

## **Shelter submission**

### **Housing, Communities and Local Government House of Commons Select Committee**

### **Inquiry into the impact of COVID-19 (Coronavirus) on homelessness and the private rented sector**

Shelter helps millions of people every year struggling with bad housing or homelessness through our advice, support and legal services. And we campaign to make sure that, one day, no one will have to turn to us for help.

We're here so no one has to fight bad housing or homelessness on their own.

## Contents

Summary.....	2
Recommendations.....	4
Responses to specific questions.....	5
1. How effective has the support provided by MHCLG and other Government departments in addressing the impact of COVID-19 on those in the private rented sector, rough sleepers, and the homeless?.....	6
a) The private rented sector .....	6
b) Rough sleepers.....	9
c) Other homeless households.....	10
2. What problems remain a current and immediate concern for these groups? .....	11
a) Rent arrears.....	11
b) Risk of eviction.....	12
c) Discrimination .....	12
3. What might be the immediate post-lockdown impacts for these groups, and what action is needed to help with these? .....	13
a) Private rented sector.....	13
b) Homelessness .....	16

## Summary

- We welcome the opportunity to submit evidence to this inquiry.
- Every week, we work with people threatened with, or experiencing, debt, bad housing and homelessness. Decades of underinvestment in social housing has left hundreds of thousands of people without a safe home they can stay in during this pandemic, risking infection in overcrowded and unsuitable accommodation. Some at the sharpest end of the housing emergency are unable to access the emergency shelter they need to stay safe off the streets because of strict eligibility tests that, without government guidance, councils are still applying.
- An unaccountable and expensive private rental sector and weakened welfare system have buckled under the pressure of coronavirus, putting millions more people at risk of homelessness as the health crisis gives way to a perilous financial landscape.

- Last year, more than 4.7 million people came to Shelter for help with housing and homelessness problems across England and Scotland.<sup>1</sup> Our emergency helpline is there for anyone in urgent need of housing advice. Through just our helpline, in the last month we received a total of **24,134 calls**, an increase of **18%** compared to the previous month.
- **60% of calls and messages were directly related to the impact of coronavirus.** Homelessness remains a major issue even during the coronavirus outbreak. Of the calls answered, **37%** of people were currently homeless, and **33%** were at risk of homelessness.
- We are working with homeless individuals and families who are desperate because they have nowhere safe to stay during the pandemic or are in homeless accommodation where they cannot follow public health advice. Their lives are at risk until a vaccine or successful treatment is widely available.
- These include people who aren't entitled to homelessness assistance even during the pandemic because their immigration status deems them ineligible, and people who can't claim Universal Credit because they have No Recourse to Public Funds (NRPF).
- Furthermore, the impact of lockdown is already resulting in further homelessness, with growing numbers likely as a result of the subsequent recession. Loss of employment, reduced hours and sickness/self-isolation is resulting in rent arrears, poverty and homelessness.
- We are seeing increasing numbers of people contacting us because they have lost their job or income and cannot pay their rent. Our recent polling suggested 1.7 million renters expect to lose their jobs by the end of June<sup>2</sup>. Meanwhile, 1.5 million new claimants have applied for Universal Credit (UC)<sup>3</sup>, many of whom have never previously claimed benefits.
- The government's restoration of local housing allowance rates to cover the bottom third (30<sup>th</sup> percentile) of local rents is welcome. But those who rent a modest home on an average local rent still face growing arrears and the fear of eviction.
- Many thousands more haven't benefitted from the restoration of rates because they are hit by the benefit cap as a result of being unable to work for more than 16 hours a week and are not covered by the grace period of exemption. Even before the rates were raised (in November 2019), 76,398 households had their benefits capped.<sup>4</sup> Many more will be capped now more are claiming and now that the rates are higher. The benefit cap leaves

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<sup>1</sup> [https://england.shelter.org.uk/\\_data/assets/pdf\\_file/0016/1405006/OBR-1177\\_Impact\\_report\\_and\\_one\\_pager\\_A4\\_Digital\\_v17\\_FINAL.pdf](https://england.shelter.org.uk/_data/assets/pdf_file/0016/1405006/OBR-1177_Impact_report_and_one_pager_A4_Digital_v17_FINAL.pdf)

<sup>2</sup> [https://england.shelter.org.uk/media/press\\_releases/articles/1.7\\_million\\_renters\\_expect\\_to\\_lose\\_their\\_job\\_in\\_the\\_next\\_three\\_months](https://england.shelter.org.uk/media/press_releases/articles/1.7_million_renters_expect_to_lose_their_job_in_the_next_three_months)

<sup>3</sup> Data from the Department for Work and Pensions (DWP) suggest that between 1 March and 12 April 2020 1,513,310 households made a claim for UC. DWP, Universal Credit Statistics, [Universal Credit: 29 April 2013 to 12 March 2020](#), Management information tables: 1 March to 12 April 2020

<sup>4</sup> Data from DWP suggests that in November 2019 there were 76,398 households that had either their housing benefit or UC capped. DWP, [Benefit cap: number of households capped to November 2019](#), Table 2 and Table 9

families with huge shortfalls and growing rents arrears facing eviction and homelessness.

- The benefit cap can also act as a financial barrier to leaving an abusive partner and finding alternative accommodation forcing people to choose between abuse or homelessness.
- We welcome the government's action to extend possession notice periods and suspend possession proceedings to ensure most renters can't be evicted during until the end of June.
- But this is only prolonging the inevitable for people who've lost work and continue to rack up arrears because local housing allowance doesn't cover average rents. They need on-going protection from arrears and eviction due to coronavirus when the eviction suspension ends.
- Without this, evictions and homelessness will increase, and local authorities, who are already struggling financially as a result of the pandemic, are likely to have to deal with a big spike in homeless applications, and rough sleeping will undoubtedly increase.
- The government must build on the very welcome emergency measures already implemented to ensure rough sleeping and homelessness do not increase, and safe and stable homes are available.

## Recommendations

**To protect those who are already homeless or who become homeless during the pandemic**

- **MHCLG must urgently publish guidance confirming who is entitled to emergency accommodation for the duration of the pandemic.** This should make clear that people with nowhere safe to stay should be regarded by councils as having a priority need for emergency accommodation on public health grounds.
- **Government should re-issue guidance making it clear that local authorities should use the General Power of Competence (Section 1, Localism Act 2011) to provide emergency accommodation to all who cannot access accommodation through other legislation as a result of their immigration status.**
- **Government should temporarily suspend Habitual Residency Test requirements for the duration of the pandemic.**
- **The Home Office's emergency measures to provide accommodation support for all asylum seekers should continue for at least the duration of the pandemic.**

## To prevent growing homelessness and rough sleeping

- **Local Housing Allowance must be increased so that it covers average rents.** Rates should be temporarily lifted to cover the 50th percentile of local rents to ensure people can pay their rent during the pandemic and ensuing economic uncertainty.
- **The benefit cap must be removed for at least the next 12 months,** while the government's emergency measures are in place. This will ensure the people, including those needing to flee domestic abuse, don't face homelessness and rough sleeping.
- **Government must legislate quickly to ensure that landlords must follow a pre-action protocol** before seeking possession to avoid an eviction cliff-edge when the halt to possession proceedings comes to an end.
- **Government must amend Sections 8 and 21 of the Housing Act 1988 to prevent judges from being forced to grant a possession order** where it is unjust to do so due to coronavirus.
- **Government must prevent discrimination** against local housing allowance claimants by letting agents and landlords through:
  - (1) **introducing a legally enforceable Code of Practice that requires private renters in receipt of housing benefit to be treated equally by property agents and landlords; and**
  - (2) **amending the Housing and planning Act 2016 (Banning Order Offences Regulation 2018) to make court findings of discrimination under the Equality Act 2010 by landlords or property agents, in their line of work, an offence.**
- **The No Recourse to Public Funds condition should be lifted** for people with Leave to Remain so that they can access statutory homelessness assistance and Universal Credit.
- The government must **invest in an ambitious program of social housebuilding** as a key part of the economic stimulus package that is likely to be needed post-crisis. This will boost the economy and ensure that homeless people and those on low incomes including many key workers can access affordable, decent homes.

## Responses to specific questions

## 1. How effective has the support provided by MHCLG and other Government departments in addressing the impact of COVID-19 on those in the private rented sector, rough sleepers, and the homeless?

### a) The private rented sector

MHCLG introduced welcome emergency measures to protect both social and private renters from eviction while the public health crisis is ongoing. In a time where government advice was to stay home, it was essential that action be taken to prevent renters from losing their home and risk having nowhere else to go.

#### Extending notices

On March 26<sup>th</sup>, 2020, government announced that landlords serving notice between March and September 2020 would be required to serve tenants three months' notice, regardless of the grounds for possession used. While this was welcome, it did not meet the government's aim of stopping evictions for a period of three months.

Renters who are entitled to a court order under the Protection from Eviction Act 1977 do not legally have to leave their rented property until they have been evicted via a warrant issued in the county court. However, we know that **most private renters start looking for a new privately rented property once they are served with a notice seeking possession**. In the majority of cases where a landlord has taken steps to remove a tenant (two-thirds or more<sup>5</sup>), the tenant leaves before it goes to court.

The Secretary of State ensured it is within government's power to extend the six-month period in which landlords are required to give three months' notice beyond September 2020 if necessary. However, it is important to note that notices already served cannot be retrospectively extended. Therefore, **renters served with an eviction notice in March would be expected to leave the property three months' later, in June, whatever situation the country is in by that time**.

#### Stopping evictions

So, while **extending the notice period gives more time to tenants who were served with a notice seeking possession from the date the legislation passed, it provided no protection to renters who were already in their notice period**.

For renters already in the eviction process, their landlords remained free to apply to court for a possession order. There are thousands of housing possession cases going through the county courts at any given time. 20,334 households faced eviction through court orders in

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<sup>5</sup> YouGov survey of 1009 private landlords letting in England, online, 18+, Dec 2019 – Jan 2020.

April-June 2019. Assuming that a similar number of claims would have been submitted in Q1 of 2020 and would have processed through to order stage in Q2, thousands of households were facing eviction and possible homelessness without government intervention.<sup>6</sup>

We were therefore relieved that after we raised concerns, MHCLG announced that there would be a 90-day suspension of possession proceedings, which guaranteed that most renters were protected from eviction and would not be forced to leave their homes at a time when the government is instructing people to stay home.

The announcement of this Practice Direction, ordered by the Lord Chancellor and Master of the Rolls, gave the courts clear directions to suspend proceedings. **This suspension will run up until June 25<sup>th</sup> 2020, at which point housing possession cases will recommence in the county court.**

See our response to question 3 for what we believe is now needed to avoid a big increase in evictions and consequent homelessness when the evictions ban is lifted.

### **Conditions and Enforcement**

Alongside this, government released guidance that stated, “landlords’ repair obligations have not changed” and that the COVID-19 pandemic “is no reason to allow dangerous conditions to persist”.

Despite this guidance, we are receiving cases through our services which show that landlords and agents are refusing to remedy urgent disrepair issues. For example, our services have been supporting a family who have children with bronchitis and who have severe damp and mould in their home which their agency is refusing to resolve. Issues like this are pronounced at a time when COVID-19 presents severe respiratory health risks.

Furthermore, despite the ban on evictions in the courts, our services have received cases of people being threatened with illegal eviction. We are concerned that this will be a significant post-lockdown issue as landlords grow frustrated with delays in the court system.

An increase in illegal eviction may contribute to a rise in homelessness as evicted private renters may struggle to find a home to rent at rates that they can afford, especially as there is a lack of social housing.

**Government should liaise with local authorities to understand, and then provide, the levels of funding needed for sufficient Tenancy Relation Officers and Environmental Health Officers who can support private renters and take action to hold landlords and agents to account for issues such as disrepair and illegal evictions.**

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<sup>6</sup> Shelter analysis of MoJ possession stats

## **Emergency measures from the DWP**

The Department for Work and Pensions (DWP) introduced welcome interventions to assist private renters pay their rental costs, most notably restoring Local Housing Allowance (LHA) to cover the bottom 30% (30<sup>th</sup> percentile) of all local rental markets. LHA rates are the maximum amount of housing benefit, or housing element of UC, that a private renter can claim to help pay their rent.

LHA is designed so that you will get enough housing benefit to cover the cost of renting a typical home in your area, that is large enough for your needs (one-bedroom, two-bedroom etc). Up until 2011, a “typical home” was defined as being at the average rent (50<sup>th</sup> percentile) but was subsequently lowered to cover the 30<sup>th</sup> percentile. As a result of various cuts and freezes to the rates since 2011, by March 2020, the LHA rates failed to cover the 30<sup>th</sup> percentile of the local rental market in 97% of areas in England. This left many LHA rates so low they were directly contributing to hundreds of thousands of families experiencing [poverty, poor housing conditions and homelessness](#).

On March 20th, as a direct result of the COVID-19 outbreak, the government announced they would be restoring LHA rates back to cover the 30<sup>th</sup> percentile of each rental market. This was an incredibly welcome first step, ensuring many can remain in their homes during this period. **However, this is the level that LHA needs to be at during normal times. We are now calling on the government to go further and cover the average cost of renting (50<sup>th</sup> percentile) as a necessary step for the period of the pandemic.** People cannot now move home to somewhere cheaper, so 70% of renters are paying rent that is above their local LHA rate. This is storing up debt, rent arrears, evictions and homelessness down the line.

The effectiveness even of the current measures from DWP are hindered by the benefit cap, which will prevent many claimants from accessing the increased LHA rates. The household benefit cap prevents working-age claimant couples and families from receiving more than £23,000 per year in London and more than £20,000 outside of London (15,410 and 13,400 for single adults). We know that the benefit cap already affects those who can face some of the biggest barriers to work or move. Lone parent families with a child under five are 19 times more likely to be affected by the cap and lone parent families with a child under two are 21 times more likely to be affected. Homeless households in temporary accommodation are also disproportionately affected by the cap, including women fleeing domestic violence. Households in temporary accommodation are four times as likely to be capped than other households, with thousands of homeless families currently affected by the cap.

Two of the main ways that government has suggested to escape the effects of the cap are for families to work more hours to become exempt or move to a cheaper area. Under the circumstances of the COVID-19 outbreak, neither of these two options are a possibility.



Under these new increased welfare measures, we have found that in over 8 in 10 areas (82%) even a small family in a small privately rented home, such as couple with two younger children sharing a bedroom (four people in a two-bedroom home) would <sup>7</sup> have their benefits reduced by the cap. In all areas, a couple with three children would see their benefits capped.

This means that, despite the best efforts of the DWP and the new increases in generosity to the social security safety net, there will be many who lose out because they will see their incomes capped. With the increase in numbers we are seeing applying for UC<sup>8</sup>, there will undoubtedly be many more people unable to fully benefit from the government's emergency financial packages as a direct result of the benefit cap.

**The benefit cap must be removed for at least the next 12 months, while the government's emergency measures are in place. This will ensure people who need it most will be able to access the essential government support.**

## **b) Rough sleepers**

We welcome:

- MHCLG's swift [announcement](#) (17 March) of a dedicated £3.2m fund to reimburse local authorities for emergency accommodation and support for street homeless people.
- The [letter](#) from Homelessness Minister Luke Hall (26 March) to local authority chief executives stating that it was imperative that 'rough sleepers and other vulnerable homeless' are supported into appropriate accommodation by the end of that week.
- MHCLG's [announcement](#) (18 April) that English councils will receive another £1.6bn in additional funding to respond to the pandemic, including 'getting rough sleepers off the street'. As with the previous £1.6bn, this is not ring-fenced for homelessness.
- The [letter](#) from Home Office Home Office Minister Chris Philp announcing that homeless people will not be required to leave asylum seeker accommodation until the end of June.

This is likely to have saved lives. However, as this emergency accommodation is not allocated on the basis of legal entitlement, it has created a two-tier system of help – see more in response to question 2 below – with some people benefitting and others losing out.

Those who were in night shelters and known to rough sleeping teams appear to have been offered hotels. But those who aren't, including many more people becoming street homeless every day, have even less access to emergency help than they did before: because night-shelters and daycentres are closed.

In terms of numbers offered assistance, the Secretary of State's [letter](#) (18 April) confirms that 'more than 5,400 rough sleepers have been offered safe accommodation'. He claimed this 'represents over 90% of those on the streets and in communal night shelters at the beginning

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<sup>7</sup> The calculation assumes that families are renting a modest home with rent costs at the 30<sup>th</sup> percentile of local rents Local areas are broad market rental areas (BRMAs) the local used for setting lha rates.

<sup>8</sup> [Government figures](#) show there have been over a million new claimants for Universal Credit since lockdown

of the crisis and known to local authorities.’ The Mayor of London [reported](#) on 14 April that ‘more than 1,000 homeless Londoners were now self-isolating in hotels and other safe locations’ and the Mayor of Great Manchester [reported](#) on 22 April that ‘1,100 rough sleepers have been safely housed’.

We’re unable to verify these figures. Rough sleeping statistics vary. [MHCLG statistics](#) show that, in October-November 2019, 4,266 people were estimated to be sleeping rough in England on a single night, including 1,136 in London. Whereas [GLA data](#) reports 3,637 people sleeping rough in London between October-December 2019. In any case, the numbers may well have increased between December 2019 and lockdown on 23 March. We’re not aware of up-to-date statistics on the number of people accommodated in night shelters at the start of lockdown, so we cannot compare the statistics. However, we believe that some people are currently sleeping rough.

We’re concerned that emergency accommodation funding for rough sleepers was based on the estimated number of rough sleepers last autumn, without a recognition that a growing number of people are likely to be facing street homelessness as a result of the pandemic. Since lockdown, we are advising people who are newly facing street homelessness because they have been asked to leave sofa-surfing situations or been legally (in the case of lodgers or those in homeless accommodation) or illegally evicted since.

The emergency accommodation provision hasn’t gone far enough. We’re assisting people all over the country who have nowhere to stay, but can’t access hotels because they haven’t been ‘verified’ by rough sleeping teams. In some cases, they can’t refer themselves to Streetlink for verification because they can’t get through on the phone. In other cases, it’s because they aren’t bedded down at night.

Not all street homeless people bed down at night; many sleep on night buses, in hidden locations or walk the streets at night because they are too afraid to bed down. In some cases, we’ve assisted people who have been advised to bed down *in order* to be offered the emergency accommodation, but are too frightened to do so. No one should have to sleep rough to access emergency accommodation.

Finally, we’re also seeing cases where people have been provided with emergency hotel accommodation but subsequently asked to leave (and return to rough sleeping) because:

- they have no recourse to public funds or
- they have broken rules within the accommodation, in one case because they’d left the hotel to smoke a cigarette.

As allocation of hotel accommodation isn’t rights-based, it can be more difficult to challenge such decisions.

### **c) Other homeless households**

MHCLG guidance and dedicated emergency funding has been solely focussed on rough sleeping. As mentioned above, this has left other homeless people without assistance, depending on the response of the individual local authority. These include:

- People needing to flee violence and abuse, both within the home and in the neighbourhood (e.g. gang violence)
- People being lawfully evicted by resident landlords
- People being unlawfully evicted or who leave when asked
- People leaving accommodation because of relationship breakdown

## 2. What problems remain a current and immediate concern for these groups?

### a) Rent arrears

As set out above, many private renters are staying in their homes and unable to move, while they have lost their job or income. If private renters are unable to pay their full rent during this period, they are at risk of building up rent arrears and other debts as they struggle to get by. We know from past research that when LHA does not adequately cover the cost of renting, many people are forced to make difficult sacrifices in order to pay their rent.<sup>9</sup>

Before April 2020, the LHA rates had fallen so far below the 30<sup>th</sup> percentile that one in three (36%) of private renters claiming LHA had to cut back on food in order to keep up with their rental payments.<sup>10</sup> Many were at risk of building up large debts as nearly a quarter (23%) had used a credit card to pay their rent and one in three (32%) had sold their possessions to make up the rent.<sup>11</sup>

A combination of low market coverage from the LHA rates and increasing numbers hitting the benefit cap, will mean the additional social security measures will fall short. The government needs to act now to ensure our social security system helps those who need it stay afloat during these difficult times.

Without the ability during this public health crisis to easily move to a cheaper home in the area or find new work or more hours, households will start to fall short on their rental payments. Many will also build up rent arrears by having fluctuating hours and varying LHA payments from month to month. While they are protected temporarily from being evicted, if they are unable to pay their full rent, rent arrears will accumulate. Once the eviction suspension ends, they are instantly at risk of homelessness. In overheated markets, particularly in metropolitan

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<sup>9</sup> Pennington, J., Kleyhans, S., [LHA Impact Assessment: the effects of the reforms since 2011](#), Shelter, 2020

<sup>10</sup> YouGov, survey of 828 private renters in receipt of housing benefit in England, online, August - September 2019

<sup>11</sup> Ibid.

areas, there are limited properties available that are affordable to households on low-incomes – so moving to a cheaper home is not always a readily-available option. It may be even harder in the coming months when letting agents and the rental market more broadly may not be fully functioning, there may be more competition for the rental homes that are available.

Our telephone helpline and webchat service are inundated with calls. As of 6 April 2020, 60% of calls or messages were related to COVID-19. We are advising people daily who have lost employment and are now struggling to meet their rental liability. Many may have already been served notices seeking possession and are worried they will have to leave at the end of the notice period.

**Government must bring in protections for renters who will be coming out of lockdown with significant debts.**

#### **b) Risk of eviction**

The current temporary suspension of evictions in the county court is the only significant protection for England's 11 million private renters, the majority of whom are still at a perpetual risk of being evicted for no reason whatsoever, under Section 21 of the Housing Act 1988.

While we have heard examples of good practice by landlords, where landlords have proactively contacted tenants to understand their financial situation and offer reduced rent or other practical assistance, we are also supporting many people who have been served eviction notices after informing their landlords of a loss of income – before they have even fallen into arrears.

Private renters with periodic assured shorthold tenancies who have been served with a Section 21 'no-fault' eviction notice have no defence to these proceedings.

If government does not take the decisive legislative action we are calling for to avoid evictions caused by coronavirus, there will likely be a huge spike in evictions in the months after the suspension is lifted. A significant proportion of those who may be evicted will be receiving LHA. Our campaigning has highlighted the discrimination experienced by people receiving benefits whilst searching for a new private rented home, with 40% of landlords admitting to an outright ban on letting to anyone receiving housing benefit.

#### **c) Discrimination**

The combination of so-called 'DSS' discrimination, the huge increase in the number of LHA recipients and the potential spike in evictions may lead to devastating rises in homelessness across England. This will be disproportionately felt by women and disabled people as they are more likely to receive housing benefit.

Alongside actions on evictions, government must take steps to end DSS discrimination through two overarching measures.

**Government must introduce requirements, as part of a legally enforceable Code of Practice for property agents, for letting agents and landlords to treat private renters in receipt of housing benefit equally by:**

- **removing No DSS policies and practices from their operational framework;**
- **in no other way seeking blanket exclusions of prospective renters who are in receipt of housing benefit from accessing tenancies, e.g. by refusing applications because applicants are in receipt of state benefit, or by having exclusionary income requirements for applicants and/or guarantors; and**
- **assessing housing benefit recipients' ability to afford a home on a case-by-case basis.**

**Government must also make court findings of discrimination under the Equality Act 2010 by landlords or property agents, in their line of work, an offence that leads to landlords or property agents being placed on the rogue landlord and agent database. This would require amendment to the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018.**

### **3. What might be the immediate post-lockdown impacts for these groups, and what action is needed to help with these?**

#### **a) Private rented sector**

##### **Pre-action protocol**

Government has announced its intention to extend the pre-action action protocol, which currently applies to social landlords who are seeking possession, to private landlords. Pre-action protocols are already flawed, as they do not apply in the many cases where a judge has no option but to grant a possession order – that means any mandatory grounds within Section 8 of the Housing Act 1988 and any applications under Section 21 of the Housing Act 1988.

MHCLG stated that extending the pre-action protocol 'will ensure that private sector landlords reach out to tenants to understand the financial position they are in before taking possession action...'

We welcome the spirit of the message but without legislation to ensure that judges have discretion as to whether or not to grant a possession order, it will be useless for the majority

of private tenants. Unless it is mandatory for landlords to have followed a pre-action protocol that has specific and clear requirements, tenants will be evicted because of the impact of COVID-19.

We can anticipate that responsible landlords will already be communicating with struggling tenants and not serving notice on those whose circumstances have changed. That is why **it is essential that following the pre-action protocol is a legal requirement, to ensure that all landlords are doing their bit to keep people housed.**

From initial conversations with MHCLG, there appears to be no intention to legislate to allow judges to consider whether the pre-action protocol has been followed before granting a possession order. Indeed, the department seems to have accepted the pre-action protocol's significant limits – thereby suggesting that there is no genuine offer to protect most private renters who will be at risk of eviction.

**Without amendments to the Housing Act 1988 a pre-action protocol for private landlords will be completely ineffective.** On March 18<sup>th</sup> 2020 the Secretary of State was quoted: 'The government is clear – no renter who has lost income due to coronavirus will be forced out of their home'. This is an extremely welcome sentiment, but one that will simply not happen under current plans. The government must make legislative change in order to meet its objective.

### **Section 8**

Under Section 8 of the Housing Act 1988, landlords must give a specific, defined reason as to why they are seeking possession. Under ground 8, Section 8, if a tenant has eight weeks of rent arrears when a notice is served and at the point of a hearing, the judge must grant a possession order and cannot consider any delays to benefit payments or health conditions that have led to arrears accruing.

For the government to meet its objective of ensuring that no one who has lost income due to coronavirus is forced out of their home, **government must disapply ground 8 to ensure that judges can decide whether coronavirus has had an impact on the tenant's ability to pay rent.**

Without giving judges discretion to decide whether a landlord has been reasonable in negotiating a fair repayment plan with the tenant, tenants will be evicted because of arrears they have accrued because of coronavirus, due to loss of income, benefit shortfalls or delays in welfare payment. Furthermore, the government's pre-action protocol will be legally ineffective if judges cannot take it into consideration when making their judgement.

### **Section 21**

In April 2019, government announced its intention to scrap Section 21 'no-fault' evictions and later announced a proposed Renters' Reform Bill. While it is understandable that the Bill will be delayed due to the pandemic, it is essential that government follows through to give private renters the security they need so that no-one is evicted for no reason.

Abolishing Section 21 now would not, however, protect current private renters. It is therefore essential that government considers how it can protect those who are already renting privately during and after this health crisis.

**For the pre-action protocol to be effective, government must amend Section 21 of the Housing Act 1988. This would prevent judges from being forced to grant a possession order where it is unjust to do so due to coronavirus.** For example, if a tenant had been served with a Section 21 'no-fault' notice because they had accrued arrears following a job loss, and the landlord had not followed pre-action protocol by offering a reasonable repayment plan, a judge could refuse to grant a possession order.

While this changes the fundamental nature of Section 21, it is already government's intention to abolish no-fault evictions. It has long been accepted that the relationship between landlord and tenant must be rebalanced; amending Section 21 in light of the pandemic would give judges the power to do so.

Introducing a general discretion for judges when deciding whether to grant a possession order will help those with health conditions that put them in a 'shielded' category, as it allows judges to consider the personal and medical circumstances of the tenant.

### **Extending the evictions ban**

The suspension on possession proceedings is due to be lifted on June 25<sup>th</sup>, 2020. From this date, cases that had been adjourned can be relisted and landlords can apply to court if their tenants have not left their property at the end of their notice period.

If public health guidance remains that any groups of people should stay home, or it has not made the changes set out above to ensure people are not evicted as a result of coronavirus, government must call on the Lord Chancellor to extend the suspension of possession proceedings.

**The government must introduce legislation to amend the Housing Act 1988 in the ways we set out above as a matter of urgency, so that when those being evicted due to the impact of coronavirus reach the point of a possession hearing they have genuine protections in the court.**

Ultimately, the private rented sector is not fit for purpose for the many people on low incomes who currently live there. The measures above are essential in ensuring private renters have

more protection than they currently have. But the only way to ensure that people on low incomes have affordable and secure homes is to invest in social housing.

## **b) Homelessness**

We are concerned about those existing and newly homeless individuals and families who can't follow public health advice and therefore will continue to be at risk from coronavirus for the duration of the pandemic (i.e. until a vaccination or successful treatment is widely available).

These include those:

- with nowhere to stay who are already on – or facing – the street,
- those in homeless accommodation which doesn't allow them to follow public health advice.

### **People with nowhere safe to stay during the pandemic**

The emergency accommodation provision has created a two-tier emergency accommodation system, described in one media report as [a lottery](#).

This is because many homeless people have no legal rights to emergency accommodation, including the emergency hotels. We're assisting people with nowhere to stay who've been turned away by council housing options services on the basis they fail one of the usual tests for accommodation under the homelessness legislation:

- eligibility (immigration status),
- intentionality (how they lost their last settled home)
- priority need (e.g. dependent children and vulnerability) and
- local connection (the location of their last settled home).

So, the council argue they have no legal duty to provide emergency accommodation.

When we've challenged this on the basis of the Minister's letter instructing them to accommodate all rough sleepers, several councils have informed us that they're acting on 'Phase 2' advice from MHCLG. MHCLG has not published this advice or shared it with us. This is making it very difficult for us to advise and assist people.

This problem is happening because MHCLG have, on the one hand, directed and funded councils to accommodate all rough sleepers, but on the other hand have issued no specific guidance to councils about the legal basis on which they should offer accommodation to rough sleepers or homeless people who have not slept rough. For example, it's unlawful for councils to accommodate, under homelessness legislation, people not deemed eligible (because of immigration status). But people who aren't eligible *have* been offered emergency hotel accommodation while others, who are eligible, haven't.



If the government want councils to accommodate all those with nowhere safe to stay during the pandemic, they must make the legal position clear and provide them with dedicated funding to procure emergency accommodation.

### **People in homeless accommodation where they can't follow public health advice**

Families and couples in one-room temporary accommodation (such as hostels, homeless B&Bs, budget hotels and permitted development studios) who have members with [increased risk of severe illness](#) (e.g. pregnant women) cannot follow [public health advice](#) to keep 2m apart and avoid sharing rooms.

In some cases, families are accommodated in rooms no bigger than a parking space, either with cooking facilities in the room and a tiny ensuite, or with communal kitchens and bathrooms shared with a number of other households. It's quite common for families to have to share beds.

If a family member becomes symptomatic, and particularly if they become seriously unwell, in one-room accommodation, other family members will have to sleep (in some cases in the same bed) and live in one room with the sick person. This means the entire family is likely to become infected and means children having to witness sick relatives struggling to breath.

From a housing perspective, families with school age children will have to endure months of one-room living with children unable to attend school. This will rapidly become intolerable, particularly while government [stay at home advice](#) is applicable.

Most one-room temporary accommodation has no broadband or Wifi, making it extremely difficult for homeless families to work from home or access online essential services, schooling, or entertainment without the use of expensive mobile data. Children in this type of homeless accommodation are therefore at risk of falling behind with schoolwork.

#### **Case example**

Shelter's London service is currently assisting a lone mother with three children who has been accommodated in small one-room with only two single beds, so the family are sharing beds. Two of the children are disabled. The room has its own cooking and bathroom facilities so there is no other space during lockdown. The family is not allowed to bring electrical equipment into the hostel, so they have just one phone for home schooling and entertainment.

We know that some councils are working very hard to move families living in one-room homeless accommodation to alternative accommodation, where they can follow public health advice, and where their living conditions will be more tolerable while the stay-at-home advice applies, and schools remain closed.

Despite numerous requests, there has been no guidance from MHCLG to councils on what they should be doing to assist families in homeless accommodation who can't follow public health advice. In turn, this is making it difficult for us to assist very worried families in this situation.

The restored local housing allowance rate should help them to procure larger self-contained units, such as flats and houses, especially once the lettings market reopens. But temporary accommodation providers often charge nightly rates and the costs of larger self-contained accommodation in some areas can be prohibitive for councils. So, councils need financial assistance with this.

The government is yet to confirm when or how lockdown will end. However, we do know that lives will be at risk from the pandemic until a vaccine or successful treatment is widely available. This is unlikely to be before next Spring. Until then, there is a risk of a second, possibly more serious, wave.

Therefore, it's vital that for the duration of the pandemic everyone has somewhere safe to stay, where they can follow public health advice, until they are no longer at risk.

**We strongly recommend MHCLG urgently publishes guidance confirming who is entitled to emergency accommodation for the duration of the pandemic.**

**For all those who are eligible under homelessness legislation, but have nowhere safe to stay:**

- **MHCLG guidance should make clear they should be regarded as having a priority need for emergency accommodation on public health grounds. The intentionality and local connection tests should not be applied for the purpose of providing emergency accommodation.**

This will clarify on-going entitlements when the emergency hotel accommodation ends with easing of lockdown. But it will also assist all those who haven't been able to access the hotel accommodation or who face street homelessness at a later date.

**For those who are not eligible for assistance under homelessness:**

- **The NRPF condition should be lifted for people with Leave to Remain for the duration of the pandemic, so that they can access statutory homelessness assistance and Universal Credit.**
- **Government should re-issue guidance making it clear that local authorities should use the General Power of Competence set out in section 1 of the Localism Act 2011**

**to provide emergency accommodation to all who cannot access support through other legislation as a result of their immigration status.**

- **Government should temporarily suspend Habitual Residency Test requirements for the course of this pandemic.**
- **The Home Office's emergency measures to provide accommodation support for all asylum seekers should continue for at least the duration of the public health emergency and its knock-on impacts.**

Ultimately, this crisis has shown the precariousness of our housing and homelessness system, and shone a light on the awful conditions, from overcrowded temporary accommodation to extortionate private rentals, that many in our country live in, with no certainty that they can stay in their homes and a lack of protections. This is all due to the lack of social housing.

- **The government must invest in an ambitious program of social housebuilding as a key part of the economic stimulus package that is likely to be needed post-crisis. This will boost the economy and ensure that homeless people and those on low incomes including many key workers can access affordable, decent homes.**