

Consultation response

# Shelter's response to the review of property conditions in the private rented sector

March 2014

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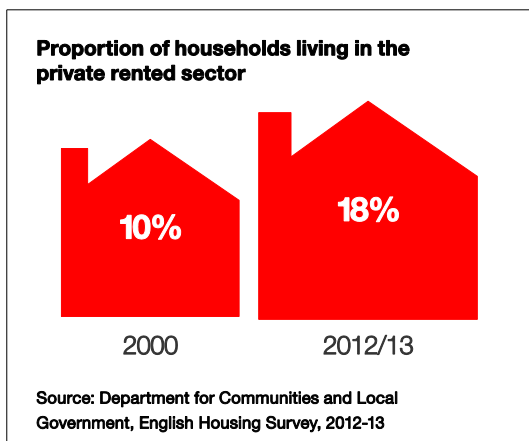
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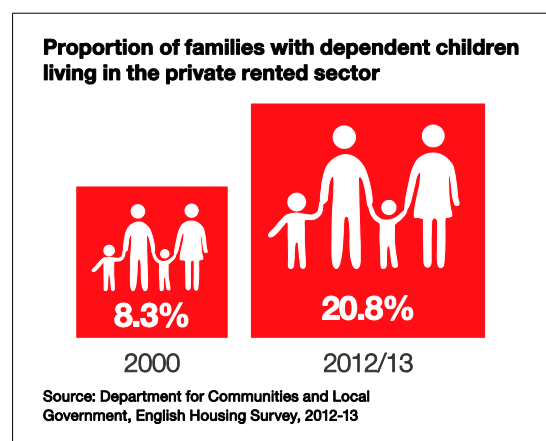
# Introduction

Shelter strongly welcomes the government's review of property conditions in the private rented sector. This is an extremely important opportunity to address the disproportionate poor standards and introduce legislative changes to improve the lives of the increasing number of families living in this tenure. We support their willingness to engage with a wide range of stakeholders and their clear desire to improve life for tenants through the production of the Tenants' Charter.

Private renting is fast becoming the new normal. There are now more than nine million renters in England; the private rented sector makes up 18 per cent of all households in England.<sup>1</sup> It can no longer be thought of as exclusively the domain of students and highly-mobile young professionals. Nearly 50 per cent of the growth in the private rented sector in the last two years has come from families with children and almost half of tenants are age 35 and over.<sup>2</sup>



**The proportion of households living in the private rented sector has risen by 80 per cent since 2000.**



**The proportion of families living in the private rented sector with dependent children has more than doubled since 2000.**

For many people the private rented sector is not a tenure of choice, but a tenure of necessity. The high cost of buying a home and the shortage of social housing means many families have no choice but to rent privately for the medium to long term. Nearly a third of tenants (32 per cent) expect to be living in the private rented sector for the rest of their lives.<sup>3</sup> Fifty per cent of families say that their main reason for renting is because they cannot afford a home of their own and only four per cent say that they like the freedom and flexibility it gives them.<sup>4</sup> Fifty-three per cent of all tenants would like to own their own home but do not think they will ever be able to afford it.<sup>5</sup>

More than 40 per cent of the people who approach Shelter for advice live in the private rented sector. This is a proportion that keeps growing, and is more than double the proportion of the population who rent privately. The majority of enquiries that we receive from people living in the private rented sector relate to disputes with landlords and poor conditions. This response is based on work that we have recently undertaken on poor conditions in the private rented sector.<sup>6</sup>

<sup>1</sup> Department for Communities and Local Government (DCLG), English Housing Survey, 2012-13.

<sup>2</sup> DCLG English Housing Survey 2012-13. Table 1 Demographic and economic characteristics, by tenure 2012-13.

<sup>3</sup> YouGov 2014, base 4544 private renting English adults. Jointly commissioned by Shelter and British Gas

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Shelter, [Can't Complain: why poor conditions prevail in private rented sector homes](#), 2014

## Summary: Shelter's key priorities

- **Poor conditions.** Conditions are significantly worse in the private rented sector than all other tenures, and this requires urgent action. Poor conditions are endemic to the sector. Attention should be focused on underpinning structural issues including: the lack of legislative protections for tenants to report poor conditions; the significant number of amateur and accidental landlords who are unaware of their responsibilities; and, in an overheated market, the limited financial incentives for landlords to invest in maintaining and improving property conditions.
- **Retaliatory Evictions and Section 21 notices.** Shelter strongly recommends that the government restricts the use of Section 21 notices in order to better protect tenants from retaliatory eviction by giving tenants who complain about poor conditions and are subsequently served with an eviction notice a defence to possession action and automatically restricting the use of Section 21 notices where a local authority serves a notice verifying Category 1 and 2 hazards. In addition we recommend that the Government reform the use of Section 21 notices by introducing a 'prescribed form' and time limits for the validity of notices in order to improve the process for both landlords and tenants.
- **Rent Repayment Orders.** Shelter welcomes proposals to extend Rent Repayment Orders to tenants who are living in poor conditions or have been illegally evicted. We have concerns about the number tenants, particularly those who have been illegally evicted, that would be able to benefit from this change and have made a number of recommendations on how this can be remedied.
- **Safety Conditions.** Shelter strongly recommends a legislative requirement for all private rented sector homes to be equipped with smoke and carbon monoxide detectors. We also support the introduction of mandatory five-yearly electrical safety checks.
- **Licensing of rented housing.** Shelter firmly supports the power of local authorities to implement selective licensing schemes. Licensing enables local authorities to proactively manage their private rented market, tackle poor conditions and drive up professionalism throughout the sector. It also enables local councils to provide landlords with educational resources and training. In the spirit of localism, Shelter recommends that the Government extend the criteria for licensing to include poor conditions and high demand.

### How bad are conditions?

Conditions in the private rented sector are worse than in any other form of tenure. Thirty three per cent of private rented homes fail to meet the Government's Decent Homes Standard, compared to 20 per cent of owner occupied homes and 15 per cent of social rented homes.<sup>7</sup> Almost one in five privately rented homes (18.9 per cent) contains a Category 1 hazard.<sup>8</sup> Our research shows that 61 per cent of tenants have experienced at least one of the following problems in the last 12 months: mould or damp; leaking roofs or windows; electrical hazards; animal infestations or a gas leak.<sup>9</sup>

Ten per cent of tenants report that their health has been affected in the last year because their landlord has not dealt with repairs and poor conditions in their property, and nine per cent of private renting parents said their children's health has been affected.<sup>10</sup> Almost one in six councils in England say that private landlords' neglect of their property has required the intervention of health services.<sup>11</sup> The BRE

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<sup>7</sup> Department for Communities and Local Government (DCLG), English Housing Survey, 2012-13.

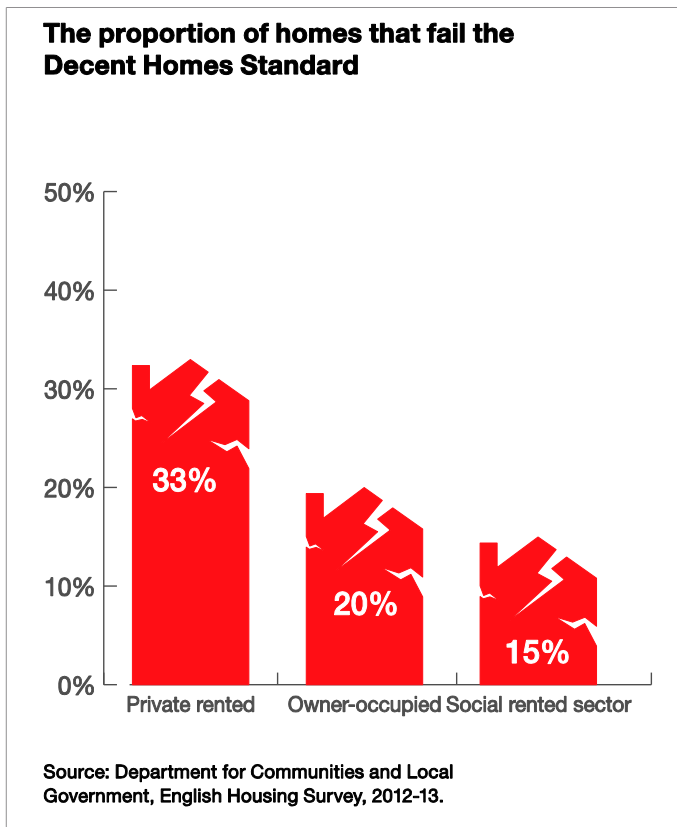
<sup>8</sup> From the English Housing Survey – see report for reference

<sup>9</sup> YouGov 2014, base 4544 private renting English adults. Jointly commissioned by Shelter and British Gas.

<sup>10</sup> YouGov 2014, base 4544 private renting English adults. Jointly commissioned by Shelter and British Gas.

<sup>11</sup> Shelter Freedom of Information request July 2012. This asked thirteen questions concerning complaints received concerning private rented accommodation and subsequent enforcement action against private landlords. Out of the 326 local authorities contacted we received 310 responses. -

Group have calculated that poor housing is costing the NHS in excess of £600 million a year.<sup>12</sup> While this is not exclusively attributable to the effects of conditions in the private rented sector, the overrepresentation of Category 1 hazards in this tenure provides a very definite cause for concern.



**A third of private rented homes fail to meet the Decent Homes Standard.**

Between 2006 and 2012 there was a decrease in the number of non-decent homes in the sector from 47 per cent to 33 per cent.<sup>13</sup> However, due to the rapid expansion of the sector, the actual numbers of non-decent homes increased. In 2006, the number of homes in non-decent conditions stood at just over 1.2 million. In 2012 the figure had risen to more than 1.3 million.<sup>14</sup> The proportional improvement in conditions may also be a result of the disproportionate addition of newer housing stock, rather than the improvement of existing conditions.<sup>15</sup>

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<sup>12</sup> Roys, M., Davidson, M., Nicol, S., Ormandy, D. and Amrose, P. The real cost of poor housing. Bracknell: HIS BRE Press. Nb. BRE have developed a methodology to compare the cost of housing interventions with the potential savings to health services, 2010.

<sup>13</sup> DCLG English Housing Survey 2012-13 Table 12: Non-decent homes by tenure, 2012.

<sup>14</sup> Ibid.

<sup>15</sup> Rugg, J and Rhodes, D. The Private Rented Sector: its contribution and potential, Centre for Housing Policy, The University of York, 2008.

# Shelter's response to the review of property conditions in the private rented sector

## Rights and responsibilities of tenants and landlords

### Tenant Satisfaction

The high levels of tenant satisfaction recorded by the English Housing Survey 2010-2011, and cited in the Government's review document, should not lead to complacency. While we accept that many tenants do not have pressing and immediate concerns about their accommodation, Shelter does not recognise such high levels of satisfaction as reflecting the reality of private renting in 2014.

With one-third of privately rented homes failing to meet the Government's Decent Homes Standard, there is a need for action to improve conditions regardless of perceived tenant satisfaction.

Our work has shown that tenants often have very low expectations and aspirations regarding renting. Longitudinal research with 128 previously homeless households living in the private rented sector found that people had very low expectations of their original tenancy resettlement and often referred to themselves using the phrase 'beggars can't be choosers'.<sup>16</sup> In order to get positive feedback, landlords only had to meet basic legal obligations and behave with common courtesy; tenants felt gratitude towards landlords who made small repairs, rather than properly resolving problems and improving conditions. In these instances the performance of such small repairs was above and beyond the tenant's expectation.

In focus groups Shelter conducted with low to middle income private tenants in Watford, when asked what would improve their experience of private renting, it was noticeable that the participants listed things which are already part of the current legal framework that they are entitled to – but which they, unaware of their rights and routinely placed in a powerless position by their landlord, did not have access to.<sup>17</sup> These included the option to have a 12 month contract with a six month break clause, and the landlord giving appropriate notice to enter the property. We would argue that, given low tenant expectations of both landlord behaviour and property conditions, it is inaccurate to conclude that reported high satisfaction equates to low urgency for reform to improve private renting.

We would also note that 17 per cent of respondents reported that they were dissatisfied with their accommodation. If one in six customers of another form of business were unhappy with the service they had purchased, this would be considered as a company failing- to be addressed with some urgency. Renting should be no different.

### Landlords

The Government's discussion paper heavily attributes poor conditions in the sector to a 'small minority' of 'rogue landlords'. We are delighted that the government has adopted the terminology which we coined and popularised to describe those landlords who treat their tenants unfairly i.e. landlords who rent out homes that are not in a fit state, neglect basic safety standards, carry out financial scams or deliberately exploit or harass tenants. Given that one in 20 tenants have rented from a rogue landlord in the past twelve months, there is a strong need for a determined focus on prosecution and heavier penalties for this behaviour, which is clearly not confined to "a small minority".<sup>18</sup>

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<sup>16</sup> Smith, M., Albanese, F. and Truder, JA Roof Over My Head: The final report of the Sustain project., Sustain: A longitudinal study of housing outcomes and wellbeing in the private rented accommodation. Shelter and Crisis, 2014. Big Lottery Funded.

<sup>17</sup> Two focus groups were conducted with the heads of household from families with children who had been living in the private rented sector for the last five years. The focus groups were organised and run by GfK NOP and took place in December 2011.

<sup>18</sup> YouGov 2014, base 4544 private renting English adults. Jointly commissioned by Shelter and British Gas.

However, this focus should not detract from the far higher number of ill-informed and/or irresponsible amateur and accidental landlords whose actions, while not malicious, may be equally as dangerous for tenants. Our research showed that 27 per cent of landlords could be described as 'accidental' because they rent out a property which they either could not sell or inherited.<sup>19</sup> We also found that only one in six (16 per cent) landlords are either members of a trade body, are accredited or hold a licence. More than three-quarters (77 per cent) of landlords have never been a member of any trade body or held any licence or accreditation.<sup>20</sup> Landlords with more experience and bigger portfolios are more likely to be accredited. Arguably it is this group of landlords who are already aware of their rights and responsibilities. This group also only represents a very small number of landlords in the sector. In contrast to other countries, where the market is dominated by larger more professional landlords, the vast majority of landlords, just under nine-tenths (89%), are private individuals responsible for 71% of all dwellings. More than three-quarters (78%) only owned a single dwelling for rent.<sup>21</sup>

A lack of skill and awareness of legal requirements is widespread. Our research revealed that:<sup>22</sup>

- A quarter of landlords did not know how often they should review their Energy Performance Certificate.
- Nearly one in five landlords surveyed (19 per cent) were not able to correctly state that gas safety certificates need renewing each year.
- Six per cent of landlords we surveyed appeared to be breaking the law on gas safety by not ensuring that boilers are serviced every year and CP12 certificates are up to date in all of their properties.

Intervention should aim to improve conditions and raise standards and professionalism throughout the sector rather than just targeting rogue landlords.

## The Tenants' Charter

*Question 1: In addition to the production of the Tenant's Charter, is there any further action that could be taken to raise awareness amongst tenants and landlords of their rights and responsibilities? Who needs to take this action?*

Shelter welcomes the production of the Tenants' Charter, but there is more that both national and local government to do to raise awareness and reinforce the existing rights of tenants.

### Advertising

The success of the Tenants' Charter in improving awareness is dependent on a high profile marketing campaign and we recommend that the Government allocates a generous communications budget.

Such commitment is not uncommon across the public sector. The Mayor of London has recently committed a substantial marketing budget to the launch of the London Rental Standard. The marketing campaign will run from Spring 2014 to March 2016 at a total cost of £250,000 to the GLA. At least a further £100,000 will also be contributed by the GLA as TfL value in kind advertising space. We urge the Government to follow this example. DCLG itself recently undertook significant promotion of the Help to Buy scheme – including broadcast advertising on ITV during Coronation Street, at a probable one-time cost (excluding production) of £51,000.<sup>23</sup> Shelter would welcome a similar commitment to help improve the position of private tenants.

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<sup>19</sup> YouGov December 2013, base 1,064 UK private landlords. Jointly commissioned by Shelter and British Gas.

<sup>20</sup> Ibid.

<sup>21</sup> DCLG Private Landlord Survey 2010

<sup>22</sup> Ibid.

<sup>23</sup> ITV Estimate that an advert during [Coronation Street costs around £51,000](#).

## Tenancy Relations Service

In addition to the production of the Tenants' Charter, Shelter recommends that national government place a statutory duty on each local authority to provide a tenancy relations service, as a measure to improve awareness of rights and responsibilities. The work of tenancy relations services includes: awareness promotion with both landlords and tenants; conciliation and negotiation between the parties in the interest of resolving landlord and tenant disputes; and where necessary, assisting in the enforcement of duties and in the prosecution of landlords for the criminal offences of harassment and illegal eviction. Very few housing authorities currently provide a tenancy relations service. This situation has worsened since the cuts to local authority budgets in April 2011.

## Improving Section 21 Notices

Shelter also recommends that the government take action to reform the use of Section 21 possession notices in order to professionalise the process and make landlords and tenants more aware of their rights and responsibilities. There are three relatively simple measures that could be taken to do this:

### Prescribed forms

- There are a number of tenancy matters for which it is necessary for landlords and tenants to complete a 'prescribed form'.<sup>24</sup> The forms have been carefully drafted to ensure that the person completing the form does so correctly. Failure to serve the correct form may serve to invalidate it. Shelter recommends that the government also produce a mandatory Section 21 notice form. This would help reduce the number of notices served incorrectly and raise awareness of the rights of both landlords and tenants in this process.

### Time limits

- We also recommend that limits are placed on the length of validity of a Section 21 notice. This would prevent the common practice of serving of a Section 21 notice on tenants in the early stages of their tenancy in order to quickly apply for possession at a much later date. Whilst this is legal, all industry stakeholders agree that this represents poor practice. It has also contributed to local authorities not treating a Section 21 notice as evidence of homelessness, meaning that tenants have to go through a stressful bailiff eviction before they are accepted as homeless by their local authority. This situation presents difficulties for both tenants and landlords.

### Restricting the use of Section 21 Notice to prevent retaliatory evictions

- Finally, Shelter recommends restricting the use of Section 21 notices where a tenant has complained about poor conditions to prevent retaliatory evictions. More details on this recommendation are set out on pages 13-14.

## The Housing Health and Safety Rating System

*Question 4: Should the guidance for landlords be updated and widened to include information for tenants, to help them understand whether a property contains hazards?*

Shelter supports the need for additional guidance for both tenants and landlords on the Housing Health and Safety Rating System (HHSRS). The government's Private Landlord Survey revealed that only 15 per cent of landlords had heard of the HHSRS. The survey also found that 29 per cent of landlords required more information on gas regulation and 27 per cent required more information on fire regulation.<sup>25</sup> Shelter therefore recommends that existing guidance be updated and widened to include information for both tenants and landlords to help them understand whether a property contains hazards under the HHSRS.

## Local Authorities

### Raising awareness of tenants' right to seek help and advice from councils.

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<sup>24</sup> See <https://www.gov.uk/assured-tenancy-forms> for list of 'prescribed forms'

<sup>25</sup> DCLG Private Landlord Survey 2010



*Question 2: What is best practice in raising awareness amongst tenants of their right to seek help and advice from their council and how can this be shared between local authorities?*

Best practice should focus on removing the fear and reality of retaliatory eviction. Our research shows that despite high levels of poor conditions throughout the sector, as little as eight per cent of renters have complained to their local council. However, 29 per cent of renters said they had cause to complain to their local council (this increases to 37 per cent in London, 36 per cent among housing benefit recipients and 34 per cent for families).<sup>26</sup> Moreover, of those that has reason to complain to their local council, only 11 per cent felt it solved the problem and 17 per cent did not because they were worried about the action their landlord or letting agent would take in response to their complaint.<sup>27</sup>

Shelter has long stressed that the main barrier to tenants reporting defects is the lack of protection from retaliatory eviction or other forms of retaliatory action, such as landlord harassment. The implementation of legislative protection from retaliatory eviction is essential to give tenants the confidence to seek help and advice from their local authority. Our proposals on this issue are set out on pages 13-14.

We have been fortunate to work with a range of local authorities who, in the face of budget cuts, are using cost effective and innovative measures to improve their private rented sector by raising awareness among tenants of their right to seek help and advice.<sup>28</sup> It is crucial that local authorities not only ensure that tenants have access to a clear reporting procedure for complaints, but that councils proactively support and protect tenants that are likely to be at risk. This will help make sure that any subsequent action is appropriately targeted. Joined up enforcement and advice will minimise the fallout from the actions of rogue landlords.

#### **Examples of best practice**

**The London Borough of Lewisham** employs a team of specialist private sector advisors to advise private tenants and landlords about their rights and responsibilities and ensure compliance with the law. These advisors act as mediators, will attend incidents and, directly where necessary, help tenants to obtain injunctive relief.

**High Peak Borough Council** tries to target hard-to-reach groups to ensure that they are aware of the minimum standards of housing that they can expect to have.

### **Requests for help and advice from private sector tenants**

*Question 3: What is best practice in dealing with requests for help and advice from private sector tenants and how can this be shared between local authorities?*

Inspection and best practice should not simply focus on reacting to complaints. Proactive management enables local authorities to identify private rented homes that should be prioritised for improvement. It allows councils to understand their local sector and pre-empt any problems that may occur. Another significant benefit of proactive management is that it does not rely upon complaints from tenants, therefore reducing the fear and practice of retaliatory eviction.

The majority of local authority environmental health teams are not however, sufficiently resourced to carry out a proactive response. Instead their work is based upon responding to complaints. Shelter recommends that local authorities set up clear procedures to help reduce the scale of their workload resulting from complaints. More resources can then be made available for proactive work. Working closely with other agencies also enables local authorities to maximise their existing resources and pool

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<sup>26</sup> YouGov 2014, base 4544 private renting English adults. Jointly commissioned by Shelter and British Gas.

<sup>27</sup> Ibid.

<sup>28</sup> Shelter, [What works? Tackling rogue landlords and improving the private rented sector](#), 2013



expertise. Leeds City Council, for example, have demonstrated the success of proactive inspections. In April 2013 a new team of 11 officers was created to proactively inspect properties in targeted areas of the city, addressing the worst areas of housing.

In many areas local authorities are discharging their homelessness duty into the private rented sector. Sustain, a three-year longitudinal qualitative study of people housed in the private rented sector by local authorities and other organisations, conducted jointly by Shelter and Crisis, found that every participant experienced a problem with conditions over the 19 month period that they were interviewed.<sup>29</sup> When discharging vulnerable adults and homeless families into the private rented sector, any property under consideration should be inspected by an officer trained under the Housing Health & Safety Rating System before the accommodation is offered. This would avoid accommodation being offered that has serious hidden health risks, such as fire hazards or carbon monoxide. There should also be greater communication between different agencies and local authority departments, as well as internally within local authorities, to prevent use of a private rented property for resettlement if poor conditions are found. This could include introducing a shared blacklist which would prevent other agencies moving households into the same property unless conditions are improved.<sup>30</sup>

### **Enforcement and prosecution of landlords**

We know that many local authorities are stepping up enforcement action against rogue landlords. Between 2010/11 and 2011/12 the number of successful prosecutions brought against private landlords increased by 77 per cent. By serving notices under the Housing Act 2004, and bringing prosecutions where these are not complied with, local authorities can send a strong message to all landlords that poor conditions and practices will not be tolerated. In a time of tight resources it is important to emphasise that tough, well-publicised enforcement can save money in the long run. By ensuring that successful prosecutions of rogue landlords are publicised locally, all landlords will be encouraged to ensure that their properties meet legal requirements, reducing the need for further enforcement action in the future. We also strongly urge the Government to bring into force section 85 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 as soon as possible. This will lift the cap on magistrates' court fines for housing related offences from £5000, providing a much stronger deterrent to landlords letting properties in poor conditions.

#### **Examples of best practice**

**East Hertfordshire District Council** has a staged approach to responding to complaints, offering advice and opportunities for remote resolution, before following up the more serious cases.

**Slough Borough Council** engages with their area health authority to ensure they can refer vulnerable tenants with infectious lung diseases such as tuberculosis

**Rushmoor Borough Council** investigates all allegations of poor conditions within three days of receipt. If there is an imminent risk to residents they will visit the property that day. They work closely with Hampshire Fire and Rescue Service beyond normal office hours to ensure that properties are safe.

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<sup>29</sup> Smith, M., Albanese, F & Truder. [A Roof Over My Head: The Final Report of the Sustain Project Sustain: A longitudinal study of housing outcomes and wellbeing in private rented accommodation](#), Shelter and Crisis, 2014. Big Lottery Funded.

<sup>30</sup>Smith, M., Albanese, F & Truder. [A Roof Over My Head: The Final Report of the Sustain Project Sustain: A longitudinal study of housing outcomes and wellbeing in private rented accommodation](#), Shelter and Crisis, 2014. Big Lottery Funded. Ibid. p.69

## Retaliatory Eviction

*Question 5: Do you think restrictions should be introduced on the ability of a landlord to issue or rely on a section 21 possession notice in circumstances where a property is in serious disrepair or needs major improvements?*

Shelter has long stressed that that the main barrier to tenants reporting poor conditions- and one that would come into play even if they possessed both higher expectations and awareness of their rights – is the lack of protection from retaliatory eviction.

The majority of tenants have an assured shorthold tenancy of a six or twelve month period. During the fixed term period landlords can only evict a tenant using a Section 8 notice which requires them to provide evidence of certain grounds, such as rent arrears. Outside the fixed term, landlords can use a Section 21 notice to evict tenants. So long as the landlord has protected the deposit and the notice is served correctly, tenants have no defence to a possession claim based on a Section 21 notice.

Our research shows almost a third of tenants (27 per cent) are in rolling statutory periodic rather than fixed term tenancies (the equivalent of just over 1 million households) and a further 11 per cent have no written contract at all.<sup>31</sup> This makes the threat of retaliatory eviction a very real one, and provides a strong incentive for tenants not to risk ‘provoking’ their landlord.

The UK is out of step with other jurisdictions in failing to provide specific legislation to protect tenants who report poor conditions from retaliatory action. In other European countries, many tenants are protected by longer fixed-term tenancies. In countries such as U.S.A (39 of the 50 states provide protection), Australia and New Zealand, where shorter tenancies are more commonplace, tenants have greater powers to challenge an eviction in order to protect themselves from retaliatory action.

There is a significant body of research, which goes beyond anecdotal evidence, which demonstrates that the practice and fear of retaliatory eviction is widespread. Our research shows:<sup>32</sup>

- **Tenants fear retaliatory eviction.** One in eight tenants (12 per cent) have not asked for repairs to be carried out in their home, or challenged a rent increase in the last year because they fear eviction.
- **Tenants do suffer retaliatory eviction.** One in 33 tenants (3 per cent) have been evicted, served with notice or threatened with eviction in the past five years because they complained to their local council or their landlord about a problem in their home. This is the equivalent to 324,172 tenants every year.

There are some groups living in the private rented sector where retaliatory eviction and fear of it is more prevalent. In London fear of eviction increases to 17 per cent and 22 per cent for families in London. The figure also rises to 19 per cent for English households in receipt of Housing Benefit and 18 per cent for Black and Minority Ethnic (BME) households in England.<sup>33</sup>

In the past year the incidence of retaliatory eviction increases to 10 per cent among BME households (17 per cent for London BME households), 13 percent for non-EU nationals, 7 per cent in London (14 per cent for London families), 5 per cent for households in receipt of Housing Benefit (7 per cent for families in receipt of Housing Benefit).<sup>34</sup>

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<sup>31</sup> YouGov 2014, base 4544 private renting English adults. Jointly commissioned by Shelter and British Gas.

<sup>32</sup> Ibid.

<sup>33</sup> You Gov 2014 tenants survey, base 1009 private renting London adults, 4544 private renting English adults. Jointly commissioned by Shelter and British Gas.

<sup>34</sup> You Gov 2014 tenants survey, base 1009 private renting London adults, 4544 private renting English adults, 829 private renting English adults with dependent children. Jointly commissioned by Shelter and British Gas.

The Tenants' Voice found that 71 per cent of tenants have paid for repairs themselves rather than asking their landlord to make them, and that 61 per cent were wary of complaining to their landlords about poor conditions.<sup>35</sup> It should also be noted that 86 per cent of tenants surveyed said that they had never heard of the term 'retaliatory eviction', suggesting that the practice is underreported. These findings are supported by the experiences of frontline housing staff. Shelter regularly witnesses how the practice and fear of retaliatory action deters tenants from exercising their rights. In a recent survey of 48 Shelter advisers, over half said that in 30 per cent of cases where there were poor conditions, tenants were reluctant to take formal action because they were worried that their landlord might evict them. Three quarters said that tenants worried that their landlord would increase the rent if they made a complaint about poor conditions. Worryingly, just over half of advisers said that they thought that the practice of retaliatory eviction had got worse.

"Where demand for private properties exceeds supply, the use of Section 21 notices is prolific for any tenant who raises their head above the parapet tenancy wise" **Shelter adviser**

Shelter Cymru have also carried out research on this practice.<sup>36</sup> They found that *all* the environmental health and tenancy relations officers they surveyed had worked with tenants who were put off from accepting their help because they feared jeopardising their tenancy, and almost 40 per cent reported that tenants were 'often' put off accepting their advice and help. These findings very much reflect the work carried out by Citizens Advice Bureau in 2007, which similarly focused on the experience of environmental health and tenancy relations officers.<sup>37</sup> They also found that all respondents had worked with tenants who were put off accepting their help for fear it might jeopardise their tenancy, and almost half said that this was 'always' or 'often' the case. When respondents were asked if more security was required for tenants when exercising their statutory rights, only two per cent disagreed. These findings not only highlight the impact on tenants but also how the fear of retaliatory eviction affects the ability of frontline housing staff to properly advise tenants and take enforcement action, which is particularly concerning within the context of limited resources.

#### **Amy's story**

"I lived with bad conditions like mould and a boiler that broke all the time. There was some damp in some of the rooms so it smelled musty. I tried calling to complain about the conditions, but he just put my rent up – he said he'd done it to encourage me to leave.

Finally, I wrote my landlord a letter about the conditions I was living in- and he served me with an eviction notice a few weeks later. I'm angry about my eviction, and feel like I'm being punished for complaining. I'd like to fight my landlord over it, but I feel powerless to do much."

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<sup>35</sup> Tenant Voice, 'A third of tenants have been evicted or threatened with eviction after complaining to their landlords', (2013). The results are based on a poll of more than 2,000 tenants from their Facebook Community.

<sup>36</sup> Shelter Cymru, 'Making Rights Real - preventing retaliatory evictions in Wales', 2013.

<sup>37</sup> Citizens Advice Bureau, The Tenant's Dilemma- warning: your home is at risk if you, dare complain, 2007.

### **Greg and his family's story**

"My eldest son was coming up for his exams, and we had him set up in a local school with extra lessons and special measures for his Asperger's. We'd had some trouble in the house with damp and mould, so I reported it to the landlord- three weeks later, he served us with an eviction notice.

Now, we have nowhere to go, and have come to Shelter for help. I don't want to have to move my son from his school as it'll affect him pretty badly, and will put him back at least a year. We haven't been able to hide it from the other kids so they're feeling the stress too. It's extremely frustrating, especially when we didn't do anything to cause it- this shouldn't be allowed."

### **Shelter's proposals**

*Question 6: What would be an appropriate trigger point for introducing such a restriction?*

*Question 7: How could we prevent spurious or vexatious complaints?*

Shelter is calling on the government to put restrictions in place to prevent Section 21 notices being served when a tenant has complained about poor conditions in their home.

Shelter recommends that:

#### **Tenants who report poor conditions to their landlord and are subsequently served with a Section 21 notice should have the right to defend the possession action**

- If a tenant is able to provide evidence from someone who is trained in the Housing Health and Safety Rating System to show that there are Category 1 or 2 hazards present in their home and that they made a complaint to their landlord, or someone who works on their behalf (e.g. letting agent) before the notice was served, then the notice should be treated as invalid.
- The landlord should not be able to serve a valid Section 21 notice for six months subsequently.
- This model most closely resembles international protections for tenants.

#### **An improvement notice or notice of emergency remedial action served by a local authority should operate to prohibit a Section 21 notice**

- The fear of retaliatory eviction is more prevalent than the practice. In order to provide tenants with the confidence to report poor conditions, Shelter recommends that when a local authority serves an improvement notice or takes emergency remedial action, landlords are subsequently prohibited from serving a valid Section 21 notice.
- Local authorities are under a duty to take some form of enforcement action if they discover a Category 1 hazard. While they are not obliged to do so, they also have the power to take enforcement action if they discover one or more Category 2 hazards. Local authorities also have the power to take emergency remedial action if there are hazards present which pose an imminent risk of serious harm to occupiers. They can take remedial action themselves to remove the risk of harm and recover their reasonable expenses.
- Shelter recommends that if a Section 21 notice is served before the improvement notice is served or emergency remedial action is taken, it will also be treated as invalid.
- We also recommend that where an improvement notice is served or emergency remedial action is taken, the landlord should not be able to serve a valid Section 21 notice for a period of six months subsequently.

#### **A Hazard Awareness Notice served by the local authority should also operate to prohibit a Section 21 notice from being served.**

- Many local authorities do not necessarily serve a landlord with an improvement notice if they find Category 1 and 2 hazards in a property. The Housing Health and Safety Rating System enforcement guidance advises that it might be appropriate to wait before serving the notice if

the local authority is confident that the landlord will take remedial action quickly. In this situation authorities are advised to use a hazard awareness notice to record the action and provide evidence that the landlord was informed in the event that they fail to carry out the necessary work.<sup>38</sup>

- Shelter proposes that the hazard awareness notice should also serve to prohibit landlords from serving a Section 21 notice for six months in order to prevent tenants from being evicted before the landlord has considered how to respond to the notice.
- We also recommend that if a Section 21 notice is served before the local authority issues a hazard awareness notice, it should also be treated as invalid.

These proposals would give tenants the confidence to report poor conditions in their homes without fear of retaliatory eviction. There is already a precedent for restricting landlords who have not properly protected tenancy deposits from evicting tenants, and the legislative changes could be modelled on the sanctions for non-protection of deposits in section 215 of the Housing Act 2004. This would ensure that protections for tenants are in line with the broad range of international examples.

A change to the law would also benefit landlords. Often when tenants do not report problems, properties are allowed to fall into disrepair and landlords may ultimately find themselves subject to larger bills, enforcement action and large fines. Our research into landlord business models showed that 71 out of 225 landlords surveyed thought that a tenant not reporting problems when they occurred was a barrier to upgrading and maintaining their property.<sup>39</sup> Reforming the law to encourage tenants to report issues as they arise will help landlords respond promptly, before their property deteriorates further. We also recommend that landlords who wish to sell their property would still be able to issue a Section 21 notice, provided they could produce documents clearly evidencing a binding exchange of contracts to ensure that the proposed sale is genuine.

The involvement of someone trained in the Housing Health and Safety Rating System in verifying reports of poor conditions as the basis for restricting the use of Section 21 notices will protect landlords from spurious tenant complaints.

The proposals put forward by Shelter will ensure that those landlords who wilfully neglect their obligations will rightly be prevented from doing so. This will help improve the reputation of the sector and act as a deterrent to bad practice.

## Statements supporting Shelter's proposals to tackle retaliatory evictions

### The Chartered Institute of Environmental Health

Many of our members working in housing tell us that the fear, and reality, of retaliatory eviction can be a major deterrent for tenants reporting poor conditions. We support the proposals put forward by Shelter as they are simple, straightforward and would offer tenants the protection from retaliatory eviction, while also helping landlords to manage their properties and keep them in good condition.

### The Association of Tenancy Relations Officers

Our members continue to see examples of retaliatory eviction on a regular basis. There are also many more people who, because of the 'no-fault' Section 21 Notice, never report dangerous conditions in the first place or are deterred from accepting help from their local authority. In areas where there is a shortage in the supply of housing, the decision to evict a tenant who complains about poor conditions is often seen as a rational one. The availability of retaliatory eviction therefore encourages unscrupulous landlords to seek out the most vulnerable who are less likely to complain and may also be less able to find accommodation. This is why we support Shelter's recommendations to restrict the use Section 21

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<sup>38</sup> The Office of the Deputy Prime Minister, *Housing Health and Safety Rating System, Enforcement Guidance, Housing Act 2004, Part 1: Housing Conditions*, February 2006. p.10

<sup>39</sup> University of Cambridge and BDRC Continental, *Understanding Landlord Business Models, Preliminary findings, 2014*-unpublished. Jointly commissioned by Shelter and British Gas.

notice. They would provide far more protections for tenants and help tackle poor conditions throughout the sector.

### **Electrical Safety Council**

Introducing restrictions on the use of Section 21 eviction notices where the tenant has complained about unsafe conditions in their home is a sensible step, and equivalent legislation is already in place in many PRS markets worldwide.

If implemented thoughtfully there would be little negative impact on responsible landlords who manage and maintain their properties correctly, but would give tenants much greater security and protection and would help to weed out rogue landlords who have little regard for tenant safety.

### **Generation Rent**

Generation Rent stands firmly behind Shelter's calls to protect renters who complain about poor conditions from sudden eviction. We know tenants can face upheaval and distress, just because they want to live in a decent home. Please support this campaign which will improve security for tenants, end the fear of retaliatory eviction and drive up property conditions across the private rented sector.

### **National Union of Students**

NUS is supportive of Shelter's calls for use of section 21 notices to be restricted where there are serious health and safety hazards present in the property. We believe that this kind of limitation would be likely to improve compliance among landlords and agents, as it appears to have done with tenancy deposit protection legislation. Our research found that while three quarters of students had a problem with their condition of their property, a third of those who had reported it to their landlord or agent found that this was not at all useful in resolving the problem. We need to ensure that tenants are empowered to ask for repairs and improvements without fear of consequences, and with confidence that the landlord will act.

### **Priced Out**

When the government started promoting Buy to Let as a lucrative hobby, it didn't expect the private rented sector to turn into the behemoth that now houses 9 million people. Renters are not being treated with the same respect that they get as consumers of other products, and they can do nothing about it for the simple reason that they need a roof over their heads. Houses need to be treated as homes, not investment opportunities - and we can start by giving renters rights and protections as Shelter are proposing.

### **The Tenants' Voice**

Our own research and experiences mirror the findings of Shelter and having reviewed their proposals we support them 100%. Retaliatory evictions are very real and a hot topic and major concern in the renting community. Families should not be afraid of their landlords and should not be afraid to report a health hazard or other problem. We agree with, and support, all three of Shelter's recommendations and believe, if accepted and implemented, they will go a long way to helping renters feel more comfortable and confident in their homes while finally empowering many to report issues that they have had to put up with for far too long.

### **Kate Faulkner, Managing Director, Designs on Property**

The majority of landlords would never consider evicting or threatening to evict a tenant due to a request for repairs, so the few that do, be they landlords or agents, have no place in the lettings business. For tenants to prevent themselves being subject to this treatment, they should make sure they rent through a letting agent who is a member of NALs or ARLA, so they can also benefit from their rent being protected. Tenants renting directly from a landlord can protect themselves by going to local authority accreditation scheme or choosing a landlord who is a member of RLA or NLA.



It's a good idea in theory for retaliatory action to be prevented for landlords/agents that threaten tenants in this way, but for it to work legally and practically, there needs to be clear definitions of what is not acceptable and local authorities need to confirm their environment officers training is up to date and they can cope with the additional workload.

### **Terrie Lucking, Managing Director, Belvoir Lettings (Peterborough)**

In my opinion involvement in the private rented sector needs to be seen as an investment in a business as against to that of a minority of so called landlords who exploit tenants for unfair or illegal gains (its not profit - as profit comes from a business) in unsafe properties. Many of these so called landlords hide from or ignore various statutory safety requirements plus HMRC tax returns dragging down consumer perception of the industry affecting thousands of professional single and portfolio landlords and investors. Landlords and investors who operate professionally need not fear restrictions in Section 21 Notices proposed by Shelter.

### **The Chartered Institute of Housing**

CIH recognises that most private sector landlords clearly understand that that their tenants have rights regarding the condition of their property and deal promptly with complaints about repairs. But some wrongly assume their tenants are causing trouble and evict them. In their 2007 report [Tenants Dilemma](#) the CAB found that in 2005/06 the service dealt with over 72,000 problems relating to the PRS, of which 13 per cent related to repairs and maintenance issues and 14 per cent to security of tenure. Shelter have also identified challenges associated with poor conditions in the PRS and tenant anxieties around retaliatory evictions in their 2014 publication [Can't complain: why poor conditions](#).

In many other countries where tenants have less security such as Australia, New Zealand and the United States, there is often specific legislation in place to protect against retaliatory eviction. Government should consider prohibiting the use of a Section 21 Notice where a PRS tenant notifies their landlord of poor property conditions; particularly if they can evidence that the property had a category 1 or 2 hazard under the HHSRS prior to the complaint being made.

In addition, where a PRS tenants makes a complaint and their LA serves an Improvement Notice or takes emergency remedial action, their landlord should be prohibited from serving a Section 21 Notice. The HHSRS enables a LA to serve a Hazard Awareness Notice for remote and minor Category 1 and 2 hazards where remedial action is desirable. Where a LA serves a Hazard Awareness Notice for remote and minor Category 1 and 2 hazards, a landlord should not be able to serve a Section 21 Notice.

**A significant number of local authorities, from all over England, also agreed that action needs to be taken. We have showcased a couple of these examples below:**

### **The London Borough of Newham**

The London Borough of Newham agrees that tackling retaliatory evictions is important to improving conditions in the private rented sector (PRS) and Shelter are right to highlight this escalating problem. Local authorities have responsibility for inspecting properties in the PRS once a complaint has been made but as Shelter has pointed out, tenants are often reluctant to make a complaint. Another important problem is that tenants may not know who their landlord is, and equally it's difficult for the local authority to locate the landlord, or the person responsible for managing the property. Borough-wide licensing of the PRS in Newham is helping to create transparency in the sector, so that tenants and the local authority alike know who is responsible for the property and can quickly ensure that improvements are made where necessary. We require landlords to provide written tenancy agreements and rent deposit certificates. Licensing also protects tenants from eviction because landlords cannot evict tenants if they have not licensed their property. The London Borough of Newham agrees with Shelter's call for "pausing" the landlord's ability to serve notice on their tenant where hazards under HHSRS have been identified.

### **Amber Valley Borough Council**



An increasing number of renters tell us that following the council asking their landlords to make repairs, an eviction notice is swiftly served. On top of that we think that we only receive complaints from around 10% of renters who are living in non-decent properties. This is why we strongly support Shelter's proposals to restrict the use of Section 21 notices where there are serious hazards. These protections would provide far greater numbers of renters with the confidence to report poor conditions to their landlord or council.

## Rent Repayment Orders

### Rent Repayment Orders where a property contains serious hazards

*Question 11: Do you think a landlord should be subject to a Rent Repayment Order if they rent out a property that contains serious hazards?*

Shelter welcomes the proposal to extend the use of Rent Repayment Orders to tenants living in properties containing serious hazards. In overheated markets, it is often very difficult for tenants to act as consumers to bargain for better conditions. This measure has the potential to provide tenants with an important tool to do so. It is a basic consumer right that if you pay for a product - in this case a home that is safe and decent – you should be entitled to claim your money back if it does not meet the required standard.

Our research has found that:<sup>40</sup>

- Sixty eight per cent of tenants said they would report their landlord to their council to recover their rent or housing benefit if their property was in poor condition and could cause them harm.
- Out of this group 27 per cent would only do this if they knew they could not be served with an eviction notice.

Tenants who apply for a Rent Repayment Order under the current framework are already protected from eviction because there are restrictions in place to prevent landlords letting out licensable properties without a license from using a Section 21 notice to evict a tenant. It is essential therefore that the government put similar restrictions in place to protect tenants living in poor conditions from retaliatory eviction who apply for a Rent Repayment Order.

One of the advantages of Rent Repayment Orders is that they can be used by tenants who have left a property as well as current occupants. Nearly two in ten renters (18 per cent) who have moved in the last five years stated that one of their main reasons for moving was due to the poor quality of their previous accommodation.<sup>41</sup> Tenants can often feel that they have no choice but to leave their property if their landlord does not improve conditions. Consequently, properties are continuously let in a poor condition, and standards are never improved.

### Shelter's proposals

*Question 12: What should the trigger point be?*

Currently tenants are able to use a Rent Repayment Order to reclaim rent over a twelve month period, where a landlord has been convicted of failing to license a property. An application for an Order can be made to the Residential Property Tribunal (RPT), which is now part of the Property Chamber of the First-tier Tribunal. To claim a Rent Repayment Order, the tenant is required to provide evidence to show they have paid rent over the time period for which they are applying for reimbursement. In a situation where poor conditions are the basis for a Rent Repayment Order, and there is not necessarily a conviction, it would be much more difficult to prove for precisely how long the property has been let in a poor condition. We would therefore recommend that tenants are able to reclaim rent from the point at

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<sup>40</sup> YouGov 2014, base 4544 private renting English adults. Jointly commissioned by Shelter and British Gas.

<sup>41</sup> YouGov 2014, base 4544 private renting English adults. Jointly commissioned by Shelter and British Gas.

which the local authority first informs a landlord that there are serious Category 1 or 2 hazards in the property.

The Housing Health and Safety Rating System Guidance advises that it might be appropriate to wait before serving an improvement notice if the local authority is confident that the landlord will take remedial action quickly. The majority of environmental health officers therefore serve a hazard awareness notice initially rather than an improvement notice. If action is not taken to make repairs or improve conditions, an improvement notice may then be served containing a schedule of works and a time period within which they have to be completed.

We recommend that if the landlord carries out remedial works to the property following a hazard awareness notice or improvement notice then the tenant should be able to reclaim a proportion of rent as partial compensation for living in substandard accommodation. The RPT should decide what proportion to award a tenant based on the severity of the poor conditions. They would be entitled to reclaim rent from the point at which the landlord was first informed of hazards in the property, either by a hazard awareness notice or an improvement notice. So for example, if it took two months from the landlord initially being served with a notice to complete the works, then the tenant should be able to reclaim a proportion of their rent for those two months.

If the landlord fails to comply with the notice within the specified time period, we recommend that the tenant should be eligible to reclaim the whole of the rent from the point that the initial notice was served until the present date, if the tenant is still living in the property, or otherwise until the date they left.

In both scenarios evidence would have to be provided by an environmental health team to verify poor conditions, and to confirm whether or not the landlord completed the works in the specified time, and the date on which the works were completed. In addition, tenants would also be required to provide evidence that they had been paying rent during this period as they are currently required to do.

These recommendations would help to incentivise landlords to carry out repairs and improve conditions swiftly. Our research showed that 1 in 12 (8 per cent) renters have waited longer than a month for their landlord/ letting agent to deal with urgent repairs and in the last year 24 per cent of renters reported that their landlord/ letting agent did not carry out repairs or deal with poor conditions at all.<sup>42</sup>

Additionally, landlords who take action quickly to resolve problems would not be liable to repay the rent in full whereas rogue landlords who rent out properties in poor conditions and do not comply with improvement notices would be rightly penalised.

*Question 13: Should a Rent Repayment Order be in addition to, or instead of, any damages that the tenant may also be awarded, or other action taken by the local authority, for example a prohibition on renting out the property?*

Rent Repayment Orders are rarely used by local authorities and even more rarely used by tenants. It is essential that the Government takes measures to ensure that they are more accessible to all parties. Currently local authorities can apply for a Rent Repayment Order regardless of whether the landlord has been convicted. For tenants, the landlord must already have been convicted, making it much more difficult for them to bring a case. Our proposals would not require a conviction, removing this obstacle for tenants who apply for a Rent Repayment Order without the support of the local authority.

To raise awareness among tenants of their right to apply for a Rent Repayment Order we recommend that Government make it a requirement that environmental health teams provide tenants with standard guidance, drafted by DCLG, on the procedure at the point at which they serve an improvement notice or a hazard awareness notice and the point at which the landlord either completes the schedule of works or fails to do so.

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<sup>42</sup> YouGov 2014 Tenant Survey- this stat hasn't been checked by Francesca.

Local authorities should also be given greater scope to reclaim the costs for the resources they invest in serving notices and providing evidence to the RPT. We are often told by local authorities that the cost associated with amass evidence for the RPT is why the number of Rent Repayment Orders is so low. We also recommend that local authorities are required to reinvest money they receive from a Rent Repayment Order (where the rent has been paid in part or whole by Housing Benefit) into tackling poor conditions in the private rented sector.

An Order should also not prevent local authorities from taking other forms of action such as serving a prohibition order. Rent Repayment Orders should serve as an additional deterrent to landlords letting out properties in poor condition.

## Illegal evictions and hazards in the homes: rent repayment orders

*Question 8: Do you think government should introduce Rent Repayment Orders where a landlord has been convicted of illegally evicting a tenant?*

*Question 9: Should this be in addition to, or instead of, any damages the tenant may have received, or action taken by the local authority, for example a prohibition on renting out the property?*

Shelter supports proposals to give tenants who are illegally evicted recourse to reclaim their rent using a Rent Repayment Order. Depending on the severity of the illegal eviction and the hardship suffered by the tenant, the RPT should have the power to make landlords pay back between two to six months' rent. The RPT should take into account the manner in which the tenant was evicted, the notice they were given (if any) and the disruption it caused them.

As the proposals stand, however, the numbers of tenants who have been illegally evicted and would benefit from this measure would be extremely low. Local authority use of enforcement powers under the Protection from Eviction Act 1977 (PEA) is patchy and sometimes non-existent. Additionally, many police forces think that illegal eviction is a civil matter and it is rare that they would investigate an offence unless violence has been used. As a result there is a large disparity between the numbers of illegal evictions and the numbers of landlords prosecuted for this offence. Between 2008/09 and 2011/12 the number of complaints concerning illegal evictions increased by 13% (an increase from 1,533 to 1,738).<sup>43</sup> This figure undoubtedly only represents a very small numbers of the tenants who are illegally evicted. However, in 2011 only 13 successful prosecutions occurred for unlawful eviction.<sup>44</sup>

Many landlords do not fear prosecution or investigation. As the law currently stands landlords convicted under the PEA are only subject to a maximum fine of £5000 in the magistrates' court. This does not serve as a strong enough deterrent, given average rents, and considering the significant impact on the tenant, fails to match the severity of the crime. If a magistrate determines that the punishment should be more severe than a £5000 fine, their only alternative is a custodial sentence of up to six months, or to commit the case to the Crown Court. Shelter recommends that the government provides magistrates with scope to hand out much higher fines to landlords who illegally evict tenants. We strongly recommend that section 85 of the Legal Aid Sentencing and Punishment of Offenders Act 2012, which will lift the cap on fines for housing related offences, should be brought into effect as soon as possible and should also apply to offences committed under the Protection from Eviction Act.

In addition we support the Association of Tenancy Relations Officers' recommendation to make it mandatory for local authorities to investigate alleged PEA offences, and to prosecute cases where there is sufficient evidence and it is in the public interest to do so. To provide the resources for this work, Shelter also recommends that the government place a statutory duty on local authorities to provide a tenancy relations service, whose focus would include taking steps to assist in the enforcement of duties

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<sup>43</sup> Shelter FOI, 2012. On 23 July 2012 Shelter submitted a Freedom of information request to all English local authorities. This asked thirteen questions concerning complaints received concerning private rented accommodation and subsequent enforcement action against private landlords. Out of the 326 local authorities contacted we received 310 responses (a response rate of 95%)

<sup>44</sup> Hansard 19 Nov 2012 : Column 284W

and in the prosecution of landlords for the criminal offences of harassment and illegal eviction, as well as fostering good practice in the private rented sector.

*Question 10: Should a Rent Repayment Order be issued automatically where a landlord has illegally evicted a tenant?*

Because of the low levels of prosecutions for illegal eviction, we also recommend that the government extend the use of Rent Repayment Orders to tenants who have been illegally evicted, but whose landlord has not been prosecuted. In these circumstances the RPT would take evidence from the tenant and the landlord, and if available from local authority officers, and would need to make findings of fact. Any sum awarded under a Rent Repayment Order would be taken into account in the assessment of any civil damages awarded to the tenant by way of compensation for the landlord's actions.

## Safety Conditions

### Smoke alarms and carbon monoxide detectors

*Question 15: Should private sector landlords be required to install, and maintain, smoke alarms in their properties or would a non-regulatory approach be a better option?*

*Question 16: Should private sector landlords be required to install, and maintain, carbon monoxide alarms in their properties or would a non-regulatory approach be a better option?*

The Energy Act 2013 allows the government to make orders requiring all private sector homes to be equipped with smoke alarms and carbon monoxide detectors.<sup>45</sup> Shelter strongly urges the government to use these powers and implement these obligations as soon as possible. HMOs and properties built after 1992 are already required to have smoke alarms fitted.

Evidence from the English Housing Survey shows high levels of safety issues regarding risk of fire in privately rented homes compared to other tenures. Despite only making up 18 per cent of the overall housing stock, privately rented homes account for 29 per cent of the million homes that were classified as posing a significantly higher than average fire risk.<sup>46</sup> Shelter research found that only 52 per cent of renters reported having a working smoke alarm in their current property and only 23 per cent reported having a fire extinguisher and or a fire blanket in a property in the last year.<sup>47</sup> Two per cent of renters reported they had experienced a fire in their home caused by poor conditions in the last year, this is higher for BME households (7%) and those of non-EU nationality (11%).<sup>48</sup>

The Gas Safety Trust have reported that private tenants have at least 4.4 times greater risk of a carbon monoxide incident than those living in other tenures.<sup>49</sup> Our research found that only 47 per cent of all landlords have carbon monoxide detectors fitted in all the homes that they let and two per cent of tenants have experienced carbon monoxide poisoning in the past year.<sup>50</sup> Installing a carbon monoxide detector is a relatively low cost measures (the Gas Safety Trust estimate that the average detector cost £15) that landlords can take to prevent serious injury or fatality.

That so many private landlords are not taking adequate steps to ensure that the homes they let are safe from fire or a carbon monoxide incident demonstrates the need for legislative measures to be swiftly enacted.

### Electrical Safety

*Question 18: Do you think that the current approach strikes the right balance or should there be a statutory requirement on landlords to have electrical installations regularly checked?*

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<sup>45</sup> Section 150 of the Energy Act 2012

<sup>46</sup> DCLG English Housing Survey, Homes Report 2011.

<sup>47</sup> YouGov 2014, base 4544 private renting English adults. Jointly commissioned by Shelter and British Gas.

<sup>48</sup> Ibid.

<sup>49</sup> Gas Safety Trust, *Gas Safety Trust Carbon Monoxide Incident Report*, 2012, p.15

<sup>50</sup> YouGov 2014, base 4544 private renting English adults. Jointly commissioned by Shelter and British Gas.

Shelter support the Electrical Safety Council's recommendation to introduce mandatory five-yearly safety checks, by a competent person, of the electrical installation and any electrical appliances supplied with private rented sector properties, along with requirements for provision of relevant safety certificates to tenants. These measures would bring electricity more in line with requirements for gas installations, which by law must be checked every year. Five year periodic inspections are already recommended by the Institution of Engineering and Technology (IET). The Electrical Safety Council reports that a five year periodic inspection would only cost a landlord between £100 and £150, which equates to around £3 a month when spread over a five year period. This does not therefore place an undue burden on landlords. It is important to note that given that the Management Regulations require electrical installations in Houses in Multiple Occupations (HMOs) to be checked on a five yearly basis, there is a precedent for these measures.

The changes we are proposing are very easy to implement. The primary legislation already exists and the costs to landlords are minimal. Most sensible landlords will already ensure their electrical wiring is checked at least every five years. This legislation will catch those at the bottom of the market who put their tenants wilfully at risk.

Some of the worst instances of landlord neglect relate to poor electrical safety. Electrical hazards are silent and unseen so tenants often have little warning before something goes seriously wrong. The English Housing Survey shows that around half of homes in the private rented sector do not meet all five electrical safety features.

	all PVC wiring	all modern earthing	modern consumer unit	MCB	RCD in consumer unit or separate RCDs	all 5 electrical safety features
Tenure	All figures %					
owner occupied	97.9	92.3	64.6	72.8	62.4	46.7
private rented	97.9	92.5	69.0	77.7	64.3	49.3
local authority	97.4	95.4	75.8	91.4	79.5	62.1
housing association	98.4	96.6	80.3	93.7	84.3	67.2

Source: Survey of English Housing Homes Report 2011. Annex Table 3.11: Electrical safety features by tenure, 2001 and 2011

Our research shows that 16 per cent of tenants have experienced a problem with electrical hazards in the past twelve months.<sup>51</sup> Three per cent of tenants said they had replaced electrical wiring in their homes themselves.<sup>52</sup> Our landlord surveys also shows that:

- Twenty three per cent of landlords don't have regular inspections on electrical wiring and appliances carried out in in any of their properties.<sup>53</sup>

<sup>51</sup> YouGov 2014, base 4544 private renting English adults. Jointly commissioned by Shelter and British Gas.

<sup>52</sup> YouGov 2012 base 4327 private renting English adults. Jointly commissioned by Shelter and British Gas.

- Twelve per cent of landlords have experienced an electrical fault in the homes they let in the last three years.<sup>54</sup>

In 2010, Shelter conducted a survey with 184 Environmental Health Officers. Ninety per cent of officers who responded said they had encountered electrical hazards in the past 12 months. This was the fourth highest problem (out of 17 that were listed) after damp and mould, excess cold, and fire safety.

### The Landlord and Tenant Act 1985

*Question 17: Does the Landlord & Tenant Act 1985 cover the right areas, or should it be broadened to cover other issues?*

The Landlord and Tenant Act 1985 broadly covers the right areas. It should however been updated to make it applicable to more tenants. In addition, the civil legal aid changes brought about by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, which Shelter have campaigned vigorously against, mean that the Act no longer provides sufficient protection from poor conditions. Given the limited scope of the Landlord and Tenant Act 1985 for improving poor conditions in the sector, it is essential that the government ensures that local authorities are given sufficient resources and flexibility to enforce standards using the Housing Health and Safety Rating System, as outlined elsewhere in our response.

Section 11 of the Landlord and Tenant Act 1985 provides the basis for a tenant to claim damages and/or get an injunction if a property is in poor condition caused by disrepair. The section places a duty on landlords to repair the structure and exterior of a property; the installations for the supply of water, gas and electricity and for sanitation; and the installations for heating and hot water. Section 11 does not however, cover design defects such as a lack of ventilation causing condensation, dampness or public health matters such as infestation. The only exception would be if for example, an infestation is caused by disrepair such as broken pipes. As a result of cuts to legal aid it is only available to assist tenants in taking action for breach of the landlord's repairing duties where an injunction to carry out repair works is required and where there is a 'serious risk to health or safety' to the occupiers. This remedy is now therefore inaccessible to the majority of tenants.

Section 8 of the same Act should be a very important measure in improving conditions as it works to ensure that privately rented homes are 'fit for human habitation'. It inserts an implied term into a letting agreement whereby the landlord undertakes (1) that the accommodation is fit for human habitation at the start of the tenancy; and (2) that it will be kept fit for human habitation by the landlord during the tenancy. It is however, completely obsolete as it only applies where the annual rent is less than £80 in London, and £52 elsewhere. These would have been low, but not entirely unrealistic, rents in 1957, when the last uprating took place.

**We recommend that the government legislate to remove the rent limits from section 8 entirely.** There is no reason whatsoever why a basic standard of fitness for human habitation should not apply to all lettings and it would serve to send a strong message to landlords of their legal requirement. It must be noted again however, that legal aid is only available for court action where there is a serious risk to the health or safety of the occupiers and the tenant is seeking an injunction to put matters right.

### Licensing of rented housing

#### Voluntary Accreditation

*Question 19: How effective is voluntary accreditation as a way of driving up standards?*

Accreditation is of limited value in driving up standards in the private rented sector. Voluntary accreditation schemes provide an opportunity to raise professional standards across the sector. For

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<sup>53</sup> YouGov December 2011, base 1,064 UK private landlords. Jointly commissioned by Shelter and British Gas.

<sup>54</sup> YouGov March 2013, base 1004 UK private landlords. Jointly commissioned by Shelter and British Gas



amateur and accidental landlords they can provide an important source of education and guidance. The numbers of landlords that access voluntary accreditation schemes however, is extremely low. Shelter research shows that only one in six (16 per cent) landlords are either members of a trades body, or hold an accreditation or licence, and more than three-quarters (77 per cent) have never been a member of any trade body or held any licence or accreditation.<sup>55</sup> Landlords with more experience and bigger portfolios appear most likely to be 'accredited'.<sup>56</sup> Arguably, this is the group that has the least to gain from accreditation.

In many areas of the market where the demand for rented homes outstrips supply and landlords are confident of a steady supply of tenants and regular rent increases, there are very few incentives for landlords to join accreditation schemes in order to attract tenants. In an overheated market, where the competition for homes is fierce, tenants are unlikely to be able to 'choose' to rent from a landlord who is accredited. Moreover, these schemes are ineffective in tackling rogue landlords. It is therefore essential that accreditation is underpinned by robust, proactive inspections to root out the landlords who never come forward to join these schemes and let out properties in poor condition.

## Selective Licensing

*Question 20: Should we consider introducing tighter restrictions on the use of selective licensing to avoid putting unnecessary burdens on good landlords?*

Shelter supports the ability of local authorities to use selective licensing as a measure to help improve conditions and drive up professionalism in the sector. We would not therefore support an introduction of tighter restrictions on its use – including tighter geographic restrictions.

Licensing helps local housing standards enforcement officers identify privately rented properties in their area, enabling them to develop proactive inspection and enforcement programmes. This is especially important at a time when local authorities are facing budget cuts and environmental health teams are often under resourced.

Far from being an unnecessary burden, licensing provides an opportunity for good landlords to identify themselves to the local housing authority. This makes it easier for local enforcement officers to prioritise identifying and inspecting unlicensed properties, which may have poor standards of maintenance and management. Requiring contact information for private landlords in their area allows local housing authorities to offer services to improve their practice, such as regular information updates, training courses, forums and signposting to local statutory and voluntary services. Licensing therefore is an important tool to improve the sector, not only to deal with landlords who deliberately exploit tenants, but for the large numbers of amateur and accidental landlords who are unaware of their responsibilities.

Recent research suggests that the majority of landlords would face few financial barriers to paying licensing fees. Based on an analysis of the Wealth and Asset Survey, the Strategic Society Centre found that 61 per cent of landlords considered that they could cope for a year or more if their income dropped by a quarter.<sup>57</sup> A recent Shelter survey also found that three quarters of landlords collect more in rent than their total costs (mortgage, insurance, maintenance etc.).<sup>58</sup> Forty three per cent of landlords have no outstanding mortgage costs and only 16 per cent had mortgages worth 75 per cent of the value of their portfolio or more.<sup>59</sup> Our recent unpublished research into Landlord Business Models found that a quarter of landlords thought that selective licensing was the most significant incentive for upgrading and maintaining a property.<sup>60</sup>

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<sup>55</sup> YouGov December 2013, base 1,064 UK private landlords. Jointly commissioned by Shelter and British Gas.

<sup>56</sup> Ibid.

<sup>57</sup> Lord, C, Lloyd, J, Barnes, M, Understanding Landlords, A study of private landlords in the UK using the Wealth and Assets Survey, Strategic Society Centre (2013).

<sup>58</sup> YouGov December 2013, base 1,064 UK private landlords. Jointly commissioned by Shelter and British Gas.

<sup>59</sup> Ibid.

<sup>60</sup> University of Cambridge/ BRDC Landlord Business Models research 2014, unpublished.



Rather than restricting the criteria for selective licensing, Shelter recommends that it is extended to include high demand and poor conditions. The primary function of licensing should be to improve property management and conditions. Many local authorities, not facing the problem of low demand, are forced to make a case on the grounds of antisocial behaviour where there is not necessarily a specific link to poor conditions or management standards. Making a case on these grounds attributes blame for poor conditions on tenants, rather than focusing on the role of landlords.

In areas of high demand, where tenants are less able to act as consumers and bargain for better conditions, standards are often far worse. For example, in London, England's highest demand market, 40 per cent of tenants worried that their landlord would not keep the accommodation in good order—higher than all other English regions except the North.<sup>61</sup> Our recent research into landlord business models also found that landlords letting properties in high demand areas are less likely to invest in maintaining and improving property conditions.<sup>62</sup>

### **Licensing and rogue landlords**

*Question 21: Should we consider introducing an approach which would enable local authorities to focus any licensing scheme solely on rogue landlords?*

In addition to rogue landlords, there are far more amateur and accidental landlords, whose actions, while less malicious, can be equally dangerous and whose behaviour could be improved via licensing. See above response for details. Shelter does not therefore support selective licensing schemes targeted specifically at individual rogue landlords.

One problem with targeting individual rogue landlords is that they are not easily identifiable. Many tenants will not necessarily report a problem for fear of retaliatory eviction, particularly if they are renting from a rogue landlord that is more likely to engage in this practice. As a result prosecution numbers remain relatively low.

Our research has shown that one in 33 tenants (3 per cent) reported that they currently rent from a rogue landlord, and one in 20 (5 per cent) said they have done so in the past twelve months but are not currently.<sup>63</sup> It is important that licensing serves to penalise them more heavily. It is possible however, to apply a geographical licensing scheme, as at present, which penalises rogue landlord and rewards landlords who keep their properties in a good condition. For example, schemes can offer a discounted fee for landlords who apply early or are members of accreditation schemes. They can also offer longer licences to landlords letting out properties in a good condition. Shelter also strongly recommends that licensing should be accompanied by proactive inspection and enforcement work in order to target rogue landlords who will not necessarily apply for a license.

### **Housing Health and Safety Rating System**

*Question 23: Do you think the methodology that underpins the Housing Health and Safety Rating System and/or the accompanying operational guidance need to be updated?*

Shelter supports the use of a methodology of risk assessment to determine the danger that poor conditions pose to the health and safety of tenants. It is essential that the focus of the assessment remains as such. We support the Chartered Institute of Environmental Health's (CIEH) position that the HHSRS is a far better system than the bricks and mortar approach previously imposed under the Housing Act 1985. Reverting to a 'prescriptive standards' approach that does not account for individual circumstances and the health and safety of the tenant would be an unwelcome and retrograde step.

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<sup>61</sup> YouGov 2011, base: 541 private renting GB adults. Fieldwork:2-5 December 2011

<sup>62</sup> University of Cambridge and BDRC Continental, Understanding Landlord Business Models, Preliminary findings, 2014-unpublished. Jointly commissioned by Shelter and British Gas.

<sup>63</sup> YouGov 2014, base 4544 private renting English adults. Jointly commissioned by Shelter and British Gas.

However, we think the HHSRS could be improved and support the following recommendations from the CIEH:

- The government should undertake a review of the statutory enforcement guidance issued under Part 1 of the 2004 Act. The Secretary of State has power to provide a direction under Section 3 of the 2004 Act on how the duty on local housing authorities to review housing conditions should be met and such direction is needed as most local authorities only deal with complaints, meaning that the most vulnerable tenants of the worst landlords are likely to go unprotected.
- The Enforcement Guidance should also be reviewed. The Operating Guidance requires review and revision in light of experience and decisions made in the Residential Property Tribunal/First-tier Tribunal (and Upper Tribunal), although it can be argued that most of the problems that have arisen stem from the poor drafting of Part 1.
- The Enforcement Guidance should also be updated to provide advice on how to gather local data to enable local averages for the likelihood and spread of harms for hazards to be developed. The data on excess cold remains the most controversial and certainly needs updating. The private rented sector contains a disproportionate number of cold or difficult to insulate homes. A complex mix of factors including rising fuel prices, the disparity between gas and electric prices and many cold and difficult to treat homes in the national private rented stock create a situation where there is inconsistent opinion and enforcement.

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