford the property. They can assess affordability when deciding which prospective tenant to choose. They can still ask for references from previous tenancies, and someone may have poor references which count against them. They can still ask for credit reference checks from companies such as Experian to check that a prospective tenant has a good credit history. These remain normal and lawful checks.

Landlords can also require a rent guarantor, but there is a key condition: if they require a guarantor, that requirement must apply to all prospective tenants, not just those on benefits. They cannot, for example, have three applicants for a property, two working and one on benefits, and say only to the person on benefits, “Because you’re on benefits, I want a guarantor from you.” That would be unlawful discrimination, even if it might seem reasonable to some. If a guarantor is required, it must be required on a consistent basis from all prospective tenants.

A landlord will still be able to set a minimum income requirement, but they cannot ignore income from benefits when deciding if someone meets that threshold. So they can say, “For this property, the minimum income required is X,” but they cannot say, “In deciding if you meet X, I am excluding your PIP, universal credit, or other benefits.” That would be unlawful. In practice, given that rents are market rents, a minimum income threshold pegged to the market rent is still likely to rule out many people on benefits, because this is not based on local housing allowance levels. If the minimum income threshold is high and someone’s income (including benefits) does not reach that level, they can be refused on affordability grounds – but the landlord must count the benefit income and must not refuse just because the income comes from benefits.

What about children? The rules around discrimination against prospective tenants with children are slightly different. The Act gives landlords some leeway in respect of children. Landlords may refuse prospective tenants with children if they can demonstrate that the refusal is a “proportionate means of achieving a legitimate aim” – a phrase we often see in equalities law. In short, if there is a legitimate reason and the refusal is proportionate to that reason, the landlord may lawfully refuse.

Examples of what might count as a proportionate means of achieving a legitimate aim include: retirement housing, where the property is intended for older people seeking quiet enjoyment, and children running around could undermine that purpose; student housing, where the accommodation is clearly aimed at students; a house in multiple occupation (HMO) where there are single adult occupants and having families with children in that environment raises risk or suitability issues; supported housing, particularly for people with complex needs or mental health problems, where mixing in families with young children would be inappropriate; situations where the property would be overcrowded, such as someone with eight children applying for a one bed flat; and situations where the property would be unsafe for children, for instance, due to very old features or design that pose a particular risk to young children.

However, nothing is completely set in stone in the Act on these examples. If a landlord refuses to let to a prospective tenant with children and claims it is a proportionate means of achieving a legitimate aim, then if that decision is challenged and investigated by the local authority, the landlord will have to evidence that rationale. Ultimately, it will be for the local authority (and, if contested further, the courts) to decide whether an offence has been committed.

So that is the issue around rental discrimination and the new rules under the Renters' Rights Act. Many landlords are likely to get this wrong. Some will say, "I'm still choosing on affordability, and you're on benefits, so it's not affordable for you because you're on benefits." That is discrimination. They cannot use "being on benefits" or "having children" as the basis for refusal, and they cannot ignore benefit income when calculating affordability.

This area is controversial. There will be case law and many complaints to local authorities from prospective tenants who believe they have experienced rental discrimination on the basis of being on benefits, having children, or both. We will need to watch how this develops in the courts as the Renters' Rights Act takes effect and beds in over the next 18 months to two years.

I'll see you in our next video.