

MHCLG: Overcoming the barriers to longer tenancies in the private rented sector



Submission from St Mungo's

August 2018

About St Mungo's

St Mungo's vision is that everyone has a place to call home and can fulfil their hopes and ambitions.

As a homelessness charity and housing association our clients are at the heart of what we do.

We provide a bed and support to more than 2,700 people a night who are either homeless or at risk, and work to prevent homelessness.

We support men and women through more than 300 projects including emergency, hostel and supportive housing projects, advice services and specialist physical health, mental health, skills and work services.

We work across London and the south of England, as well as managing major homelessness sector partnership projects such as StreetLink and the Combined Homelessness and Information Network (CHAIN).

We influence and campaign nationally to help people to rebuild their lives.

For any questions about this submission, please contact publicaffairs@mungos.org

Executive Summary

The Private Rented Sector (PRS) is in desperate need of reform.

Landlords are currently able to end tenancies without the need for reasonable grounds and are unrestricted in the amount they can increase rents. As a result, tenants lack stability and security, and may face frequent and expensive moves.

As access to social housing becomes scarcer, the PRS is housing an increasing number of people who are moving on from rough sleeping. As it stands today, the PRS is not fit to support this group, as people with a history of rough sleeping are unlikely to have the financial resources or resilience required to withstand frequent evictions.

Therefore, we support the Government's intention to reform the PRS and particularly welcome the opportunity to comment on limiting rent increases.

However, we do not feel that the current proposal is the most effective way of reforming the PRS. The retention of a break clause at six months means that landlords will still have the ability to evict tenants for no reason after a short tenancy. In practice, this means that tenants will have no more security than in the current system. We are also

concerned that the proposed changes will not be introduced through legislation, as other incentives to landlords have already been shown to be ineffective.

Instead, we recommend that the Government review the Scottish system of private residential tenancies with a view to introducing a similar system in England through legislative change. In Scotland, tenancies do not have a defined end date and “no fault” evictions have been abolished. Instead, both tenants and landlords can end a tenancy, although landlords need a defined reason for this. We also recommend that incentives only be used to encourage landlords to let to tenants who may otherwise struggle to find a tenancy, alongside tenancy sustainment support.

Q1: Are you responding (please tick one)

- As a private individual?
- On behalf of an organisation? (Please give organisation’s name below)**

St Mungo’s, the homelessness charity and housing association.

Q3: If you are an organisation, which of the following best describes you? Please leave blank if you are answering as an individual.

- Landlord
- Property agent
- Letting agent
- Local Authority
- A sector representative body
- Charity dealing with housing issues**
- Other (please specify)

Questions for all

Q10: Do you think that the protection for tenants from retaliatory eviction introduced in the Deregulation Act 2015 has been successful? Please explain

- Yes
- No**
- Not aware of what these protections are

The Deregulation Act states that a landlord cannot evict a tenant for six months using a section 21 “no fault” eviction notice if the tenant has complained to their local authority about a hazard in their property, and this has resulted in an improvement notice or a notice of emergency remedial action.

Whilst this was a welcome change, it does not fully protect tenants from revenge evictions. For example, there is no protection for tenants if a notice is not issued by the local authority, or after the initial six month period. It also does not protect tenants who only complain to their landlord and not to the local authority.

Furthermore, six months is not a significant period of time and the short length of protection could still deter people from complaining to their local authority.

In its 2018 report on the private rented sector (PRS), the Communities and Local Government Select Committee recommended that the Act should be improved, to

protect tenants from other potential revenge evictions. This should include an extension of the six-month period in which “no fault” eviction notices cannot be issued, and should also prohibit retaliatory rent increases. The Government must further ensure that tenants are protected as soon as they make a complaint whether that be to their landlord, letting agent or local authority.¹

Q11a: What do you consider to be the main benefits of a longer tenancy for landlords? (Assign a score out of 10 for the importance of that factor with 10 being the most important)

- Less risk of void periods for landlords
- Tenants more likely to take care of property
- Landlords save on costs of finding new tenants (8)**
- Other (please explain)

Q11b: What do you consider to be the main benefits of a longer tenancy for tenants? (Assign a score out of 10 for the importance of that factor with 10 being the most important)

- Greater security for tenants (10)**
- Tenants saving money as they do not have to sign new tenancies or renew so frequently
- Tenants have greater assurance they can afford any rent increase
- Tenants more empowered to challenge poor practice
- Other (Please Explain)

Q12: Do you consider that there are any further benefits of longer tenancies that are not covered in question 11? Please explain.

Greater stability in the PRS could lead to a reduction in the number of people sleeping rough, which is a key Government objective.

The end of PRS tenancies are a common trigger for rough sleeping for those with vulnerabilities or few financial resources. By reforming the relationship between tenants and landlords, some of these instances of homelessness could be prevented which would also reduce costs to other public services.

Q13: What do you consider to be the main barriers to landlords offering longer term tenancies?

- Tenants do not want them
- Landlords do not want to offer them
- Landlords concerned about void periods
- Time taken to gain possession of property**
- Agents' advice
- Landlords want to retain ability to increase rent
- Mortgage conditions
- Other [please list]

A New Framework

¹ House of Commons. (2018) Housing, Communities and Local Government Committee *Private rented sector*. Available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/440/440.pdf>

Our suggested longer term tenancy model is a three year tenancy with a six month break clause. The main components would be:

- A three year tenancy but with an opportunity for landlord and tenant to leave the agreement after the initial six months if dissatisfied. If both landlord and tenant are happy, the tenancy would continue for a further two and a half years.
- Following the six month break clause, the tenant would be able to leave the tenancy by providing a minimum of two months' notice in writing.
- Landlords can recover their property during the fixed term if they have reasonable grounds. These grounds would be in accordance with the existing grounds in Schedule 2 of the Housing Act 1988 and would include antisocial behaviour and the tenant not paying the rent. Landlords must give the tenant notice (which would follow the notice set out in section 8 of the Housing Act 1988 for the ground or grounds used). Additionally, there would be grounds which covered landlords selling the property, as is possible in the current model tenancy agreement, or moving into it themselves. These grounds would require the landlord to provide at least two months or 8 weeks' notice in writing.
- Rents can only increase once per year at whatever rate the landlord and tenant agree but the landlord must be absolutely clear about how rents will increase when advertising the property. Any agreement on rent should be detailed in the tenancy agreement.
- Exemptions could be put in place for tenancies which could not realistically last for three years, for example, accommodation let to students or holiday lets.

Q14: Do you think that a three year tenancy with a six month break clause as described above is workable? Please explain

- Yes
- No

The PRS is increasingly becoming the destination for those exiting homelessness and currently rehoused around a third of people.² It plays a particularly significant role for single homeless people with limited access to social housing.

However, problems with affordability and stability make it especially hard for people with a history of rough sleeping to access and maintain a private rented tenancy. While the PRS can provide homeless people with settled accommodation for a period of time, it can also be the cause of repeat homelessness. The end of an assured shorthold tenancy in the PRS is now the leading cause of statutory homelessness.³

A comprehensive study, which followed the experiences of hundreds of people for five years after homelessness, demonstrated clearly the differences between people who had been rehoused in social housing compared to those in the PRS:

- People were much more likely to become homeless again if they were resettled into the PRS rather than social housing (58 per cent compared to 22 per cent)
- People who moved into the PRS were three times more likely than those in social housing to have moved at least four times over the five year period

² Crisis (2017) *Moving On*. Available at https://www.crisis.org.uk/media/237833/moving_on_2017.pdf

³ National Audit Office (2017) *Homelessness*. Available at <https://www.nao.org.uk/report/homelessness/>

- People living in the PRS were also less likely than those living in social housing to have received support after moving out of homelessness⁴

Given the increasingly prominent and currently unavoidable role the PRS plays in providing long-term accommodation for people with a history of rough sleeping, reform is vital in order to ensure more people can move on from homelessness for good.

We support the Government's review of current tenancy options. However, while the proposals may be an improvement on the current system, we do not believe that this would provide the best system for our clients, or tenants more generally. The proposals would also only be an improvement if longer tenancies are required by law.

In our experience of providing accommodation, a specific tenancy end date is often viewed by tenants as the date they will leave their property. As a result, they may be less likely to view the property or their local community as somewhere they will be settled for the long term. Similarly, the ability of landlords to issue a "no fault" eviction notice at six months would not provide tenants with any more stability than current assured shorthold tenancies. Such a system would also continue to allow landlords to evict tenants who had complained about the state of a property but not received an improvement notice from the local authority, or in order to increase rents for a new tenant.

Instead, we recommend that the Government review evidence from the new Scottish tenancy system, wherein all new private residency tenancies do not have an end date or a break clause, and implement a similar system. Crucially, both tenants and landlords can still bring the tenancy to a close, with either one or three months' notice depending on the amount of time they have been in the property, but the tenancy will not end automatically. This would provide tenants with more stability and increase the likelihood they will be able to remain in a property for a longer.

As outlined in more detail below, we also believe that the success of any new system will be reliant on the Government enabling changes through new legislation and limits on rent increases.

Q16: How long do you think an initial fixed term tenancy agreement should last (not considering any break clauses or notice periods)? Please explain

- 6 months
- 12 months
- 2 years
- 3 years
- 5 years
- No limit set**
- Other

We support the development of tenancies of indefinite tenure, in line with the private residency tenancies introduced in Scotland in December 2017. As noted above, in our experience setting an end date to a tenancy tends to lead people to feel that they are living in a property or community for only a certain period, and may mean they are less likely to feel secure in their tenancy, look after their property, or become fully engaged

⁴ King's College London (2016) *Rebuilding lives*. Available at <https://www.kcl.ac.uk/sspp/policy-institute/scwru/res/roles/rebuilding.aspx>

with their community. It also enables landlords to use “no fault” notices to evict tenants after six months in order to increase rent or avoid undertaking repairs to properties.

Landlords and tenants would both be able to bring a tenancy to an end, with a sufficient notice period and, in the case of the landlord, an adequate reason. However, it would remove a hard end date for the tenant living in the property.

We recommend that the Government begin to gather and review evidence of how tenancy changes in Scotland are working in practice and use this to inform any new system before introducing changes in England.

Q17: What do you think is an appropriate length of time for a break clause?

- Less than 3 months
- 3 months
- 6 months
- 12 months
- Other

We do not believe that there should be a break clause at six months.

As noted above, many St Mungo’s clients move out of homelessness into the private rented sector. In our experience as a provider of homelessness services, many of these individuals face eviction at the end of their assured shorthold tenancy (which often end at six months), and are at risk of returning to rough sleeping.

According to the Combined Homelessness and Information Network (CHAIN), a multi-agency database recording information about rough sleepers and the wider street population in London, the number of people rough sleeping in London decreased from 8,108 people in 2016/17 to 7,484 during 2017/18. However, there was an 8% increase in the number of people returning to rough sleeping after a year of not being seen on the street (1,119 compared to 1,036). The data also shows that 36% of new rough sleepers reported that they were asked to leave or evicted from their last settled base.

A secure and stable tenancy can make the difference between someone having a home or being forced to return to the streets. More than a third of tenants in the PRS went into debt to finance their last move,⁵ and people with a history of rough sleeping are likely to have lower financial resilience than the general population. Some people also lack a network of family and friends who can provide support.

Research suggests that 55% of landlords are unwilling to let to tenants in receipt of Housing Benefit. Landlords are also reluctant to let to people who have a history of support needs.⁶

⁵ YouGov for Shelter, base: English private renters: 3792. Survey conducted between 22nd June and 13th July 2015

⁶ Crisis (2016) *Home. No less will do*. Available at https://www.crisis.org.uk/media/237168/home_no_less_will_do_access_crisis.pdf

Even if a landlord is willing to let to people with a history of rough sleeping, there is evidence they put additional safeguards in place such as increasing the rent or deposit required. This adds even more barriers for homeless people looking to rent privately.

Six months is a relatively short period of time in which to build up the financial resources required to fund a deposit, rent advance or moving fees, particularly when these may be higher than for the general population.

Instead, we support the use of open ended tenancies, with no break clause, in which landlords can provide either one or three months' notice for tenants to leave the property, providing they have a justifiable reason for this.

Q18: How much notice should landlords be required to give to tenants when they want to recover their property to sell or move into?

- Less than 1 month
- 1 month or 4 weeks
- 6 weeks
- 2 months or 8 weeks
- 3 months or 12 weeks**
- 6 months or 24 weeks
- Longer than 6 months

As noted above, people with a history of homelessness will likely find it difficult to build up the financial resources required to fund moving. Providing them with three months' notice, as is largely in line with the new Scottish tenancy system, would grant tenants more time to save towards a new deposit, advance rent and other moving costs. There may be circumstances in which landlords would only need to give one month's notice, as is currently also the case in the Scottish system.

It would also ensure that tenants facing eviction have time to try and find their own property before they are able to engage with local authorities under the Homelessness Reduction Act, which has a requirement to provide support to people facing homelessness within 56 days. This may reduce the strain on local authority services in the long term.

Q19: How much notice should tenants be required to give to their landlords when they want to leave their tenancy?

- Less than 1 month
- 1 month or 4 weeks**
- 6 weeks
- 2 months or 8 weeks
- 3 months or 12 weeks
- 6 months or 24 weeks
- Longer than 6 months

Tenants may need to move quickly from their property for a number of reasons, including a new job in a different location, or an inability to pay their rent. If tenants are required to give more than one month's notice they may be forced to pay double rent, or go into rent arrears.

10: Do you think that the grounds for a landlord recovering their property during the fixed term under any longer term tenancy agreement should mirror those in Schedule 2 of the Housing Act 1988, with the addition of the right for the landlord to recover their property when they wish to move in or sell it?

- Yes
- No

We believe that these grounds are an appropriate list of reasonable grounds for landlords looking to regain possession of their property.

However, we would welcome further changes to the eviction process, and recommend that “no fault” evictions under section 21 of the Housing Act be abolished. Landlords should be asked to provide reasonable grounds before evicting a tenant, as this is the only way to prevent evictions based on revenge or unfair rent increases.

As outlined in the consultation document, the current process for securing a section 8 eviction notice is arduous. It can take some time to secure a court hearing, and final decisions are often delayed. This means that landlords may struggle to recover their property quickly, and the process can be costly.

Under the new tenancy system in Scotland, evictions can only take place for one of 18 reasons and landlords must apply for an eviction notice from the First-tier Tribunal for Scotland Housing and Property Chamber. We strongly recommend that the Government in England review how this process has worked in practice since its introduction in late 2017, with a view to introducing a similar system in England.

Introducing similar legislation in England would likely require an overhaul of current possession proceedings, but we understand that the Government is currently consulting on the introduction of a specialist housing court. At present, neither landlords nor tenants are well served by a court system which takes considerable time and expense to resolve disputes and issue possession orders, encouraging the use of “no fault” evictions. Reform is needed to increase capacity in this system, which could take the form of a housing court. However, any reform would need to retain access to legal aid, increase the capacity of the court, and ensure that landlords are held responsible for providing reasons for eviction. We look forward to working with the Government on this issue in the future as it continues to consult.

Q21: Do you think that there should be any restrictions on how often and by what level the rent should be increased in a longer tenancy agreement? And if so what is the maximum that these restrictions should be? (Tick up to two)

- Yes – rent increases should be limited to once per year
- Yes – rent increases should be limited to once every 18 months
- Yes – rent increases should be limited to once every two years
- Yes – rent increases should be limited in frequency but not in the amount that can be charged
- Yes – any rent increases should be linked with inflation measures (e.g. Consumer Price Index (CPI))
- Yes – any rent increases should be linked to local market averages
- No – rent increases should not be limited
- Other – please explain

Rent rates in the PRS are becoming increasingly unaffordable for people with a history of rough sleeping, and particularly those who claim Housing Benefit to pay their rent.

In the PRS, Housing Benefit is only paid up to the rate of the Local Housing Allowance (LHA), but there is no requirement for landlords to let their properties at this level. Since 2011 LHA rates have been calculated based on the 30th percentile of local rents, but rates have been frozen since 2016 as rents have continued to rise. LHA rates are not due to increase again until 2020. Research by Shelter suggests that 83% of areas in England will be unaffordable to LHA claimants by 2019/20.⁷

Most single people under 35 renting in the PRS can only claim the Shared Accommodation Rate (SAR) of Housing Benefit, which is the lowest rate and only intended to cover a room in a shared house. Shared housing is often not the right option for people with a history of rough sleeping, and options are extremely limited for those who rely on Housing Benefit. One mystery shopping exercise suggested that only 13% of rooms are affordable at the shared rate.⁸ There are some exemptions from this rule for vulnerable young people, but these are not wide enough to cover everyone with a history of rough sleeping.

An increasing number of people are having to move into properties in the PRS that are rented above the LHA rate. As a result, their Housing Benefit does not meet the full cost of their rent and they have to try and make up the shortfall from other income. For people who have a history of rough sleeping, who are more likely than many others to be without any financial support or savings, it is very difficult to maintain rent payments under these circumstances. This makes them vulnerable to eviction.

The Benefit Cap also limits the amount of welfare that households can claim every week and reduces the Housing Benefit available to some people living in areas with the most expensive housing. This can make it even more difficult to find accommodation for those moving on from homelessness, particularly in central London, and often leads to individuals being forced to move away from their support networks and current services.

Tenants in the PRS are currently unprotected from rent increases, which can also mean they are required to move frequently if they can't afford new rent levels. As outlined elsewhere in this document, this lack of stability is a key factor in forcing people to return to rough sleeping.

We therefore support proposals to control the amount that rents can increase over the period of a tenancy, but urge the Government to go further and limit rent changes to an annual increase in line with inflation. This will enable landlords to continue to rent their properties in an affordable way, without burdening tenants with rent increases which outrun their income.

We also strongly recommend that, before these changes are introduced, the Government should increase LHA rates across the country to ensure that they cover

⁷ Shelter (2017) Briefing: Ending the freeze to LHA. Available at: https://england.shelter.org.uk/_data/assets/pdf_file/0003/1423083/2017_09_10_Shelter_Briefing_-_Ending_the_freeze_to_LHA.pdf

⁸Sanders, B., and Teixeira, L. (2012) *No room available: study of the availability of shared accommodation*. London: Crisis.

properties up to the 30th percentile of local rents. This will ensure that Housing Benefit claimants will be able to find affordable properties, and long-term homes.

Q22: What do you think is the best way to ensure that landlords offer longer term tenancies to those that want them or need them? Please explain.

- Change the law to require all landlords to offer longer tenancies**
- Change the law to require all landlords to offer longer tenancies as a default with an option to choose a shorter term
- Financial incentives**
- Voluntary measures such as a kitemark on longer term properties or an updated version of the existing model tenancy agreement
- Other (please explain)**

We recommend that legislation be introduced to implement changes to tenancy lengths. Measures to encourage landlords to introduce longer tenancies had been tried in the past and proven ineffective. For example, in 2013 a new model tenancy agreement was introduced, which attempted to empower tenants to request longer tenancies. However, there is no evidence to suggest that this led to a significant increase in the amount of longer tenancies on offer. The only way to ensure that landlords introduce longer tenancies across the board is by compelling them to do so using legislation.

However, financial incentives could be used to encourage landlords to let to groups who have difficulty accessing PRS properties.

Research by the charity Crisis suggests that landlords are unwilling to let to welfare claimants and those who are homeless. In a survey of landlords, only 20 per cent indicated that they were willing to let to homeless applicants and 52 per cent said they were *not* willing to let properties to tenants who claimed Housing Benefit.⁹ Where landlords do let to people with a history of homelessness who claim Housing Benefit, they tend to require greater upfront costs such as larger advances or security deposits. This can make the PRS even more unaffordable to people who have been homeless.

Financial incentives, such as access to rent deposit schemes, tax incentives, or direct payments, could be used to support landlords to feel more confident in letting to welfare recipients or those who have been homeless. This could be very helpful in enabling this group to access a larger number of privately rented properties, and should be used alongside tenancy sustainment support for tenants, and other interventions such as direct payment of rent to landlords.

Q23: Which types of tenancy should be exempted from the proposed system?

- Purpose Built Student Accommodation
- All Student Accommodation
- Holiday Lets**
- Tenancies for those with visas ending in the next 3 years
- Tenancies for those with short term work contracts
- Other (Please explain)**

⁹ Crisis. (2018) *Home. No Less Will Do*. Available at https://www.crisis.org.uk/media/237166/home_no_less_will_do_crisis.pdf

If the Government were to adopt the proposals outlined above, in which tenants could offer one month's notice before leaving their tenancy, then most of the above types of tenancy would not need to be exempt. Holiday lets may be intended for use of less than one month and therefore could be exempt from this system.

We would very strongly recommend that tenancies for those with short-term visas or work contracts should not be exempt from a new system. Visas are often extended beyond their initial period, but this may not be confirmed for some time. Ending an individual's tenancy during this period could cause significant stress, force someone to move unnecessarily and would be superfluous if the tenant were able to give one month's notice.

Similarly, individuals on short term work contracts should not be forced to accept less secure tenancies than others. Short term contracts are often extended and may become more permanent, and we would not support the creation of a two tier system in which tenants would need a permanent contract in order to access a longer tenancy. Instead, tenants should have flexibility to lend their tenant with a month's notice.

Q24: What do you think would be the benefits and disadvantages of changing the law to require all landlords to offer the longer term tenancy model?

We believe that the only way to ensure that landlords actually offer longer term tenancies is by introducing legislation on this issue, for the reasons outlined above.

Q25: What, if any, financial incentive could encourage longer tenancies? Please explain

We do not support the use of financial incentives to encourage longer tenancies. Instead a new standard tenancy should be introduced through legislation.

Q26: If there were a financial incentive to offering longer tenancies, what conditions should a landlord have to comply with to be eligible? (Tick all that apply)

- Meet all legal requirements
- Agree to certain restrictions about frequency and level of any rent increases
- Comply with a minimum property standards, including gas safety checks and tenancy deposit protection
- Other (please explain)**

Landlords should always be expected to meet all legal requirements and comply with minimum property standards, regardless of access to financial incentives. The Government should have greater oversight of landlords to ensure that tenants' legal rights are being met, and that their properties are of a habitable standard.

However, as outlined above, we do believe that financial incentives could be useful in opening up the rental market to certain groups who currently struggle to access private sector properties, including welfare claimants or those with a history of homelessness.

Q27: What other options to promote longer tenancies should be considered?

We believe that legislation should be introduced which creates a new standard tenancy, with an indefinite tenancy length.