

Submission

Shelter submission to the Communities and Local Government Select Committee inquiry into the role of local authorities in the private rented sector

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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.

Executive Summary

- Property conditions in the PRS are worse than in any other sector. As the cost of home ownership rises and the lack of social housing endures, the private rented sector is playing an increasingly important role in housing people. It is vital that these homes are safe and decent.
- We have welcomed recent changes to legislation covering conditions in the PRS but, taken as a whole, it is piecemeal, out-dated, complex, dependent upon tenure and patchily enforced.
- Shelter is actively supporting the Homes (Fitness for Human Habitation and Liability for Standards) Bill, which brings together existing, and updates defunct, fitness legislation and incorporates the HHSRS into one test of fitness that will, ultimately, be decided by the Courts. The Bill will enable tenants to pursue their own action against landlords to get repairs done and conditions improved, without having to rely on over-stretched local council enforcement teams.
- Even as their powers have increased, the capacity and resources of local councils to continue to improve standards in the PRS has reduced, in the face of funding reductions and increasing demand. Their increased powers must be coupled with increased resources for PRS enforcement teams.
- Licensing schemes can help councils to understand their local private rented sector and the landlords within it, and help them to work with landlords to promote higher quality accommodation.
- Complaint mechanisms for private renters are not fit for purpose. Lack of consumer powers and security of tenure means that tenants have very little ability to complain about their conditions, for fear of being evicted and becoming homeless. It is vital that work to prevent homelessness should go hand in hand with enforcement
- Reinstating Legal Aid for disrepair issues (and potentially wider 'fitness' issues if the Homes (Fitness for Human Habitation and Liability for Standards) Bill becomes law) would go a long way to redress the power imbalance between landlords and tenants.

Introduction

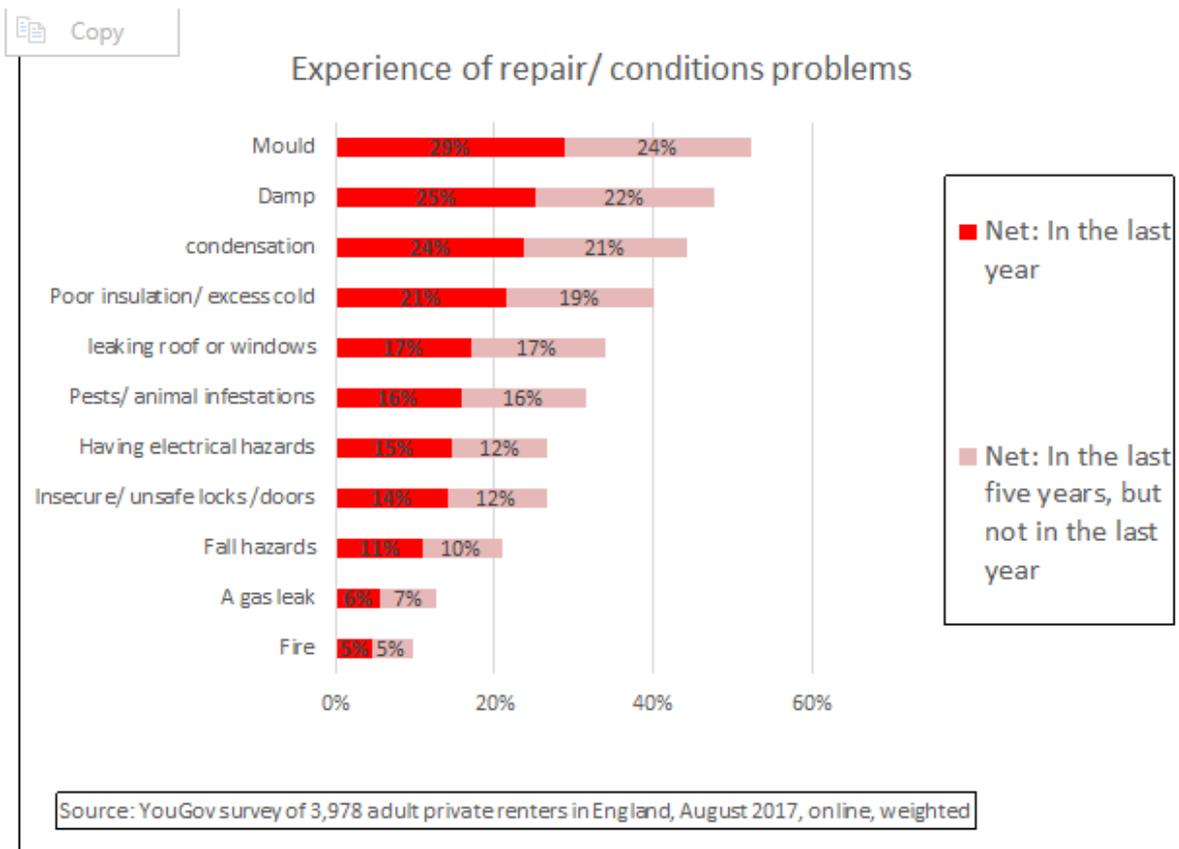
Introduction

1. Shelter welcomes this opportunity to submit evidence to the Communities and Local Government Select Committee's inquiry into the role of local authorities in the private rented sector.
2. Our submission is based on evidence from our recent reports, *Happier and Healthier: improving conditions in the PRS*¹ and *Shut Out: The barriers low-income renters face in private renting*², *Closing the Gap*, the report of our Grenfell review³, our work on the Homes (Fitness for Human Habitation and Housing Standards) Bill and the findings of our Landlords and Tenants Surveys.
3. Everyone should have a home that is warm, safe and secure. But too many homes in today's private rented sector are in very poor condition, severely compromising families' health and wellbeing, and in the most extreme cases putting lives at risk.
4. Our recent surveys of landlords and tenants found that over half of tenants (53%) have experienced at least one problem with conditions or repair in the last year. In common with previous surveys, there is a high incidence of these problems amongst private renters. Mould and damp are the most common issues, with many respondents ticking both. Worryingly, a high number of tenants reported potentially very serious problems this year, such as electrical hazards (15%) and gas leaks (6%).
5. Just over four in 10 of the landlords in our Landlords survey admit that they never inspect the homes they let out for repair issue, leaving it to agents or tenants to do this. This may not be a problem if a good agent is employed, but a quarter of those without an agent said they 'never inspect'.

¹ Shelter, 2017, *Happier and Healthier*

² Shelter, 2017, *Shut Out*

³ Shelter (2017) *Closing the Gaps: Health and Safety in Housing*



- Property conditions in the private rented sector are worse than in any other tenure. As the cost of home ownership rises and the lack of social housing endures, the private rented sector is playing an increasingly important role in housing people. It is vital that these homes are safe and decent.

Response to call for evidence

Do local authorities have the powers and capacity required to enforce standards in the private rented sector and deal with 'rogue landlords'?

- Legislation giving local authorities powers to enforce standards in the private rented sector and deal with 'rogue landlords' dates back to the Housing of the Working Classes Act in 1885. The Fitness Standard (Housing Act 1985), s11 of the Landlord and Tenant Act 1998, the Housing Health and Safety Rating System (HHSRS, introduced by the Housing Act 2004) and licensing schemes all provide mechanisms for local authorities to identify and tackle poor conditions and bad landlords.
- The Housing and Planning Act 2016 has added important new powers, some of which came into force in April 2017, including Fixed Penalty Notices and Rent Repayment

Orders. Banning orders, registers of rogue landlords, electrical safety checks and information from tenancy deposit schemes have yet to come in.

9. We have welcomed these new powers. They will enable local councils to take much tougher enforcement action against landlords who fail to keep their properties in a decent condition.
10. We are disappointed that the Government chose not to take the opportunity to go further and introduce a national register of landlords, improve consumer powers for tenants through longer tenancies and require homes are fit for human habitation, or go beyond allowing councils to retain the fines from enforcement activity and introduce new grant funding for councils to do this work.

11. While recent developments are welcome, they do not obscure the fact that, taken as a whole, however, the legislation is often criticised as being piecemeal, out-dated, complex, dependent upon tenure and patchily enforced.⁴

12. The capacity, and resourcing, of local authorities to use these powers is key:

The extra powers are great. We will make good use of them. But they bring a new capacity pressure to our already stretched team.

Private Renting Team, Bristol City Council

13. Despite examples of good practice, as evidenced in the case study areas featured in our report, Happier and Healthier⁵, **local council capacity to continue to improve standards in the PRS has reduced in the face of funding reductions and increasing demand.** Resources for statutory services, including enforcing against landlords who have properties with Category 1 hazards, have been stretched to breaking point, leaving non-statutory services, including powers to enforce standards in the PRS, struggling for resource.

Several years ago, it was often commented upon that landlords would take no notice of us because they knew we did not have the capacity to follow up letters and notices. This has changed, but, despite having a much improved staff team relative to a few years ago, we still don't have enough enforcement capacity to really get on top of the problem.

Housing Standards Team, Derby City Council

⁴ Shelter, 2017, Closing the Gaps: Health and Safety in Housing

⁵ Shelter, 2017, Happier and Healthier: Improving conditions in the private rented sector

14. Formal enforcement activity in many councils is still low, with many preferring to take an informal approach instead.⁶ FOI research in 2015 found that formal enforcement activity (hazard awareness notices, improvement and prohibition notices, as defined under the Housing Act 2004) had fallen by 40% since the previous Parliament.⁷
15. Councils can, and do, deal successfully with poor conditions using informal routes and building positive relationships with local landlords. When these informal routes fail, however, councils must be prepared (and resourced) to use formal methods. Indeed, councils will need to show that they have pursued more formal action if they are to make use of their new powers contained within the Housing and Planning Act.

We take a more proactive approach than many councils, but with budgets shrinking and resources scarce, we have to target our activity. We don't have the legislative powers to help in cases that are less serious but nor do we have the capacity to help informally

Private Housing Team, Bristol City Council

16. To make a significant improvement in conditions in the private rented sector, there needs to be a fundamental review of housing standards, including updating the evidence base that sits behind the HHSRS (which is now 20 years old) and reinstating some basic housing standards that are easy for both renters and landlords to understand.
17. Shelter is actively supporting the Homes (Fitness for Human Habitation and Liability for Standards) Bill, which brings together existing, and updates defunct, fitness legislation and incorporates the HHSRS into one test of fitness that will, ultimately, be decided by the Courts.

What are the main obstacles to effective intervention in the private rented sector?

18. Our Safe and Decent Homes report showed that a lack of enforcement powers, and the capacity of local councils to make proper use of them, is only one of a number of factors that contribute to ongoing poor conditions in the private rented sector.⁸

⁶ See for example, Pidgeon C (2016) Rogue Landlords in London: A survey of local authority enforcement in the private rented sector and Battersby S (2015) The challenge of tackling unsafe and unhealthy housing: report of a survey of local authorities for Karen Buck MP

⁷ Battersby S (2015) *op cit*.

⁸ Safe and Decent Homes report

19. Shelter identified five root causes of poor conditions, all of which create obstacles to effective intervention in the PRS:

- Demand outstrips supply, leading to renters being unable to negotiate better conditions
- Landlords have few incentives to invest in repairs and maintenance (despite having the cash to do so)
- Landlords tend to be amateur or accidental, with little understanding of their responsibilities
- Local authorities lack information on landlords and private rented stock
- Local authorities often lack the resources to enforce their legal duties and powers.

20. The new enforcement powers do address the lack of incentives for landlords to improve their properties through Banning Orders, Fixed Penalty Notices and Rent Repayment Orders, and enabling councils to build up and share intelligence through registers of local landlords and information from tenancy deposit schemes.

21. At the same time, however, other factors have made it harder for renters to exercise what consumer powers they have and council's resources to tackle bad landlords have continued to reduce. The new powers will not be enough to fundamentally improve conditions in the private rented sector if we do not also tackle these.

Supply and demand issues

22. In the three years since we published *Safe and Decent Homes*, the impact of welfare reform has meant that low income households have found it ever more difficult to access the PRS and, in desperation, have become increasingly vulnerable to criminal landlords in the lowest part of the market.⁹

23. Due to shortages in social housing, councils are increasingly relying on an insecure private rented sector to house people most at risk of homelessness.

24. Meanwhile, housing benefit has failed to keep up with spiralling rents. The local housing allowance freeze is creating large shortfalls between rents, even at the bottom of the market, and the amount households can get to help them pay their rent. The introduction of Universal Credit is giving landlords yet another reason to be cautious about renting to tenants on benefits.¹⁰

⁹ Shelter (2017) *Shut Out*

¹⁰ *Shut Out*

25. As a result, low income renters are left in insecure housing with few options. When people on low-incomes do manage to find an affordable private rental, it is likely to be at the very lowest end of the market, where standards are low.¹¹

“The people most vulnerable to poor conditions are often the least likely to contact us. They think that, because they can only afford to pay rent at the very lowest end of the market (which is still a high rent, because this is Bristol), they are not entitled to expect any better. They are easily intimidated by their landlord and fearful of losing their home.”

Private Housing Team, Bristol City Council

Stability

26. Renters in the UK generally have very short fixed-term contract of either six or 12 months. During the fixed term, landlords can only evict tenants if they can prove certain grounds, including rent arrears. After the fixed-term ends, landlords can issue an eviction notice without having to provide any grounds of wrong-doing on the renter’s part. In a market where there are simply not enough homes to go round, renters are easily replaceable. Landlords know this and so do renters themselves.

27. Eviction from a private (assured shorthold) tenancy is now the single biggest cause of homelessness, accounting for 78% of the rise in homelessness since 2011.¹² Even with the introduction of legislation to protect tenants from retaliatory eviction (in some circumstances), tenants living in the worst conditions and with the fewest options – for example, those on housing benefit – are reluctant to make a complaint about their landlord, fearful eviction or a rent increase and knowing they can ill-afford to find a tenancy if their existing one ends.

28. In addition, if landlords do invest in their properties, then it would not be unreasonable for them to seek an increased return on their investment through higher rents. Indeed, councils use this in their armoury of incentives. But increases in rent can leave those same households unable to afford the rent, risking homelessness because they know that they cannot afford anything else in the private rented sector.

29. But this must not be a reason not to improve standards in the PRS. Work to prevent homelessness should go hand in hand with enforcement and include identifying those tenants at risk of becoming homeless and helping them stay in their existing home,

¹¹ *ibid*

¹² DCLG (2017) Live tables on homelessness

challenging illegal eviction and harassment and defending no-fault (e.g. retaliatory) evictions, where possible. If all else fails, councils should help them find another home, in either the private or social rented sectors.

“We are co-located with our Housing Options Team (in the open plan council HQ building) and work very closely with them in this respect. The authorisations to use the Protection from Eviction Act 1997 have just been transferred to my team members, so they can now co-ordinate tenancy relations enforcement with that under the Housing Act 2004.”

PRS Team, Derby City Council

30. The Homelessness Reduction Act gives new attention and additional resource to homelessness prevention work. It offers protection to all eligible people threatened with homelessness, in addition to those who are unintentionally homeless and in priority need. It also encourages councils to intervene early in potential homelessness cases and take a more humane approach, which is both a more efficient use of resources and a better solution for those affected by homelessness. However, the Act does not tackle the leading cause of homelessness – the inability to find a new rental property once the current tenancy ends.

“We get people at crisis point, but they don’t know where to start. Their biggest fear is losing their tenancy.”

Shelter Birmingham

How effective are landlord licensing schemes in promoting higher quality accommodation?

31. Licensing schemes can help councils to understand their local private rented sector and the landlords in it, and help them to work with landlords to promote higher quality accommodation.

32. Most existing schemes are selective – they are introduced in areas where there is evidence of particular problems, but they can lead to confusion for both landlords and tenants. This risks being compounded by the requirement to obtain sign-off from the Secretary of State for schemes covering more than 20% of an area, which has pushed councils to adopt even smaller schemes and an even more fragmented approach. The way to deal with this is through greater co-ordination at combined authority or county level.

33. A borough-wide scheme does have considerable advantages for cash-strapped councils. It is less of an administrative headache, easier for landlords and tenants to

understand and gives poor landlords less opportunity to hide. It enables councils to concentrate resources (and enforcement action) on those landlords who do not apply for a license.

34. Newham adopted a borough wide licensing scheme in 2013 to integrate licensing with their other environmental health powers and crack down on rogue landlords and poor conditions. Newham's central assumption is that any landlord who is willing to flout the law when it comes to licensing is unlikely to hold a deep respect for their tenants' legal rights – or the condition and safety of the property or getting planning permission or even paying their tax. Using all the data the council has at its fingertips, finding landlords with the wrong (or no) license has proved relatively easy.
35. In the last four years, Newham has prosecuted more bad landlords than any other London borough and issued more than 2000 improvement notices to tackle poor conditions.
36. Shelter is concerned that the requirement for councils to seek permission from the Secretary of State for 'any selective licensing scheme that would cover more than 20% of their geographical area, or 20% of privately rented homes in their local authority area' will have a serious dampening effect on larger licensing schemes.
37. Redbridge is the only council to have applied for a borough-wide licensing scheme since the requirement was introduced in 2015. It was turned down by Greg Clark, the then Secretary of State at DCLG, at the end of 2015.
38. Newham's application to extend its borough-wide scheme, launched in July 2017 and still waiting for a decision, will be another significant test of this.

What approaches have local authorities taken to promote affordable private rented sector accommodation in their areas?

39. The barriers to renting facing low-income households have long been recognised by local authorities and voluntary organisations. Agencies have developed programmes to help such households overcome barriers.¹³

¹³ Rugg, J, Rhodes, D, 2008, The private rented sector: its contribution and potential, <https://www.york.ac.uk/media/chp/documents/2008/prsreviewweb.pdf>

40. Since the early 2000s, local authorities have been encouraged to offer a wider range of housing options to statutory homeless households, making greater use of the PRS to reduce the use of temporary accommodation.
41. Such schemes are relatively extensive, especially in London. For example, 153 schemes across the country previously received government funding under the Private Rented Sector Access Development Programme, to expand access schemes for homeless people.¹⁴
42. A number of organisations have called for the expansion of ‘social lettings agencies’. These are a type of PRS access scheme: lettings agencies specifically set up to help low-income and homeless households into the PRS and incentivise landlords to let to people claiming housing benefit.
43. These schemes, however, have had varying success in developing a long-term sustainable model.¹⁵ London borough social lettings agencies are currently falling far short of cost-neutrality and are not financially viable.¹⁶
44. To increase overall viability, some councils have proposed broadening the scope of agencies to include market rent properties for higher income tenants, in order to subsidise lower value ones.¹⁷
45. Many councils are reluctant to go down this route – currently, practitioners’ chief concern of meeting the urgent needs of their vulnerable residents supersedes the time and planning required to establish an alternative financial structure.¹⁸
46. **One of the biggest challenges to expanding PRS access schemes is landlord reluctance to participate.** Of the one in six landlords in our Landlord Survey who do not let to tenants on housing benefit, a third were adamant that nothing would make

¹⁴ Rugg, J, 2014, Crisis’ Private Rented Sector Access Development Programme: Final evaluation report, Crisis,

https://www.york.ac.uk/media/chp/PRS%20Access%20Development%20Evaluation_FINAL_email.pdf

¹⁵ Hastings, A, Bailey, N, Bramley, G, Gannon M, Watkins, D, 2015, The cost of cuts: the impact on local government and poorer communities,

<https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/Summary-Final.pdf>

¹⁶ Future of London

¹⁷ Rugg, J, 2014, Crisis’ Private Rented Sector Access Development Programme: Final evaluation report, Crisis,

https://www.york.ac.uk/media/chp/PRS%20Access%20Development%20Evaluation_FINAL_email.pdf

¹⁸ Future of London, 2016, A social lettings agency for London? Viability and potential Trust for London

them change their mind.¹⁹ A review of the PRS in South London concluded that because of the buoyancy of the local market, “any landlords willing to set up working arrangements with the local authority will be in a minority.”²⁰

47. **The shortfall between LHA rates and rents also limits the ability of PRS access schemes to source affordable accommodation for tenants, and to persuade landlords to let to people on housing benefit.**²¹
48. Inadequate LHA rates also have the potential to push PRS access schemes into offering unsuitable accommodation with disrepair issues.
49. Shelter’s Sustain report, which followed homeless households who had used PRS access schemes, found that after 19 months every home had a condition problem, the majority of people had to deal with problem landlords, and some people were moved into cramped, unsuitable accommodation.²²
50. Monitoring and assessing the effectiveness of local authorities’ attempts to promote access to affordable private rented sector accommodation is difficult because of a shortage in local and national data. **It would be advantageous for the Government to collect further data on such schemes in order to evaluate their effectiveness.**

How effective are complaint mechanisms for tenants in the private rented sector?

51. Complaint mechanisms for private renting tenants are currently not fit for purpose.
52. If they have been unable to persuade their landlord to make good on repairs, private sector tenants *can* turn to their council’s environmental health department to consider

¹⁹ Shelter, 2017, Survey of private landlords

²⁰ University of Glasgow, Cobweb Consulting, 2014, The private rented sector in South East London and Lambeth: A study for South East London Housing Partnership and LB Lambeth, South East London Housing Partnership, Lambeth Council, <https://tinyurl.com/k7yeofe>

²¹ Rugg, J, 2014, Crisis’ Private Rented Sector Access Development Programme Final Evaluation Report.

https://www.york.ac.uk/media/chp/PRS%20Access%20Development%20Evaluation_FINAL_email.pdf

Also, some PRS access schemes have mitigated placing single people in ‘exempt’ or ‘specified’ accommodation, such as hostels, which allows landlords to charge higher rates than LHA.

²² Smith, M, Albanese, F, Truder, J, 2014, A Roof Over My Head: the final report of the Sustain project, a longitudinal study of housing outcomes and wellbeing in private rented accommodation, Shelter, Crisis,

http://england.shelter.org.uk/professional_resources/policy_and_research/sustain/downloads/6424_Sustain_Final_Report_for_web_opt.pdf

serving a Hazard Awareness Notice or Improvement Notice. But this depends on councils having the capacity to take action in the face of growing need and cuts to local authority funding. In practice, over half of local authorities have served no, or one, enforcement per year. One London council accounts for 70% of enforcement notices in London and 50% of those in England.

53. Access to free legal advice, when a problem first emerges, has been hugely restricted as a result of changes following the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012. Free advice now kicks in only at the point of crisis – when a family faces imminent homelessness or disrepair has become a serious risk to their health or safety (through the identification of a Category 1 hazard).
54. This allows neglectful landlords to ignore the complaints of tenants who (i) don't qualify for Legal Aid but cannot afford to take legal action or (ii) who qualify for Legal Aid but are unable to prove there is a 'serious risk'.
55. Landlords have access to legal advice from their own solicitors, as might tenants on higher incomes. But there is not really any way that low income tenants can enforce standards without risking eviction– unless local authorities support them with this.
56. This results in a considerable power imbalance between landlords and tenants.
Reinstating Legal Aid for disrepair issues (and potentially wider 'fitness' issues if the Homes (Fitness for Human Habitation etc.) Bill becomes law) would go a long way to redressing this balance.
57. The Deregulation Act (2015) introduced the first new protection for tenants against being evicted for complaining about problems in their home, since 1988. Tenants cannot now be served a section 21 notice within six months of issue of an improvement or emergency remedial action notice by the council, following the identification of a Category 1 hazard in their home. Shelter campaigned hard for this protection against revenge, or retaliatory, eviction.
58. It is, however, a difficult process to make work and there are many exceptions. Tenants need their local council to respond to complaints, assess hazards and serve Improvement Notices on landlords in order to be protected from eviction. They are not protected if they approach their landlord by themselves or if the local authority has pursued an informal approach. This leaves uninformed or unsupported tenants vulnerable to bad practice and homelessness if evicted. As a result, it is very rarely

used. Closing the Gap reports that, in a meeting of the Housing Law Practitioners Association, delegates expressed surprise that they knew of one case where it had been used, because it was assumed it was entirely otiose.²³

59. **If tenants continue to be afraid of retaliatory eviction, particularly where this might leave them unable to find another home that meets minimum standards, they will be reluctant to complain.** Environmental health and homelessness prevention teams often seem to be working to conflicting agendas (the drive to improve housing standards clashing with four walls and a roof being better than none, no matter what the condition) but closer working between these teams is key – and has been given increased emphasis following local councils' new duties to prevent homelessness in the Homelessness Reduction Act 2016.
60. The Housing and Planning Act 2016 gives **local councils the power to find rogue landlords and fine them**, but tenants themselves are still not supported to take action against their landlord. Such a two-pronged attack would enable tenants to exercise their consumer power and take action themselves, freeing local councils to concentrate their limited resources on pursuing the worst offending landlords.
61. The **Homes (Fit for Human Habitation and Liability for Housing Standards) Bill will empower renters to take legal action to make landlords to improve bad conditions in their home.** Empowered tenants seeking their own route to redress will not have to rely on their local authority to take action.
62. In the worst cases, it will be possible for tenants to provide their own evidence to the Court, such as photos of disrepair, without relying on an environmental health officer or independent surveyor's report, which can be expensive. This allows local authorities to manage their scarce resources and make full use of the new powers in the Housing and Planning Act by continuing to focus on the very worst offenders in the sector.

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²³ Closing the Gap, op cit.

