

Safer Renting

# Journeys in the shadow private rented sector

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This report is the product of teamwork in Cambridge House, particularly including Karin Woodley who had the foresight to commission the setting up of Safer Renting; Daniel Currie, project mentor; Rob Anderson whose Master's Degree dissertation analysis was a foundation stone for the research; Elliot Laker, editorial assistant; and fieldwork team members Sarah Collins, Molly Delaney and Yahaya Mustapha; and finally to Mijeroh Tialobi who supports our data recording.

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Finally, we thank the respondents who told their stories. Within this report, tenants are the expert commentators on landlord criminality: they have experienced criminal behaviour at first hand, and we are grateful for their contribution.

## About the authors

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# Journeys in the Shadow Private Rented Sector

## Foreword

As one of the UK's pioneering university settlements, Cambridge House was founded to promote social justice in South London's 19<sup>th</sup> century 'slum' neighbourhoods. In 1889 we began working at a grass roots level to empower local people to tackle the social problems created by urbanisation and industrialisation. Since then – for the past 131 years – we have pursued a vision of a society without poverty where all people are valued, treated equally, and lead fulfilling and productive lives. Our innovative work contributed to the 1906 Liberal welfare reforms and the creation of the welfare state. Today, Cambridge House continues to work in some of the UK's most deprived areas to tackle social exclusion, enable people to transition out of crisis, and progress towards independence.

Safer Renting is the only service of its kind – and the latest example of Cambridge House's innovative approach to delivering its vision of a society without poverty. Its mission is simple: to keep vulnerable, low-income residents in their homes and off the streets, empowering individuals and bolstering communities whose problems are largely hidden from view. Against this backdrop, it is unsurprising that the term 'rogue landlord' has entered into the political lexicon over the past decade: it is a product of a private rental market serving low-income Londoners, which is under-regulated, exploitative, and characterised by dangerously poor physical standards and insecurity of tenure. Yet, as this report illustrates, the term is also an unhelpful one: eliding ill-informed landlords with criminals who wilfully exploit vulnerable tenants.

This report sets out a range of recommendations for how policymakers should take urgent action to tackle the bleak picture facing people stuck in the low-income private rental sector. Three themes are worth highlighting. First, that law-enforcement agencies need to do more to prevent illegal evictions, making better use of existing powers within the Protection from Eviction Act 1977 and taking advantage of temporary powers available to police during the Covid-19 crisis. Second, a new regulatory framework is required to oversee the private rental sector, with a particular focus on providers of low-income tenancies. Third, that poor housing has contributed to the unacceptably low levels of progress towards equality for people of BAME origin – addressing the impact of poor quality, multi-occupancy and insecure housing is an essential part of the response to structural inequalities highlighted by the Black Lives Movement.

Safer Renting has made significant progress in helping vulnerable tenants over the past few years – but this report shows how more work remains to be done to make private renting safe for everyone.

Simon Latham<sup>1</sup>  
Chair of Trustees, Cambridge House

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<sup>1</sup> Simon Latham writes here in a personal capacity

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# Journeys in the Shadow Private Rented Sector

## Executive Summary

### 1. Context and method

Safer Renting delivers tenancy relations services to six London boroughs and supports around 200 tenants a year where the property is subject to local authority enforcement activity. Much of this work takes place in the 'shadow' private rented sector (PRS), where highly vulnerable tenants are targeted by criminal landlords and letting agents *deliberately* undertaking multiple breaches of tenancy and housing law in order to maximise their rental profit.

Landlords in the shadow PRS aim to evade detection through the use of identity fraud, use of unconventional tenancy agreements where there may be uncertainty around tenancy rights, and often use non-standard properties or subdivided properties to increase rental yield through high-density overcrowding.

These landlords can be distinguished from landlords who may be well-intentioned but not fully conversant with their responsibilities.

The shadow PRS also includes letting agents, who may act in concert with landlords or defraud both landlords and tenants.

In the last ten years, London has been a favourable context for the growth of criminality in the PRS: rents are high relative to property quality; market pressures create a tolerance for overcrowding amongst tenants; there is a growing population of economic migrants; cutbacks in enforcement; an unwieldy legal framework; poor support for tenants seeking legal recourse; low penalties for convicted offenders; and growing use of the internet where identities are harder to verify.

Limited research has directly explored criminality in the PRS, although third-sector data indicates that tenant experience of illegal eviction, harassment and abusive and threatening behaviour from landlords is not uncommon.

This research draws from Safer Renting's case study data, interviews with London-based stakeholders and interviews with tenants who have had direct experience of landlord and letting agent criminality. All research took place before March 2020.

## 2. Regulatory framework

Regulation of the private rented sector is spread across a range of local authority officers, including environmental health professionals, tenancy relations officers, trading standards and planning.

The regulatory framework includes a patchwork of regulations that offer tenant protection from eviction, controls on property standards and management, regulation of the letting agent industry and building control regulations which control areas such as changes in use class.

Recent regulation has encouraged local authorities to make greater recourse to pursuing civil penalties from landlords.

However, these regulations are piecemeal. They may deliver greater levels of compliance amongst already-compliant landlords in the mainstream market but offer little protection to tenants where landlords and agents choose to act illegally.

## 3. Landlords and agents in the shadow PRS

Defining landlord identities is a problem in the shadow PRS. Tenants may not be clear as to the status of the person to whom they are paying the rent: it could be the landlord, agent, or another tenant. Complex criminal cases sometimes include chains of landlords, agents and tenants working 'rent-to-rent' scams. Sometimes, everyone in this chain may be complicit; in other cases, just part of the chain might be operating with illegal intent.

The use of letting agents appears to provide multiple opportunities for illegality.

This report distinguishes five groupings or types of criminal landlord behaviours:

- **wilfully ignorant** landlords who tended to have small portfolios and were letting with no intention of meeting their statutory obligations;
- **corner cutters** had larger portfolios and maximised their rental income through non-compliance, factoring penalties and fines into their business model;
- **scammers** remained hidden, and often used the internet to swindle tenants – and landlords – through securing and then stealing deposits, or renting property that was immediately sublet or let on the short-let market;
- **prolific offenders** showed a blatant disregard for the law, often acting unpleasantly and with impunity, and were confident about their ability to challenge any attempt at prosecution; and

- **letting linked to organised crime** in which letting might be associated with labour and sex trafficking and the use of rented property as cannabis farms.

Certain property management behaviours were strongly linked to illegality:

- a tendency to **operate at the edges of tenancy law**, where there could be ambiguity around tenant rights, for example, in rent-to-rent scams, ‘lockdown’ subdivision, property guardianship, ‘lifestyle’ clubs and short-term lettings;
- **high density letting and serious overcrowding**, including the use of structures – shipping containers, sheds, garages – not designed for residential purposes;
- operating with **no formal tenancy agreements** and **requiring tenants to pay cash** with no rent book or receipts;
- common use of **illegal eviction**, which could include – in addition to the sudden loss of home – **theft or damage to property** and some level of **physical assault or threat**.

#### 4. Tenant experiences of the shadow PRS

The report recounts ten individuals’ experiences of criminal landlord behaviour, and common themes emerged:

- The involvement of the local authority did not deter criminal behaviour. Respondents reported that local authority enforcement actions did not materially change the landlord’s activities. Tenants who had looked for help felt unprotected by the statutory authorities.
- Landlords or letting agents in the shadow PRS felt that they could act with impunity. Tenants were living with personal insecurity, theft, harassment and fraud. There was the constant threat of the worst outcome, which was the landlord illegally and with no notice changing the locks. Tenants felt they had no protection from the traumatic loss of home and possessions: police tended to side with the landlord.
- Tenants could themselves be drawn or coerced into illegality through rent-to-rent scams.
- Only six per cent of cases pursued by Safer Renting led to households gaining a social housing tenancy. In most cases, despite Safer Renting involvement, positive outcomes rarely led to fundamental change in a landlord’s behaviour. Tenants – including those with children or other vulnerable people in the household – continued to move from one shadow PRS tenancy to another.

#### 5. Obstacles to enforcement and justice: stakeholder perspectives

Principal obstacles to enforcement related to the complexity of regulations, the nature and scale of criminality in the private rented sector, and the subsequent inability of local authorities to respond effectively. Local authority officers were working with laws that left considerable ambiguities and which were not targeted at the kinds of criminality that were common in the PRS.



In addition, there was a lack of consistency in political will at local and national levels to deal with the problem. Stakeholders alluded to degrees of complicity, where boroughs were unwilling to prosecute landlords they relied on to provide temporary accommodation and meet low-income housing need, irrespective of the fact that sometimes the same landlords were routinely contravening multiple regulations.

In addition, police were ambivalent about dealing with even serious crime that had a housing component. Local authority officers and housing law advisers had no confidence that the police were equipped to deal with landlord criminality or even willing to do so. Similarly, tenants' experiences described in this report would tend to cement their view that the police would offer no protection, even where the landlord was physically threatening or had stolen property.

## 6. Recommendations

The report makes twelve recommendations, for the government, local authorities, the Crown Prosecution Service and the Metropolitan Police Service.

### **The Government should:**

- Place a duty (not just a power) on the police to enforce the provisions of the Protection from Eviction Act 1977.
- Create a fund to support local authorities in recruiting expertise and capacity to pursue civil penalties under the Housing and Planning Act 2016.
- Place a legal requirement on online platforms that host private rentals adverts to police criminal activity by disabling offending accounts and give clear advice on how private tenants can protect themselves from criminal landlord and letting agent behaviour.
- Introduce a duty on local authorities to prepare local multi-agency strategic housing plans that include provisions for joint working that cover housing options, homelessness and regulation of the PRS, Planning, Trading Standards and policing to detect and prosecute landlords' and agents' criminal behaviour.
- Amend housing legislation to introduce joint and several liability for housing offences to include the property owner.
- Remove Section 21 'No Fault' evictions and replace Assured Shorthold Tenancies with longer, fixed-term tenancies, with a duty on landlords to provide written tenancy agreements that comply with statutory requirements.
- Introduce a right to expert statutory advocacy for private renters faced with criminal behaviour by landlords.

### **Local authorities should:**

- Adopt targeted means to detect unlicensed HMOs, including expanding data-sharing and monitoring all on-line platforms advertising private rentals.
- Work with the police more proactively to enforce the Protection from Eviction Act 1977, and actively pursue prosecutions of offenders in such cases.

**The Crown Prosecution Service should:**

- Institute procedures for centralising data collection and reporting on illegal evictions.

**The Metropolitan Police should:**

- Work with councils to make more active use of powers to enforce the Protection from Eviction Act 1977.
- Review its training around evictions.

## 1 Context and method

### About the Safer Renting project

This project has been undertaken by the Safer Renting Service at Cambridge House, a South East London social action centre established in 1889 to provide social services to the urban poor and campaign for social justice'.<sup>1</sup> Safer Renting, set up by Cambridge House in 2016, has the following four objectives:

- To prevent homelessness, particularly by intervening in illegal evictions;
- Support private renters to negotiate better conditions in their homes;
- Enable private renters to leave a criminal landlord on their own terms, with compensation wherever possible; and
- Inform government policy and best practice by analysing and communicating how criminal landlords are exploiting the London housing crisis at the expense of tenants.

The Safer Renting team has extensive experience in working in tenancy rights and working with local authority housing enforcement teams. The team works closely with the Cambridge House Housing Law Centre. The team works with six London boroughs: Croydon, Enfield, Havering, Hounslow, Westminster City Council and Waltham Forest, and undertakes close to 200 cases a year.

### Rationale for the research

The Safer Renting team is routinely familiar with a part of the private rented sector (PRS) not represented in official statistics. The English Housing Survey (EHS) indicates that 84 per cent of tenants are satisfied with their rental property, but it is highly unlikely that EHS surveyors encounter the kinds of rental arrangement discussed in this report.

This research also offers some reflection on debates relating to the nature of 'rogue' landlordism. Arguments are often made that landlords cannot be expected to keep up to speed with overly complex housing law. Certainly, where offences are committed in ignorance then more resources need to be directed towards education and training. However, there are parts of the market where offences are perpetrated knowingly. In these cases, a greater emphasis needs to be placed on detection, prosecution and penalties that would constitute an adequate deterrent.

## Criminal landlords and the 'shadow' PRS

The private rented sector includes what is here termed a 'shadow' market, which contains particular characteristics. Tenants in this part of the market may already be vulnerable to harm as a consequence of low income and marginality in the labour market. Many mainstream landlords prefer not to let to tenants who are dependent on welfare, and this means that these households are often unable to exercise choice. Tenants in the shadow PRS are more likely to be economic migrants and their unfamiliarity with the UK housing markets often makes them uncertain about exercising their housing rights. Landlords and letting agents in the shadow PRS deliberately target the most vulnerable tenants, and consciously undertake multiple breaches of tenancy and housing law in order to maximise their rental profit.

Behaviours in the shadow PRS have tended to evade routine survey data collection, and this part of the market is not well understood. The English Housing Survey is based on face-to-face interviews with resident households.<sup>2</sup> In the shadow PRS, households are unlikely to make themselves available for interview, may not have English as a first language, and will often be living in shared properties. Landlords aiming to mask the degree of overcrowding and poor property conditions might well threaten their tenants away from speaking to officials. Where tenants are migrants, landlords might claim that speaking to officials would risk Home Office deportation.

In addition, the shadow PRS also includes letting practices that tend not to fit conventional tenancy definitions. Letting arrangements and the property itself might well alter and shift through the course of a tenancy. Family accommodation might be subdivided once a tenancy has started; unrelated people may well be expected to share rooms; and at the bottom of the scale, the tenant may have purchased no more than a 'bed-shift', or a bed shared with another shift worker.

The research will refer to the activities of landlords and letting agents. The term 'rogue landlord' is often used to define an individual who is letting property in contravention of the law. This term came into common usage from around 2010, and was adopted in 2012 by the then Department for Communities and Local Government in its publication 'Dealing with Rogue Landlords: A Guide for Local Authorities'. This report raised awareness of contraventions in the residential market and use of the term has since gained widespread acceptance in government, across the media and with the public. However, this term is not useful, and tends to cover all landlords who fail to honour their legal obligations, whether through ignorance, negligence or active criminal intent.

The narrative surrounding housing crime suggests that these practices are in some way less than criminal. An industry spokesperson commented that whether landlords were acting in ignorance, through negligence or with deliberate intent, *'failures under criminal law – it's not what people would identify as criminality'*.<sup>3</sup>

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<sup>2</sup> <https://www.gov.uk/guidance/english-housing-survey-guidance-and-methodology>

<sup>3</sup> Industry stakeholder #3

This report reflects on over 180 cases undertaken over the past two years, and it was common to encounter landlords who expressed complete disregard for tenancy rights law, claiming that they were entitled to do what they wanted with 'their property'.

This report is concerned specifically with this group. Defining an individual as a 'criminal' can only follow where that individual has been convicted of a criminal offence. This report refers to 'criminal landlords' as those who wilfully breach housing and other related consumer legislation, irrespective of whether they have been convicted of those offences. These landlords have made a strategic decision to target vulnerable tenants who may not be capable of asserting their rights, and knowingly execute multiple breaches of housing, landlord and tenant, health and safety and Trading Standards law for the purpose of increasing their rental profit.

This report places an important stress on criminal intent. Policy debate has shown a great deal of interest in making distinctions between different 'types' of landlord, classifying them according to whether they are knowingly breaking the law, and the seriousness and frequency of their offending behaviour. Criminal landlords exist as a group that can be distinguished from individual landlords who are simply not well versed in housing law. 'Amateur' landlords are generally well-meaning and require a specific kind of policy intervention that raises awareness and expands training opportunities. More strategic and intentional criminality in the lettings market requires a different response, with an emphasis on detection, prosecution and effective penalties.

It is evident that letting agents can also be involved in the shadow market, often involving some level of fraud with regard to deposit holding or rent collection. Landlords are sometimes complicit in this fraudulent activity. It is also the case that landlords may be completely unaware that their letting agent is acting illegally. The complexity of 'rent-to-rent' arrangements in particular can create problems in assigning culpability in some types of typical shadow market behaviour.

## Context

In recent years, a number of factors in the context have allowed this shadow market to flourish.

### Financial incentives

The sector can be remarkably remunerative and demand for rental property is strong. In 2017, Knight Frank stated that the PRS had in that year secured £6.3 billion in investments.<sup>4</sup> Countrywide, Britain's largest estate agent, estimated that private tenants had paid over £51.6bn in rents, compared to £22.6bn in 2007.<sup>5</sup> London is a particularly valuable market. According to the EHS, the median rent for PRS property in the capital 2017/18 was £1,352 a month, compared with £684 for the rest of England.<sup>6</sup>

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<sup>4</sup> Matthews, W. and Elliott, L. (2018) *The Human Factor: Specialist Property*, London: Frank Knight.

<sup>5</sup> Collison, P. (2018) 'UK tenants paid record £50bn in rents in 2017', *Guardian*, 12 Feb.

<sup>6</sup> English Housing Survey Headline Report, Annex Table 1.12.

Subdivision increases the profitability of a property and there is a strong market for shared lettings in London. The extent to which this reflects preference for shared living and to what extent it reflects diminishing affordability of rents is moot. Further, the existence of a shadow PRS relies on there being demand from groups facing difficulties in accessing the mainstream, open market. Landlord and letting agent unwillingness to deal with tenants in receipt of benefits and undertake 'right to rent' checks has pushed demand to parts of the market in which criminal activity is more likely to take place.

#### Ethnic enclaves and language barriers

London is a place where cultures and languages exist in parallel, sometimes very separately. The PRS is a first home for the vast majority of migrants to the UK, who are vulnerable to exploitation by landlords running or connected to illegal labour gangs, and who may well have encouraged or facilitated the move to the UK. The ethnic and language dimension means that victims of criminal landlordism can become isolated or – conversely – supported by a migrant community network that is not necessarily well acquainted with tenancy law.

#### Cutbacks in enforcement funding

Substantial regulation defines standards for property management and condition, but austerity measures in local government have resulted in a continuous round of disruptive staff re-organisations that have reduced resources and de-skilled officers with a responsibility for enforcement. Central government funding cuts have reduced local government spending on a raft of services that together form the framework for regulating the PRS: between 2009/10 and 2017/18, there were cuts of over 50 per cent in housing and planning expenditure, and a cut of nearly 20 per cent in spending on environmental services, including environmental health, which holds primary responsibility for PRS enforcement.<sup>7</sup>

#### Complex legislation

The legal framework for enforcement requires engagement with unwieldy bureaucracy and complex and often contradictory legislation. At least 29 statutes are in force, applied by four distinct professional disciplines including Environmental Health Professionals (EHPs), Tenancy Relations Officers (TROs), Trading Standards Officers (TSOs) and planning officers. Amongst other things, these officers enforce regulations relating to:

- mandatory and selective licensing of various types of property;
- setting minimum property standards for licensing schemes and applying the Housing Health and Safety Rating System where required to make an inspection;
- minimum management standards including control of overcrowding and 'Fit and Proper Person' tests for landlords letting certain types of property;
- illegal eviction;
- contravention of regulations around tenant fees, the handling of deposits and issuing unfair tenancy contracts; and
- building controls.

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<sup>7</sup> MHCLG Select Committee (2019) "Local Government Finance and the 2019 Spending Review"  
<https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/2036/203605.htm>

However, enforcement activities are not always well co-ordinated. Local authorities may waste time and effort in pursuing multiple enforcement actions against the same landlord and waste resources in not using the most effective regulatory option. Lack of clarity on where responsibility lies within the local authority creates difficulties for tenants seeking support for dealing with a problematic landlord.<sup>8</sup>

### Reduced access to legal recourse

Law centre closures and loss of legal aid housing solicitors have further reduced resources and skills to support tenants in bringing their own action against landlords operating illegally. Further, twenty of the courts (County and Magistrates) that hear housing claims have been closed across London, which has substantially reduced the accessibility of housing justice.<sup>9</sup> Freedom of Information requests collating data on enforcement action have indicated very low levels of prosecution of criminal landlords.<sup>10</sup> This indicates that the civil penalty threats included within the Housing and Planning Act 2016 have had limited traction to date.

### Growth in online lettings

Growing reliance on the internet to advertise and arrange tenancies has created new opportunities for fraudulent activity particularly with regard to the advertisement of rooms in shared properties on sites including Gumtree and SpareRoom. It is more difficult to bring actions against agents and landlords operating entirely online: perpetrators evade scrutiny through identity fraud and property companies dissolving to evade detection but setting up again immediately under a new name ('phoenixing'). Of the 31 qualitative narratives included in the study, a majority – 18 – sourced their problem letting on line; two well-known platforms accounted for two thirds of these cases.

## Existing literature and evidence

Despite substantial anecdotal evidence of criminal behaviour in the PRS, no research has focussed entirely on this phenomenon although aspects of poor letting practice have been highlighted in individual reports. In 2017, Clarke *et al.* published a study exploring the incidence and geography of enforced moves from rental property, including social tenancies. The report isolated the practice of illegal eviction, landlord intimidation and enforced moves in the PRS but did not quantify the problem or draw any conclusions relating to criminality in the market.<sup>11</sup> Lobbying on issues relating to private renting is more likely to make reference to affordability issues, property conditions and the role of the sector in accommodating households not necessarily suited to private renting.<sup>12</sup>

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<sup>8</sup> Rugg, J (2020). "London Boroughs' Management of the Private Rented Sector"

<sup>9</sup> Madge, N. (2019) "Selling Off Our Silver" *Legal Action Group*, July 2019

<https://www.lag.org.uk/article/206681/selling-off-our-silver>

<sup>10</sup> Battersby, S. (2017) *Local Authority Housing Action on Conditions in Rented Housing*. [www.sabattersby.co.uk](http://www.sabattersby.co.uk)

<sup>11</sup> Clarke, A., Hamilton, C., Jones, M. and Muir, K. (2017) *Poverty, Eviction and Enforced Moves*, York: JRF.

<sup>12</sup> For an overview of recent literature see Rugg, J. and Rhodes, D. (2018) *The Evolving Private Rented Sector: Its Contribution and Potential*, York: Centre for Housing Policy.

A lack of engagement with this issue is reflective of problems with counting the incidence of particular types of criminal activity. For example, no data is held by the Crown Prosecution Service on the incidence of prosecutions of landlords or letting agents for fraud, despite the Home Office/GLA's Rogue Landlord Checker listing this as one of the key offences. In addition, there is no method for monitoring the incidence of illegal eviction since these cases rarely lead to formal action against the landlord by the tenant.

Nevertheless, it is very clear that landlord crime is not unusual. In 2016, Citizens Advice reported that in the twelve months up to March 2106, 2,087 people had asked for advice after being threatened with illegal eviction. This was an increase of nearly 50 per cent from 1,415 for the previous year.<sup>13</sup> A Shelter Yougov poll of 3,250 tenants in 2016 indicated that one in eight had experienced some level of landlord illegality. Actions included landlords who had cut off their tenant's utilities, changed locks and thrown out tenant possessions, been abusive or threatening, and entered the tenants' home without permission or notice.<sup>14</sup>

Despite the availability of this information, there is little sense in which criminality in the PRS is regarded as a major issue, particularly by the police. The last major report in this area was commissioned by the then DETR in 2000: copies are no longer available.<sup>15</sup> In 2015, the Police Federation produced a report that focussed on crime as it related to the PRS, but the report was extremely limited in scope, and only considered the incidence of burglary and anti-social behaviour in rental property.<sup>16</sup> The Mayor of London has intervened in establishing a Rogue Landlord checker database, but without substantive evidence, it is clear that there will continue to be limited policing interest.

## Research methods

The research set out to explore four inter-related areas:

- The characteristics of the shadow PRS;
- Typical behaviours of landlords and letting agents operating in the shadow PRS;
- Tenant experience of landlords' and letting agents' criminal activity; and
- Obstacles to an effective regulatory response.

The report uses data obtained from a mixture of qualitative and quantitative methods including:

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<sup>13</sup> Citizens Advice (2016) "Almost 50% more people facing eviction in the last year."

<https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/almost-50-more-people-facing-illegal-eviction-in-the-last-year/>

<sup>14</sup> Shelter (2016) "Over a million renters victim to law-breaking landlords"

[https://england.shelter.org.uk/media/press\\_releases/articles/over\\_a\\_million\\_renters\\_victim\\_to\\_law-breaking\\_landlords2](https://england.shelter.org.uk/media/press_releases/articles/over_a_million_renters_victim_to_law-breaking_landlords2)

<sup>15</sup> D.S. Cowan, A. Marsh, P. Niner, R. Kennett, R. Forrest (2000) *Harassment and unlawful eviction of private rented sector tenants and park home residents*, London: DETR.

<sup>16</sup> A. Higgins and R. Jarman (2015) *Safe as Houses: Crime and Changing Tenure Patterns*, London: The Police Federation.



- Analysis of Safer Renting case study data;
- Face-to-face, semi-structured interviews with stakeholders representing local authorities, elected representatives, and the legal profession; and
- Face-to-face, semi-structured interviews with tenants who have experienced criminal landlord behaviour.

All interviews were recorded, and this report includes verbatim quotations – checked by respondents – distinguished in the text by use of italics.

#### Analysis of Safer Renting case study data

Each year, Safer Renting supports just under 200 private tenants faced with often complex legal housing problems. The project has a contractual agreement to accept referrals from Waltham Forest, Hounslow, Enfield, Havering, Westminster City Council and Croydon Citizens Advice. Staff also work closely with stakeholders across London such as the police and lawyers to improve tenants' outcomes.

This report is in part a reflection of the Safer Renting team's experience of dealing with tenants in the shadow PRS. The team has undertaken all the primary research in this report, framing the interview questions around their detailed understanding of criminal landlord practices, tenant experiences and the response of various regulatory authorities to the incidence of criminality.

In addition, Safer Renting has created a database of 259 cases pursued between January 2018 and March 2020. Demographic data on tenants in these cases indicates that:

- 40 per cent of cases were BAME; 42 per cent were white 'other' (within this group, two thirds were Eastern European); 17 per cent white British and 1 per cent 'other';
- 47 per cent were single-person household in house shares; 27 per cent were families with dependent children (half of these were lone parents); 11 per cent were single people, and 8 per cent were couples in non-sharing accommodation; 4 per cent were adult multi-generational households and 2 per cent were 'other'; and
- Income data collected from one fifth of this sample (52 cases) indicates that close to two thirds were in work. A half of this working group received in-work benefits.

#### Stakeholder interviews

Semi-structured, face-to-face interviews took place with twelve professional stakeholders who were recruited from Safer Renting's own professional network which extends throughout the capital. All the stakeholders had expertise and resources, duties and/or powers that are relevant to the policing, enforcement of standards and landlord prosecution in London. The interviewees included:

- Three inner and outer London Environmental Health Professionals;
- Four specialists in housing law;
- Two constituency teams of London MPs with a particular interest in housing and a Greater London Assembly member;
- A representative from the Greater London Authority with specialism in policing and crime; and

- A third sector housing advice worker; and a local authority housing advice worker.

In addition, interviews also took place with one landlord representative, one letting agent representative one Property Redress Scheme representative, and a representative from an online property portal.

Extensive attempts were made to speak with a representative from the Metropolitan Police Service but there was no response to multiple requests.

The interviews explored respondents' knowledge of the different types of criminal behaviour that they routinely encountered in their professional capacity, whether it was possible to characterise tenants who were victims of this kind of behaviour, and examined the issues attached to enforcement and prosecution. Findings from these interviews are referred to throughout the report, and particularly in Chapters 3, 4 and 5. Stakeholder respondents will not be identified by name in this report.

### Tenant interviews

The Safer Renting team recruited respondents from their caseload, following a clear 'opt-in' protocol which included the securing of informed consent and assurances of confidentiality. A total of 31 tenants agreed to a face-to-face interview, which took place using a semi-structured topic guide to help the interviewee create a detailed narrative of their housing experience.

### Report structure

This report will, in Chapter 2, discuss the legal framework for private renting and indicates the problems for officers in different departments working across multiple and sometimes contradictory laws. Chapter 3 uses stakeholder and tenant information to characterise common criminal landlord behaviours, and Chapter 4 gives a detailed narration of the experiences of a selection of the tenants who were interviewed. Chapter 5 outlines the obstacles to effective enforcement and to successful prosecution of criminal landlords. The final chapter outlines recommendations.

### Conclusion

Legislation defines landlord criminal behaviour but little attention has been paid to the incidence of crimes relating to the letting of residential property. This research highlights the very serious nature of those crimes: in the 'shadow' private rented sector, tenants are subject to financial exploitation, harassment, illegal eviction, theft of their property, threats of violence and actual violence. Characterising landlords as 'rogues' in these circumstances underplays the challenges faced by housing professionals seeking to enforce regulations and secure prosecution against landlords who set out to act in an intentionally criminal way.

## 2. The regulatory framework

### Introduction

This report is not the place for a full description of the regulatory framework for the PRS although it is important to highlight the sheer breadth and complexity of that framework. Different professional disciplines are called on to implement the law, which means that problems arise for local authority officers deciding between possible regulatory responses. As will be seen in Chapter 3, shadow PRS landlords and letting agents are often guilty of multiple offences. Moreover, there is a constant risk of breakdown in co-ordination between the various professional disciplines. Landlords and letting agents are able to exploit gaps and contradictions in the law, and tenants – understandably – often lack a clear understanding of their rights. For these reasons, many observers have called on the government to undertake a radical review to consolidate rental legislation. The scale of problems is indicated by the fact that PRS law comprises at least 29 separate statutes with their associated regulations, enforced by six distinct professional disciplines at the local level.

This current chapter outlines the principal statutes which are often breached in the shadow PRS, and will consider, specifically: powers relating to protection from eviction; property and management standards; regulations relating to letting agents; and planning regulations. Breaching these regulations is often a civil rather than a criminal matter, though in some important cases, such as Protection from Eviction, the offences are both civil and criminal. This particularly creates uncertainty as to police involvement in prosecution. The final section of the chapter briefly outlines the process of taking an offender to court.

### Local authority statutory duties

It should first be stressed that local authority activity is defined by statute. There are over 1,000 statutory requirements which local authorities are obliged to observe. These requirements include, for example, undertaking periodic housing needs and homelessness surveys. There is also a requirement to license houses in multiple occupation above a certain number of occupants. However, other types of activity are not statutory requirements, irrespective of their desirability: for example, local authorities are not obliged to investigate an illegal eviction. All local authorities must comply with their statutory duties, but the ability to take other actions which offer essential support to the undertaking of statutory responsibilities have often been compromised by budget cuts (see Chapter 5).

### Protection from eviction

#### Protection from Eviction Act 1977

As will be seen in Chapter 3, landlords and letting agents operating in the shadow PRS are most likely to be in breach of the Protection from Eviction Act 1977. This Act defines

unlawful eviction and harassment. Legalities with regard to eviction depend on the way in which a tenant occupies a property. Private tenants rent on a variety of forms of tenancy, each with their own rights and obligations. The overwhelming majority of private tenants are Assured Shorthold Tenants (AST), or statutory periodic tenants renting on the same terms as their initial AST, or tenants who have no form of written tenancy agreement. In the latter case, proof of exclusive occupation and payment of rent for the home (whether a room or a whole house) can be used to argue that the occupant does indeed have an AST.<sup>17</sup>

Landlords seeking to evict tenants on an AST must comply with the procedures set out in the Housing Act 1988. This act defines seventeen grounds for possession, including a series of grounds relating to arrears of rent and another for other breaches of tenancy conditions. However the most commonly used ground is the so-called 'no fault eviction' or 'Section 21' (S21) to which there is often no defence. A successful possession claim requires only that the landlord prove that they have abided by their statutory obligations, such as property licensing, observance of fire and gas safety measures, rent deposit protection and that they have not recently been subject to Improvement notices by the local authority.

To end a tenancy and most licenses, a landlord must follow a formal procedure. Landlords commonly use a S21 'no fault' process, by which they:

- serve a S21 Notice of Seeking Possession to the tenant, *normally*<sup>18</sup> giving two months' notice;
- if a tenant stays after that date, the landlord can apply to court for an order for possession within six months' of serving of the S21;
- court papers sent to the tenant give the opportunity to challenge the S21 notice or ask for more time;
- if the landlord is not seeking repayment of arrears and no defence has been entered by the tenant, an accelerated order means that no court hearing is required; and
- if the tenant is still in the property, court bailiffs will issue a time/date for an eviction. A bailiff must always be present at the execution of an eviction order.

Overall, the entire process from service of a notice to physical eviction by bailiff's warrant is typically a minimum of six months. Currently, the government is considering a further restriction to landlords' ability to use the S21 'no fault' eviction. The landlord community is strongly committed to this procedure being retained, as it is relatively simple and less costly than proving fault on the tenant's part.

The Protection from Eviction Act 1977 provides that tenants may not be evicted from their home without a court order. Where a landlord has resorted to eviction by force or by changing the locks while the tenant is out, it is a criminal offence in which:

- police may intervene and arrest the landlord;

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<sup>17</sup> Street V. Mountford (1986) and s54 Law of Property Act 1925.

<sup>18</sup> These procedures relate to usual practice outside the emergency procedures introduced under the Covid-19 outbreak.

- the tenant has a right under the Criminal Law Act 1977 Section 6 to use reasonable force to re-enter the property;
- a local authority may bring a criminal prosecution after the event, leading to a fine or imprisonment;
- the tenant may bring a civil claim for damages; and
- the tenant or the local authority may apply for a Rent Repayment Order.

The Protection from Eviction Act does not apply where the occupant is deemed to have the lesser rights of an excluded 'licensee' (a lodger) rather than a tenant, irrespective of any written agreement. This is where the occupant:

- shares living accommodation with a residential landlord (or member of the landlord's family) and the landlord or family member has lived there from before the occupant moved in, and has lived there continuously up until and including when Notice to Quit is served and
- the room(s) exclusively occupied have changed during the course of the occupancy: a change of location in a house during the period of occupation say from Room A to Room B - would mean that what might otherwise be a tenancy becomes a licence, with lesser security of tenure.

As will be seen in Chapter 3, landlords or letting agents sometimes leave the legal status of a tenant deliberately opaque in order to create uncertainty as to the applicability of safeguards provided by the Protection from Eviction Act.

This Act also anticipates that landlords may well undertake harassment or other types of activity in order to induce the tenant to forgo their tenancy. To this end, the Act also defines as an offence any action 'likely to interfere with the peace or comfort of the residential occupier or members of his household'; this action can include the withdrawal or withholding of services 'reasonably required for the occupation of the premises in question as a residence'.

Landlords in breach of the Protection from Eviction Act may be subject to criminal prosecution, and if convicted may be subject to a fine and/or a term of imprisonment up to a maximum of two years. Under the Protection from Eviction Act, both the police and local authorities have the power to prosecute a landlord for harassment or illegal eviction. Police forces have generally deferred to the local authority to exercise that power. Historically, local authorities employed Tenancy Relations Officers (TROs), usually within housing needs teams, to provide advice and sometimes advocacy for tenants and prepare witness evidence for a prosecution brought by the authority's legal team. However, the number of TROs employed by local authorities has declined substantially (see Chapter 5).

### [Deregulation Act 2015](#)

In an attempt to combat the incidence and fear of retaliatory eviction, whereby a landlord will respond to a request for repairs by serving an eviction notice, Section 33 of the Deregulation Act 2015 set out restrictions on the ability of landlords to serve an eviction notice within six months of being served an improvement order by the local authority. For it to offer the tenant protection from a S21 notice, the Act requires the tenant to contact the

local authority to secure an inspection, and for the local authority to deliver an improvement notice formally before the landlord serves a S21 eviction notice. It is uncertain how much use has so far been made of the Deregulation Act to counter the incidence of retaliatory eviction, which in any case offers little protection to tenants in the shadow PRS. As will be seen in the following chapters, eviction is not necessarily associated with complaints about property conditions and there is often little intention on the part of the landlord to evict using any form of legal procedure.

## Property and management standards

Local authority Environmental Health Professionals (EHPs) working in Enforcement and Licensing Teams are the chief agencies for enforcing standards in private rented housing. EHP powers are derived from 15 of the 20 key statutes. The following sections include principal elements of their responsibilities.

### Mandatory licensing of Houses in Multiple Occupation

The Housing Act 2004 introduced a suite of licensing options for local authorities to regulate the physical and amenity conditions, layout and management standards, including mandatory licensing for all properties falling under its definition of house in multiple occupation (HMO). This definition was expanded in 2018 to include any property let privately to five or more individuals (including children) in two or more unrelated households, irrespective of the storey height of the property. Landlords are obliged to license all property defined as HMOs within their local authority. A failure to do so may lead to prosecution and a civil penalty fine. The Act also allows the local authority to impose an Interim or Final Management Order on the property, in which the local authority steps in and takes on the landlord's rights and duties to manage the property. Multiple failures to license can also give rise to a minimum one-year banning order, which essentially prohibits an individual from operating as a landlord or letting agent.

### 'Additional' or 'Selective' licencing

Alongside the national Mandatory scheme, the Housing Act 2004 gives local authorities the option of introducing 'Additional' or 'Selective' licencing. These schemes extend the scope of licensing beyond the mandatory scheme to include all rented property of a particular type in a particular geographic locality. These schemes must be shown to meet nationally set tests of reasonableness, and require public consultation and government authorisation before they can be introduced. The schemes last for up to five years but may be extended at the end of the term if the justification for doing so is accepted.

### The Housing Health and Safety Rating System

The Housing Act 2004 also introduced application of the Housing Health and Safety Rating System (HHSRS) to assess minimum property and fitness standards, and is backed with a power to apply Improvement Orders, Prohibition Orders or Management Orders for non-compliance. HHSRS is the evaluation tool used by EHPs to assess the safety of a property during the course of an inspection. Some local authorities include inspection as part of their licensing regime, but this is not a general statutory requirement and is not always the case. Tenants may also ask local authorities to inspect their property if they feel that it is unsafe.

However, HHSRS does not define a standard that landlords must comply with in order to let property.

On inspecting a property, officers must take action if they recognise the existence of hazards defined as 'Category 1', which carries an immediate threat to health and safety. This action can include informal negotiation with the landlord to make improvements or the serving of a formal notice to undertake the required repair. In cases of serious hazard, the local authority may serve an improvement notice which defines an action and a timescale for compliance. Landlords who have been served an improvement notice are unable to use a S21 eviction order for a period of at least six months after it has been complied with.

Whilst such notices can be appealed against, it is an offence to fail to comply with an improvement notice without reasonable excuse and the local authority may do the work in default or by agreement. Since 6 April 2017, a local authority may impose a civil penalty of up to £30,000 as an alternative to prosecution. Landlords committing such an offence may also be subject to a Rent Repayment Order or a banning order.

#### Amenities safety

The Gas Safety Regulations 1998 created a duty for all landlords to maintain annual gas safety certification. The Deregulation Act 2015 included a gas safety certificate as part of the 'prescribed information' which needs to be placed at the start of a tenancy in order to succeed with any S21 possession proceedings.

#### Public Health Acts 1936 and 1961

Two key Acts provide local authorities with powers relating to amongst other things, the supply of clean water and drainage and sewers, to protect the health of occupants and the wider environment. The 1961 Act has provisions for dealing also with 'filthy and verminous' properties. These powers are particularly relevant to the enforcement of standards in poorly converted properties, whether S257 HMOs (see below) or informal structures ('beds in sheds'), where utilities have not been altered to provide for the new arrangements in the property. This can include problems arising, for example, from failure to properly separate waste water and foul waste, or meeting the standard for supply of fresh mains water.

The powers contained in these Acts include powers of entry, powers to undertake works in default and powers to prosecute owners not complying with notices. Building Control, Planning Enforcement and Licensing and Enforcement teams can all exercise powers under the Acts to order improvements.

#### The Homes (Fitness for Human Habitation) Act 2018

This Act came into force in March 2019 to ensure that residential rented properties are 'fit for human habitation', in terms of being safe, healthy and free from any risk of serious harm. The Act empowers tenants themselves to take action against landlords with respect to property quality where unfitness was a feature of the original construction of the building rather than a problem of disrepair. If convicted in court, the court can oblige the landlord to pay compensation to the tenant. At the time of writing, the use and impact of this legislation was not yet evident.

### Minimum management standards

The Housing Act 2004 defines a range of minimum management standards for houses in multiple occupation and these standards are enforceable by local authority licensing and enforcement teams. The chief standards are as follows.

### Overcrowding

For the purposes of enforcement in the PRS, two Housing Acts provide for the control of overcrowding. The Housing Act 1985 defines statutory overcrowding which can lead to criminal prosecutions if a room standard or space standard is not met. For non-licensable property, the standard allows any number of people of the same sex to live in the same room, subject to 'the space standard'. The space standard sets the maximum number of people who may sleep in a property, according to size of the room, number of living rooms and bedrooms, and the age of the occupants. The room standard is breached when two people of the opposite sex sleep in the same room. The exceptions to this rule are cohabiting or married couples and children under the age of ten. Under the Housing Act 1985, all living rooms and bedrooms and large kitchens are treated as a room.

The Housing Act 2004 defines maximum occupancy rates for the numbers of people sleeping in houses in multiple occupation (whether mandatory or a local discretionary scheme) which are set out in the applicable licensing standard. It allows not only for the numbers of people sleeping in the property to be limited by reference to the space and ratio of people to utilities but also for rooms to be prohibited for sleeping purposes – for example if they lack a safe means of escape in case of fire.

From 1 October 2018 HMOs licensed in England under part 2 of the Housing Act 2004 had to have a floor area no-smaller than 6.51 square metres. Licenses now require the floor area of:

- any room in the HMO used as sleeping accommodation by one person aged over 10 years is not less than 6.51 square metres;
- any room in the HMO used as sleeping accommodation by two persons aged over 10 years is not less than 10.22 square metres;
- any room in the HMO used as sleeping accommodation by one person aged under 10 years is not less than 4.64 square metres;

and that any room in the HMO with a floor area of less than 4.64 square metres is not used as sleeping accommodation.

In cases of overcrowding, EHOs have the power to bring a criminal prosecution or impose a £2,500 civil fine. If overcrowding existed at the time of the original letting and not as a result of subsequent natural household growth then an overcrowding notice stipulating the required reduction in occupancy level and a time frame by which it must be complied with may be served by the authority. To let or re-let rooms in such a way as to not reduce occupancy in line with a notice would be a criminal offence. The notice does not give a landlord rights to terminate a tenancy or evict occupants.



### *Deposit protection*

As required by the Housing Act 2004, landlords who let on an assured shorthold tenancy (AST) after 6 April 2007 are given 30 days to place a tenant's deposit in one of three government-backed tenancy deposit protection (TDP) schemes. The schemes safeguard and ultimately return the deposit to the tenant provided they meet the terms of the tenancy agreement. Under the Deregulation Acts of 2015 and 2018, a landlord who fails to protect a rent deposit in this way is not able to use the 'no fault' eviction (S21) procedures for evicting a tenant, unless and until the deposit has either been protected or repaid in full. It also allows an aggrieved tenant to apply to county court for repayment of the deposit, plus a penalty payment of up to three times the value of the deposit.

### *Rent collection and written tenancy agreements*

If the property is let on a weekly rent, a rent book must be provided by the landlord. Otherwise, the regulations do not stipulate that landlords must provide receipts for rent collected or – unless served with a formal notice – issue a written tenancy agreement. The Housing Act 1988 (S20a) provides that any tenant under an AST may, by notice in writing, require their landlord to provide a written statement of any term of the tenancy which is not evidenced in writing. A failure to comply with that request within 28 days is a criminal offence, which carries the risk of a £2,500 fine. Under the Landlord and Tenant Act 1987 S48 a tenant also has the right to require the landlord to provide a name and an address for service of documents and under S47, an address where they may be 'found'.

## Letting agents

Letting agents are primarily regulated through the Consumer Protection from Unfair Trading Regulations 2008, although more recent regulation has defined specific housing-related offenses, and these are listed below. These Acts were passed in response to criticism of a lack of clarity around fees and charges and to ensure that tenants and landlords are protected through appropriate redress schemes.

### *Consumer Rights Act 2015*

This act requires an agent to display information about their relevant fees and membership of both redress and client money protection schemes. This information has to be displayed prominently in the office and on associated websites. Failure to meet the requirements of the Act can result in a civil fine.

### *Housing and Planning Act 2016*

Letting agents are also, under the Housing and Planning Act 2016, required to give the name of their Client Money Protection Scheme.

### *Tenant Fees Act 2019*

Further criticism on the clarity of fees charged by letting agents led to the passing of the Tenant Fees Act 2019. As of 1 June 2020, letting agents are required to be members of a Client Money Protection Scheme and are limited to charging fees to tenants that are expressly permitted by the Act, including:

- rent;

- a refundable rent deposit, placed in a deposit protection scheme, of up to five weeks' rent (for lettings up to £50,000 a year);
- a refundable holding deposit, capped at no more than one week's rent;
- if provided for in the terms of the tenancy, a reasonable and evidenced fee for the replacement of a key or security device, and/or a fee for late payment of rent (capped at the Bank of England Rate plus 3 per cent per day);
- payment of reasonable costs for assigning, varying or novation of a tenancy agreement as requested by the tenant (usually capped at £50);
- early termination fees when a tenant terminates an agreement before its end, usually limited to the actual loss of rent due until re-letting; and
- payments for utilities, communications services and council tax where these are included in the rent.

For all these regulations, a first breach can attract a civil fine of up to £5,000; second offenses within five years or continuing offences can result in criminal prosecution or fines of up to £30,000.

## Planning regulations

A number of planning regulations have a direct bearing on property subdivision, changing planning use class (for example from commercial to residential or family housing to HMO) and the construction or use of temporary structures for residential use.

### Article 4 directions

In normal circumstances, converting family accommodation into a HMO amounts to a 'change of use' in planning status, which is held to be 'permitted development' under the Town and Country Planning (General Permitted Development) (England) Order 2015. Where a local authority deems it necessary to limit the incidence of new HMOs in order to preserve the character of an area, after a process of consultation, the authority can make an Article 4 direction which revoking the 'permitted development' status of such change of use.

Converting a family home into a HMO in an area where an Article 4 direction is in place requires planning consent, which is likely to be refused. To change the use class without consent is an offence. Planning Development Control teams have the power to prosecute for breach of the Direction and to require reinstatement. However the breach must be proven to have occurred within four years of bringing the prosecution. Also prosecution does not bring any tenancies created in the property to an end, so reinstating property to its original use class is neither assured nor immediate.

### 'Section 257' HMOs

Under S257 of the Housing Act 2004, poorly converted properties are treated by local planning authorities and licensing and enforcement teams as HMOs even if the units are self-contained. The conditions for declaring such property as an HMO include:

- the standard of the conversion does not meet that required by the Building Regulations 1991 or 2000 (whichever were in force at the time of the conversion); and

- fewer than two-thirds of the created flats are owner-occupied. Owner-occupiers are those with a lease of more than 21 years or who own the freehold in the converted block of flats, or a member of the household of the person who is the owner.

Where these conditions are found, Licensing and Enforcement Teams have the power to treat the property as a HMO using the full provisions of the Housing Act 2004.

#### 'Beds in sheds'

Structures both permanent, such as garden sheds or other outbuildings, and temporary such as caravans, mobile homes or shipping containers are let for residential purposes and may fail building regulation standards. In some circumstances, planning enforcement teams may require the removal of such structures or fine offenders for continuing to let them for residential purposes. As with unlawful multi-occupancy of residential property however, such planning enforcement measures do not bring an end to any tenancy.

### Civil penalty fines and banning orders

The Housing and Planning Act 2016 enabled local authorities to apply new civil penalties for a range of offences under the Housing Act 2004, as an alternative to more time-consuming prosecution.

The local authority can impose a civil penalty notice without recourse to the courts but the landlord has the right to appeal against it in the First Tier Tribunal. A tenant who has been the victim of the offence may also apply to the civil First Tier Tribunal (Property Chamber) for compensation in the form of a Rent Repayment Order. Thus a criminal landlord may be penalised twice for the same offence, in these two legal realms. Though neither penalty results in criminal conviction, both legal claims are subject to criminal standards of evidence to be successful.

Whilst the civil penalty regime does not result in the perpetrator acquiring a criminal conviction, it does have the advantage to the local authority that the fines are paid to the local authority. Offences that may be dealt with through civil penalty include:

- failure to comply with an Improvement Notice;
- failure to licence a HMO;
- failures in relation to 'selective licencing schemes in place';
- contravention of an Overcrowding Notice; and
- contravention of HMO Management Regulations.

Where landlords incur a civil penalty, the local authority may enter the name of the landlord into the Greater London Authority's Rogue Landlord Checker and/or the national database. The name of the landlord remains on the databases for a year from the time of the offence. If a landlord incurs two civil penalties they are liable to a banning order which prohibits them from operating as a landlord. The local authority is empowered to make a Management Order on the properties concerned, and step into the place of the landlord.

The more extensive use of Rent Repayment Orders (RROs) was also encouraged by the Housing and Planning Act 2016. Under this Act, it became possible for orders to be made without the landlord having necessarily been prosecuted but where the tribunal is satisfied beyond reasonable doubt that a relevant offence has been committed. A RRO can be claimed by a tenant who paid their own rent. In the case of an individual who was in receipt of housing benefit, the local authority can apply to recover housing benefit or the housing costs element of Universal Credit, and retain that repayment.

RROs are awarded by the First Tier Tribunal where tenants can act as litigants in person or can be represented by professionals who are not solicitors. Awards can be for up to one year's rent.

## Conclusion

This section has summarised a framework of rights and obligations that landlords, letting agents and tenants are expected to meet, and where requirements are enforced by local authority officers. In some instances, non-compliance comprises a criminal offence but this is not always the case. Increasingly, local authorities are encouraged to pursue civil penalties, and landlords who are non-compliant in this regard are not – strictly speaking – criminal. One stakeholder was of the view that the law was *'unfortunately [...] designed to deal with people who comply with the law. It's not there to deal with people who don't'*.<sup>19</sup> Another stakeholder agreed: *'it's often easy-to-prosecute, low hanging fruit with little real impact on tenant welfare, affecting small landlords who are ignorant or negligent. That becomes the focus of any enforcement action.'* Indeed, *'the parts that are enforced do not deal with the worst criminality'*.<sup>20</sup> As will be seen in the next chapter, attitudes and behaviours of landlords and letting agents in the shadow PRS demonstrate a complete lack of interest in any mode of compliance.

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<sup>19</sup> Inner London Enforcement Officer #2

<sup>20</sup> Industry representative #2

### 3. Landlords and agents in the shadow PRS

#### Introduction

Statutory agencies tasked with strengthening regulation of the PRS should have a good understanding of the characteristics of those landlords who knowingly flout regulations. The supply side of the shadow PRS is highly fragmented, but patterns are clearly discernible in how and why criminal landlords behave in the way they do. This chapter considers modes of supply to the shadow PRS and the business models and practices which are generally favoured by landlords and letting agents in this part of the market. As indicated above, the research method included analysis of over 180 cases dealt with by Safer Renting. Material in this chapter reflects that data, commentary supplied by the stakeholders and Safer Renting's own experiences in dealing with this part of the market.

#### Defining 'landlords' in the shadow PRS

Categorisation of landlords in the shadow PRS market is highly problematic. This is because identifying 'the landlord' in any particular case is rarely straightforward. Tenants make rental payments, but the status of the person to whom the rent is paid is not always clear. This person may be:

- the landlord who owns the property;
- the landlord who owns the property and still lives in it (resident landlord);
- an agent who is acting legitimately on instruction from the landlord who owns the property;
- an agent who is acting legitimately on instruction from someone posing as the owner of the property;
- an agent who is acting illegitimately in managing a property that has been subdivided without the knowledge of the landlord;
- a tenant who is renting the property and has themselves illegally sublet rooms in the property or has indeed subdivided it, and is living elsewhere; or
- a tenant who is renting the property from a legitimate landlord or agent, and is illegally subletting it and continues to live in the property.

This lack of clarity is in itself a substantial obstacle to taking enforcement action and conducting a prosecution, particularly since any one of the types of individual listed above may be using a false name or might only be known to the tenant on first name terms, contactable via a mobile phone.

Safer Renting data on 259 recent cases where it was possible to make a judgement on the tenancy arrangement indicates that 50 per cent of these cases involved a tenant dealing directly with a landlord; 35 per cent of cases involved an intermediary letting agent in some capacity; and 15 per cent were highly complex cases involving some element of rent-to-rent or mesne ('middle') tenant arrangements.

## Letting agents in the shadow PRS

In the view of the spokesperson for the Property Redress scheme:

*Property should not be an amateur hobby and therefore landlords should not really be able to operate on that basis [...] If they are unable or unwilling to do so, they should have to use an agent. For this, property agent sector should be professional, competent and accountable so that landlords can trust them. The idea would be to create a virtuous circle that when you add the tenant into the equation you are protecting all interests and making it hard for criminals to enter in.* <sup>21</sup>

This report challenges the presumption that letting agents always operate to ‘police’ the PRS. The fact that so many problematic tenancies are linked to letting agents deserves attention. Renting from a letting agency does not remove the possibility for a tenancy to be conducted illegally. Indeed, in the experience of Safer Renting, letting via a letting agency often increases a tenant’s vulnerability to sharp practice and illegality. These practices, at the most extreme, include outright fraud where individuals pose as online letting agents, post fake property details and secure up-front payments from the tenant with no intention of arranging a letting.

### **Box 3:1 Scams involving letting agents**

A legal expert speaks of their experience with lettings agents:

*One of the things we're seeing with the young European group, who are coming in for a short time, and then leaving. We're seeing letting agents who are spotting these young people and they have arranged properties that they know are not in the condition presented to this young person on a screen. They take a lot of money from that young person. They say you have to pay us now or the property will go, so they think "I'm only here for a short time, let's just do it" and then expect that the system will protect them in a way that it doesn't.*

*They pay all this money up front, then go to the property and find it's in a right mess and then assume that they'll get their money. The agents know it's not as simple as that. And then what I've seen in one particular case recently, we had a letting agent took £2,500 off a person on a 3-month let, the property was a complete mess, probably not at the level where you'd get legal aid for disrepair but if I had walked into it, like this person, I would have said "I wouldn't live here".*

*The person goes back on the same day to get their money back and the agents will say we will give you your money back, but you'll have to sign this (disclaimer) and we'll take an £800 cancellation fee from the same day that they've signed the agreement and it's a whole month's rent. Fortunately, and I would describe that as criminal behaviour, it's in breach of principles of fairness and consumer law, in breach of professional standards that you would*

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<sup>21</sup> Spokesperson for Property Redress Scheme

*expect of a letting agent. But it's very difficult in the short time frame that the person is around for, to get the letting agent to pay that money back.*<sup>22</sup>

Where criminal letting agents do actually manage property, little attention may be paid to the legalities of setting up a tenancy, taking deposits, making sure that rent is paid to the landlord, or attending to property condition and on-going repairs. Indeed, criminal letting agents may well be exploiting the landlord and the tenant simultaneously. 'Sideline' landlords may be particularly vulnerable if they are insufficiently experienced to scrutinise letting agent practices. Again, lettings arranged online are problematic:

*A lot of the newer landlords are expecting everything to be online only – virtual office. [The agent will] advertise on Spare Room, Airbnb any other website that they can put the property on, and they're the ones we're finding the problems. They're a niche, they're not traditional letting agents [...] They're much more mobile, they don't use proper company names. They'll advertise as "Contact Fred" and you ask the tenants who their landlord is and half the time they don't know. If they have a tenancy agreement, well that's a bonus.*<sup>23</sup>

Letting via an agent creates the opportunity to forge additional links within complex tenancy arrangement chains. One of the Enforcement Officer respondents, working in inner London, considered criminal letting agents to be particularly problematic: *'You do get some very slippery letting agents where the tenancy agreement will have one company name on but the bank that tenants are paying rent to is different company'*.<sup>24</sup>

This duplicity is evidence of – and hides – the intent to defraud the tenant and/or the landlord often via a rent-to-rent scam. The arrangement with the landlord may well have taken place via a 'virtual' office; properties may be subdivided into a HMO and sublet by the agent on a 'rent-to-rent' basis without knowledge of the landlord; the landlord may actually never receive a rental payment; and when the landlord complains, the letting agency 'phoenixes', that is to say deletes its online presence, to re-emerge in another guise. However, the landlords remained culpable for the activities of the letting agent: *'at the end of the day the landlords [...] do need to show some due diligence. At the end of the day they are feeding this letting agent problem that we have'*.<sup>25</sup>

Industry concern has been reflected in the creation of a Regulation of Property Agents (ROPA) working group. This presented a report to government in 2019 calling for the creation of a new regulatory body for agents, overseeing a requirement for all agents to be trained and qualified in order to be allowed to practice. There has, as yet, been no government proposal flowing from their report.

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<sup>22</sup> Specialist in Housing Law #2

<sup>23</sup> Inner London Enforcement Officer #2

<sup>24</sup> Inner London Enforcement Officer #1

<sup>25</sup> Inner London Enforcement Officer #1

## Shades of criminality

In describing behaviours that might be regarded as ‘criminal’, it is possible to discern ‘shades’ of criminality which at one extreme amounted to conscious negligence and, at the other, highly organised crime. The landlords and agents discussed in this research do not easily fit into single categories, but rough groupings of criminal behaviours emerge. The following indicates an approximate percentage of landlords in each group within the Safer Renting data, acknowledging that there will be overlap between categories.

### Wilful ignorance of the law

Roughly 17 per cent of landlords were small-scale, 1-2 property landlords who tended not to use managing agents. Research has suggested that knowledge of the law can be low amongst ‘sideline’ landlords, but in these cases it was clear that landlords and agents had no intention of acting within legal frameworks and so tended to operate largely informally without tenancy agreements and were happy to let property in poor condition. One outer London enforcement officer commented:

*we’re actually picking up single portfolio landlords who are not complying with the regulations or the expectations of being a landlord. So we’re getting quite a few that are coming through where there have been tenants complaining or alleging harassment for complaining to the local authority for the disrepair, and that seems to be increasing.<sup>26</sup>*

The attitude of this kind of landlord was expanded on by another respondent:

*They are criminals because they are breaking the law but they don’t see themselves as criminals. What they see themselves as are entrepreneurs and business people and they don’t recognise any standards that apply to them and I think they see other people doing it and they think “if other people are doing it, why can’t I do it?” And then when they get caught, they come up with all sorts of excuses: “Oh, I didn’t realise my property needed an HMO licence”<sup>27</sup>.*

There can, on occasion, be an ethnic dimension to this kind of activity. Landlords might exploit the trust and sense of fellow-feeling amongst members of their own cultural or linguistic communities. In these circumstances it is easier to persuade tenants to accept overcrowding and informal arrangements, with low risk of redress. One housing law specialist indicated that these kinds of tenancy were difficult to investigate: *‘there will be people whose English is not very good and they’ll be renting from landlords who might come from the same place in the world. So it can be quite difficult to dig into those arrangements sometimes, if there’s no paper trail’.*<sup>28</sup>

### Corner-cutters

Around 25 per cent of the landlord sample had larger portfolios and was routinely breaching regulations across a number of fronts: *‘invariably if they’re offending in one area, they’ll be*

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<sup>26</sup> Outer London Enforcement Officer #3

<sup>27</sup> Inner London Enforcement Officer #2

<sup>28</sup> Specialist in Housing Law #3



*offending in other areas’.*<sup>29</sup> This group was often managing unlicensed HMOs: *‘because unsurprisingly they are the worst managed. Usually they’ve got all sorts of odd license to occupy, the tenants often don’t have any agreements, there’s all sorts of abuses going on in those ones as well as poor property conditions’.*<sup>30</sup> However, these landlords were factoring into their business model the possibility that they might occasionally be caught and fined. It is notable that this group also included letting agents, operating ‘rent-to-rent’ schemes, who – in the view of one Enforcement Officer – saw fines relating to *‘licensing or even mandatory licensing as an occupational hazard’.*<sup>31</sup>

This group also relied on the probability that tenants would not pursue action against the landlord. Tenants may not understand their rights, and often the prospect of retention of an illegally held cash deposit could act as a deterrent:

*That’s also a little blackmail thing that the landlords hold over them, deposits, or they’ve caused damage to the property therefore they can’t have their deposit back. Making sure we can always say to them “have you been given a certificate by your landlord, is your deposit protected?”, because obviously if they haven’t had their deposit protected they can take it to the courts, but a lot of the tenants don’t understand the rules – well, a lot of people in this country don’t understand the rules. So I think deposits are the biggest issue. Because for most people that is the difference between living on the street and living in your next property.*<sup>32</sup>

### Deliberate scammers

This group, which comprised 36 per cent of the sample, approached their letting using a deliberately exploitative model which relied on obfuscation and false identity to evade prosecution: *‘The ones which use multiple false names and addresses all the way through are the really dodgy ones that have thought all about this and have really contrived to avoid it all’.*<sup>33</sup> This group of landlords and agents was more likely to use more complex portfolio management models including rent-to-rent scams, the ‘London lockdown’ model of high-density one-person studios and to regularly ‘phoenix’ their property companies to evade capture. Scammers often target students and other economic migrants. Again, this group tended to have a more extensive portfolio than either of the first two groups.

#### **Box 3.2: Other deliberate scammers**

*Some landlords and agents are setting up complex ownership arrangements so that they’re hard to track down. I don’t know how much of it is deliberate and how much is casual but I certainly have clients where their landlord is called “Mike” and they’ve got a mobile number and then the landlord signs the tenancy saying that their name is “Tom”. You know that you’ll never get anything enforced against them.*<sup>34</sup>

<sup>29</sup> Inner London Enforcement Officer #2

<sup>30</sup> Inner London Enforcement Officer #1

<sup>31</sup> Inner London Enforcement Officer #2

<sup>32</sup> Inner London Enforcement Officer #2

<sup>33</sup> Inner London Enforcement Officer #1

<sup>34</sup> Specialist in Housing Law #1

*They will always prey on young international overseas tenants because, for a start, they'll put up with a lot more, they won't know their rights, they will listen to the sham agreements and the other rubbish they hand out, the supposed tenancies, they will actually believe what it says, they'll believe all the unfair charges... So they do tend to, like the traditional rogue landlords, they tend to prey on their own communities, because a lot of the online property letting agents, rent-to-rent agents, they do tend to be overseas EU nationals themselves for the most part, sometimes advertising these rooms in other countries, 'Come to London'. And they end up in these quite rundown flats with no fire alarm, no heating, but they're young, they're adventurous, they're transient. So people have been able to get away with quite a bit.<sup>35</sup>*

*They [ie the perpetrators in a case under investigation] have got an office in Prague and an office in East London. So the idea is you go to them, settle in the UK, you're given unlawful accommodation because it will be unlicensed, overcrowded, whatever else it might be breaching, and then you will be given 10 days' notice to leave and if you don't leave, your things are thrown out. That seems to be their business model to me. They are given 10 days' notice to leave once – they tend to rent from the freeholder, they don't own any property. And rather than the traditional agency, they will be renters themselves, but they're running it as a letting agency. [...] They'll be squeezing people into – they'll be creating overcrowded households.<sup>36</sup>*

*Young Europeans are here on a short-term basis and I'm finding that they don't understand the system here, they're only here for a short amount of time and are easy targets for rogue landlords who don't return deposits. The landlords just think, if I can hold out for a bit, this person is going to go.<sup>37</sup>*

### Prolific offenders

Twenty per cent of the sample fell into the category of prolific offenders, who made no attempt to conceal their offenses or their identity. Individuals in this group could be confident about their ability to challenge any court case and tended to carry on regardless. Often their behaviour could be unpleasant and threatening and range across a number of regulatory infractions and illegal behaviours, the least of which might be not lodging deposits with a government scheme.

#### **Box 3.3: Prolific offending**

*Generally, they [ie the tenant] won't come to us while the tenancy is still on-going and ask us to make a claim. They will come to us when the tenancy has ended and the landlord is refusing to return the deposit, often claiming that they have damaged the property and we say, "you not only have a claim to get your deposit back, you have the potential for a penalty*

<sup>35</sup> Inner London Enforcement Officer #1

<sup>36</sup> Specialist in Housing Law #3

<sup>37</sup> Specialist in Housing Law #2

*against the landlord". So that is the context, a lot of the time and when we see evidence of illegal eviction, that'll be an opportunity for us to put pressure on a landlord to get the deposit money back, rather than all the tenants wanting to pursue criminal routes. It's just a question of, "I want my money back and I want to get on with my life", so that's what we're seeing, people trying to get their money back, so they can move on and use that money to put a deposit on the next property.*

*There will often be disrepair issues as well and access issues or problems with landlords who harassed them, during the course of the tenancy but it all gets packaged up when they come to us, "Yes, it was horrible, a lot of horrible things happened and I want my deposit back, I want to move on with my life." And that's where we'll come in, sending letters and trying to help them with that.<sup>38</sup>*

### Organised crime

An estimated three per cent of the sample was individuals who were probably involved in more complex organised crime which went beyond housing offenses and might include trafficking, running cannabis farms and large-scale financial fraud. This proportion is considered to be an under-estimate. The landlords and agents in this sample of cases have been identified as a consequence of licensing and enforcement breaches. It is likely that where residential letting is linked to serious crime then landlords and agents will be more ruthless in their methods for avoiding detection, and slip more effectively under the radar. Tenants trapped in these circumstances may well be moved on by the landlord to frustrate possible enforcement action. Further, local authorities are not in a position to investigate serious crime connected to housing offences.

The stakeholders who were interviewed for this report were generally agreed that slavery and trafficking does exist within the PRS. Some types of 'tied' accommodation clearly pushed at the boundaries of slavery definition:

*We've had ones where we've made a case it might be human slavery because everyone in this HMO, which was awful, where their rent comes out of their wages, they don't have pay slips, so we've referred that through to human slavery.<sup>39</sup>*

*[We've seen] significantly severely overcrowded HMOs where the occupiers appear to have had their identity stolen and have been placed into employment, and we find out that they are actually not getting paid for the employment.<sup>40</sup>*

*You've also got activity where you can have cannabis farms and you can also have some apartments used for prostitution.<sup>41</sup>*

There are linkages between the 'Right to Rent' regulations, and migrant tenants' fears about their migration status:

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<sup>38</sup> Specialist in Housing Law #2

<sup>39</sup> Inner London Enforcement Officer #1

<sup>40</sup> Inner London Enforcement Officer #3

<sup>41</sup> Industry representative #1

*It's very widespread [...] It's obviously the issues like the 'Right to Rent' and their fears of their immigration status being uncovered and the fact that our government doesn't treat victims of human trafficking with great sympathy. But as illegal [migrants], many people are afraid to come forward and go into a law clinic and complain about housing conditions. So I suspect there are a lot of people completely under the radar living in abominable conditions.<sup>42</sup>*

## Property management in the shadow PRS

It was notable that a number of popular 'business models' were evident amongst landlords and letting agents operating with deliberate intent to defraud and exploit tenants. The key principle appeared to be to maximise yield, which could mean selecting properties that were in poor condition to start with but without necessarily attending to any improvement:

*There is also a depressing amount of right-to-buy flats that are now HMOs, and HMOs in bad lettings agents' hands. We've got lots of ex-council flats unlicensed HMOs that we've prosecuted landlords and agents in, and sometimes some of them are really bad. One I saw personally, it looked like it still hadn't been properly refurbished since the 1970s.<sup>43</sup>*

In almost all instances, landlords were subdividing property to create 'lettable' spaces within existing properties. According to one enforcement officer, the landlords think:

*"the more people I can squeeze in, the more rent I can make". That seems to be the way that criminal landlords work. [...] They know the law, but they don't want to engage with the council because these properties are overcrowded, the rooms are too small, they've probably got four or five people living in a property that is suitable for three, and that's part of the actual business, it's creating something out of nothing.<sup>44</sup>*

Indeed, certain types of neighbourhood lent themselves to intensive subdivision, including areas with tower blocks: 'Obviously if you're in a 1930s semi suburban street everyone's going to see'.<sup>45</sup>

Landlords could also deliberately target areas where it was known that enforcement activity was poorly resourced:

*They all go and find opportunities where they think – it's a cost/benefit analysis, and just because they're criminals doesn't mean they're stupid. And they will go to the places where (a) regulation is weak, (b) perhaps there's no separate licensing controls or where the local authority doesn't make many prosecutions or they think the local*

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<sup>42</sup> Specialist in Housing Law #1

<sup>43</sup> Inner London Enforcement Officer #1

<sup>44</sup> Inner London Enforcement Officer #2

<sup>45</sup> Inner London Enforcement Officer #1

*authority perhaps is not really up to it, where the property is cheaper, where they can squeeze as many people into a property as possible.*<sup>46</sup>

Often, landlords were deliberately using forms of residence that evaded scrutiny or control because actions fell between gaps in the law. Using these models, it is possible for landlords and agents to increase substantially the revenue achievable from a property let to a single household, and to let properties not suitable for residential use.

In addition, certain types of management practice were also in evidence.

#### **‘Rent-to-rent’**

As has been seen, above, letting agents were involved in a large minority of cases brought to Safer Renting. Letting agents are often integral to ‘rent-to-rent’ scams, by which properties may be let involving a chain of two or more landlords and agents: an original owner, subletting to an agent, with individuals subletting and where there are no formal tenancy agreements at any point in the chain. This mode of working extends the opportunity for shifting responsibility for housing offences, which is problematic for the tenant and for investigating officers. Chains may be ‘legitimate’ with just one link in the chain acting in an unscrupulous manner, or all the individuals or agencies in a chain may have planned a deliberate evasion, with collusion to ensure that no-one is held responsible. Housing enforcement find this practice particularly difficult to counter: *‘It’s the rent-to-rent boys who are causing us the problems, not the traditional landlords who have been in the business for donkey’s years’.*<sup>47</sup>

It is not always the case that letting agents are involved in these scams. One central London enforcement officer, working in a high rental value area, indicated that they were dealing with cases of criminals acting as tenants and then defrauding landlords:

*The way the real criminals operate is they’ll take out a business lease or an AST on a property which they could be paying four or five thousand pounds a month rent. They pay the first month, they get the tenants in, collecting rent from the tenants and then stop paying the superior landlord. They’re creaming off in three months before they can be evicted, ten or twelve thousand pounds. So they’re not having to pay the landlord, they’re collecting the rent. We did actually have a landlord who came to us complaining about one particular guy who was doing this scam who has now apparently left the country.*<sup>48</sup>

#### **Box 3.4: Complex rent-to-rent fraud**

*We have ones where a tenant, to the best of our evidence, will deceive a landlord or a high street letting agent into giving them a property, him and his girlfriend is moving in. They then subdivide it, turn the lounge into a bedroom or maybe if they're really greedy they'll*

<sup>46</sup> Inner London Enforcement Officer #2

<sup>47</sup> Inner London Enforcement Officer #2

<sup>48</sup> Inner London Enforcement Officer #2

*manage to get a kitchen diner and they'll turn that into two bedrooms. So there's that one where they're stealthily sub-letting it.*

*Then there's the other one where they will do rent-to-rent corporate company lets, where the landlord will pass it to a high street letting agent who will then pass it to, usually, an online one. And they will have a corporate letting agreement or there will be a corporate tenant, and then they will rent it out on a room by room basis, yet again doing substandard partitions, usually small rooms, dangerous rooms with no protected means of escape i.e. through kitchen. So we'll see those ones.*

*We've had some chains which just defy logic. The biggest one we've got so far has been a five-step chain: owner, letting agents to then online company who then went to another online company to the tenants, so there were five steps in it.<sup>49</sup>*

Degrees of criminality travel beyond intent to defraud on rental payment. Not all housing statutes and regulations are clear about who should be held liable for regulatory infractions and the distinction creates difficulties with assigning responsibility for failure to comply with licensing requirements. For example, in the matter of the duty to apply for a mandatory HMO or selective licence, it is the person who 'controls' the property who is liable, and that is not necessarily the owner. Rent-to-rent scams mean that defining responsibility for 'control' is extremely problematic. Indeed, in some cases landlords may well exploit a 'mesne' or head tenant to encourage them to subdivide the property as a means of arriving at subdivision informally, so increasing and sharing the increase in total rental take from the property. Meanwhile, the landlord evades any liability for breaching Article 4 directives or for failure to license the property as a HMO. If identified by enforcers, the mesne tenant simply disappears.

Rent-to-rent arrangements also operate to disenfranchise the tenant. Where a property is let to an individual who then sub-lets the property but continues to live in the property as a 'house-sharer', those subletting tenants are, in law, lodgers and are not entitled to a possession order in court under the Protection from Eviction Act's requirement. They may be asked to leave the property without a court order, and be entitled only to 'reasonable' notice. In the quantitative case work sample, over a tenth of tenants had been denied their housing rights in this way.

#### ['London lockdown' model](#)

This model exploits poorly-framed regulations defining the difference between rooms in a HMO and single-person studio flats. One Inner London Enforcement Officer explained the model:

*The other problem we see is the converted blocks of flats that have usually been chopped up not once, not twice, three times sometimes. Sometimes they use what's called the lockdown model. It's where you chop something up into tiny little self-*

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<sup>49</sup> Inner London Enforcement Officer #1

*contained studios and make loads of housing benefit claims for it, because you get paid more housing benefit for self-contained accommodation. We've seen a few of those in the borough.*<sup>50</sup>

The lockdown model capitalises on the difference in benefit rates between the shared accommodation rate and the one-bed studio rate in Local Housing Allowance, and is aimed at single LHA recipients over the age of 35. In this model, landlords subdivide a property purportedly to create a HMO, which under 'permitted development' status does not need planning permission. The property includes a 'galley kitchen' with a microwave and kettle. However, each room is then let as a single-person studio, typically with a minimal shower and toilet installation carved out of the room and a worktop installed equipped with kettle and microwave oven. These 'micro-flats' are often no more than 10m<sup>2</sup>.

Should the property be visited by housing benefit officials – an unlikely scenario – facilities in the shared galley kitchen can be removed. If the property is visited by planning enforcement or HMO licensing and enforcement officers, the kitchen facilities are replaced in the shared kitchen to demonstrate use as a HMO and kettles and microwaves are removed from the individual rooms.

### Property guardians

Under this model, organisations take on vacant, non-residential or institutional premises and let them to 'guardians' who are nominally contracted to protect the empty property, in a kind of sham tied tenancy, but who are obliged to pay rent. The arrangement is intended to create a rent stream without giving the tenants any property rights. However, this model is not exempt from needing a HMO licence if the occupancy level meets the applicable threshold.

There is a very wide range of property types being occupied under the property guardians model, from vacant industrial property, former pubs and fire stations to care homes. Property not designed for residential use is least likely to be adequately equipped with amenities such as kitchens or bathrooms/toilets. No effort is likely to be made to check safety and amenity standards required for residential use and so deficiencies are less likely to be addressed.

However, this mode of letting exists within a case-law vacuum. Solutions are unlikely, since the development is often regarded as a creative and practical solution to the prevalence of vacant commercial, industrial or institutional premises. At present, this kind of letting cannot currently be identified as criminal activity, but legal commentators believe that it is not lawful to let property which fails to meet basic standards in this way and the practice could be challenged in court.

### 'Lifestyle' clubs

Another practice that pushes at the edges of legality is the 'lifestyle' club which offers tenancies in 'exclusive' properties often in central London. These build on the concept of serviced apartments, offering 'members' the freedom to live in any property in the club's

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<sup>50</sup> Inner London Enforcement Officer #1

portfolio although there may be a charge for moving from one property to another. An inner London Enforcement Officer mentioned this practice: *'There are several companies now that operate this membership club. I can't remember the name but there's one particular one where if you're a tenant, you're a member of the club, but if you breach anything they'll send you a massive bill.'*<sup>51</sup> This kind of letting again creates uncertainty in terms of the legality of the tenancy arrangement, deposits taken and fees that are charged. In particular, it can be used to argue the occupant is a licensee without any security of tenure. This is operating in the grey area of Trading Standards abuses considered to be unfair trading and can be challenged legally.

### Short-term lets

Substantial growth in the short-term lettings market has also created incentives for scams around leasing properties that are then sub-leased as short-term lets via on-line platforms. The high volume of student demand in the capital has encouraged the proliferation of fraud in this area.

#### **Box 3.6: Short-term letting scams**

One letting agency representative indicated that:

*We will find companies who will find, maybe a student, and pay that student, to go into a letting agent and find the property. To all intents and purposes, you will do your referencing on that person who comes into the office and they will be renting the property. Sometimes they might try to pay the first six months' rent in advance, and as far as you are concerned that tenant moves in and that's it. But that tenant never moves into that property. That property then is put on one of the short-term letting websites (by the company) and they will platform hop now. You are only supposed to let a property as a short term let for 90 days in a year, but they might do 90 days on one platform and then they'll go to another.*<sup>52</sup>

*We also have an extremely big issue with [short-term lettings business], not necessarily the company but the principle of short-term lettings [...] But what's happening is you're getting these very grey areas where you have people renting and living in properties for two or three months at a time. Is it an HMO? Have they got a tenancy agreement? Or is it a short-term let? And the landlords are intentionally, in my opinion, trying to obscure what they're doing.*<sup>53</sup>

### 'Beds in sheds'

One MP Constituency team reported that they had come across a number of cases of young migrant men living in *'really grim'* sheds in back gardens.<sup>54</sup> So-called 'beds in sheds' are

<sup>51</sup> Inner London Enforcement Officer #2

<sup>52</sup> Industry representative #1

<sup>53</sup> Inner London Enforcement Officer #2

<sup>54</sup> MP Constituency Team #1



garage conversions, shipping containers or lean-tos, often converted without planning permission, not compliant with building regulations, and not meeting Fitness for Human Habitation or HHSRS standards. This kind of property tended to be more common in outer London: *'And the further out you get the more creative landlords or arrangements can be, beds in sheds, makeshift outhouses. The stuff that makes it onto TV programmes, that whole substrata of the rental sector'*.<sup>55</sup> In a bid to avoid detection by authorities, these structures are often fed via water or energy supply rigged up from the main property.

#### No written agreement, payment in cash

Landlords and agents may also deliberately undermine tenants' rights by a lack of clarity over the nature of their tenancy agreement. In a quarter of all the casework analysed for the report, landlords and agents sought to evade the law by refusing to issue written tenancy agreements and often also demanding the payment of rent in cash without then providing receipts. Of the 31 tenants who were interviewed, more than two-thirds had no written agreement. For tenancies for a term of less than three years neither of these practices is illegal.

However, the failure to provide a written tenancy agreement and taking payments in cash both make it difficult for the tenant to seek redress for tenancy incursions. Evidence will have to be provided – to a criminal standard, in court – of their occupation and rent payments over a given time frame. A tenant not being able to provide a tenancy agreement and being required to deal with cash only is a 'red flag' indicator that criminal activity is likely to be associated with the tenancy, in addition to planned abuse of tenant rights.

#### Illegal eviction, harassment and threats

Eviction without due process was a common occurrence in the casework analysed for this report, occurring in 40 per cent of the sampled casework and in a third of the qualitative narratives. Stakeholder interviews also indicated that this kind of illegality was not unusual: one housing law specialist indicated: *'We are seeing outright criminality in terms of harassment, violence, intimidation, physical threats, illegal evictions where there is a forcible eviction'*.<sup>56</sup>

Defining eviction as illegal becomes problematic where it is unclear whether a tenancy agreement has indeed been issued. One MP constituency team indicated that they had recently dealt with a woman whose landlord had taken her deposit, offered no receipt or tenancy agreement, and told her to leave after she had complained about a pest infestation.<sup>57</sup> Furthermore, establishing whether the eviction without a court order is illegal often relies on facts that are difficult to uncover, including the identity of the landlord.

Illegal eviction could also include an element of theft or damage of tenants' property: landlords evicting at short notice on occasion retained tenants' possessions or threw them into the street. Often, the tenants who were seeking legal advice simply want to secure access to their possessions: *'It's often goods, belongings that have been seized, or not*

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<sup>55</sup> Specialist in Housing Law #3

<sup>56</sup> Specialist in Housing Law #3

<sup>57</sup> MP Constituency Team #2

*having access to goods. So, if someone's locks have been changed and their goods are still left inside'.<sup>58</sup>*

Personal security could also be an issue: enforcement officers reported that tenants often complained of landlords entering the property without required notice.

### **Box 3.7: Illegal eviction**

One MP constituency team reported that

*it would be common for us to see those kinds of revenge eviction type scenarios, where maybe the tenant has complained to the private rented sector team at the council and then had their stuff smashed up, kicked out of the house, that sort of thing at the most extreme end. [...] I brought along a case of someone I dealt with, almost a year ago, he was experiencing a revenge eviction.*

*So I guess this would have been an illegal eviction since he had complained to [BOROUGH'S] private housing team because his living conditions were unhealthy, so there were mice and cockroach infestations, there was water leaking from the bathroom. I think an officer from the team had been to inspect it and given a notice to the landlord that they were doing that. But he returned home one night and the property had been broken into and items had been stolen and his things had been put outside and he was receiving threats from the landlord. His house was broken into again. But then that was difficult because the person he was paying rent to was not his landlord, so it will be quite common that people will pay rent to someone who wasn't their landlord and sometimes there are two or three middle men involved.<sup>59</sup>*

Illegal eviction could also be facilitated through a campaign of harassment: *'We see cases of people that have different extremes, people who have had landlords changed the locks, use intimidation, who have complained to a landlord or letting agent and found that the "boys have been sent round" to intimidate them out of their property'.<sup>60</sup>*

It is difficult for a tenant to secure legal support to bring any kind of action against this kind of harassment and threat. Legal aid may be available for such cases if the quality of evidence is strong. However, solicitors are rarely willing to take this work on conditional fee arrangements. Even where cases are actively pursued, there is a sense in which tenants may continue to be vulnerable. One specialist housing law advisor indicated that part of the advice to clients was to take care:

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<sup>58</sup> Specialist in Housing Law #3

<sup>59</sup> MP Constituency Team #1

<sup>60</sup> Specialist in Housing Law #2

*Yeah, yeah, people beaten up, pushed, shoved, thumped, which can form part of a claim. But the claim doesn't stop that happening again if they bump into the same landlord again. I've had that conversation with people, "you need to be careful where you go. You need to look out for yourself, because we're not mucking around anymore, we're suing them for quite a lot of money, they're not going to like it and you just need to take care of yourself. Because you're dealing with a criminal landlord who by definition are acting outside the law".<sup>61</sup>*

## Conclusion

This chapter has indicated that criminality amongst landlord and letting agents in the shadow PRS is spread across a range of practices which include financial fraud, routinized flouting of housing law and serious crimes against the person. It is clear that some perpetrators are simply using the internet and high demand for rental property to pose as letting agents or landlords and secure advance payments from victims who perhaps ought to be more vigilant. However, in other cases, criminality is expressed through complex chains of fraudulent lets and sublets where tenants, landlords and agents may be perpetrators or victims. In all cases, criminality appears to flourish in the grey spaces between definitions, where tenancy agreements are ill-defined, the mode of letting is not wholly fixed and evidence as to which laws exactly have been broken is not easy to verify. As the next chapter illustrates, criminal landlordism is seldom a single activity or action: victims are generally subject to a range of behaviours, which in itself creates problem in securing a resolution.

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<sup>61</sup> Specialist in Housing Law #3

## 4. Tenant experiences of the shadow PRS

### Introduction

This chapter will present tenant experiences of living in the shadow PRS through ten anonymised narratives from tenants themselves, selected from 31 interviews. The accounts show that tenants are likely to experience multiple infringements. Illegal eviction was commonplace, and often – but not always – triggered by formal intervention by the authorities as a consequence of complaints about repairs. The chapter does not aim to present detailed analysis of these accounts: the stories are relayed without commentary. The experiences indicate that landlords and letting agents operating in the shadow PRS set no boundaries around their behaviour and this leaves the tenant without effective protection. The chapter ends with a summary of common emergent themes.

### Tenant case studies

The following section presents ten tenant case studies, selected from 31 interviews as being typical of the behaviours and issues highlighted in Chapter 3. Tenants' experiences related to a range of criminal activities, from the wilfully negligent through to organised fraud and – in some instances – exploitation facilitated through the threat of violence. The cases have in some instances been simplified, since narratives were often convoluted, but in all instances here tenants have read their summaries and agreed that the summary represents a fair representation of their experience. In all cases, tenants were deeply upset and even traumatised by their experiences, which left them depressed, anxious and fearful. Italics indicate verbatim quotation.

#### Adele

Adele had difficulties through her teenage years: she was young when she became responsible for her siblings and eventually ended up homeless, with a long period in the hostel system. She fell pregnant, and following a period of ill-health also found herself in financial difficulty. She had been allocated a housing association flat but had not been prepared for the financial responsibility. She said she '*mashed up*' her credit even before she realised what she was doing. She lost the accommodation and found herself in the homelessness system again. The local authority encouraged her to find accommodation in the private rented sector for herself. There were limited choices: landlords and letting agents refused her application because she was reliant on housing benefit: '*what I found going into estate agents, [often] I would experience immediate rejection. So that was already pretty hard*'.

She was determined to secure a property that was self-contained, and finally found what was advertised on-line as a '*one-bedroomed bungalow*'. She secured the property with the council's assistance: Adele was helped to pay a month in advance, and the homeless prevention team paid an additional incentive payment of £1,000 to the landlord, to agree

the tenancy. The landlord then asked Adele herself for an additional month's payment of rent up-front. Adele had no option but to take out a loan under Universal Credit, and she is still repaying this loan at the rate of £127 a month long after she was evicted from the accommodation. At no point did the council visit or check the property, which was part of a converted garage. Adele said, of her landlord,

*She didn't have planning permission for it. I made it homely, but I was only there for six weeks. The lady was a nightmare. The condition of it, I mean it was dirty when we moved in. You could tell there was no consideration for it, and there was a huge mound of rubbish, what I thought was just shrubs until it got warmer and then there were rats and things. The front door was very loose, so there was still a gap to outside. If it was colder you would feel it more. And it took a lot of messaging and insisting that I was going to contact the council to sort it out.*

In response, the landlord instituted a campaign of harassment. There were builders working on the main property, who walked close to her windows. Adele found it threatening: 'you're not dressed, you didn't know they were coming, why are there five men in the garden? What's happening? Not to mention the guys who would peep through – it was crazy. It was humiliating [at] times, she [ie the landlord] didn't care.' The landlady expected to have access without notice, and the building work started to infringe on Adele's home.

*I had a skylight and there was some work being done on the roof and she didn't tell me. [...] I was picking [her son] up from school and there was debris all over the floor, the glass had been moved and was off for two days, there was a high smell of some chemical, it wasn't butane that they were using but it was filling up the entire, it was awful, lots of vomiting. I had to go to A&E twice. It was a lot of headache.*

The landlord approached Adele at any time of day or night, and her campaign of harassment included sending text messages referring to information that Adele never received: 'So it was like she was trying to mess with your head sometimes [...], and react like this was really rational'. Finally, Adele was simply told to leave after the illegal conversion came to the attention of the local authority.

### Carlene

Carlene was a young professional, living in a HMO with a shifting population of around fourteen unrelated young adults. The property was badly overcrowded, but the chaotic experience of living there was made worse by the landlord. He had a flat behind the house that he regarded as his 'office'. He did not necessarily work there, 'it was more like a man cave, because their friends turn up at any time'. Carlene felt unsafe. She complained to him and said his friends should not be there when he was not, and asked him 'why are you coming here without announcing yourself in the first place? [...] I said to him, I'm used to a landlord giving me 24 hours' notice before turning up to the house, but now I could come downstairs and you're there having a drink with your friends'.

She was also worried about the safety of the gas boiler, and refused to pay the rent until it was inspected. Her landlord's response was to change the locks to effect an illegal eviction and pursue a claim for rent arrears. Carlene was able to secure legal advice, and settled with

the landlord out of court. However, she had to move back into the property, because she had no better options.

### Charles

Charles moved to an area of east London to take up a job, and found a property with a residential landlord on SpareRoom. From the outset, his landlord's behaviour was erratic. He refused to let tenants have the heating on, and installed cameras in the property, *'he said, directly to spy on us'*. The landlord was aggressive, and made inappropriate sexual references. Tenancy turnover was high, and the landlord frequently gave no more than 24 hours' notice for people to leave the property. For Charles, *'it felt like that at any moment I could come home and my stuff could be on the street'*. Charles was uncertain about his rights as a tenant. The landlord started to impose service charges: *'he started to charge for things like closing a window or putting a pan away or putting the toilet roll back on the holder'*. Typically, the rent being charged was £650 plus bills, but one month these additional fees amounted to an extra £450. Charles was intimidated into paying: *'he was quite threatening, quite difficult to reason with, and because he was so unstable it was a fight I didn't really want to have'*. Charles eventually accessed housing advice, using the Shelter on-line chat.

### David and Sasha

David and Sasha found a shared property on Gumtree, and moved into a three-bed house with a group of Algerian men who shared two rooms, and a brother and sister who shared another room. It seems that the landlord's letting policy involved letting out rooms as 'doubles', to people prepared to share a room, irrespective of the size of the room. Indeed *'she was charging more for a "double room", even though the room size would be the same'*. The landlord *'was looking to make money in the easiest way she can, and if it involves breaking the rules and the laws, that's it'*. The couple paid a deposit, but it was not lodged with a protection scheme and they were not offered a 'How to Rent' booklet. Indeed, it seemed to them that the landlord *'just tried to find honest people who weren't too familiar with the laws of renting'*. There was an unpleasant atmosphere in the house, which had a high tenancy turnover.

Issues came to a head when the landlord and her partner divorced. She wanted to extend the mortgage on the property, which was being purchased on a standard residential mortgage and let without the mortgage-provider's consent. The landlord asked the tenants to hide their possessions when the surveyors came to inspect the property, and David and Sasha refused. As a consequence, the landlord became abusive and threatening, saying that the tenants were only lodgers and she only had to give two weeks' notice. Finally, she gutted the kitchen and left it in the front garden, claiming that she was undertaking renovations. She tried to have the couple evicted using a 'no fault' possession order, but David had researched his tenants' rights and her claim was overturned. The couple moved into another HMO, but it was clear at the interview that they were again facing a very similar situation with a very similar landlord.

### Wilma

Wilma had found herself in housing crisis after her relationship with her partner broke down. She was not able to find a property for private rental, *'due to limited fund and NRPF*

[No Recourse to Public Funds] status<sup>62</sup> which not allow me to apply for housing support. I was desperate to find shelter for my 10-year-old daughter.' Wilma eventually agreed to move in with a friend. This person was meeting her own housing costs by illegally subletting rooms in the property she was renting. As – essentially – a lodger, Wilma realised that she had limited rights and attempted to find alternative accommodation. However, the property owner discovered the subletting. Wilma was blamed, and one day when Wilma was out, the landlord entered the property, assaulted Wilma's daughter and dumped the belongings outside the house by the rubbish bin so any passer-by could have taken them. The landlord changed the lock and refused Wilma access to the property. These belongings included 'my whole life – career certificates that will help me to secure a job, my wedding ring, my birth certificate, my marriage certificate, passport'. The loss of these legal documents created difficulties for Wilma seeking redress through the courts, since she could not prove her identity or demonstrate her income to apply for legal assistance. The experience left her highly disturbed:

*I couldn't cry, I was just numb thinking about the loss that I had. . I couldn't get anything back I was devastated. It was so much hardship I have to go through with my daughter. I wish my daughter didn't have to through all this [. ..] It was a trauma I experienced [...] seeing all my daughter's and my belonging was thrown outside the house and I was living in fear that every day we could be thrown out at any time. I did ask for the council for help but they reject on the basis of NRPF, I still didn't get any support since then. I had to go through so much [...] I can't imagine how the landlord could get away with this and not be penalised for such an act.*

#### Diana

Diana and her son aged three lived in a room, sharing a bathroom and kitchen. The property was damp, and had exposed electrical wiring. Diana sometimes smelled gas in the hallway, and the front door to the property was patched up with cardboard. The conditions were intolerable, and she complained to the landlord. One day, when she returned home from work with her son, she found that the locks had been changed. She had nothing but the clothes she wore, and nothing for her son to change into. The council arranged temporary accommodation, and she contacted the police hoping to be let into the property to retrieve her belongings. The police said that they did not help in these cases.

#### Abdul

Abdul came to the UK as an economic migrant, and moved into a shared property above a restaurant: two of his friends already lived there, and were members of the same community as was his new landlord. On occasion, letting was combined with employment in the restaurant. The landlord paid no regard to the law. He did not comply with the 'right to rent' legislation, and Home Office officials visited the property on at least one occasion and deported other tenants living there. A fire at the landlord's adjacent property led to all properties being emptied whilst he undertook safety improvements; he was permitted to re-let providing he met the occupancy standards.

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<sup>62</sup> No Recourse to Public Funds is an immigration status defined by the Immigration Act 2014 that restricts access to benefits to a specific provision to protect children from 'destitution'. Those with this status do not have access to mainstream welfare benefits or support services

Abdul said that this was the case initially: he moved in with just one other occupant. However, the landlord quickly reverted back to his usual policy, and soon there were ten people living above the restaurant, sharing one toilet and a small kitchen. At one point, a family of four was living in one of the rooms. Abdul complained to the council, who informed him the landlord had not secured a HMO licence, and the landlord was fined. It seemed that the landlord had taken this equitably, but when Abdul returned from a holiday he found that the access to the property was blocked. The landlord again claimed that he was undertaking renovation work. *'I didn't get any of my stuff that I left there in the flat. Everything, all my belongings, were inside when I got evicted.'*

### Ilya

Ilya was a single EU migrant, who had originally moved to the UK with his wife and children. Following divorce, he moved to London and set up his own cleaning business. However, his income was insufficient for him to meet his own costs and family maintenance. He fell into a rent-to-rent arrangement: the landlord would forgo the rent if Ilya acted as a 'head' tenant, managing the property and collecting the rent. Lettings were principally made to other economic migrants including members of his extended family, and there was high tenant turnover: at times, tenants shared beds on a 'rota' system. However, there was an altercation one night which led to the involvement of the police. Ilya's landlord acted rapidly to try and cover evidence of how many people lived in the property and later issued a threat, saying that it would not cost much to have Ilya shot. Ilya is still living there and seeking alternative accommodation, but is again looking for a 'mesne' arrangement: he does not think he would otherwise be able to afford the rent.

### Anna

Anna was a BAME British citizen and a single working mother who was also studying. She had been living with her mother since her toddler was born, but as tensions between herself and her mother reached breaking point, she realised she needed to find her own place. Anna took a room in a three-bed house which she found through informal contacts. The room included a shared bathroom and kitchen. Anna believes that most of the other tenants did not possess legal status to live in the United Kingdom and that this demographic was targeted on purpose. The landlord, 'Samuel', did not ask about Anna's background or to check her identification, but simply printed a tenancy agreement for her to sign and she moved in. 'Samuel', it appeared, had a tenancy for the property and was sub-letting rooms individually. Anna struggled to keep her son safe in the property:

*There was no heating, [...] and it was winter. It was really awful for me and my son, we really suffered, [...] Me and my son had to boil water and bathe at night because if we do it in the morning that means we have to wake up at four thirty or five to get ready to leave the house, so in total it was nine people living there. And we're sharing one toilet and one bathroom. In the morning, to use the bathroom or the toilet you need to queue and then my son goes to school in [xxx] and sometimes I don't even shower him, I just have to take him because it takes us almost an hour to get to the school. It was too much for us [...] so it wasn't easy at all [...] Especially if you have a young son and he doesn't even understand what is going on.*



Anna complained to the council about the conditions. Her complaint led swiftly to harassment which affected all the occupants and created a climate of fear:

*There was one incident with one of the ladies upstairs, her sister came from abroad, came to have a baby and they were all immigrants upstairs. And he wanted her to leave because she brought in another occupant and apparently he even hit the baby, and I don't know if the landlord has done anything to the door but if you go and see the hole in the door, that was how hard he wanted to hit them.*

After another incident Anna called the police, because after 'Samuel' shouted at her to leave, she believed that he meant to hurt her.

Anna became aware that 'Samuel' may not have been acting honestly, but she could not be sure whether or not the agent or the owner of the property knew what was happening. She strongly suspected they did:

*I think it's something he's doing, he's got another house in [neighbourhood] [...] a similar thing happened because he wanted to chuck them out as well. But I think one of the gentlemen in the house went to the agency and told the agency they [ie the tenants] were going to collect the money and instead of paying it to Samuel they would pay it to the agency. I think that someone was working with someone there. I think they knew something about it.*

'Samuel' then disappeared and it is unclear whether he pocketed the money himself, or paid it over to the agency who simply kept it without accounting for it. The letting agent held Anna liable for the rent which remained 'unpaid', on the strength of a tenancy agreement which they claimed she had signed: the document had her signature ineptly forged on it. Further, Anna was shocked to find later that her name had also been registered for the council tax on the entire property.

Although not yet homeless, Anna could not see how to defend herself so turned to the local homelessness team for help. She found herself being sent from the Homelessness Team to the Licensing and Enforcement Team and back again, both saying it was the other's responsibility to step in. She was offered no help to leave the tenancy. The council 'were not helpful at all. So I remember there was a lady there and she said, "You're not threatened with any homelessness so you have to go back"'.

When the matter came to the court, the Judge declined to accept Anna's testimony that the agent had falsified her signature and demanded that a handwriting expert be paid to advise. Anna was in no position to finance this, and so the agency's possession order against her was granted. She was finally re-homed by the council, but still has a county court judgement against her for a debt she did not incur.

## Romesh

Romesh was a well-educated IT professional, but his life fell to pieces when his wife sued for divorce. He was living as a lodger in a HMO, but he was evicted after falling behind a week with the rent because of the way in which his work organised their payment cycle. The

landlord had changed the locks. Romesh protested: *'The police had to be called, [they] came and looked at the tenancy agreement and said: "Look, he's geared this tenancy agreement in his favour. We will stay here for you to move all of your belongings out."*' Romesh was homeless, but secured a package of support from a housing charity. They arranged for him to move into a 'studio' room, which was equipped with a shower, toilet and microwave. The house had another room which was ostensibly a kitchen, but which was not equipped for use.

After what looked like a burglary, Romesh called the police but the agents admitted that they had entered all the rooms ahead of a planning inspection to *'ensure the property looked nice'*. In practice the agents had simply removed the kettles and microwaves from each of the 'studios' in a bid to present the room as a house in multiple occupation. However, Romesh found that a gold bracelet had also been taken from his room; the agents denied any responsibility.

## Common themes

All the respondents who agreed to be interviewed had been referred to Safer Renting by one of six London boroughs. The tenants themselves had in many instances approached the local authority for assistance, and in this regard the selection presented here will not represent the tenants who lack the opportunity to seek assistance. These stories appear to be extreme, but are unlikely to be the worst experiences.

Some common themes emerge. First, the threat of eviction was evident in almost every case. Illegal eviction took place with no notice at all, often through the medium of simply changing the locks. It is notable that in these cases, amending the law to prevent a S21 'no fault' eviction would simply have no impact. Landlords could also force a tenant to move through a campaign of harassment, or through making a house uninhabitable – in one circumstance, through the extreme measure of removing the kitchen. Eviction could also be forced through, simply by campaigns of unreasonable behaviour which might include charging additional fees or through regular invasions of privacy.

All these cases indicate landlords and letting agents being willing to act illegally, with no intention to follow required regulations. Statutory authorities intervened on a number of occasions – these were not necessarily tenancies that were wholly under the radar – but nevertheless there was no evidence that landlords changed their behaviour in response. These were not landlords or agents who would change their behaviour if they were given access to training opportunities.

Tenants were in many instances uncertain about their rights. Indeed, landlords in some instances misrepresented the law and indicated that tenants had far fewer rights than was in fact the case. Even where they were knowledgeable, it was not always easy for tenants to exercise their rights.

Tenants were often vulnerable and felt unprotected. This was particularly the case when they were living with a landlord or a mesne tenant who was prepared to act illegally, and

where the landlord's unreasonable behaviour was unlikely to improve in response to a complaint. The law does not offer substantial protection in the circumstances instanced in this chapter. For example, protection against retaliatory eviction relates to eviction in response to a property complaint, and even then, only when formal enforcement has been already initiated. The qualitative interviews indicate that eviction might also be a response to other kinds of complaint relating to a landlord's behaviour. Further, tenants were frequently expected to return to or stay in property where the landlord had already exhibited unreasonable or threatening behaviour: it was regarded as reasonable that tenants should live with personal insecurity and the possibility that they might well lose all their possessions should a landlord decide to evict them illegally.

To a worrying degree, tenants' 'enforced tolerance' of poor circumstances could shade into complicity, particularly where tenants might be pressed into facilitating rent-to-rent scams or offered inducements to act as mesne tenants. The tenants who were economic migrants were clearly prey to a very particular type of exploitation which included high levels of overcrowding and being compelled to quit a property at very short notice in response to any kind of statutory intervention.

These cases demonstrated that the impact on tenants' mental and physical health could be substantial. Tenants were often living with low-level aggression, perpetrated by landlords who could access the tenant's home at any time. There was evidence of personal threat and also – more commonly – of insecurity with regard to personal possessions. Eviction often meant not only a loss of home, but theft or irreparable damage to all personal belongings. It is not surprising, then, that one tenant likened the experience to trauma.

Tenants, trapped in impossible situations, rarely secured a statutory response that protected them or changed their situation. There were instances of individuals being proactive in alerting the authorities of illegal activities, but even in cases where children were involved, attempts were rarely made to remove tenants to safety. Indeed, there were instances in which tenants' vulnerability was heightened by the statutory authorities: Adele's placement in an illegally converted garage was facilitated by the council with a £1,000 incentive payment to the landlord.

In eight of the cases detailed here, tenants continued to live within the shadow PRS, continuing what had been a series of moves in the search for a better tenancy. In two cases, respondents were accepted under homelessness legislation and offered a social housing tenancy. Of all the tenants helped by Safer Renting, only six per cent have been recorded as being accepted under homelessness legislation.

## Conclusion

This chapter has used tenant narratives to underline how landlord criminality is experienced, first hand. What might be regarded as normal market rules do not apply within the shadow PRS, since the regulatory frameworks for commercial transactions are largely disregarded. Landlords and letting agents show little concern that they might be caught, and indeed in a number of instances did come into contact with statutory authorities which in all

cases permitted those landlords to continue operating. The regulatory frameworks outlined in Chapter 2 simply do not offer an effective protection for tenants faced with a landlord or letting agent prepared to act illegally.

## 5. Obstacles to enforcement and justice: stakeholder perspectives

### Introduction

The last two chapters have indicated that there is substantial evidence of criminality, and that tenants' experience of that criminality carries serious adverse consequences in terms of physical and mental health in addition to financial losses and – in the case of illegal eviction – loss of home and often loss of possessions. Despite the severity this criminality, there are substantial obstacles both to effective enforcement of the regulations outlined in Chapter 2 and to securing housing justice where landlords and agents are very clearly contravening those regulations. This chapter also summarises two cases dealt with by Safer Renting, where an attempt was made to prosecute the landlord concerned.

### Obstacles to enforcement

Stakeholder interviews indicated that major obstacles to enforcement reflected the complex regulatory framework, the nature and scale of the problem, local authority inability to respond effectively, political will, and police ambivalence towards criminality in the PRS.

#### Complexity of the regulatory framework

As Chapter 2 has shown, the regulatory framework is large and complex. As a consequence, landlords and tenants – and often enforcers themselves – can be unclear about rights and obligations. A spokesperson for the landlord industry described the laws relating to the PRS as piecemeal, 'over-complex and under-enforced', 'not fit for purpose' and 'often badly drafted'.<sup>63</sup> The law itself created shadowy intersections where uncertainty created opportunities for tenant exploitation.

#### Nature and scale of the problem

Chapters 3 and 4 have outlined in detail the characteristics and experience of the shadow PRS. Local authority stakeholders were of the view that the nature of the problem itself contributed substantially to the inability to introduce effective enforcement. These officers were best placed to understand the scale of enforcement activity they were expected to deliver:

*Because we've got a lot of intelligence about where the unlicensed HMOs are, we've got a good idea who's operating in them, but we just can't get round to them, there are just so many. We've gone off intelligence from Spare Room, our own internal databases. We know where they are, we know they are most likely to be a HMO because that's the business model with the most money, so that's what they're all going to do. But I do not have enough officers to get round to them all. We think there's probably somewhere between 4,000 and 6,000 more unlicensed properties out there.<sup>64</sup>*

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<sup>63</sup> Industry representative #2

<sup>64</sup> Inner London Enforcement Officer #1

Further, the range of offenses include harassment, physical attack, fraud, and failure to comply with relevant regulations within properties but also in cyberspace; and offences might be perpetrated across two or more boroughs. A particularly egregious case might well sit in an awkward space between jurisdictions where there may be uncertainty as to which officers and which boroughs should lead an investigation.

In addition, more serious offences might well sit outside housing law, in the realms of organised companies fraud. Action against this level of criminality was almost regarded as fruitless: *'You can take a company to court and then literally they can change the name of the company, close the company down and open a new one the next week and you haven't got anywhere at all'*.<sup>65</sup>

Stakeholders felt that laws were framed to ensure the better compliance of already compliant landlords. The law had little impact on landlords and letting agents who had no intention of acting legally. For example, the Deregulation Acts offered little protection to tenants who were illegally evicted in response to an unwillingness to meet a rent increase, or who complained about the landlords' behaviour; and tenants were unlikely to press landlords for evidence that deposits had been placed in a scheme if they had no tenancy agreement and paid rent in cash without receiving a receipt. Overall, the threat that management and property quality infringements would deny landlords the right to serve a S21 notice had little effect where the landlord routinely ended tenancies illegally.

#### Local authority inability to respond effectively

Respondents were not always pointedly critical of the legislation they were dealing with. The problem with containing criminality was more often accounted for by failures in enforcement:

*'Unless you've got a really properly funded body that's going to enforce and [...] come down hard on landlords and managing agents, it doesn't matter. You can pass as many laws as you want, it's irrelevant'*.<sup>66</sup>

*'Whatever they do, if you don't have the right enforcement then it doesn't work. I believe strongly that there needs to be investment in enforcement for local authorities, with ring-fenced fines, and that doesn't mean money going into a big pot for different departments to take from it. I think the fines should go into the enforcement department to pay for more enforcement'*.<sup>67</sup>

There was common agreement that a local authority openly signalling its commitment to enforcement activity sent a clear message: *'If you have that, you create the environment that these landlords will not be so brazen in their activities and will know that if they are, there is a body who will come after them'*.<sup>68</sup> Adequate funding is needed to ensure a steady stream of rent repayment orders, formal enforcement notices and prosecutions, demonstrating that landlords were likely to be caught and likely to suffer heavy penalties.

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<sup>65</sup> Inner London Enforcement Officer #2

<sup>66</sup> Specialist in Housing Law #2

<sup>67</sup> Industry representative #1

<sup>68</sup> Specialist in Housing Law #2

Local authority respondents themselves were often critical of local authority investment in enforcement activity. A licensing scheme brought additional income, but the income could only be used to support the licensing scheme itself and could not be used for proactive investigation of landlords who fail to license properties. Additional funding had been sought in some instances from the MHCLG Controlling Migration Fund, which was established in 2016 and distributed £100m in funding grants. Some London boroughs had secured funding to set up 'rogue landlord' interventions. However, this was 'one-off' funding in a context where serious on-going investigation might take years to pull together.

Stakeholders expressed little comfort in the prospect of funding being recouped through civil penalties. The Rogue Landlord checker, accessed on the 24<sup>th</sup> February 2020, indicated that fines amounted to just over £435,250 for 81 infringements. Extrapolated across all London boroughs, this income averages at less than £14,000 per borough, a sum insufficient to employ even a single part-time officer.

Other common themes relating to the local authority response included the inability to co-ordinate activity across boroughs. One enforcement officer indicated: *'to be honest with you I've lost a bit of touch about what other boroughs have as resources. You'll never get two private rented sector teams set up in the same way'*.<sup>69</sup> Change in one borough's approach had knock-on effects for other boroughs if joint understandings had to be unpicked and reframed. For example, some enforcement teams had been redeployed to check cladding, post-Grenfell, but without extra staffing resource this meant a reduction in dedicated PRS enforcement activity. It became difficult, then, for each team to anticipate how much resource other boroughs might be able to dedicate to enforcement co-ordination, or if that resource could be relied on over the long term.

From the lettings industry perspective equally, variation across borough boundaries often straddled by the landlords and agents, was seen as problematic:

*The real problem here is the lack of any standardised, central database for HMO and licensing information. At present it's almost impossible to get all the information required to understand which properties require or have licenses as each local authority holds their information in different formats and with different means of accessing it.*<sup>70</sup>

There was also agreement that the GLA or the MHCLG could usefully be more interventionist at a higher level and effect better co-ordination of enforcement work. One Inner London housing officer indicated that they had 'decent links' with other boroughs but that amounted to 'just brief' interactions: *In an ideal world it would be clear whether it was GLA organised or MHCLG organised or whatever. But a clear protocol, a clear framework that all local authorities, can get around and say...look, can we even have dedicated cross-borough bods that can sit around and have a clear framework of what we're bringing?*<sup>71</sup>

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<sup>69</sup> Inner London Enforcement Officer #1

<sup>70</sup> Spokesperson for leading online lettings platform #1

<sup>71</sup> Inner London local authority Housing Officer.

## Political will

The inability to co-ordinate effectively across boroughs reflected the fact that commitment to enforcement activity is patchy across Greater London. One MP constituency team was critical of their inner London local authority's commitment to enforcement activity:

*I just don't think that's where the council's priorities are. The council's interest politically is hanging baskets and rubbish collection. You could do it differently. One of the things that drives us crazy is that in contrast they really try and work with the housing associations to try and deal with [social] landlord issues. It's just like nobody's bothered [about the private rented sector] really, it's just not what they're interested in.<sup>72</sup>*

Even where local authorities might be actively interested in the PRS, that interest could be compromised by their desire to retain good working relationships with the sector because of a reliance on PRS schemes to supply temporary accommodation and meet housing need under the Homelessness Reduction Act. Indeed, one industry spokesperson characterised the shadow market as 'public subsidy for substandard properties operated by criminals, via housing benefit'.<sup>73</sup>

One housing advice worker in an inner London borough was despondent about their local authority's approach, which was so conciliatory it permitted blatant infringement of the Deregulation Act:

*Unfortunately we have a local authority that doesn't issue formal notices, they issue informal notices which is not enough to stop retaliatory action. They are landlord-friendly in that way. They want to keep landlords on-side, they believe that landlords should act if they give them informal notices. They don't act, they ignore them and issue S21s, so it's as if the Deregulation Act [...] doesn't even matter to them. I think they are landlord-friendly because they want to encourage private landlords in the borough, give them incentives to join up to schemes. My own feeling is that they want to get as many landlords onside as they can so they can use their properties.<sup>74</sup>*

This kind of approach contrasts with a more proactive alternative. One Outer London Enforcement Officer indicated that their borough had introduced a rather more bullish approach:

*We're sending out the message [to the landlord] that we are going to enforce against you. The communities are beginning to see some proactive work being taken. So that has had some knock-on effect with some landlords who are now probably going to be compliant a lot quicker. Whereas before, the officers used to send an email, and months later nothing had changed. We've seen compliance rates increase through our change of processes and being a bit more proactive, and not being so informal. That was the turning point here, I think. We've formalised and started the enforcement a lot quicker. So you only have five days, no not five months, five days.*

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<sup>72</sup> MP Constituency Team #2

<sup>73</sup> Industry representative #2

<sup>74</sup> Third Sector Housing Advice Worker



*And we charge fines. That was the other thing. If you don't do it, you're going to have to pay £378, because we're going to serve you a notice.*<sup>75</sup>

Clearly, it had been a political decision to take that approach. However, that variation in commitment to enforcement in itself could be a driver for criminal activity to target locations where there were no licensing controls or where the local authority had a poor history of prosecutions.

### Police ambivalence

Poor police awareness of housing issues, and how to tackle that poor level of awareness, was a common theme. Local police did not play a strong role in supporting enforcement activity. It was common for respondents to report that police were more often called in by landlords and letting agents to facilitate eviction of an individual deemed to be a 'squatter', and where police made no checks as to the legality of the action. There were a number of elements to the problem. First, police officers could be uncertain about their requirement to respond to a housing issue, which means that tenants reporting problems were unlikely to receive assistance: *'The police certainly have a terrible approach to victims of harassment. My experience is they treat it as a civil matter particularly when the landlord is saying "well I own the flat". They don't get what a tenancy agreement means, the police response is very poor.'*<sup>76</sup>

In cases where the police have been called in by the landlord to support an illegal eviction, the tenant may simply be unable to explain what is happening:

*there have been really severe examples of those people literally being dragged out of their property, and what we have seen is that the police will sometimes be called but they will not see it as a criminal matter, even though it is a criminal matter, the local authority is generally the one that will enforce the law in those circumstances. The police should still treat these circumstances as criminal cases but what we'll often see is that they'll side with the landlord over the tenants. The language barrier or all of that, a tenant is unable to explain what's happening at the time and the police default response is, this is a civil matter, it's nothing to do with us. By time it comes to us, we say well it is a criminal matter but at that point it doesn't matter.*<sup>77</sup>

Some respondents indicated that there had been examples of initiatives of enforcement officers delivering training on housing law to police officers, but – again – this kind of activity was patchy: *'a lot more needs to be done, and I'm disappointed that the police hasn't made this S21 training mandatory.'*<sup>78</sup>

An associated, second, issue is that the police focus tended to be on issues that were central to their own concerns. Respondents indicated that the police were not necessarily interested in fraud, which constitutes a major element of criminality in the PRS. The experience of enforcement officers working directly with the police was mixed: in some

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<sup>75</sup> Outer London Enforcement Officer #3

<sup>76</sup> Specialist in Housing Law #1

<sup>77</sup> Specialist in Housing Law #2

<sup>78</sup> Outer London Enforcement Officer #2

cases, the police were clearly operating entirely to their own agenda. One enforcement officer indicated that during raids working with immigration officers, their priority was to collect evidence to make a case against the landlord, but the immigration officers' attention was focussed elsewhere: *'I want people to talk to me. They [immigration officers] are very much "In we go, right, who's living there, have you got a right to be living there?" If you haven't got a right to be living there then they will be arrested and they're out and on to the next one'*.<sup>79</sup>

#### **Box 5.1 Safer Renting Case #1: Mrs C.**

This case involved Mrs C., a recently separated mother of three. The family was threatened with eviction in April 2018. Safer Renting wrote a letter before action, warning the landlord not to evict the family without a court order. Texts from the landlord in response suggested he was likely to proceed with his threat regardless and so the team supported the family to obtain an ex-parte injunction against the landlord to block his threat. However, the landlord had concealed his address and so Mrs C. was unable to send him the injunction. He came to their house with a friend at 11 pm on a Friday night and forced his way in, armed with an electric drill and crowbar. Mrs C. tried giving the landlord a copy of the injunction at that point: he screwed it up and Mrs C. was kicked in the stomach during the physical assault that followed. Terrified by the violence, Mrs C's 8-year-old son screamed for help at the window, which was answered by several neighbours. They called the police and attempted to restrain the landlord.

The police arrived. Mrs C gave the police a copy of the Injunction and asked that they enforce it. The police then took a statement from the landlord who claimed that he had been the victim of an assault. The police arrested the neighbours and the landlord, but released the landlord soon afterwards, keeping the neighbours in custody overnight. Mrs C. was terrified to see the landlord retrieving his tools from outside their home in the small hours of the morning, knowing the people that had come to protect her family were in custody.

Safer Renting were called the next morning. They were unable to get through to the custody suite by telephone and went in person and explained the background to the case to the police and to establish their duty to enforce the injunction against the landlord. The police officer on shift duty undertook to review the case. The neighbours were released from custody on bail that afternoon. However the case was not reviewed; an investigation was finally undertaken a year later, at which point it was decided not to prosecute the neighbours.

Safer Renting referred the case to a housing solicitor who brought a successful claim for £25,000 damages against the landlord who, it was said by the presiding judge, *"had lied and lied and lied."* No police prosecution was ever taken against the landlord.

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<sup>79</sup> Inner London Enforcement Officer #2

## Obstacles to housing justice

There were multiple obstacles to securing housing justice, from the point of initial access to legal advice through to the successful prosecution and punishment of offenders.

### Limited access to housing advice and legal aid

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) reduced the types of housing work that are covered by legal aid. Assistance is available only for cases of defence against possession proceedings, threat of illegal eviction or of dealing with immediate health and safety threats resulting from poor property conditions. Restrictions in the availability of funding has led to the closure of specialist housing law centres and reduced the number of specialist solicitors in housing law at a time in which demand for services has increased substantially. There are 'advice deserts' across London. Further, even where advice may be available, the eligibility criteria for legal aid exclude many individuals. This exclusion, ironically, affects people who may be unable to demonstrate that their income is indeed low enough to qualify because they lack any formal banking services, may be paid cash in hand or simply not have an income at all. In some instances the evidence for income is lacking because the offending landlord dumped or stole it during the course of an illegal eviction.

Economic migrants are a key tenant group in the shadow PRS, and some of these will have no right to benefits or in some cases 'no recourse to public funds' if they are unable to work for some reason. According to one specialist in housing law: *'There will be lots of people who don't have secure immigration status who are renting, who are unlawfully evicted, there's no paper trail, there's a landlord who may not be the landlord, they're in a vulnerable position in the country and they're in a vulnerable position in their tenancy but because of that you can't see them.'* In the worst cases, there will be a combination of uncertainty around the occupant's legal standing, and informality in the tenancy and that *'creates problems about where the occupants stand legally, because if you dissect it, do they have a tenancy? The worse it is sometimes the harder it is to bring a claim'*.<sup>80</sup>

#### **Box 5.2: Safer Renting case #2: Mrs S.**

This complex case took over 30 paralegal hours to resolve over an extended period of time. Mrs S., a nurse, had entered into a joint tenancy with her husband. The property was let by the owner who was also a director of the agency managing the tenancy. Mrs S.'s marriage failed following a series of family tragedies that left her with funeral debt and responsibility for the care of her disabled mother. Rent arrears accrued and the landlord initiated a possession claim. Mrs S. did not agree with that rent arrears amounted to £6,800 as claimed by the landlord. She had taken the step of securing legal insurance with her bank, but *'they said they couldn't help with this case because it was short notice and [the] case was too complicated'*.

Mrs S. received help from Safer Renting to enter a defence against the possession claim on the grounds of false accounting for the size of the debt. The court 'lost' the defence papers

<sup>80</sup> Specialist in Housing Law #3

that made Mrs S.'s case and her duty solicitor was unable to secure an adjournment for a resubmission of the defence. The case was awarded against Mrs S. and her ex-husband as joint tenants, leaving them with a money judgement of £6,800. Mrs S.'s ex-husband agreed to apply to the court on a technicality: he had never been served with papers despite being a joint tenant. A review of the case would have meant that their evidence on false accounting would be heard. However, in a letter so long delayed that it was too late to appeal, the court rejected the application claiming (incorrectly) that the ex-husband had indeed been present at the court hearing.

Mrs S's landlord became frustrated by delays in the bailiff's service to enforce the order, and applied to transfer the case to the High Court. The Judge in this instance accepted an explanatory letter from Mrs S., and blocked the money judgement from being enforced. The landlord, who had by this time recovered possession of the flat, simply dropped the case. Mrs S. had lost her home, but had been shielded from a county court judgement for a debt she had not incurred.

### Tenant unwillingness to prosecute

Difficulties in securing housing justice are further compounded by the fact that bringing a case requires tenant commitment. Tenants, misunderstanding their rights, fail to pursue valid actions: *'People will sometimes assume that if they owe rent, they have to leave, if they owe rent they might be doing something that is criminally wrong. There's a lot of muddle understanding of what their position is'*.<sup>81</sup>

More often, tenants simply do not pursue action because they are living in part of the market where they expect that the landlord or letting agent will act illegally. In some instances, tenants may regard themselves lucky to be housed at all: *'especially those on housing benefit, because it was probably a massive struggle just to get the flat in the first place, and so if they have to go on a wild goose chase to find someone who will accept them on housing benefit, they are less likely to want to complain or do something about their situation'*.<sup>82</sup>

Pressures in the housing market have lowered expectations substantially: *'availability in London and the cost of accommodation means that landlords can get away with packing people in and people live in appalling conditions and put up with it'*.<sup>83</sup> Even where a tenant might be sufficiently conversant with their rights and willing to take action, tenants often thought it was simply not worth pursuing a prosecution where the outcome was uncertain.

Two classes of redress are available: a reinstatement of occupation and associated tenure rights where there has been attempted or actual eviction; and compensation from the landlord for illegal eviction, disrepair, harassment etc. Tenant willingness to pursue redress was conditioned by the likely outcome. Stakeholder respondents generally agreed that tenants were hardly motivated to act if the outcome was for them to retain a poor-quality property perhaps with an unaffordable rent: *'a six-month tenancy at market rent is not*

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<sup>81</sup> Specialist in Housing Law #3

<sup>82</sup> MP Constituency Team #2

<sup>83</sup> Specialist in Housing Law #1

worth fighting for'.<sup>84</sup> The appetite for legal action against eviction was much higher amongst social tenants who, it was felt, had something valuable to lose.

It was reported that even a simple rent repayment order from the First Tier Tribunal typically requires between 40 and 90 hours of paralegal casework, and take a year from start to finish. For a tenant to pursue compensation from the landlord comprises a substantial commitment of time and resource. If the tenant is continuing to live in the landlord's property during that time, taking action is likely to expose the tenant to further harassment and insecurity and the probability that the landlord will eventually serve a legal 'no fault' eviction. There was perhaps just one area where private tenants were willing to take action, and that was to recover unfairly retained deposits at the end of a tenancy. However, once these have been returned, tenants were unlikely to want to pursue further action even where the landlord or agent was evidently guilty of further breaches and it might be possible to secure compensation (as in Box 5.1).

#### Taking landlords to court

Prosecuting a landlord or letting agent for housing-related offenses is by no means straightforward. Some housing enforcement teams employ protocols that give the perpetrator the opportunity to correct their offending behaviour and thereby avoid prosecution. This approach benefits the 'corner cutting' landlords and agents who simply fail to comply until the point at which they are caught.

Where a local authority seeks to pursue a case, there are delays. Since 2010, a major programme of reform to the judiciary has seen the closure of over half of all county and magistrates courts; and questions have been raised about the expense and inconvenience of extended 'travel-to-court' times falling disproportionately on lower-income complainants.<sup>85</sup> Furthermore, maladministration and understaffing have led to problems: Safer Renting has experience of a number of mistakes including legal bundles going missing in the courts, letters from courts about cases being sent to the wrong address, and letters being sent too late for appeals to be made in time or for directions to be complied with.

Further, as indicated above, it can be very difficult for tenants to make a case where the landlord has stolen the documents needed to validate the claim. Safer Renting has recently supported a tenant whose documentation – including his passport – was taken by the landlord. With no evidence to demonstrate his income, he could not claim legal aid or fee remission to seek an injunction against the offender.

Where the local authority is more proactive with prosecution, they must present evidence that meets the standard for criminal conviction. That is, the evidence shows that the person being charged is – beyond all reasonable doubt – guilty of the offence. This is problematic where more than one person could have committed the offence, as often happens in housing crimes. Prosecution requires the collection of witness evidence, the person to be charged must have been interviewed properly under caution and a prosecution case prepared and submitted by an authority with the power to bring that criminal prosecution. As a consequence, bringing a case against a landlord or letting agent is a remarkably costly

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<sup>84</sup> Specialist in Housing Law #1

<sup>85</sup> Jack Simson Caird (2016) *Court and Tribunal Closures*, House of Commons Briefing Paper CBP 7346, 21 Mar.

business for a local authority. Some simply lack the legal infrastructure to deal with this kind of work: local authority solicitors may be more set up to defend the local authority *from* prosecution than to seek action. The very nature and range of crimes involved means a substantial commitment of resource simply to locating responsibility and isolating the perpetrators. Third sector agencies were even less likely to be willing to accommodate that burden, as one respondent indicated:

*One of the big problems is, are you ever going to cover your costs? Cost recovery, who is your opponent? A very common theme will be dealing with intermediate agents where there's no address, there's no name, there's a telephone number. Trying to establish a link to the freehold owner where there are parties in between, rent-to-rent scams, they make it incredibly awkward to pursue your legal remedies, which basically means you're not going to get damages and you're not going to get costs, which means they lack viability for us to take on as a case but they're just not worth it in terms of damages if the client's not going to get paid. So we get quite a few cases like that, proper unlawful eviction cases but with no viable opponent to take on.*<sup>86</sup>

Recovering damages can also be problematic where companies regularly 'phoenix', and responsibility for the debt disappears with the folded-up company: *'anybody...could go next door and rent an office and set up a lettings department and take people's deposits and spend that money. If you're reported and found out for it - people are getting away with it, then dissolving their agencies and setting up under another name.'*<sup>87</sup>

Even where it might be possible to pin down a perpetrator, then battling through the courts can be a daunting prospect given the resources that landlords and letting agents may be able to deploy: *'if people are going to fight us they will fight us in the courts. And they've got money and if they have a million-pound portfolio they can hire the best barristers and solicitors. So that can be a little frustrating sometimes'*.<sup>88</sup>

### Rates of prosecution and proportionate punishment

Concern about the court system was shared by one industry representative: *'The law needs to change so that they convict people quicker. I know some of these enforcement agencies are doing what they can but if it's going to take a year plus to get one person into court, who the fine means nothing to, that's not good enough'*.<sup>89</sup> As indicated in this comment, even where cases might be brought successfully, the level of fines does not act as a deterrent for prolific offenders. Indeed, a landlord might well risk an illegal eviction, since the fine if convicted is less than the cost of securing a possession order through the legal route. For example, in 2015, Swansea landlord Sean MacManus was convicted of illegal eviction under the Protection from Eviction Act, and was charged just £105 and £1,000 costs with an additional £20 victim surcharge since he had dumped all his tenants' possessions on the tenants' parents' driveway.

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<sup>86</sup> Specialist in Housing Law #3

<sup>87</sup> Industry representative #1 1

<sup>88</sup> Inner London Enforcement Officer #2

<sup>89</sup> Industry representative #1

Criminal fines may be regarded as a minor irritation by some landlords, and are disproportionately lenient given the trauma visited on the tenant. Recent publicised cases include the Oxford landlord Riasat Ali who in 2015 was fined by the Magistrates Court £180 for illegally evicting and £300 for conducting a campaign of harassment against a tenant, who had been repeatedly threatened with violence by Ali and his family. Ali was also ordered to pay £1,000 costs to the Council. At the time, Oxford Councillor Mike Rowley commented *'I would have liked to have seen a stiffer penalty as we need to send a clear message to rogue landlords that they cannot just take the law into their own hands'*<sup>90</sup>. In 2017, a Peterborough Landlord, Jeffrey Reeve, was charged with illegal eviction after changing the locks on his tenants' home whilst he was out; on his return the tenant – who only had the clothes he was wearing – was hospitalised after sleeping outside that night. Reeve was given a conditional discharge.<sup>91</sup>

### Limited expectation of a successful outcome

There are no easily collectable quantitative data available on the incidence of successful prosecution, for example, for illegal eviction. Analysis of Safer Renting's caseload indicates that just under a third of their cases of threatened eviction cases are successfully defended by the tenant who either sustains their tenancy or who exercise the choice to leave later on their own terms. Awareness of the substantial obstacles blocking a successful prosecution has so far lowered expectations that bringing a case was very much an exceptional activity. One of the stakeholders, a specialist in housing law, indicated that almost all cases started with a risk assessment, to see whether bringing a case would be worth the tenants' time given the uncertainty as to outcome and if indeed any award against the landlord would be enforced. The obstacles to successful prosecution have simply stifled any incentive even to try.

## Conclusion

This section has indicated that, despite the regulation laid out in Chapter 2, and evidence of serious crimes discussed in Chapters 3 and 4, there are substantial obstacles to enforcement and to securing housing justice in the case of landlord and letting agent criminality. All statutory service delivery depends on the availability of resources, but decisions also have to be made around strategic working and prioritisation. The penalties for offending are too weak to act as a deterrent for criminals, and both the quality of the outcomes and the likelihood of success also act as a disincentive even to attempt to secure legal redress. This unwillingness to prosecute, in turn, further encourages criminal behaviour to flourish.

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<sup>90</sup> <https://www.oxford.gov.uk/news/article/51/oxford-landlord-convicted-for-unlawful-eviction-of-tenant>

<sup>91</sup> <https://www.peterboroughtoday.co.uk/news/crime/peterborough-landlord-illegally-evicted-tenant-1068462>

## 6. Recommendations

These recommendations are aimed at the government, local authorities, the Crown Prosecution Service and the Metropolitan Police.

### **The Government should**

1. *Place a duty (not just a power) on the police to enforce the provisions of the Protection from Eviction Act 1977*

This is required because without a statutory duty resting clearly with one agency, the spirit and intentions of this statute are not being delivered. If illegal eviction is not being prevented, not only is there irreversible anxiety and trauma and loss occurring, but there is no effective redress for to its many victims. Homelessness arising from such illegal evictions is also costing every London council an unknown amount, likely to be run into hundreds and thousands of pounds a year.

2. *Create a fund so that local authorities can recruit expertise and capacity to pursue civil penalties regime under Housing and Planning Act 2016*

Regulation of the private rented sector is, for the most part, not a statutory duty. Pressures on London councils honouring duties that are statutory have hollowed out their resources and capabilities to use the discretionary powers that they have. Even where powers are used to their maximum, in discretionary licensing areas and where strong political will exists to support a proactive approach, upscaling programmes of enforcement against criminal landlords requires pump-priming cash to get staffing and systems up and running, to make use of the new civil penalties system.

3. *Place a legal requirement on on-line platforms hosting private rentals adverts, to display clear advice on how private tenants can protect themselves from landlords' criminal behaviour and to police criminal activity by disabling offending accounts.*

A substantial proportion of problem lettings originate through on-line platforms, where it is very easy for landlords and their agents to conceal with identities, denying the victims of criminal behaviour any protection or redress. The internet platforms are able to contribute timely information to prospective tenants searching their platforms to reduce the risk of harm to them and at the same time, to protect their own brand reputations. These platforms have shown little appetite for self-regulation and so government action is now urgently needed to mandate it.

4. *Introduce a duty on local authorities to prepare local multi-agency strategic housing plans that include provisions for joint working that cover housing options,*



*homelessness and regulation of the PRS, Planning, Trading Standards and policing to detect and prosecute landlords' and agents' criminal behaviour.*

Significant barriers to enforcement exist. These include the highly fragmented and complex regulation; multiple disciplines involved in enforcing it; and lack of co-ordination. This inevitably leads to: missed opportunities for delivering the positive outcomes intended by that framework; wasted resources; and preventable harms to the tenants of criminal landlords. The value of multi-agency working has long been evidenced, reported and encouraged yet even where good practice has been embedded, in the current environment of post-austerity, that good practice often not sustained. Key individuals move on, external funding for 'pilots' comes to an end, or new imperatives take priority over old. Unless there is established mandatory framework for multi-agency working in key areas such as regulating the private rented sector, services will continue to under-perform and under-deliver.

- 5. Amend all housing legislation to introduce joint and several liability for housing offences to include the property owner.*

At present only some housing and landlord/tenant statutes can be enforced against the owner of the property that is being misused in private renting. Where a landlord and an agent are both able to evade liability for offences committed or committed in their name, by accusing each other of responsibility for it, tenants who are the victims of criminality have very little prospect of getting protection or redress. Action taken against rogue agents does not succeed in the successful recovery of fines or damages, as the agent may not have any assets. Yet it is the property owner who ultimately profits from a letting and owns the asset. The property owner should be accountable for conducting due diligence on any agency agreement entered into. Standardising housing and landlord/tenant law in this way will open up a route to redress for many private tenants to whom it is currently denied.

- 6. Remove S21 and replace ASTs with statutory longer fixed term tenancies with a duty for landlords to provide written tenancy agreements that comply with statutory requirements*

A majority of renters in the shadow PRS do not even try to exercise their tenancy rights, because those rights are so thin as to not be worth fighting to defend: paying to take out an injunction in order to 'win' another six months of living under harassment and in poor conditions seldom seems worth it. Improving security of tenure would encourage more tenants to defend their tenancy and seek redress where landlords operate illegally. A lack of written tenancy agreements is a common source of ignorance and confusion for landlords and tenants as to statutory rights and obligations.

- 7. Introduce a right to expert statutory advocacy for private renters faced with any criminal behaviour by landlords*

Low paid workers in the private rented sector are seldom eligible for legal aid in housing cases, even where the type of offence qualifies (limited to threat of or actual eviction). They are rarely in a position to self-finance a defence or claim. The law is of such complexity it is also rare for anybody to be able to act as a Litigant in Person. Access to justice is therefore

widely denied. The system of statutory advocacy could be expanded to include a right for people suffering from criminal action by a private landlord to have access to expert para-legal advocacy, for which local authorities would be required by law to have budgetary provision and to procure appropriately qualified services.

### **Local authorities should**

8. *Adopt targeted means to detect unlicensed HMOs, including expanding data-sharing and monitoring all on-line platforms advertising private rentals*

There are models of good practice in intelligence-led joint working with IT applications that have been built to support it. However, the requirements of the General Data Protection Regulations have wrongly led to many authorities failing to share data where they are permitted to do so, in the course of their duties in detecting, preventing and prosecuting crimes. There is a need for positive guidance to encourage lawful data-sharing, on which basis more effective and cost efficient intelligence-led enforcement work could be founded.

9. *Work with the police to enforce the Protection from Eviction Act 1977, and actively pursue prosecutions of offenders in such cases*

The level of fines for illegal eviction incentivises criminal landlords to evict illegally, as it is typically cheaper to do so even if prosecuted, than follow legal due process. Since fines do not act as deterrents preventing the offence from happening in the first place is the only way to protect tenants from losing their home, often their possessions and often also their mental health. Furthermore, homelessness arising from such illegal evictions is also costing every London council an unknown amount, but running into hundreds and thousands of pounds per year each. If and when police services begin to intervene to prevent evictions under this Act, any illegal evictions that do arise and which police are unable to prevent should be considered for other types of redress, including supporting Rent Repayment Orders and criminal prosecutions of offenders by the local authority.

### **The Crown Prosecution Service should**

10. *Institute centralised collection and reporting on illegal evictions*

At present, the political will for changing the law or increasing resources to tackle the high level of illegal evictions is undermined by the complete absence of reliable data on the scale of the problem. As a precursor to fundamental change, it is urgent that the data that would support it be collected, analysed and monitored.

## **The Metropolitan Police**

### *11. Work with councils to make more active use its powers to enforce the Protection from Eviction Act 1977*

If councils are to use their powers to prosecute criminal landlords, all evidence gathered by the police in the course of exercising their powers to prevent illegal eviction should be put at their disposal by the police, for efficiency and effective resource deployment.

### *12. Review its training around evictions*

The Metropolitan Police should review its training around evictions. At the least, it should not be possible for criminal landlords to call on the police to support illegal eviction. Tenants who are victims of crimes such as threats, assault and damage to their property should have a reasonable expectation of justice. The police and enforcement officers should explore the benefits of a closer working relationship leading to a more active approach to investigating and prosecuting criminality in the PRS.