

Why We Can't Afford to Lose it: Local Authority Housing in London Protects the Poor from Homelessness

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Carried out in partnership with Lambeth County Court Duty Scheme



Dr Hannah White is the Research and Knowledge Exchange Co-ordinator at **Cambridge House**. The organisation is a social action centre working locally and nationally to tackle poverty and social injustice. Founded in 1889 the organisation was set up to provide services in South London and is part of the **settlement movement**, considered to be the forerunner of the welfare state. Established in 1894 **Cambridge House's Law Centre** provided the **first free legal service** in the UK. Today it specialises in employment, welfare and **housing law**. The law centre protects people's homes by advising tenants on their rights and supporting those facing rent arrears, housing benefit issues, disrepair, a possession order or eviction as well as homelessness.

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Lambeth County Court Duty Scheme is run and managed by **Lambeth Law Centre**. The scheme runs three to four times a week at Lambeth County Court. Its purpose is to provide free legal representation to those at risk of losing their home due to rent arrears on the day of their hearing. Current members of the scheme include: Advising London, Brixton Advice Centre, Cambridge House Law Centre, University of Law, Lambeth Law Centre, Southwark Law Centre, Anthony Gold, Philcox Gray, Hansen Palomares, Hockfield & Co, GT Steward and Centre 70.

Executive Summary

London: a sustainable city?

London is changing rapidly. Parts of the capital, particularly inner-city boroughs with large stocks of social housing are undergoing state-led gentrification, leading to the displacement of low-income groups. This is partly due to a potent mix of government policy, cuts to local authority budgets and international investment, which has seen councils selling off dilapidated estates they can no longer afford to maintain.

At the same time ‘reforms’ intended to cut the welfare bill such as the bedroom tax and tax credits and the simultaneous rise of zero hours contracts have hit the working poor hardest. Nationally rates of eviction from local authority properties have been rising steadily mainly owing to rent arrears, while Southwark, Lambeth and Lewisham, like a number of other London boroughs, have been identified by **Shelter** as eviction hotspots. Last year on average, one in thirty tenant households in these three boroughs received a possession order, meaning they were subject to legal process where their home was at risk.

The loss of social housing, expansion of the private rental sector and involuntary dispersal is set to accelerate if the proposed Housing and Planning Bill is passed in its current form. Rather than resolving the current housing crisis, proposals such as the right-to-buy housing association homes, the selling off of ‘void’ council properties, removal of local authority planning restrictions and prioritisation of starter homes will likely see further increases in landlord repossessions and more families priced out of the capital.

For the moment, however, council estates remain home to a large number of Londoners and offer secure and truly affordable accommodation. In order to understand more fully the role that social housing and the law currently play in protecting those on low incomes, the research set out to examine the reasons for rent arrears and the experiences and circumstances of tenants. To access those facing a possession order we shadowed Lambeth County Court Duty Scheme. This provided the unique opportunity to observe solicitors interviewing and taking instruction from tenants giving us direct insight into the complex and multiple issues which affect those on low incomes. It also enabled us to study the court and how the law operates in practice.

Research Aims

- To establish who is vulnerable from eviction and the reasons why.
- To investigate how local authority housing and the law protects those who are ‘vulnerable’ and/or on low incomes.

The findings presented here are the result of research carried out during Autumn 2015 and they are part of a larger project looking at the displacement of low-income groups from boroughs in South London. Our findings here look specifically at the reasons for rent arrears amongst social housing tenants, and demonstrate how government policy and in particular welfare reform has affected people’s lives. These insights have informed our recommendations below disputing key aspects of the proposed Housing and Planning Bill.

Key Findings

- Local authority housing plays an essential role in protecting those who are vulnerable as a result of old age, mental illness or physical disability, as well as those on low incomes, from homelessness.
- Local authority tenants with a secure tenancy are better protected than housing association or private tenants.
- The Pre-action Protocol for Possession Claims by Social Landlords protects both local authority and housing association tenants. Housing associations, unlike local authorities, however, can seek possession of a property using a Ground 8, Section 8 Notice. In this instance if the tenant owes more than 8 weeks rent on the day of the hearing the court has no mandate to intervene.
- Disproportionately represented amongst those at risk of eviction in South London are women with dependants and ethnic minorities.
- Work does not necessarily pay – over two-thirds of those observed defending a possession order were either in full or part time work and yet still struggled to pay their rent.
- Housing Benefit delays or mistakes are a primary cause of rent arrears.
- It is not just social housing under threat due to the proposed Housing and Planning Bill, currently Lambeth County Court and funding for legal aid are also at risk and the rolling out of universal credit will see a reduction in many people's weekly budgets.

Recommendations

- Plans to sell off high value council accommodation to subsidise the right to buy of housing association properties should be scrapped. In the short term this will increase the financial burden on local authorities and in the long-term significantly reduce their capital assets.
- Greater safeguards should be introduced for private tenants including rent controls, more secure tenancies and greater protection from possession claims.
- Local authorities must retain affordable planning controls, while welfare reforms need to be reconsidered to protect tenants from forced dispersal and to save money. This should include:
 - A review of the bedroom tax and benefit cap, both notable causes of debt and rent arrears
 - Greater effort should be made to rehouse bedroom tax tenants in properties with less bedrooms
 - Discretionary housing payments should be made available to help tenants pay off debts in cases where rent arrears are the result of a housing benefit error
 - Measures should be put in place to stop rent arrears cases owing to a housing benefit error coming to court

1.0 Background to the research

Despite long waiting lists, **local authority housing** is under threat of **privatisation**. This is partly due to cash-strapped councils selling off stock to private developers (Lees, 2014a, 2014b) and partly due to the doubling of right-to-buy sales since the government introduced discounts in 2012 (DCLG 2015a). The **Housing and Planning Bill** is set to accelerate losses owing to the proposed right-to-buy of housing association properties at discounted rates (DCLG, 2015b, 56 [1,2,3]). The cost of which is to be compensated through the sale of high value local authority accommodation or a payment to the Secretary of State proportional to the worth of vacant high value council property (DCLG, 2015b, 62 [1,2 – a,b]).

In response concerns have been raised regarding the legislative uncertainties in the Bill and its impact. This includes the extent to which sold properties will be replaced, the potential delay in building new homes, and the quality and location of stock (Bibby, 2015; Redbrick, 2015; Wilson, 2015). Other worries include the fiscal impact on local authority budgets and the knock on effect for other public services.

Less has been said about how the loss of social housing will affect families and individuals. To demonstrate the role that local authority housing plays, the research summarised below set out to examine the experiences of tenants and in particular the reasons why they may find themselves in arrears and facing eviction.¹ By shadowing Lambeth County Court's Duty Scheme the research also looked at the measures currently in place to support tenants.

The research consisted of ethnographic observation of the duty scheme between September and November this year and analysis of the scheme's records for 2014-15; we also analysed secondary data and sources. The scheme runs three to four times a week providing free legal advice and representation to those at risk of losing their home due to rent arrears on the day of their court hearing. Typically solicitors represent local authority and housing association tenants facing a possession order, but also provide advice on housing rights, the possession process, disrepair, rent and housing benefit issues.

Ethnographic observations were carried out during 15 visits to the court (including two pilot visits) during which over 50 cases were observed and five in-depth interviews carried out. Brief analysis of the duty scheme data (based on 790 unique visitors) provided information on the gender and ethnic origin of clients, the type of landlord and the order made.

The perceived benefits of the method included direct insight into tenants' experiences and the complex and overlapping issues which affect those on 'low' incomes, and greater understanding of the reasons for rent arrears. At the same time, the research provided the opportunity to observe the court and how the law operates in practice, highlighting the varying rights of those in council, housing association and private accommodation. In so doing the research demonstrates and underlines the importance of local authority housing and how the law currently protects the most vulnerable members of society.

¹ According to DCLG's (2014) local authority housing statistics for 2013-2014 there was a 12% increase in local authority evictions driven primarily by a 19% increase in evictions for rent arrears.

2.0 Case Studies

During our visits to court we observed the duty solicitors taking instruction from clients, giving advice, and the court hearings. During consultations we were able to gather substantial information about the clients including their occupation, relationship status, income, benefits, type and length of tenancy, amount of rent owed and the reasons for the arrears. We were also able to observe the legal process – the advice given by solicitors, the order sought by housing officers, court procedures and the judges’ ruling.

This helped to build a picture of how the rise of zero-hour contracts, wage freezes and the outsourcing of public sector services, as well as cuts to benefits, tougher sanctions and delays in processing claims, have impacted people’s lives and their ability to pay even subsidised rents in London. It also demonstrated how measures currently in place such as the Ministry of Justice’s pre-action protocol for social landlords, the duty scheme and current law, play an essential role in protecting those at risk of losing their home. The case studies summarised next exemplify the complex and interrelated issues the majority we encountered were struggling to cope with, and illustrate the impact of national policy on those with low incomes. The case studies are followed by a summary of the main findings of the research.

2.1 Young man suffering mental health issues

The client is a single male, black British, and he has one child who doesn’t live with him. He lives in a one-bedroom property. He moved there in 1998 when he was 16 after leaving home and living in various hostels. He currently has no income other than housing benefit, which pays the rent and he has been living off food banks and hand-outs from friends.

He explains that he has been in court before but that was a number of years ago. He estimates that his current arrears are between £600-£800. He was informed in January that if he didn’t get the arrears down he would be taken to court.

When asked about the reason for the arrears he explains that until recently he was self-employed but lost his business a year and a half ago, and went onto Employment and Support Allowance (ESA).

“I was doing a lot of things with the business trying to progress, help in the community, helping people who were struggling, the shop itself and ...urm... a few incidents happened in the area where the shop is and the pressure of the type of people I had to deal with on a day-to-day basis, it kind off... I let it get to me. And that is when the stress kicked in and I started acting out of character and just couldn’t continue”.

During the interview the man explained that despite his mental health issues (depression, anxiety and psychosis – he says he is fine now but deteriorates under pressure) when he was assessed in May he was considered fit for work and his ESA and housing benefit were both stopped.

“So I went onto ESA for about ten months til they wanted an assessment and because I was physically fit and they didn’t diagnose my mental state – they cancelled my ESA”.

and then I got further depressed and wouldn't come out of my house for a couple of weeks".

He signed up for JSA but was sanctioned after he missed a couple of appointments. He explains that he is back on full housing benefit and makes a payment towards the arrears when he can. The last one was £25 two weeks ago, which he borrowed from a friend.

He is currently challenging the decision about his ESA and has a tribunal coming up.

[The interview with the solicitor is cut short because it is time to go into court]

In court it becomes apparent that the defendant's housing benefit payments have been reinstated so the rent is covered, although the defendant doesn't have any other income. The duty solicitor asks for an adjournment of 4 weeks on the basis that the ESA tribunal will be heard the following month and because the defendant may be owed a back payment of ESA which would help to pay off the arrears.

The housing officer is not present. The claimant's representative is seeking a suspended possession order. This is justified on the basis that the defendant was in court for arrears in 2008.

The Judge questions why housing and other benefits are stopped in instances where people obviously need it.

The case is adjourned on terms. The defendant is asked to pay £7.70 a month towards the arrears, which he agrees to by borrowing money from friends.

2.2 Care-worker on a zero-hours contract

The tenant is single, black British and has an adult child living with her who is acrophobic and has anxiety and depression. He is currently on ESA. They have lived at the property for 23 years. The local authority is seeking a suspended possession order for rent arrears.

When I ask the tenant why she got behind with the rent she explains:

"Um yeah, rent arrears, basically I don't get paid enough in wages. I'm on a zero-hour contract so my hours are never consistent and I never get above 24 hours a week. Most of the time I do about 15/16. Last week I did 12, this week I'm going to do less. I'm a care worker. If one of my service users is in hospital then obviously I don't visit – so you won't get paid – and that's when you lose out again".

It appears that the woman is eligible for housing benefit owing to her fluctuating income but explains that there is currently a query on her case. She is struggling to pay council tax although it is likely that she would be eligible for help with this also. She is the primary carer of her son, but believes that she is not eligible for a carer's allowance.

The duty solicitor is concerned that because the woman's income is low if she receives a suspended possession order she won't be able to keep up with the payments and will

therefore be at a real risk of losing her home. On this basis and because the woman requires benefits advice the solicitor advises to seek an adjournment.

The Judge adjourns the case for 28 days to allow the defendant time to resolve the outstanding benefit issues.

During our interview later, I ask the woman the difficult question what would she do if she were evicted and whether she has any support locally.

HW: Do you have local support and family nearby?

Not really. I've got family nearby but they are not rich - so they can't help me out or anything like that.

HW: So you are on your own with this... if you had to move away what impact would it have on you?

We would end up the street and that is basically what would happen and that would worry me because of his [her son's] mental health as well.

HW: How do you feel about your home?

It's home. I made it a home and to lose it you know... I'm getting on in life. It's not a good thing, the stress of it and being under all the stress makes me worried that I won't be able to do my job properly, if at all. I might lose my job. If I am made homeless I will lose my job because I get sent my rota at home, it has personal information about service users and that can't be urm... [starts to cry] disclosed to anybody, so I will lose my job too as well as my home.

HW: I'm sorry to ask the question.

I don't know what I would do.

HW: Did you find today very stressful?

[Nods]

HW: What impact does going to court have – does it mean you are more likely to pay the rent?

I was never in dispute of it; I just simply don't have enough money. I go to bed every night with a sandwich and a cup of tea [still crying], I can't even have a proper meal.

HW: How do you feel about what's been happening to you? Obviously I can see that it has been really distressing... but what do you think about the court process itself?

I understand it's got to be done, but urgh... it just feels like a punishment for the poor. If I was in Dickensian times I would be in debtors prison.

2.3 The single-mother and student

The client is a young white woman, a single mother with two children. She lives in a two bedroom flat with her children who are aged 6 and 9. She took over the tenancy in 2006; the rent arrears are £1,612.70.

When asked if the flat is in good condition the defendant explains that she had a seven-year battle with the Council to fix a leak in the flat above, which had created considerable damp problems in the hallway and bathroom. The leak has since been sorted however no work has been done to make good the damage to her property.

When asked about the cause of the rent arrears, the woman explains that she got into financial difficulty last year when she applied to be a student and had problems signing on. At the time she was volunteering at a local theatre. Later on she went on holiday for a week and her benefits were suspended including her housing benefit (despite informing the JS office of her plans).

She went on to explain that when her housing benefit was reinstated, housing benefit paid half the rent and she was responsible for the other half, which was to be paid out of her student loan. However, it took 6-7 months to resolve the outstanding housing benefit issue and once it had been reinstated the backdated amount didn't cover the arrears. She also explained that in September this year, she phoned the housing officer because she hadn't passed her first year and there was some doubt as to whether she would continue to be eligible for a student loan. She pointed out that she hadn't had any money since August anyway because her last instalment had been paid several months before.

The woman went on to suggest that around this time her mental health and ability to cope began to deteriorate. She had been receiving psychotherapy for childhood trauma at Kids Company but this had stopped suddenly when the charity went into receivership and was not picked up by another support service. She also explained the reason for the therapy was because both her parents had been addicts when she was young, that she had been in and out of foster care and had been sexually abused when she was 5. (At this point she was extremely distressed and broke down – the solicitor apologised for having to ask questions and explained that she thought sadly her experience would help her case). The woman went on to indicate that the withdrawal of support had had a major impact on her ability to cope.

(The interview was suddenly suspended because the solicitor had to go into court to represent another case, during this time the woman's father/grandfather walked up to me and asked if Kids Company was going to open again – suggesting she was alright when she was there).

On exiting the court, the solicitor went to negotiate with the housing officer. After five to ten minutes they agree to an adjournment on the basis of the woman's experiences rather than the possession order the housing officer was originally seeking and to reserve the court costs.

3.0 Key Findings

- **Local authority housing plays an essential role in protecting those who are ‘vulnerable’ as a result of old age, mental illness or a physical disability, as well as those on low incomes, from homelessness through the following:**
 - Secure tenancies (a permanent council tenancy) – a secure tenancy can only be ended by the landlord obtaining a possession order.
 - Before seeking an order and taking a tenant to court the council or housing association must do the following.
 - Talk to the tenant as soon as possible
 - Provide detailed information about the arrears
 - Offer to help if a housing benefit claim needs to be made
 - Agree to delay taking the tenant to court if a reasonable offer is made to pay off the rent arrears. (www.gov.uk)
 - When a case comes to court, the judge has a number of options regarding the type of order that can be made.
 - Adjourning the case (on terms/generally/for a fixed period)
 - Postponing or suspending an order
 - Granting an outright order
 - If a tenant breaches the terms of the court by missing a payment, depending on the type of order made previously, they may find themselves back in court. In the worst-case scenario they may receive a possession order. Once this has been made the landlord can then apply for an eviction warrant. The tenant may still be able to make an application to the court to stop the eviction going ahead under exceptional circumstances.

- **The law better protects local authority tenants than housing association or private tenants:²**
 - Although housing association officers must follow the same guidance as local authority landlords, for example, seeking to talk to tenants as soon as possible about their arrears, housing associations as well as private landlords can submit a possession claim under Ground 8. This means that so long as the tenant is more than 8 weeks or 2 months in arrears at the time the summons is served and/or the case is heard, and the notice has been served correctly, the court has no mandate to intervene.³
 - In contrast local authority landlords cannot evict a tenant unless they can demonstrate that it is reasonable in all circumstances for an order to be made.

- **Disproportionately represented amongst those at risk of eviction in South London are women with dependants and ethnic minorities:**

² This does not apply to introductory tenancies granted for the first year of tenure. This is likely to become more complicated when flexible tenancies come into effect & potentially give local authorities the right to end a tenancy.

³ Where a housing association tenant faces a Ground 8 claim a public law defence can be made under the Equality Act or if a claim is unlawful on judicial review principles/human rights grounds. It is important to note that these cases are typically tough to pursue.

- According to the duty scheme records for 2014/15, 18% of clients were white British. The two largest groups were black or black British African (27%) and black or black British Caribbean (20%).
 - Similar figures were recorded during the duty scheme observations. Just ten of 43 clients were recorded as white British (23%), while 26 (60%) of clients were noted to be black, black British African/Caribbean.
 - Sixty-one percent of duty scheme clients last year and 67% of those observed during the research were female.
 - Of the female clients observed during the fieldwork (29), 15 (52%) had a dependent child living with them, 3 (10%) lived with a non-dependent child, and another three (10%) lived with a non-dependent child with care needs, one woman's children had been taken into care. Only four of the women with children lived with a partner.⁴
- **Work doesn't necessarily pay:**
 - Sixty-seven percent of those observed at court defending a possession order were either in full or part time work and yet struggled to pay their rent.
 - Those in full employment in care and service industries such as nursery nurses, teaching assistants, and cleaners, are not paid enough (approx. £1,000-£1,200/month) to cover rent, council tax, utility bills, food and travel, even when living in subsidised housing. For many, further cuts to their benefits would be a disaster.
 - Those on zero-hour contracts reported struggling to budget and manage rent payments due to precarious working conditions and inconsistent hours.
 - **Delays or mistakes in housing benefit payments are a major cause of rent arrears:**
 - Out of 43 clients observed, 28 (65%) claimed housing benefit and two were awaiting their claim to be processed.
 - In over half of the total cases observed (22 or 51%) the rent arrears originated from a housing benefit issue.
Problems encountered included:
 - Delays in processing claims
 - Delays in payments for those with irregular incomes owing to flexible working arrangements
 - Suspended payments owing to suspected benefit fraud
 - The failure to pay back historical arrears in full or in part
 - Lone-parent students struggling to simultaneously manage student loan payments and housing benefit entitlements
 - 'Clawing back' – the practice of deducting sums from housing benefit payments owing to a previous over payment
 - 25% deductions owing to the bedroom tax for two bedrooms or 14% for one bedroom

⁴ This could be attributed to the greater proportion of women living in local authority housing on account that those who are pregnant or have dependant children are considered a priority.

- **Local authority housing has become the last bastion of the welfare state owing to the stripping of benefits and services – and plays an essential role ensuring that basic support needs for the poor and/or disabled are met:**
 - A sudden change in personal circumstances such as a relationship breaking down, bereavement, mental illness, or long-term illness, for those on low incomes, can quickly lead to rent arrears. Without the protection currently provided by local authority housing many would find themselves destitute.
 - If an individual or family are evicted for rent arrears they are often considered to be intentionally homeless and therefore the council does not have a duty to house them unless they can demonstrate the arrears were not their fault i.e. the tenant lost their job or their housing benefit was stopped in error.
 - If evicted from a local authority property individuals and families would struggle to find alternative private accommodation nearby on account of their rental history and recent hikes in rates in the capital.

- **Under current proposals it is not just social housing which is under threat, Lambeth County Court, funding for legal aid and benefits are also at risk:**
 - The Ministry of Justice have proposed to close Lambeth County Court and transfer its workload to Wandsworth County Court in East Putney. This is likely to impact those on low incomes and who use public transport to reach the court due to increased costs and travel times.
 - Because of the increase in travel times, there will be substantial additional costs for other public bodies which use the court such as Lambeth and Southwark.
 - Those facing rent arrears may experience greater difficulties accessing advice and therefore will be more likely to lose their homes.
 - It is likely that the duty scheme will be imperilled due to increased costs.
 - Further cuts to benefits corresponding with the rolling out of Universal Credits mean that more people are likely to struggle to pay rent even at local authority rates.

4.0 Conclusion

This research underlines the importance of retaining council housing as a protection for the poor against dispossession and homelessness. This is important for the UK as a whole, but is especially important in the context of London where property prices and rents are some of the highest in the world, and where council estates are being demolished as we speak and regenerated for a new class of resident (Lees, 2014a,2014b; LTF et al, 2014). The intricacies of this protection are outlined here – this is about more than just lower and more affordable rents, it is the procedures in place from the actions required of the local authority, to the actions of free legal aid and the actions of the court that seek to prevent dispossession of the poor. Once local authority housing is sold on, demolished or people are forced out of council housing, these protections also disappear. Indeed our duty of care to the poor disappears along with local authority housing. If we believe that London and other British cities should be socially sustainable for all social groups then the Housing and Planning Bill must be fought at all costs.

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