

RHA 02

Ymgynghoriad ar yr hawl i dai ddigonol

Consultation on the right to adequate housing

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## The Right to Adequate Housing

### Submission to the Local Government and Housing Committee Inquiry

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### Introduction

1. We are three legal academics with longstanding interest and expertise in housing law and policy. Details of our research, policy and practice expertise are set out at the end of this submission.
2. We welcome the inquiry into a right to adequate housing, and the opportunity to provide evidence in relation to that proposed right. We are supportive of such a right in general, and consider that providing such a right could bring significant benefits to residents in Wales. This submission focuses on a potential barrier to the realization of such a right.
3. Our focus is the law relating to harassment and illegal eviction, which is primarily governed by the Protection from Eviction Act 1977 (PFEA 1977). We have been researching this legislation and considering potential reform over the past 12 months. We have met with tenancy relations officers, practising lawyers, landlord and tenant groups. There was overwhelming agreement that the law of illegal eviction and harassment is out of date, poorly understood and inadequately enforced. Even where prosecutions are successful, punishment is light. There are barriers for residential occupiers assisting local authorities with prosecutions or taking Rent Repayment Orders.
4. Illegal evictions break down trust in civil society and lead to extraordinary social costs, as education, employment and health care are disrupted and local authorities

are faced with escalating costs in providing accommodation for the homeless. It is vital to provide a modern, effective, and easily understood law.

5. Our submission is that, for a right to adequate housing to be effective, it is essential to address flaws in this area of law. Even better, in our submission, would be a root and branch rethink of the ways in which the law protects individuals from unlawful eviction. We are mindful that the law on illegal eviction provides the floor of housing rights and it should therefore be as clear, appropriate and inclusive as possible.

### Current problems with the law

6. Section 1 of the 1977 Act creates three offences: unlawful eviction and two relating to harassment. Estimates made by Safer Renting of reported offences across England and Wales are of 6930 cases in 2020 yet only 23 cases were proceeded against and there were only 12 convictions.<sup>1</sup> Half of the prosecutions were being undertaken in just two police areas: South Yorkshire and the Metropolitan Police. There is not separate data published for Wales.

### Illegal Eviction

7. There are situations in which there is no need for notice or a court order for the eviction to be legal, although there must be compliance with the contractual provisions – including for example, when the occupier lives with a resident landlord. This can get very complex for lay people to understand.
8. A significant problem faced by residential occupiers and prosecutors is identifying the landlord. The current law encourages behaviour which obscures the identity of landlords.

### Harassment

9. The current provisions on harassment – contained in s.1(3) (3A) and (3B) of the PFEA – are complex and confusing, particularly for lay people. In summary it is easier to prove the offence when it is alleged to have been committed by the landlord or their agent. Non-landlords must be proved to have intended to cause the residential occupier to give up occupation or their rights under s.1(3), while prosecutors only need to prove that a landlord (or their agent) knew, or had reasonable cause to believe, that their actions would have that result.
10. Proving that it was a landlord or their agent who took the action is challenging. This is particularly so when there is often deliberate obscurity about the identity of the landlord. Where it is not possible to establish it was the landlord or their agent, prosecutors must establish the higher threshold requiring proof of intent, which is a very high bar.
11. Simplifying the law and making it consistent with other criminal and civil provisions on harassment would make sense and appropriately extend legal protections to very vulnerable residential occupiers.

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<sup>1</sup> See Offences under the Eviction Act 1977 Protection from in England and Wales: A report from Safer Renting (2022) by Ben Reeve-Lewis, John Luke Bolton and Julie Rugg available at <https://ch1889.org/safer-renting>

## Enforcement

12. There are a range of difficulties facing local authorities seeking to enforce these provisions. They do not have any express investigatory powers under the current legislation, and there is little flexibility in the range of enforcement tools, unlike in other areas of housing law. Enforcement is also a power rather than a duty, failing to give due weight and significance to the social implications of these offences.
13. Resolving these issues would make enforcement much more easily available.
14. There also needs to be clarity about the police role in enforcement of these offences.

## Rent Repayment Orders

15. Rent Repayment Orders empower tenants to act against illegal eviction. In Welsh law, an application for a Rent Repayment Order (under the Housing Act 2004) requires a criminal conviction. In England, as a result of the Housing and Planning Act 2016, it is easier for tenants to seek repayment where there has been unlawful behaviour, as the tribunal can make a determination that an offence has been committed for the purposes of the application. However, simply adopting the law in England (which we would recommend) would still leave applicants with a high threshold to meet.
16. This is because the current position is that residential occupiers can apply to the First Tier Tribunal (FTT) for a Rent Repayment Order (RRO) of up to 12 months rent where they are able to prove beyond reasonable doubt that an offence under the PfEA has occurred. This requirement of the criminal standard of proof is difficult for tenants, acting in effect as lay prosecutors, to meet.
17. There is also an inconsistency because were a residential occupier to choose to pursue civil damages for the offences in the county court the civil standard of proof would apply and damages can potentially far exceed the 12 months rent limit of the RRO. The tribunal is not in a position to give an applicant legal advice on this, or to transfer the case to the county court. For none of the other offences for which RROs are available is there an alternative civil remedy. It would make sense for the tribunal to determine the case on the civil standard of proof and award damages.

## Conclusion

18. Our submission is that the law currently does not properly protect residential occupiers from criminal offences by landlords, and unless it does, this will be a barrier to the effective realization of a right to adequate housing. The housing context has changed significantly since the law was last considered in detail in the 1960s (the 1977 Act effectively reenacted earlier provisions), and we submit that this is an ideal opportunity for holistic reconsideration in the light of a right to adequate housing. We are very happy to assist further with this inquiry as needed.

## Appendix 1: Details of authors

**Helen Carr** is Professor in Law at the University of Southampton. Before entering academia she practised as a solicitor specialising in housing and welfare issues. She is a lawyer chair of the First-Tier Tribunal (Residential Property). She was seconded to the Law Commission to work on their Renting Homes Project and was subsequently seconded to develop the proposals for implementation of Renting Homes in Wales. She has also conducted an audit for Shelter of their advice work. Her relevant publications include:

Carr, H., Hunter, C., Owen, G., Makin, C., and Wallace, A. (2021). Research into the Sale and Use of Leaseholds in Wales. Cardiff: Welsh Government, GSR report number 16/2021.

Carr, H. (2011) The Right to Buy, the Leaseholder, and the Impoverishment of Ownership. *Journal of Law and Society*, 38 (4). pp. 519-541. ISSN 1467-5478.

Carr H., Cowan D., Hunter C. and Wallace A. (2010) Tenure rights and responsibilities York: Joseph Rowntree Foundation <http://www.jrf.org.uk/sites/files/jrf/tenure-rights-responsibilities-full.pdf>

Carr H., Cottle S. and Ormandy D. Using the Housing Act 2004 (Jordans, 2008)

**Caroline Hunter** is Professor of Law at the University of York. She is a barrister who before entering academia practised in housing and local government. She is a lawyer chair of the First-Tier Tribunal (Residential Property). She is co-author of Arden and Partington on Housing Law (Looseleaf Sweet and Maxwell). She is co-author of Private Sector Housing: Regulating Conditions (2007, Sweet and Maxwell). She has conducted a number of empirical research projects on the operation of housing law and her publications include:

Carr, H., Hunter, C., Owen, G., Makin, C., and Wallace, A. (2021). Research into the Sale and Use of Leaseholds in Wales. Cardiff: Welsh Government, GSR report number 16/2021.

Pleace, N., & Hunter, C. M. (2018). Evictions in the UK: Causes, consequences and management. In P. Kenna, S. Nasarre-Aznar, P. Sparkes, & C. Schmid (Eds.), *Loss of Homes and Evictions Across Europe: A Comparative Legal and Policy Examination* (pp. 333-360). Edward Elgar Publishing Ltd.

Carr H., Cowan D., Hunter C. and Wallace A. (2010) Tenure rights and responsibilities York: Joseph Rowntree Foundation <http://www.jrf.org.uk/sites/files/jrf/tenure-rights-responsibilities-full.pdf>

**Edward Kirton-Darling** is a solicitor (non-practising) and lecturer in law at the University of Bristol. His work includes policy reports on behalf of Shelter and the Veterans Advisory and Pensions Committee (on homeless veterans). He completed his PhD at Kent in 2015, and his teaching includes Land Law and Law & State. He graduated from the University of Leeds with a 1st class honours degree in law in 2003, and went on to work on the Renting Homes projects at the Law Commission. He qualified as a solicitor at Hodge Jones and Allen in 2009

and specialised in public law and housing cases until starting his PhD studies in September 2012. His publications include:

- Carr H. & Kirton-Darling E. (2022). Jepsen v. Rakusen (case note) *Cambridge Law Journal*
- Carr H, Cowan D, & Kirton-Darling E (2022). Marginalisation, Grenfell Tower and the voice of the social-housing resident: a critical juncture in housing law and policy? *International Journal of Law in Context*, 18(1), 10-24
- Burtonshaw-Gunn E, Cowan D, Carr H, Kirton-Darling E (2017). Closing the Gaps: Health and Safety in Housing, research report for [Shelter](#).