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Protecting the Right to Housing in England: A Context of Crisis

Full Report

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Authorship and Acknowledgments

Our thanks goes to Dr. Jessie Hohmann, the author of this report, a leading academic on the human right to housing. JustFair and the author are grateful to Brain Lampert and Adaiana Souza Lima for their research assistance in preparing the Report.

We are extremely grateful to the organisations that provide funding for our vital monitoring and advocacy work: Barrow Cadbury Trust, Clifford Chance Foundation, Henry Tinsley Foundation, Joseph Rowntree Charitable Trust, Network for Social Change.

Many Consortium members contributed to this report by identifying priority issues, providing data, and contributing qualitative evidence. We are particularly grateful to the Just Fair Trustees for providing expert advice and editorial guidance. This report was published in April 2015.

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Protecting the Right to Housing in England: A Context of Crisis

Dr. Jessie Hohmann[1]

Executive Summary

England is experiencing a housing crisis. Exceptionally high numbers of people are homeless, or vulnerable to homelessness. The current housing environment is characterised by deep cuts to social welfare benefits, profound issues of lack of supply, high and further increasing housing costs, lack of security of tenure, and homes of such poor quality that they are unfit for habitation. These issues plague all of England's main housing tenure types: the owner occupied, the private rental sector (PRS), and the social housing sector. Housing insecurity affects not only people on low incomes, but broad swathes of the English population, who currently live in situations of insecurity and uncertainty.

In this context of crisis, the government is failing to meet its obligations to ensure the right to housing of its population, so that everyone can enjoy a standard of living in homes that are adequate, safe, and secure.

The UK accepted international obligations to respect, protect and fulfil the right to housing under the International Covenant on Economic, Social and Cultural Rights (ICESCR) when it ratified the ICESCR in 1976. It undertook to take progressive steps towards the realisation of the right to housing, using all the means at its disposal, both financial and otherwise.

In a climate of austerity, it is vital to point out that the government is obliged not to take regressive (that is, backward), steps or strip away enjoyment of the right to housing unless this is absolutely necessary. Any backward movement must be justified under the strictest possible criteria.

Yet a growing number of individuals and families in England are not able to secure the adequate, safe and affordable housing that the ICESCR requires. Homelessness is rising. Housing is increasingly unaffordable, and legislative changes have weakened key safety nets for English households.

This report focuses on two areas of particular concern in England, which show that the UK government is manifestly failing to discharge its obligations for the right to adequate housing under the ICESCR.

These are first, homelessness, and second, multiple concerns with the quality, affordability, and regulation of the Private Rental Sector (PRS).

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Both areas illustrate serious concerns with retrogression in the enjoyment of the right to adequate housing; and how current law and policy over housing fails to protect some of England's most vulnerable and marginalised individuals and families.

Homelessness:

Exceptionally high levels of homelessness in England represent a serious concern with respect to the enjoyment of the right to housing under the ICESCR. Homelessness is the paradigm violation of the right to housing, and its most obvious manifestation. The deprivation of any dwelling that a person may call his or her own, with adequate privacy and security of tenure, is denied to the person experiencing homelessness.

The report details:

- The number of individuals forced to sleep rough in England has increased year on year, by a total of 55% between 2010 and 2014 *and 30% further in the last year alone*.
- Frontline services for homeless prevention and support are under severe financial pressure, with cuts negatively affecting the number of shelter and hostel beds and the number of frontline workers available, despite the growing numbers of homeless people needing these services.
- Hidden homelessness, overcrowding, and the use of inadequate temporary accommodation mask, but do not relieve, the true levels of homelessness. Increasing numbers of hidden homeless individuals and families live in a situation of unacceptable insecurity and instability.
- The statistics used to calculate the numbers of rough sleepers and the numbers of homeless households to whom Local Authorities owe duties do not meet the required standards of trustworthiness, reliability and value in assessing the true state of homelessness.
- Use of temporary 'bed and breakfast' accommodation is higher now than at any time in the past five years, and its use for families continues in breach of the government's own rules.
- The vulnerable continue to live in insecure conditions: 280,000 households in England are currently at risk of homelessness, a 9% increase in one year.
- Local Housing Authority (LHA) duties to homeless and threatened homeless individuals have been weakened, allowing LHAs to discharge their duties without the consent of the homeless person. This puts more of the most vulnerable and marginalised households at risk of street homelessness.
- Privatisation of social housing is pushing more and more households into an increasingly expensive and poorly regulated Private Rental Sector.

The fact that levels of homelessness are rising, more households are at risk of becoming homeless, and key services for homeless people are being cut, points to a retrogressive step in the enjoyment of the right to housing, and thus a serious failing in the Government's obligations under the ICESCR.

The Private Rental Sector:

The private rental sector (PRS) in the UK has, in recent history, accounted for only a small part of the tenure picture. However, the sector has grown rapidly, and set against a

shrinking social housing sphere, the private rental sector now forms the second largest form of tenure in England. For many households, the PRS represents the only available option, given the shrinking social housing sector and ever increasing house prices.

Serious issues of quality, security of tenure, affordability, and barriers to access make the PRS a profoundly insecure form of housing for many.

The report shows that:

- A startling 29% of dwellings in the PRS are non-decent, meaning they do not meet basic standards of health, safety and habitability. For almost one third of those living in private rental accommodation, life is lived in unsafe and unhealthy conditions below the basic minimum considered adequate in England.
- Security of tenure in the PRS is inadequate. Tenants are afraid to complain about the poor quality of properties for fear of retaliatory evictions or arbitrary rent rises. There are no real safeguards against this practice, and as many as 200,000 tenants were subject to a retaliatory eviction in 2013.
- The PRS is increasingly unaffordable. The cost of housing is almost double that of social housing, and private tenants are increasingly unable to meet the costs. A quarter of those renting in the PRS need housing benefit to meet the cost of housing.
- The vulnerable, minorities, the homeless, those in receipt of benefits, and those who 'appear' foreign face significant hurdles to accessing the PRS and experience discrimination in gaining access to a tenancy.

The government has increasingly presented the PRS as an important lifestyle choice, and as a tenure suited to greater labour market mobility and flexibility. While this may be the case for some economically empowered households, the overall context of private rentals shows that the sector provides housing for a large number of people, particularly families, for whom a private rental home is a source of anxiety over tenure security, cost, habitability, and quality, rather than a sought-after choice. For some, indeed it is now the only option.

Key Recommendations:

Homelessness

1. The government should take immediate measures to end homelessness, ensuring an adequate supply of affordable, permanent, decent, and habitable housing, by building and/or facilitating the building of at least 250,000 new homes per year.

2. In the absence of an adequate supply of affordable, decent and habitable housing, the government should take immediate measures to ensure affordability in the short-term through:
    a. the adequate provision of state benefits to those unable to afford housing costs; and
    b. sustained investment in existing affordable housing stock.

3. The government must take immediate measures to reduce the exceptionally high levels of street homelessness, including through:
    a. ensuring adequate numbers of hostel, or shelter, or emergency accommodation places;

b. ensuring adequately resourced frontline support is available to all homeless or threatened homeless individuals and families;
c. taking immediate legislative measures to strengthen security of tenure across the
    i. social housing sector; and
    ii. private rental sector ; and
d. taking policy measures to ensure housing is affordable in line with recommendations 1 and 2 above.

4. The government should reform legislation to:
    a. ensure the statutory housing safety net provides meaningful assistance to all homeless and threatened homeless individuals regardless of 'priority need', and 'intentionality' taking the Welsh and Scottish legislation as best practice;
    b. reinstate the crucially protective link between the discharge of LHA homelessness duties and the provision of social housing to ensure all vulnerable individuals and families remain adequately and securely housed;.
    c. ensure Local Housing Authorities:
        i. cannot discharge their duties to the homeless through provision of private rental accommodation without the consent of the homeless person;
        ii. discontinue the use of inadequate, temporary accommodation such as bed and breakfast accommodation for homeless and threatened homeless individuals and, particularly, families.

5. The government should take immediate steps to improve and ensure the reliability, trustworthiness and value of the statistics used to measure homelessness with regard to
    a. rough sleeping;
    b. statutory 'homeless acceptances'; and
    c. local authority prevention and relief activities.

Private Rental Sector

1. The State must take immediate legislative measures to strengthen security of tenure in the private rental sector including through:
    b. stronger and better resourced legislative measures to prohibit retaliatory evictions, including through preventing landlords from bringing eviction procedures as reprisal for well-founded maintenance and improvement requests where a property is in a serious state of disrepair or serious hazards are present;
    c. legislative measures to prohibit arbitrary or retaliatory rent increases; and
    d. increasing the minimum tenancy term of private rental agreements to give tenants security and stability.

2. The State must take immediate steps to ensure housing in the private rental sector meets the 'decent homes' standard including through:
    a. immediate and rigorous monitoring of the safety and quality of housing in the sector; and
    b. taking progressive steps, alone and in conjunction with the private sector, to improve the quality of housing in the sector through new building and improvements to existing housing stock.

3. The State must take steps to ensure affordability in the private rental sector including through:

a. stimulating and creating new housing across tenure types;
b. providing tenants with immediate legislative protection against arbitrary or retaliatory rent increases; and
c. preventing private landlords form discriminatorily imposing higher costs on homeless applicants, applicants on benefits, and applicants who appear foreign or have non-straight-forward documentation under 'Right to Rent' checks.

4. The State must take steps to ensure that homeless and vulnerable persons can access housing without discrimination including through:
    a. prohibiting discriminatory letting practices against homeless households and households in receipt of housing benefit by private landlords;
    b. providing funding for private rented sector access schemes to assist homeless households and households in receipt of benefit into the PRS.
    c. preventing discriminatory checks in the 'Right to Rent' process;
    d. ensuring that welfare policy particularly cuts to benefits – does not create a barrier to access to housing.

Civil Society Endorsements:

Article 12; Black Environment Network; Centre for Secular Space; Centre for Welfare Reform; Connect in the North; The Design Charity; Disability Rights UK; Galop; Homeless Link; Housing Justice; LGBT Consortium; The National Council for Voluntary Youth Services (NCVYS); New Horizon Youth Centre; Refugee Council; Stonewall Housing and Women's Resource Centre.

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1. Introduction: Housing, a Context of Crisis:

**Due to devolution of some functions away from the Westminster government in 1999, the legislative and policy terrain of housing is different in England from other parts of the United Kingdom. This report considers the English situation only.*

The UK government accepted international obligations to respect, protect and fulfil the right to housing under the International Covenant on Economic, Social and Cultural Rights (ICESCR) when it ratified the ICESCR in 1976. Yet a large number of individuals and families are not able to secure the adequate housing that provides the safe and affordable living conditions that the ICESCR requires.

The current housing climate is characterised by rapid changes in modes of living and tenure in the UK, interwoven in complex relationships with issues of low supply, lack of affordability, weak security of tenure, and poor conditions of habitability. These problems in realising the right to housing are linked to a political climate of austerity, and attendant cuts to state social security and other benefits. *The resulting situation is accurately identified as one of crisis.*[1]

This report focuses on two areas of particular concern in England, where the UK government is manifestly failing to discharge its obligations for the right to adequate housing under the ICESCR:

1. Homelessness; and
2. Multiple concerns with the quality, affordability, and barriers to access of the Private Rental Sector (PRS).

With respect both to homelessness and the multiple areas of concern in the PRS, issues of affordability, security of tenure, habitability (quality), supply, accessibility, and security of tenure emerge as major stumbling blocks to the actual enjoyment of adequate housing. Importantly, these issues map directly onto the seven elements which must be present for the right to adequate housing under the ICESCR to be enjoyed (set out below in Section 3.2.1). Accordingly, these multiple problems reveal that many people in England currently lack the right to adequate housing, and the government is failing in its obligations to them.

Moreover, the problems in all these areas are increasing, rather than decreasing, and give rise to real concerns that the UK is failing to fulfil its obligation of progressive realisation. More problematically, in fact, this is evidence of *retrogression* – backward steps – in the enjoyment of rights, which can only be justified in the most exceptional of circumstances and on the most stringent of grounds, many of which are not met in the English context.

[1] See for example: United Nations General Assembly, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context – Addendum – Mission to the United Kingdom of Great Britain and Northern Ireland* A/HRC/25/54/Add.2 (30 December 2013) at para 26; National Housing Federation *Broken Market Broken Dreams: Home Truths 2014/2015* (National Housing Federation 2015); Fitzpatrick, et al *The Homeless Monitor: England 2015* (Crisis, February 2015) at vi; Griffith & Jefferys Solutions for the Housing Shortage (Shelter, 2013) at 13; Bone, 'Neoliberal Nomads: Housing Insecurity and the Revival of Private Renting in the UK' (2014) 19(4) *Sociological Research Online* 1.

2. Housing in England: A Snapshot of the Context

2.1. Rapid Change: Housing Upheavals

Housing in England is composed of three major tenure types: owner-occupied housing, social housing, and a private rental sector (PRS).

As recently as the 1970's state provided or social housing in the UK comprised almost a third of the housing stock, and housed more than a third of the population.[2] By 2013, the most recent year for which statistics are available, the vast majority of households in England lived in the private sector: 18.7 million of England's 22.6 million dwellings were either owner-occupied (14.3 million) or privately rented (4.4 million). Only 3.9 million households are now living in social housing.[3]

Continued disinvestment in social housing will see this sector continue to shrink over the coming years. Since 1980-81, when 'the right to buy' one's social housing was introduced, approximately 2 million social homes have been privatized.[4] The government has recently announced a 'reinvigorated' right to buy which will apply to 1.3 million more social housing households.[5] The proposed legislation, currently before Parliament in the form of the Housing and Planning Bill 2015-16, could see over a million social housing units privatised.[6] This will be on top of sales already possible under existing legislation: in excess of 25,000 social homes have been sold in the last three years under the right to buy, while fewer than 4,000 replacements have been built.[7]

In addition, the proposed legislation will see local authorities sell their high-value social housing into the private market as it becomes vacant.[8] Vacancies will become more frequent if the proposal to end tenancies for life is approved in the Housing and Planning Bill 2015-16.

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[2] Alison Ravetz, *Council Housing and Culture: The History of a Social Experiment* (Routledge, 2001) at 2.
[3] Department for Communities and Local Government *English Housing Survey: Households 2013-14* (DCLG, July 2015) at 13.
[4] See DCLG Table 678 Social Housing Sales: Annual Sales by Scheme for England 1980-81 to 2014-15 12 Nov 2015.
[5] Wendy Wilson and Alex Bate, *Extending the 'Voluntary' Right to Buy (England)* House of Commons Library Briefing Paper, No 07224, (House of Commons Library, 13 April 2016) at 3.
[6] Hannah Gousey, *Home. No Less Will Do: Improving Access to Private Renting for Single Homeless People* (Crisis 2016) at 1.
[7] National Audit Office, 'Memorandum for the House of Commons Committee of Public Accounts: Extending the Right to Buy' (National Audit Office, March 2016) at 16 – 17.
[8] Gousey, Home, No Less above note 6 at 1.

However, the majority of social housing tenants may remain unable to afford to buy their housing,[9] although tenants earning over £40,000 per annum will be encouraged into home ownership by 'pay-to-stay' rules, which will see their social housing rents increase to market rates.[10] With house prices booming, this may see local authorities in high price areas lose much of their social housing stock. A government research report in April 2016 found that the 'overwhelming concern amongst social housing providers is that the measure will result in further depletion of the social housing stock.'[11] It is estimated that a further 80,000 council houses will be lost by 2020.[12]

Although the legislation compels local authorities to replace housing stock that is privatized, there is no requirement that this replacement stock will be new *social* housing, as replacement housing can be in the form of 'starter homes', shared ownership schemes, or other part-buy models.[13] In addition, new stock can be built in a different geographic region, thus pushing economically marginalized individuals out of city centres and other expensive areas, particularly in London and the South East.

Overall, the right-to-buy and stay-to-pay laws will result in significant homes being sold out of the social rental sector, without adequate affordable replacement stock. Very few social housing tenants will be in an economic positon to buy their homes, however, and as such increasing numbers of marginalized and vulnerable households will be pushed into the poorly regulated, unaffordable private rental sector.

The last four decades can thus be characterised as, at the least, ones of rapid change or upheaval in the housing experience.

Five main, interrelated, challenges in the housing context can be identified, within which the enjoyment of the right to housing in England should be understood:

2.2 Five Main Challenges to the Enjoyment of the Right to Adequate Housing

2.2.1 Affordability

In the 15 years to 2012, median house prices in England rose by 200%. At the same time, median full-time earnings rose by just over 50%.[14] Many households, across tenure

[9] Wilson and Bate, above note 5 at 22.
[10] Wilson, Social Housing: 'Pay-to-Stay' at Market Rents House of Commons Library Briefing Paper No 06804, (House of Commons Library, 21 March 2016).
[11] Wilson and Bate, above note 5 at 21.
[12] Local Government Association, '80,000 Council Homes Could be Lost by 2020' (3 Feb 2016) at http://www.local.gov.uk/media-releases/-/journal_content/56/10180/7668062/NEWS.
[13] National Housing Federation An Offer to Extend Right to Buy Discounts to Housing Association Tenants, (NHF, Sept 2016) para 2, 9.
[14] Department for Communities and Local Government, *Table 586: Median House Prices based on Land Registry Data, by District, from 1996* (DCLG, April 2014).

categories, experience pressures of affordability, given the overall context of high house prices, low pay, low savings rates, a high level of household or personal debt, and increasingly stringent restrictions on the housing costs which are eligible for coverage by State benefits.[15]

For most households, the cost of housing is the single largest household expense.[16] For more vulnerable households, the cost can only be expressed as prohibitive: In 2011/12, private renters in the bottom fifth of the UK income distribution spent an average of 56% of their income on housing.[17] In 2013/14, private renters *as a whole* spent an average of 52% of income on their housing.[18] For as many as 20% of all households, state support is necessary to be able to meet the cost of housing at all.[19] Housing costs are an increasing driver of poverty. Child poverty is approximately 10% higher than the official 'before housing costs' measure when the cost of housing is taken into account.[20] However, not only low, but also middle income, groups are struggling to meet the cost of housing.[21]

The housing picture is further complicated by stark differences across geographic regions. London, home to almost 8.5 million people,[22] has experienced a rapid inflation in the cost of living. In the year to January 2015, house prices in London rose 13%[23] and the average house price was £510,000.[24] In May 2015, housing prices in London were at record heights,[25] and in the wake of the general election that month house prices continued to increase, while supply simultaneously continued to decrease.[26] Housing costs in much of the South of England are also high.[27] While housing costs in other areas of England, particularly the more economically depressed North East, are lower, this does not necessarily equate to greater affordability. When lower salaries in these regions are taken into account, *all but a handful of regions in England are classed as unaffordable*, based on average house prices exceeding seven times the average salary.[28]

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[15] Houston et al *Gaps in the Housing Safety Net* (University of St Andrews, 2014) (Commissioned by Shelter) at 10. See also Bone 'Neoliberal Nomads' above note 2 at 3.
[16] Houston, ibid.
[17] Ibid.
[18] DCLG English Housing Survey 2013/14, above note 3 at 72 – 73. This figure excludes housing benefit. With housing benefit taken into account, the average percent of income spent on housing by those in the private rental sector is 43%. Ibid at 72.
[19] MacInnes et al, *Monitoring Poverty and Social Exclusion 2013* (Joseph Rowntree Foundation & New Policy Institute, 2013) at 116.
[20] DWP, Households Below Average Income: 1994/1996 to 2013/2014 available at https://www.gov.uk/government/statistics/households-below-average-income-19941995-to-20132014.
[21] *Home Truths 2014/15* above note 1 at 19, UN Special Rapporteur's Report on the UK, above note 1 at para 22.
[22] Office for National Statistics, *ONS Population Estimates, Borough and Ward: Mid Year Estimates Since 1961* (ONS, October 2014).
[23] Office for National Statistics, *House Price Index, January 2015* (ONS, 24 March 2015).
[24] Ibid at 9.
[25] Office for National Statistics, *House Price Index, May 2015* (ONS, 14 July 2015) at 8.
[26] S Graham 'House Prices 'Set to Rise 25% in Five Years'' *Inside Housing* (11 June 2015) available at http://www.insidehousing.co.uk/house-prices-set-to-rise-25-in-five-years/7010214.article.
[27] ONS *House Price Index January 2015* above n 23 at 7. See also *Home Truths 2014/15*, above note 1 at 23.
[28] Ibid and at Figure 21. See also DCLG, Chart 574: Ratio of Lower Quartile House Prices to Lower Quartile Earnings by Local Authority 2007, England (2008) at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/10672/chartmap574.pdf .

2.2.2 Deepening Cuts to Welfare Benefits

It is difficult to understand the overall housing situation in England absent an examination of recent, and deepening, cuts to social or welfare benefits. Recently, 67% of local authorities in England reported that welfare cuts since 2010 had increased homelessness in their area.[29] As a leading housing charity notes: 'policy factors – particularly ongoing welfare benefit cuts – have a more direct bearing on levels of homelessness than the economic context in and of itself.'[30]

Several of these benefit cuts have a specific and targeted impact on the affordability of housing:

(i) 'Bedroom Tax' / 'Spare Room Subsidy'

The controversial 'bedroom tax' or 'spare room subsidy sees housing benefit cut for households considered to be 'under occupying' social housing. The policy sees any household in the social rented sector deemed to be under-occupying have their eligible rent (for the calculation of housing benefit) cut by 14% for one 'spare room' and 25% for two. The aim of the policy is to encourage people to move into smaller accommodation and free up larger family homes for other occupants, but there is evidence that many cannot move as there are no appropriate smaller social homes available in their area, or that personal factors – such as links with schools, family, local community and employment – mean that people are unwilling to move. While there are exceptions for disabled adults requiring a room for an overnight carer, there is no exception for a family with a disabled child requiring an overnight carer, and in cases where parents are separated, even where parents have joint custody only one household is entitled to a room for the child. A policy justified on the grounds of economic rationality and fairness,[31] this cut in benefit has put additional pressure on already vulnerable households and individuals, particularly those with disabilities.[32]

The Department for Work and Pensions Interim Report evaluating the impact of the policy reveals that 20% of affected households have been unable to pay the increased cost of their housing, and indicated that where payments were being made, in more than 50% of cases, households were forced to make cuts to other household essentials or incur debts in order to pay the rent.[33] These essentials included energy for heating and lighting and adequate food.[34] Some households report having skipped meals to pay rent since the policy came into effect.[35]

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[29] S Fitzpatrick, et al 'The Homeless Monitor: England 2016 (Crisis, 2016).at 43 – 44.
[30] *Homelessness Monitor 2015*, above note 1 at viii.
[31] Department for Work and Pensions *Housing Benefit Claimant Factsheet: Removal of Spare Room Subsidy* (DWP, 2013). See further Carr & Cowan 'The Social Tenant, the Law, and the UK's Politics of Austerity' (2015) 5(1) *Oñati Socio-Legal Series* 73.
[32] See *Lall v Westminster City Council* SC242/13/09744, (20 Sept 2013) and Tribunal Decision *F v Glasgow City Council* SC100/13/11351 (9 Sept 2013). See further Department for Work and Pensions *Evaluation of Removal of the Spare Room Subsidy: Interim Report* (DWP Research Report No 882, July 2014); UN Special Rapporteur's Report on the UK, above note 1 at para 46 – 53.
[33] Department for Work and Pensions *Evaluation of Removal of the Spare Room Subsidy* ibid at 17 and 69 – 72.
[34] Ibid at 70 – 71.
[35] Ibid.

(ii) Cuts to Support for Young Adults

Individuals under 35 with no dependants are only able to claim for the cost of a room in a shared house, regardless of whether such accommodation is available or appropriate, for example for vulnerable individuals. A government review found that 67% of under 25 year olds claiming the shared accommodation rate faced a rental shortfall.[36]

Budget cuts will also, in future, remove housing benefit eligibility from those under 21 years of age.[37] Given that the latest English Housing Household Survey found that private renters who were aged 16 - 24 were among those who paid more than half their income in rent, *even when housing benefit was taken into account*,[38] this measure is likely to affect vulnerable households disproportionately and is likely to push more young people into street or hidden homelessness.

(iii) Welfare Conditionality and Benefit Sanctions

Welfare conditionality and benefit sanctions also play a role in exacerbating homelessness through rendering housing out of reach of the vulnerable. Welfare conditionality measures place requirements on benefits claimants, such as requiring job-searches and other targets. Although part of the welfare landscape of the UK since the 1980s, the sanctions and conditions are increasingly severe.[39] Under the Welfare Reform Act (2012) sanctions for failure to comply with conditions can be severe and lengthy, with the risk of having benefits withdrawn for up to three years.[40] Already homeless individuals are more likely to be sanctioned than the wider benefit claimant population,[41] providing yet another barrier to access to housing for homeless people.

2.2.3 Security of Tenure

Especially in the private rental sector,[42] but also with respect to social housing,[43] tenure is increasingly insecure. With the expansion of homeownership since the early 1980s, and in the overall context of low wages and scant savings, increasing numbers of low and moderate income households are now owner-occupiers.[44] Thus, across *all* tenures, security of tenure is not robust. In the rental sectors, this is mainly due to lack of protection offered to tenants though the tenancy agreement itself, and lack of accompanying regulation. In the home-owner market, tenure insecurity is more contextualised, and is experienced when home owners cannot pay their mortgage costs due to the disparity between the value of the mortgage and the income of the mortgagee; other high personal debt burdens, or loss of employment, for instance. While the UK has not suffered the shocks and repossessions

[36] DWP *Two Year Review of the Local Housing Allowance* (DWP, Feb 2011) at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/232335/lha-review-feb-2011.pdf.
[37] Her Majesty's Treasury, *Summer Budget 2015* (HC 264, 8 July 2015) at 88.
[38] *English Housing Survey 2013/14* above note 3 at 73.
[39] Batty, et al Homeless People's Experiences of Welfare Conditionality and Benefit Sanctions' (Crisis, December 2015) at 1.
[40] Ibid. at 1-3.
[41] Ibid. at 10.
[42] See below Section 4.2.
[43] Carr & Cowan, above note 31, provide a concise summary of tenure security changes in the Social Housing sector at 77 – 80.
[44] Houston, above note 15 at 10.

experienced in the housing crisis elsewhere in Europe, many households remain vulnerable, particularly those already economically or socially disadvantaged.[45]

2.2.4 Supply

There is wide agreement that England faces a stark undersupply of dwellings, and that current policies are not adequate to remedy this issue. This picture reflects decades of underproduction, rather than a recessionary phenomenon.[46] As such *the current undersupply cannot be justified in terms of austerity policies or on account of any recent economic downturns*.[47]

Sound estimates are that 250,000 new dwellings are needed each year, *double the number currently being built*.[48] The Government currently proposes to build 200,000 'starter homes', available for first time buyers under the age of 40, over the next five year parliament, and proposes a range of enabling policies for the private sector such as those to 'unlock homes on brownfield land' as well as demand side subsidies such as the Help to Buy Equity loan scheme[49] There is no new investment in social housing, and further social housing units will be privatized through a 'reinvigorated' Right to Buy,[50] which gives sitting tenants in more types of social housing the right to buy their homes at a subsidized rate, and will also push local authorities to sell their high value social housing into the private sector.

These measures are likely only to address the housing needs of already relatively economically advantaged individuals or households. In addition, the plans do not go nearly far enough in ensuring supply: overall, it is projected that at current building rates, by 2031 England will be 2.5 million homes short of need.[51]

The 'Right to Buy' removes homes from the social housing sector, further reducing the supply of affordable homes and increasing the problem of lack of affordability. There is no

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[45] Bank of England, *Quarterly Bulletin 2014 Q4* (2014) 54(4) at 432. See also Whittaker, *Resolution Foundation Briefing Note Mortgaged Future: Modelling Household Debt Affordability and Access to Re-Financing as Interest Rates Rise* (May 20 2014).

[46] See *UN Special Rapporteur's Report on the UK*, above note 1 at para 24; *Homelessness Monitor 2015* above note 1 at 4; European Commission, *Recommendation for a Council Recommendation on the United Kingdom's 2014 National Reform Programme and Delivering a Council Opinion on the United Kingdom's 2014 Convergence Programme* (European Commission, Brussels, 2.6.2014 COM(2014) 429 final) at 3; DCLG, Live Table 120 Components of Net Housing Supply, England, 2006-07 to 2014 – 15, 12 Nov 2015.

[47] *Homelessness Monitor 2015* ibid.

[48] See *Home Truths 2014/15* above note 1; National Housing Federation et al, *Response to the Draft National Planning Policy Framework Consultation: Housing and Homelessness Joint Response (National Housing Federation, Chartered Institute of Housing, Shelter, Crisis, Homeless Link and the Northern Housing Consortium)* (October 2011) at 1; Shelter, *In the Mix: the Need for a Diverse Supply of New Homes* (Shelter, November 2014). Shelter, *What Happens when there aren't Enough Homes?* (Shelter, January 2015) at 10; Holmans *New Estimates of Housing Demand and Need in England, 2011 to 2031 Town and Country Planning Tomorrow Series Paper 16* (TCPA 2013) at 5.

[49] Conservative Party Manifesto 2015 at 51 available at https://s3-eu-west-1.amazonaws.com/manifesto2015/ConservativeManifesto2015.pdf.

[50] Ibid. See further above s 2.1.

[51] Holmans, above note 48 at 5.

government commitment that social housing lost to the private market will be replaced, which indicates that the supply of affordable homes is likely to fall further in future years.

2.2.5 Quality or Habitability of Dwellings

A startling 22% of dwellings in England failed to meet the 'decent homes standard' in 2012.[52] Although this percentage is an improvement overall since 2006, in the private rental sector, non-decent homes continue to comprise almost one third – 29% - of the housing stock.[53] Overall, therefore, nearly a quarter of dwellings in the UK cannot be said to meet adequate standards of habitability, and thus an unwarranted number of households in the UK are exposed to very poor home environmental quality, with high levels of risks, particularly to health.

3. The Legal Framework: the Government's Obligations for the Right to Housing

3.1 National Position on ICESCR Rights

The United Kingdom has signed and ratified the ICESCR.[54] However, the state has not directly incorporated the rights under the ICESCR into its national laws. This means that individuals cannot ask a domestic court to adjudicate a rights claim on the basis of a breach of the ICESCR. In addition, the UK has yet to ratify the Optional Protocol to the Convention, which provides a mechanism for individuals to bring complaints before the Committee on Economic and Social Rights (CESCR), the independent body of experts which monitors implementation of ICESCR. Despite this lack of incorporation, it is important to note that the *international obligations for the rights contained in the ICESCR are nonetheless binding on the UK*.

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[52] The *English Housing Survey Headline Report*, states that a 'decent home' is one that meets all of four criteria:

> a) it meets the current statutory minimum standard for housing as set out in the Housing Health and Safety Rating System (HHSRS); b) it is in a reasonable state of repair (related to the age and condition of a range of building components including walls, roofs, windows, doors, chimneys, electrics and heating systems); c) it has reasonably modern facilities and services (related to the age, size and layout/location of the kitchen, bathroom and WC and any common areas for blocks of flats, and to noise insulation); it provides a reasonable degree of thermal comfort (related to insulation and heating efficiency).

Department for Communities and Local Government *English Housing Survey Headline Report 2013-14* (DCLG, February 2015) at 71. Detailed definitions of each of the criteria are included in Department for Communities and Local Government: *A Decent Home: Definition and Guidance for Implementation*, (DCLG, June 2006). The Housing Health and Safety Rating System (HHSRS) is an assessment tool against which decency of dwellings can be measured. See also Department for Communities and Local Government: *Housing Health and Safety Rating System: Guidance for Landlords and Property Related Professionals* (May 2006).

[53] *English Housing Survey 2013/14* above note 3 at 80.

[54] The UK signed the Convention in 1968, and ratified it in 1976.

The UK is also a party to the European Convention on Human Rights (ECHR) under which it has binding international obligations which have relevance for protecting the right to housing. While the ECHR does not contain a right to housing per se, various Articles of the Convention and its Protocols may provide some protection for aspects of the right to housing.[55] In addition, the UK has obligations for ensuring the right to housing under the European Social Charter (ESC).[56]

No justiciable right to housing exists under domestic law, though the Human Rights Act (HRA) 1998 and the Equality Act 2010, among other legislation, may provide avenues to protect and ensure aspects of the right to housing. Importantly, the HRA incorporates the rights under the ECHR into domestic UK law, and all public authorities are under an obligation to act in conformity with those rights.

3.2 The Right to Housing under the ICESCR

3.2.1 Substantive Obligations under Article 11(1)

The legal standard against which the UK's performance on ensuring the right to housing will be measured is set out in Article 11(1) of the ICESCR:

> The States Parties to the Present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and *housing*, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Article 11(1) sets the right to housing within the broader enjoyment of an adequate standard of living, reflecting housing as one of a number of elements needed to enjoy a decent life. However, each aspect of Article 11(1) has its own legal content and, therefore, entails its own legal obligations for the state.

The Committee on Economic, Social and Cultural Rights has, in its authoritative interpretation of the right to housing in General Comment No 4 and General Comment No 7, set out seven aspects of housing which must be present in order for a state to be meeting its obligations with respect to the right to housing.

These elements include:

i) Legal security of tenure

[55] See Hohmann, *The Right to Housing: Law, Concepts, Possibilities* (Hart, 2013) at 67 – 74.
[56] Ibid at 50 – 67. The UK has not chosen to ratify the Revised European Social Charter, but has obligations under the original European Social Charter. The UK has accepted obligations with respect to Articles 15, 16, and 19, all of which protect the right to housing in some aspect. See UK Country Fact Sheet (January 2015).

Legal security of tenure can be considered the cornerstone of the right to housing. Any individual or family whose home is subject to seizure at any time, or who is subject to the threat of arbitrary eviction, cannot be said to enjoy the right to housing, but to reside only at another's pleasure.

Accordingly, General Comment 4 states that 'all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.'[57] Forced or arbitrary evictions are a prima facie violation of the ICESCR.[58]

The obligation to prevent forced evictions is immediate and not subject to the progressive realisation standard in Article 2(1) of ICESCR,[59] discussed below. States have positive obligations to protect against forced evictions, which include an obligation to prevent such evictions being undertaken by private parties.[60] The state should have in place legislative measures to prevent them.[61]

Evictions will be in violation of State obligations under the covenant if they are undertaken in a discriminatory manner,[62] or as a punitive measure.[63] Evictions should be a last resort, carried out with a minimum of force,[64] and subject to strict procedural safeguards.[65]

Recognising that homelessness often leads to a breach of other human rights, the CESCR states that an eviction should not be undertaken if the immediate result will be the violation of other human rights of the individual.[66]

ii) Availability of Services, Materials, Facilities and Infrastructure

All dwellings must contain certain facilities which are recognised as essential for the health, security, comfort and nutrition of the household.[67] Specifically, each individual should have sustainable access to the following: natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.[68] These facilities and materials represent the bare minimum requirements for adequate housing.[69]

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[57] UN Committee on Economic, Social and Cultural Rights, *The Right to Adequate Housing (Article 11(1)): Committee on Economic, Social and Cultural Rights General Comment 4* (1991) E/1992/23 at para 8(a).
[58] UN Committee on Economic, Social and Cultural Rights, *The Right to Adequate Housing: Forced Evictions (Article 11(1)) Committee on Economic, Social and Cultural Rights General Comment 7* (1997) E/1998/22 Annex IV at para 1.
[59] General Comment 4, above note 57 at para 8.
[60] Ibid at para 9. See also General Comment 7, above note 58 at para 17; and UN Committee on Economic, Social and Cultural Rights, *International Technical Assistance Measures (Article 22): Committee on Economic, Social and Cultural Rights General Comment 2* (1990) E/1990/23 at paras 6 and 8(d).
[61] General Comment 4, above note 57 at para 9.
[62] General Comment 7, above note 58 at para 10.
[63] Ibid at para 12.
[64] Ibid at para 13.
[65] Ibid at para 14 – 15.
[66] Ibid at para 16.
[67] General Comment 4, above note 57 at para 8b.
[68] Ibid.
[69] See further Hohmann, above note 55 at 23 – 24.

iii) Affordability

Affordability of housing has clear implications for the ability of individuals to enjoy their right to housing. Accordingly, the financial costs associated with housing should not compromise the household's or individual's ability to satisfy other basic needs.[70] This means that, where housing is unaffordable, states have international legal obligations under the covenant to take measures which will ensure affordability. These steps include providing housing subsidies for both home owners and tenants, and ensuring that housing finance reflects housing needs.[71] Tenants must be protected from unreasonable rent increases, whether their landlords are private parties or state agents.[72]

iv) Habitability

In order to meet the standard of adequacy required by the ICESCR, states must ensure housing is habitable in terms of the physical safety of the dwelling and its occupants. The dwelling must be of an adequate size, and protect the dwellers from excessive cold, heat, damp, or other environmental threats. It must not pose a threat to its occupiers' health.[73] Health should be understood to encompass mental health.[74]

v) Accessibility

Accessibility has two aspects. First, housing must be accessible for disadvantaged groups, including the elderly, children, those with physical disabilities, the terminally or chronically ill, HIV-positive individuals, and victims of natural disasters or those in disaster-prone areas.[75] The Committee notes that the state should provide some priority consideration to these groups,[76] in order to meet its obligations (both positive and negative in nature) to ensure equal enjoyment of the ICESCR rights to all.[77] Secondly, access to land is related to access to housing, and states must take steps to ensure adequate and appropriate land is made available to meet housing supply needs.[78]

vi) Location

Housing experts recognise that 'the location of the dwelling constitutes one of the key elements – if not the key element – in the social integration of individuals into society'.[79] Accordingly, housing must not be isolated from livelihood and educational opportunities, or

[70] General Comment 4, above note 57 at para 8c.
[71] Ibid.
[72] Ibid.
[73] Ibid at 8d.
[74] Farha, 'Is there a Woman in the House? Re/Conceiving the Right to Housing' (2002) 14 *Canadian Journal of Women and the Law* 118 at 129.
[75] General Comment 4, above note 57 at para 8 e.
[76] Ibid.
[77] See further, with specific reference to access to housing, UN Committee on Economic Social and Cultural Rights, *The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights (Article 3) Committee on Economic, Social and Cultural Rights General Comment 16* (2005) E/C.12/2005/4 and UN Committee on Economic, Social and Cultural Rights, *Non Discrimination in Economic, Social and Cultural Rights (Article 2(2)): Committee on Economic, Social and Cultural Rights General Comment 20* (2009) E/C.12/GC/20.
[78] General Comment 4, above note 57 at para 8e.
[79] Kemeny, *Housing and Social Theory* (Routledge, 1992) at 159.

health services, and houses should not be built on polluted sites.[80] Moreover, particularly in cases where households need to be relocated, individuals should not be isolated from existing community ties and social or kinship networks.[81]

vii) Cultural Adequacy

Housing must not suppress the expression of cultural identity, or the diversity of housing needs. Thus, those with particular housing traditions – for example, Traveller Communities, the Roma, or Gypsies should have the cultural aspects of their rights ensured. However, cultural adequacy should not be invoked to justify housing that is otherwise inadequate, in terms of quality or location. Importantly, in meeting its obligations for housing that is culturally adequate states must protect individuals from conditions that would not meet the norms of the community, or which could be considered degrading or shaming within the mores of the population at large.

3.2.2 The Nature of State Obligations under the Covenant

The nature of States Parties' obligations under the ICESCR is set out in Article 2(1), which reads:

> Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Article 2(1) sets out the obligation to progressively realise the rights in the Covenant, acknowledging that full enjoyment of all Covenant rights might not be immediately possible in all states.

However, the obligation of progressive realisation does not empty the Covenant of immediate or hard legal obligations. Rather, Article 2(1) requires the following action and imposes the following concrete obligations:

i) Immediate Obligations and Minimum Core Rights

Despite the overall progressive nature of the obligations under the Covenant, the ICESCR *does* impose immediate obligations on States Parties. The obligation to guarantee rights without discrimination is immediate in nature.[82] In addition, those aspects of the rights which can be met through respecting peoples existing rights should be met right away. Any other aspect of the rights not imposing significant resource implications should also be immediately ensured.[83]

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[80] General Comment 4, above note 57 at 8f.
[81] Ibid.
[82] ICESCR Art 2(2).
[83] UN Committee on Economic, Social and Cultural Rights *An Evaluation of the Obligation to Take Steps to the 'Maximum of Available Resources' Under an Optional Protocol to the Covenant* (2007) E/C.12/2007/1 at para 7.

In addition, the Covenant imposes an immediate obligation to ensure the minimum core of each right, and, in respect of the right to housing under Article 11(1), the minimum core of each of the seven elements of the right.[84]

The obligation to ensure a minimum core does not mean that a certain proportion of a State Party's population should enjoy the right, but rather that at least the core elements of the right should be enjoyed by each and every individual to whom the state owes an obligation under the Covenant. In particular, states must protect those groups who are most marginalised or disadvantaged.[85] Any state failing to protect the minimum core of a right under the ICESCR is *prima facie* in violation of its international obligations under the Covenant.[86]

Any limitation on the rights under the ICESCR must also, under Article 4 of the Covenant, be determined by law, and be consistent with the purpose of promoting the general welfare in a democratic society. Further, any limitation under Article 4 cannot exceed the scope of compatibility with the nature of the ICESCR rights.[87]

ii) Maximum Available Resources

Article 2(1) obligates states to mobilise the maximum available resources towards the realisation of ICESCR rights.

The CESCR has provided concrete guidelines on the obligation of states to make use of maximum available resources. While noting that states retain a margin of appreciation,[88] the Committee will examine whether the measures the state has taken are 'adequate' or 'reasonable' the Committee will take into account the following (non-exhaustive list) of factors:

> (a) The extent to which the measures taken were deliberate, concrete and targeted towards the fulfilment of economic, social and cultural rights;
> (b) Whether the State party exercised its discretion in a non-discriminatory and non-arbitrary manner;
> (c) Whether the State party's decision (not) to allocate available resources was in accordance with international human rights standards;
> (d) Where several policy options are available, whether the State party adopted the option that least restricts Covenant rights;
> (e) The time frame in which the steps were taken;
> (f) Whether the steps had taken into account the precarious situation of disadvantaged and marginalized individuals or groups and, whether they were

[84] UN Committee on Economic, Social and Cultural Rights, *The Nature of States' Parties Obligations (Article 2(1)): Committee on Economic, Social and Cultural Rights General Comment 3* (1990) E/1991/23 at para 10.
[85] UN CESCR *Statement on Maximum Available Resources*, above note 83 at para 4.
[86] General Comment 3, above note 84 at para 10.
[87] ICESCR Art 4. See further on this point Nolan, 'Putting ESR-Based Budget Analysis into Practice: Addressing the Conceptual Challenges' in Nolan, O'Connell & Harvey, (eds) *Human Rights and Public Finance: Budgets and the Promotion of Economic and Social Rights* (Hart, 2013) at 49 and Leckie, 'Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights' (1998) 20 *HRQ* 81 at 98.
[88] Statement on Maximum Available Resources, above note 83 at para 11.

non-discriminatory, and whether they prioritized grave situations or situations of risk.[89]

Although normally thought of in terms of a portion of the State Party's budgetary allocation, resources should be conceived of more broadly. They can include other dimensions of public finance (such as monetary policy and government borrowing) and can encompass human, technological, organisational, natural and informational resources.[90]

iii) Progressive Realisation

States must continually take steps towards the realisation of the rights contained in the Covenant, such that those aspects of the right which *cannot* immediately be ensured are met progressively over time. In the words of the CESCR, States must 'move as expeditiously and effectively as possible' towards the realisation of the right.[91] Steps must be deliberate, concrete, and targeted towards the increased enjoyment of the right.[92]

Importantly, the obligation to *take steps* is not in itself limited or qualified by resource constraints or development issues.[93] Thus, the improvement of rights enjoyment in a state is a continuous forward or upward obligation.

iv) Retrogressive Steps as a Violation of the ICESCR

The obligation of progressive realisation means that, except in a narrow range of exceptional circumstances, individuals should enjoy their rights more fully as time goes on. Retrogression or 'backsliding' in the enjoyment of rights, or in their legal protection, should not occur.[94]

Thus the state should not adopt measures which will diminish enjoyment or access to rights,[95] including through repeal of legislation which protects the rights under the ICESCR, or imposition of legislation which negatively affects the rights.[96] Budgetary decisions which negatively impact rights enjoyment under the Covenant must be strictly justified.[97]

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[89] Ibid at para 8.
[90] Elson, Balakrishnan & Heintz, 'Public Finance, Maximum Available Resources and Human Rights' in Nolan, O'Connell & Harvey, above note 87 at 14.
[91] General Comment 3, above note 84 at para 9.
[92] Ibid at para 2.
[93] Ibid.
[94] See further Nolan, Lusiani and Courtis, 'Two Steps Forward, No Steps Back? Evolving Criteria on The Prohibition of Retrogression in Economic and Social Rights' in Nolan, (ed) *Economic and Social Rights After the Global Financial Crisis* (CUP, 2014) at 123.
[95] The *Limburg Principles* note that a state violates the right if 'it deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or *force majeure'*. *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* (1978) E/CN.4/1987/17 at para 72.
[96] See UN Committee on Economic, Social and Cultural Rights, *The Right to Adequate Food (Article 11(1)): Committee on Economic, Social and Cultural Rights General Comment 12* (1999) E/C.12/1999/5 at para 19.
[97] See Nolan & Deutschke 'Art 2(1) ICESCR and States Parties Obligations: Whither the Budget?' (2010) 3 *EHRLR* 280 at 282.

'Force majeure' or lack of available resources may present a defence to the retrogressive measures.[98] Where resource constraints are given by the state as a justification for retrogressive measures, the acceptability of those measures will be measured against objective criteria pertaining to the situation in the state. These criteria include:

> (a) The country's level of development;
> (b) The severity of the alleged breach, in particular whether the situation concerned the enjoyment of the minimum core content of the Covenant;
> (c) The country's current economic situation, in particular whether the country was undergoing a period of economic recession;
> (d) The existence of other serious claims on the State party's limited resources; for example, resulting from a recent natural disaster or from recent internal or international armed conflict.
> (e) Whether the State party had sought to identify low-cost options; and
> (f) Whether the State party had sought cooperation and assistance or rejected offers of resources from the international community for the purposes of implementing the provisions of the Covenant without sufficient reason.[99]

In all cases, however, deliberate regressive steps will be carefully scrutinised by the Committee: they constitute a prima facie violation of the Convention, which states have the burden of proof to discharge.[100] The Committee has repeatedly stated that a state which appears to be moving backward on the enjoyment of Covenant rights would have to provide a full justification that any retrogressive measure was strictly necessary,[101] after considering all alternatives, and that the measure was 'fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.'[102] In other words, governments introducing retrogressive measures must show they have used the maximum of available resources to avoid taking such a step.[103]

Crucially, moreover, retrogressive measures must not compromise the minimum core of the right.[104]

The Committee has noted that policies in times of economic and financial crises may lead to retrogression, and that in such times any retrogressive policy must meet four requirements:[105]

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[98] *Limburg Principles*, above note 95 at para 72. See further *Maastrict Guidelines on Violations of Economic, Social and Cultural Rights* (1996) E/C.12/2000/13 at para 14(f).
[99] UN CESCR *Maximum Available Resources Statement* above note 83 at para 10.
[100] UN Committee on Economic, Social and Cultural Rights, *The Right to Education (Article 13): Committee on Economic, Social and Cultural Rights General Comment 13* (1999) E/C.12/1999/10 at para 45, UN Committee on Economic, Social and Cultural Rights, *The Right to the Highest Attainable Standard of Health (Article 12): Committee on Economic, Social and Cultural Rights General Comment 14* (2000) E/C.12/2000/4 at para 32, UN Committee on Economic, Social and Cultural Rights, *The Right to Water (Articles 11 and 12): Committee on Economic, Social and Cultural Rights General Comment 15* (2002) E/C.12/2002/11, at para 19, General Comment 17 at para 27. See further Nolan, Lusiani and Courtis above note 94 at 124-5.
[101] General Comment 13, Ibid at para 45.
[102] General Comment 3, above note 84 at para 9. See further, for example, General Comment 13, above note 100 at para 45; General Comment 14 above note 100 at para 32; General Comment 100, above note 85 at para 19. See also Nolan, Lusiani and Courtis, above note 94 at 124-5; and UN CESCR Statement on Maximum of Available Resources above note 83 at para 9.
[103] Sepulveda, *The Nature of the Obligations under the ICESCR* (Intersentia, 2003).
[104] See for eg General Comment 15, above note 100 at para 42, General Comment 14, above note 100 at para 48.

- First, the policy must be temporary in nature, enduring only for the period of crisis itself.
- Second, the policy must be necessary and proportionate, 'in the sense that the adoption of any other policy or a failure to act, would be more detrimental to economic, social and cultural rights.'[106]
- Third, the policy cannot be discriminatory in nature or effects, and must encompass 'all possible measures, including tax measures,' to ensure inequalities do not increase, and that particularly disadvantaged and marginalised individuals or groups are not disproportionately affected by the measure.[107]
- Fourth, the policy must identify the core of the right to be affected, and ensure that the core content is protected at all times.[108]

The conditions on austerity measures are thus strict and must be justified with reference to all rights, and all resources available. The minimum core must not be compromised, and the retrogressive measure must be the 'least bad' option available.

4. Failure to Fulfill Obligations for the Right to Housing in England: Areas of Concern

4.1 Homelessness

Homelessness is the paradigm violation of the right to housing, and its most obvious manifestation. The deprivation of any dwelling that a person may call his or her own, with adequate privacy and security of tenure, is denied to the person experiencing homelessness. For the homeless, there is no place from which he or she 'may not at any time be excluded as a result to someone else's say-so'.[109] The homeless have no security of tenure. They do not enjoy the dignity and peace represented by the right as a whole.[110]

While those who make their homes or beds on the street are the visible face of homelessness, ranks of 'hidden homeless' are dependent on the charity of friends and family (who may be ill-equipped or resourced to accommodate them), or stay in often profoundly unsuitable temporary accommodation.

Homelessness often results in the violation of a host of other human rights, from privacy to health, and in the inability to exercise civic human rights such as the right to vote.[111] Vulnerable groups (including ex-services personnel, the young, those with mental health issues, and women at risk of domestic violence) are at particular risk of experiencing

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[105] UN CESCR, *Letter to States Parties dated 16 May 2012*, Reference CESCR/48th/SP/MAB/SW.
[106] Ibid.
[107] Ibid.
[108] Ibid.
[109] Waldron, 'Homelessness and the Issue of Freedom' (1991) 39 *UCLA Law Review* 295 at 299.
[110] General comment 4, above note 57.
[111] See Hohmann, above note 55 at 148 - 9. See further Thomas *Homelessness Kills: An Analysis of the Mortality of Homeless people in Early twenty-first century England* (Crisis, 2012).

homelessness, and, where they do become homeless, will be affected by the experience more severely.[112]

Homelessness, in its various manifestations, must be understood as a *prima facie* violation of the right to housing, including the minimum core of the right.

As such, the 'exceptionally high'[113] levels of homelessness in England represent a serious concern with respect to the enjoyment of the right to housing under the ICESCR. The fact that levels of homelessness are rising, and more households are at risk of becoming homeless, points to a retrogressive step in the enjoyment of the right to housing, and thus a serious failing in the Government's obligations under the ICESCR. At the same time, the legislative safety net that protects vulnerable, homeless, or 'threatened homeless' individuals has been weakened by recent legislative changes. The already problematic legislation now provides less protection of the right to housing.

4.1.1 Rising Levels of Street Homelessness

a) *Rough Sleeping*

An important estimate of street homelessness is provided by 'rough sleeping' statistics. The definition of rough sleepers captures those homeless people identified as:

> People sleeping, about to bed down (sitting on/in or standing next to their bedding) or actually bedded down in the open air (such as on the streets, in tents, doorways, parks, bus shelters or encampments). People in buildings or other places not designed for habitation (such as stairwells, barns, sheds, car parks, cars, derelict boats, stations, or "bashes" which are makeshift shelters, often comprised of cardboard boxes).
>
> The definition does not include people in hostels or shelters, people in campsites or other sites used for recreational purposes or organised protest, squatters or travellers.
>
> Bedded down is taken to mean either lying down or sleeping. About to bed down includes those who are sitting in/on or near a sleeping bag or other bedding.[114]

It is important to note that rough sleeping statistics present a snapshot of rough sleepers on any given night. They do not represent a total of people sleeping rough in any month or year, and can be compiled not from a count but an estimate.[115] The statistics do not record those street homeless individuals who have been able to find temporary accommodation on

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[112] Bevan, 'The Localism Act 2011: The Hollow Housing Law Revolution' (2014) 77(6) *MLR* 964 at 971 – 72. See also Department for Communities and Local Government, *Homelessness: Code of Guidance for Local Authorities* (DCLG 2006).

[113] Bevan, above note 112 at 972.

[114] Department for Communities and Local Government, *Rough Sleeping Statistics England – Autumn 2014 Official Statistics* (DCLG, 26 February 2015) at 9.

[115] DCLG, *Rough Sleeping Statisitcs England – Autumn 2015* (DCLG, 25 February 2016) at 2. For instance, the most recent statistics are compiled from 44 local authority 'counts' and 282 local authority estimates. Ibid.

the evening in question, nor do they take into account those on the street but who are not 'about to bed down' or 'bedded down' within the definition.

The UK statistics authority has recently assessed the rough sleeping statistical method, and found it wanting in quality, trustworthiness, and statistical value,[116] to the extent that the official Rough Sleeping Statistics cannot meet the standards required to be considered as national statistics.[117] One critical issue for the trustworthiness of the rough sleeping statistics is that:

> Much of the decision-making about data collection [on rough sleeping] remains under the leadership of policy officials rather than the statisticians. These are sensitive statistics about some of the most vulnerable in society, where there is perceived incentive for political pressure to be applied locally and centrally. It is therefore critical to the trustworthiness of these statistics that the independent statisticians are visible and have transparent decision making responsibilities.[118]

Rough sleeping statistics therefore are profoundly problematic indicators of street homelessness, both because the statistics may not be politically neutral, and because they capture only the tip of the homeless iceberg.

However, even with these potential statistical problems, both of which would tend towards underreporting, national figures on rough sleeping indicate that there has been a 55% increase between 2010 and 2014.[119] The most recent figures, for Autumn 2015, indicate a total rough sleeping population of 3569. This is an increase of 30% from the 2014 figure of 2744.[120] Outside London, the rise in rough sleeping was estimated at 31%.[121]

More accurate figures are available for London,[122] where rough sleeping doubled over the six years to 2013.[123] The Autumn 2014 counts for London indicate a startling 37% increase over 2013,[124] while Autumn 2015 figures show another significant increase of 27%.[125] 67% of those seen sleeping rough were new rough sleepers.[126]

All rough sleepers are already vulnerable and marginalized through the very fact of their street homelessness. But additionally, many suffer from deep, multiple forms of social vulnerability and exclusion.[127] According to the Autumn 2015 Rough Sleeping Statistics, for those rough sleepers who had had received a 'support needs assessment', 41% had alcohol

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[116] UK Statistics Authority, Assessment of Compliance with the Code of Practice for Official Statistics: Statistics on *Homelessness and Rough Sleeping in England*. (UK Statistics Authority 2015) at foreword.
[117] Ibid at para 1.6; 1.12.
[118] Ibid at para 1.9.
[119] *Rough Sleeping Statistics England – Autumn 2014* above note 114 at 3.
[120] Rough Sleeping Statistics Autumn 2015, above note 115 at 2.
[121] Ibid at 1.
[122] These statistics are compiled by CHAIN. Chain is a multi-agency database recording information about rough sleepers and the street population in London. It is commissioned by the Greater London Authority and represents the UK's most detailed source of information about rough sleeping. See CHAIN *Annual Bulletin Greater London* 2014/15 (March 2015).
[123] Rough Sleeping Statistics Autumn 2014 above note 114 at 3.
[124] Ibid at 3.
[125] Rough Sleeping Statistics Autumn 2015 above note 115.
[126] Ibid at 5.
[127] Fitzpatrick, Bramley and Johnsen, *Multiple Exclusion Homelessness in the UK: An Overview of Key Findings: Briefing Paper No 1* (Herriott-Watt University 2012).

support needs, 31% drug support needs, and 45% mental health support needs. 13% had all three of these needs.[128] A significant number of rough sleepers have additional vulnerabilities: 14% were female, 12% were under the age of 26, and 9% were over the age of 55.[129]

In the spring 2016 Budget, the Government announced a welcome £115 million to reduce rough sleeping. However, it is not yet known how or where this money will be allocated, and in the context of continuing austerity measures and cuts to welfare and social services, it is unlikely to provide even stop-gap relief for rough sleepers.[130]

Year-on-year rises in rough sleeping indicate a serious violation of all elements of the right to housing, including its minimum core. Moreover, the violation is most likely to be felt by already vulnerable and marginalized individuals such as those with mental health issues. The worsening situation illustrates serious retrogressive steps in enjoyment of the right.

b) Rates of Shelter or Hostel Use

Many homeless individuals will not be found bedding down as rough sleepers, as they are accommodated in night shelters or hostels which provide temporary, stop-gap accommodation to those who would otherwise find themselves on the street.

In England, 'night shelters' normally refer to basic spaces used for overnight accommodation in the very short term. Most are operated by charities, are often free, and may offer some food. In some areas, night shelters open only during winter months.[131] Almost half of providers offering beds to homeless individuals were operating at or above full capacity in 2013-14.[132] 72% of providers refused access to their services because all beds were full in 2013, a rise from 47% in 2012.[133]

Hostels offer slightly more stable accommodation arrangements, often available only to homeless people referred to them from other frontline agencies.[134] In particular, hostel accommodation is used to provide temporary accommodation to homeless individuals to whom local authorities owe a statutory duty (discussed further below section 4.1.5). There are about 40,000 people in England using hostels for housing.[135]

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[128] Autumn 2015 Rough Sleeping Statistics above note 115 at 7.
[129] Ibid at 6.
[130] Hansard, 21 March 2016 Column 1337 (Helen Hayes).
[131] See for example Hammersmith and Fulham Council *Finding a place to Live and Renting from a Private Landlord* (2009) available at http://www.lbhf.gov.uk/Directory/Housing/Housing_advice/Homelessness/97574_Finding_a_place_to_live.asp
[132] 2013 figures are in Homeless Link, *Survey of Needs and Protection 2014* (Homeless Link, 24 April 2014) at 23; 2014 figures are in Homeless Link, *Support for Single Homeless People in England: Annual Review 2015* (Homeless Link, 2015) at 21.
[133] *Survey of Needs and Protection 2014*, above note 132 at 18.
[134] Shelter, *How to get into a Hostel or Night Shelter* at http://england.shelter.org.uk/get_advice/homelessness/homeless_and_on_the_streets/how_to_get_into_a_hostel_or_nightshelter.
[135] *Survey of Needs and Protection 2014* above note 132 at 18 – 24.

Hostels are not free, though can be paid for out of housing benefit.[136] They generally provide a shared bedroom, kitchen and bathroom facilities.[137] Hostel accommodation is not available to those who are not eligible for government welfare benefits, which affects its availability, particularly for recent migrants.[138] It is generally not available to families or couples.[139]

In the face of rising levels of homelessness and vulnerability to homelessness, there is a troubling drop in the number of hostel places available, with 6% fewer beds available in hostels in 2013 than in 2012,[140] and a further 5% fewer accommodation projects for single people available in 2014.[141] Overall, there is a drop of 3% in available beds for single homeless persons. This fall, though statistically small, means more people are pushed onto the street, further increasing unacceptable levels of rough sleeping.

Further, although hostel or shelter beds can be of profound importance, *they do not fulfil even the minimum core elements of the right to adequate housing. There is no security of tenure, no long term peace or security can be guaranteed. A right to bare shelter is of fundamental importance to the street homeless population, but shelter beds do not fulfil the State party's obligation for the realisation of the right to adequate housing.*

c) Criminalisation of Rough Sleepers

The recent use of legislation designed to control 'anti-social' behavior, such as public space protection orders (PSPOs) to criminalise rough sleeping by some Local Authorities is a worrying trend. Although Local Authorities have been forced to back down on the use of these orders in some cases,[142] prosecutions have occurred. For example, Doncaster City Council prosecuted a rough sleeper found sleeping in the wooded grounds of a hospital in October 2015.[143] Such prosecutions are punitive. They result in the discriminatory violation of the rights of individuals who often have no other place in which they can safely be,[144] and they endanger a range of other rights of the individual rough sleeper, such as the right to be free from cruel and unusual punishment and the right to liberty and security of the person.[145]

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[136] Shelter, *Nightshelters and Emergency Hostels* available at http://www.lbhf.gov.uk/Directory/Housing/Housing_advice/Homelessness/97574_Finding_a_place_to_live.asp.

[137] Ibid.

[138] This has a discriminatory impact, and severe implications for recent migrants or asylum seekers who are therefore placed at higher risk of forced rough sleeping. In Autumn 2015, 57% of rough sleepers were non-British nationality. Rough Sleeping Statistics Autumn 2015, above note 115 at 6.

[139] Nightshelters and Emergency Hostels, above note 136.

[140] *Survey of Needs and Protection 2014* above note 132 at 19.

[141] *Support for Single Homeless People 2015*, above note 132 at 17.

[142] Hilary Osborne 'Hackney Council in East London Drops Threat to Fine Rough Sleepers' Guardian Online 5 June 1015 http://www.theguardian.com/uk-news/2015/jun/05/hackney-council-drops-threat-to-fine-rough-sleepers; Liberty 'Liberty calls for Oxford City Council to Scrap Unlawful Plans to Criminalise Homeless People and Buskers (Liberty, 11 June 2015) at https://www.liberty-human-rights.org.uk/news/press-releases-and-statements/liberty-calls-oxford-city-council-scrap-unlawful-plans;

[143] Kate Mason, 'Doncaster Man Prosecuted for Sleeping Rough' South Yorkshire Times Online 14 October 2015 at http://www.southyorkshiretimes.co.uk/news/local/doncaster-man-prosecuted-for-sleeping-rough-1-7513585.

[144] See Jeremy Waldron, 'Homelessness and the Issue of Freedom' above note 109

[145] See *Victoria (City) v Adams,* 2009 BCCA 665 where the British Columbia Court of Appeal found that criminalisation of rough sleeping resulted in a breach of s 7 of the Canadian Charter of Rights and Freedoms s 7 right to life, liberty and security of the person.

4.1.2 Cuts in Funding for Frontline Homelessness Prevention and Support

With growing levels of homelessness, including both street homelessness, discussed above, and 'hidden' homelessness, discussed in section 4.1.3 below, one might expect the government to respond with additional funding and other measures to provide increased frontline support for homelessness prevention, and for those who find themselves without a home.

However, front-line services in homelessness prevention and support have been under severe financial pressure in recent years.[146] Many of these services have been cut, and these cuts are a contributory factor in the rising numbers of rough sleepers in England.[147]

Local Authority budgets to support single homeless people had been cut by over a quarter in the three years leading up to 2013/14.[148] *Budget pressures, coupled with legislative reforms that weaken local authority duties to the homeless (or make it easier for those authorities to discharge their duty to the homeless),[149] have resulted in inadequate frontline help for homeless individuals, even those who present with clear signs of need and vulnerability.[150]*

The inadequacy of frontline services for the homeless is also evident in the cuts in numbers of hostel and shelter beds, discussed in section 4.1.1.b) above. As many as 38% of these emergency and temporary accommodation services saw their funding fall from 2012 levels in 2013.[151] Almost half of those services affected have responded to the budget shortfalls by reducing the number of frontline staff.[152]

Frontline and emergency services are of prime importance to the most vulnerable, and can make a profound difference to those at risk of the most severe deprivations of the right to housing. *Cuts to such services represent a real indication of retrogression for obligations within the minimum core elements of the right to housing.*

4.1.3 Rates of 'Hidden' Homelessness are Unacceptably High

a) *Hidden Homelessness: Defining the Phenomenon*

Hidden homelessness can be defined as the number of people not entitled to accommodation by the local authority, because they are not in priority need, but who have no accommodation that they are entitled to occupy or can reasonably continue to occupy. Thus it describes those who, having lost their own home, share with family or friends, often in accommodation characterised by insecure and poor living conditions. The definition can include would-be couples forced to live apart, as well as single homeless and hostel

[146] See *Survey of Needs and Protection 2014* above note 132; *Homelessness Monitor 2015*, above note 1 at 18-21.
[147] *Homelessness Monitor 2015*, above note 1 at 41.
[148] Spurr, 'Revealed: The Extent of Single Homeless Cuts' *Inside Housing* (4 July 2014).
[149] See further section 4.1.4 below.
[150] See *Homelessness Monitor 2015*, above note 1 at 19. See further Dobie, Sanders, & Teixeira, *Turned Away: The Treatment of Single Homeless People by Local Authority Homeless Services in England* (Crisis 2014).
[151] *Survey of Needs and Protection 2014*, above note 132 at 4.
[152] Ibid.

residents.[153] While such individuals may be housed, they experience a profound level of tenure insecurity, and as such cannot be said to enjoy the right to adequate housing.[154]

Hidden homelessness remains unacceptably high. On 2015 statistics, 2.35 million English households contained a 'concealed' additional individual,[155] with 267,000 concealed couples or lone parents.[156] These numbers represent a rise of 40% since 2008.[157] Concealed households were also more common in black and minority ethnic households,[158] indicating issues with respect to discrimination and attendant higher levels of poverty in these communities.

The burden and insecurity of hidden homelessness can attend both the 'host' and concealed family or person. In fact, government figures illustrate that over a quarter of people accepted as homeless by a LHA became so as a parent, friend or relative was no longer able or willing to accommodate the person.[159]

b) Overcrowding

Hidden homelessness is also tellingly illustrated by overcrowding statistics. Over 3%, or 701,000 households, in England were overcrowded in 2013.[160] Overcrowding is not merely a matter of inconvenience for the families affected. The government imposes occupancy standards for the very reason that those living in overcrowded properties are subjected to inadequate living conditions on multiple levels. In addition to cramped conditions, there are knock-on effects in the enjoyment of other rights, such as the right to health, and the right to family and private life, for example.[161]

Overcrowding statistics can be calculated by measuring the number of bedrooms in a dwelling against the number of household members, taking into account 'undesirable' sharing.[162] Overcrowded households were most commonly found in the private and social

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[153] Bramley et al *Estimating Housing Need* (DCLG, Nov 2010) at 29 box 2.1; House of Commons Select Committee on Office of the Deputy Prime Minister: *Housing, Planning, Local Government and the Regions, Written Evidence – Memorandum by the Countryside Agency* (HOM 58) (2005) at http://www.publications.parliament.uk/pa/cm200405/cmselect/cmodpm/61/61we02.htm

[154] Hohmann, above note 55 at 149.

[155] *Homeless Monitor 2016*, above note 29 at 69.

[156] Ibid.

[157] Ibid.

[158] Ibid at 68.

[159] Department for Communities and Local Government, *Statutory Homelessness: January to March Quarter 2015 England* (DCLG, 24 June 2015) at 5.

[160] *Homelessness Monitor 2016*, above note 29 at 73 and see Figure 4.19.

[161] See for example *R (on the application of Bernard) v Enfield LBC* [2003] UKHRR 148 (Admin) (QB) and *O'Donnell (a minor) and others v South Dublin County Council* [2007] IEHC 204.

[162] *English Housing Survey 2013/14*, above note 3 at 28 box 2. For statistical purposes, the 'bedroom standard' is calculated as follows:

> A standard number of bedrooms is calculated for each household in accordance with its age/sex/marital status composition and the relationship of the members to one another. A separate bedroom is allowed for each married or cohabiting couple, any other person aged 21 or over, each pair of adolescents aged 10-20 of the same sex, and each pair of children under 10. Any unpaired person aged 10-20 is notionally paired, if possible, with a child under 10 of the same sex, or, if that is not possible, he or she is counted as requiring a separate bedroom, as is any unpaired child under 10.
>
> This notional standard number of bedrooms is then compared with the actual number of bedrooms (including bed-sitters) available for the sole use of the household, and differences are tabulated. Bedrooms converted to other uses are not counted as available

rental sector, at 6% of households in those tenure categories.[163] The rates of overcrowding in London are the highest in the country, at 8%,[164] and trends in the south of England continue to move in upwards directions.[165]

c) Temporary Accommodation for Homeless Households including 'Bed and Breakfast' Accommodation

In December 2014, statistics record the highest number of households placed in temporary accommodation by local authorities in the last five years, and a 9% increase on the previous year.[166] Yet, by the 31st of December 2015, this number had risen again, representing a 12% rise December of 2014, and bringing the total to 69, 140 households.[167]

Temporary accommodation is vitally important to keep homeless individuals and families off the street. However, it is often profoundly unsuitable in the long term. Problematically, the operation of homelessness legislation means that families in temporary accommodation can be disadvantaged in gaining access to permanent and stable accommodation, as they can cease to be in 'priority need'.[168]

Placement in temporary accommodation occurs when there is no suitable long-term (for example social or private rental) accommodation available for the household.

While for many 'Bed and Breakfast' (B&B) accommodation conjures images of country weekends away, the Bed and Breakfast accommodation experienced by homeless or threatened homeless families in England cannot be understood in this cosy way. Rather, B&B accommodation offers extremely basic facilities, normally with shared bathrooms and kitchens, often of poor quality.[169]

Accordingly, the Homelessness (Suitability of Accommodation) Order 2003, states that B&B accommodation is not 'suitable accommodation' for families unless there is no other accommodation available and, even then, only for a maximum period of six weeks.[170]

Nevertheless, in England, the number of families with dependent children placed in B&B style accommodation increased from 630 at the end of March 2010 to 5,110 at the end of

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unless they have been denoted as bedrooms by the respondents; bedrooms not actually in use are counted unless uninhabitable.
Households are said to be overcrowded if they have fewer bedrooms available than the notional number needed. Households are said to be under-occupying if they have two or more bedrooms more than the notional needed.

English Housing Survey Headline Report, above note 52 at 70. The bedroom standard, though used to calculate overcrowding rates for statistical purposes, is one of two calculations of overcrowding provided for in the Housing Act 1985 in ss 324 – 326.

[163] *English Housing Survey Headline Report*, above note 52 at 28 and table 9.

[164] Mayor of London *Homes for London: The London Housing Strategy* (Greater London Authority March 2014) at 11.

[165] Homelessness Monitor 2016 above note 29 at pg 74.

[166] DCLG *Statutory Homelessness Statistics October to December Quarter 2014 England*, (DCLG 26 March 2015) at 1.

[167] DCLG, *Statutory Homelessness: October to December Quarter 2015 at 1.*

[168] See Housing Act 1996 Part VII.

[169] See the personal testimonials and descriptions of B&B Accommodation in the Local Government Ombudsman, *Report on an Investigation into Complaint Numbers 12 009 140 & 12 013 552 against Westminster City Council* (13 September 2013).

[170] SI 2003/3326.

December 2015 – an increase of 13% from a year earlier.[171] Of these, 870 households with children had been in bed and breakfast style accommodation for more than six weeks.[172] By December 31st 2015 the increase was 12% over the end of the same quarter of 2014.[173]

d) Numbers at Risk of Homelessness Higher

In 2013/14, 280,000 households in England were at risk of homelessness, a figure which represents a 9% increase on the previous year.[174] High housing costs, lack of adequate and affordable housing units, low wages, and cuts in state support mean that increasing numbers of families and individuals live in a situation of day-to-day insecurity.

Given that the combination of these factors places heightened pressures on already stressed and vulnerable households, the government should be taking measures to strengthen protection for these households.

Instead, recent legislative reforms, particularly those introduced under the Localism Act 2011 (which is discussed in more detail in section 4.1.4, below) represent a move towards a 'stop-gap' understanding of homelessness.[175] The ability of Local Housing Authorities (LHAs) to bring an end to their duties to the homeless without securing the consent of the person,[176] for example, represents a move away from a more holistic protection of individuals and households at risk of homelessness which takes account of the underlying drivers for homelessness, and the tools for its prevention. The definition of homelessness represents a statement about what society accepts as the minimum standard of adequacy below which no person's housing should fall.[177] Accordingly, narrowing the definition of homelessness or taking steps to exclude state duties for those who were previously considered homeless, diminishes social inclusion and equality.

Therefore, such legislative weakening fits uneasily with the state's obligation under the ICESCR to provide a right to adequate housing, rather than a right to mere shelter for those in particular crisis, as important as such assistance may *also* be. It is also problematic that the legislative safety net that provides protection for the homeless or threatened homeless has significant holes, and may fail to protect the vulnerable and most marginalized, as discussed in the next section.

4.1.4 A Safety Net with Significant Holes: The Problematic Legislative Framework for Protecting the Homeless and Measuring Homelessness

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[171] DCLG *Statutory Homelessness Statistics Oct – Dec 2015* above note 167 at 11.

[172] Ibid.

[173] DCLG *Statutory Homelessness Statistics Oct – Dec 2015* above note 167 at 11.

[174] Combining the figures on prevention and relief with those on homelessness acceptances reveals the increased number of households at risk of losing their home. See *Homelessness Monitor 2015*, above note 1 at 60.

[175] See for eg Bevan, above note 112 at 974.

[176] See the discussion in 4.1.4 below.

[177] Rossi & Wright, 'The Ghetto Underclass: Social Science Perspectives' (1989) 501 *Annals of the American Academy of Political and Social Science* 132 at 134.

Local Authorities in England have a statutory duty to house homeless individuals and households. The legislative picture is complex,[178] but specifically, the Housing Act 1996 imposes a main duty on Local Housing Authorities (LHAs) to house those who are *unintentionally homeless, and who are in priority need*.[179] Importantly, it covers not only 'roofless' individuals but those in overcrowded or other unsuitable accommodation and thus 'threatened' with homelessness.[180] The legislation thus provides an important recognition of manifestations of homelessness other than rooflessness based on rough sleeping figures. The threshold for making an application to be considered homeless is low, and, once made, imposes duties on the LHA. These duties include the provision of settled housing, the provision of adequate temporary accommodation during any waiting period for permanent housing, and the provision of measures for prevention and relief.

Despite these positive features, the legislation remains problematic both as a means of protecting the right to adequate housing of individuals and families, and of collecting statistics on levels of homelessness.

a) 'Homelessness Acceptances' as Misleading Statistic on Actual Numbers of Homeless

In its current (6th) Periodic Report to the CESCR, the UK government noted that 'homelessness acceptances' had fallen. Homelessness acceptances, however, are a poor indicator of actual levels of homelessness. In fact, the evidence demonstrates that increasing numbers of people are homeless or threatened with homelessness. As such, lower numbers of homelessness acceptances indicate that more people's right to adequate housing is being breached, and that the government is moving backward in fulfilling its obligations on the right, as the government is helping fewer individuals to enjoy their rights, while more people need this assistance.

Any individual who is homeless or threatened with homelessness may make an application to a local housing authority, and if accepted as homeless, the local authority will owe duties to provide for that individual or family unit.[181] Specifically, when local authorities find that an applicant is *unintentionally homeless* and is in *priority need*, this person is 'accepted' as homeless, and counted in the government's statistics.

However, this statistic does not equate to the number of people who find themselves roofless, or who are concealed within another household,[182] or who are threatened with imminent homelessness but who do not fit the narrow legislative criteria.

The UK government's own Statistics Authority has recently reported that statistics on homelessness in England required 'urgent actions', including 'presenting them in their proper context', as at present there is real concern that they fail to meet 'standards of trustworthiness, quality and value.'[183] In particular, the UK Statistics Authority review considered 'that the Statutory Homelessness statistics, presented as they are, without the

[178] See Cowan, *Housing Law and Policy* (CUP, 2011) at 151- 172.
[179] Housing Act 1996 Part VII particularly ss 190 – 196.
[180] Ibid.
[181] Housing Act 1996 Part VII particularly ss 190 – 196.
[182] See above Section 4.1.1.a.
[183] UK Statistics Authority, Assessment of Compliance with the Code of Practice for Official Statistics above note 116, foreword.

broader context of increasing local authority (LA) prevention and relief activity, are potentially misleading.'[184]

In addition, major housing charities in the UK state that the government's statistics based on homelessness acceptances are of 'limited value'[185] in apprehending the real scale of homelessness, as they exclude significant numbers of homeless or threatened homeless individuals. *Rather, drops in homelessness acceptances reflect changing administrative practices and weakening in the legislative safety net, as detailed below*.

The factors behind this exclusion include 'gatekeeping' by LHAs, and the problematic categories of intentionality and priority need, and b) recent changes under the localism act which weaken LHAs' duties.

Although the legislation on homelessness can provide good protection for some individuals, particularly those who are found to be unintentionally homeless and within the category of priority need, for those people who do not fit these categories, LHAs have no obligations or duties to house them. As such, these people cannot access the housing safety net. Thus in most instances, their only housing options will be in the private rental sector (PRS) which remains a problematic housing tenure, as discussed below in Section 4.2. 'Gatekeeping' by LHAs, though incompatible with the legislation,[186] can significantly skew the figures of 'homelessness acceptances'. In addition, those helped informally, whether by LHAs or by charities or civil society organisations, for example, are not reflected in the statistics.[187] *Importantly, therefore a drop in homelessness acceptances does not mean that homelessness, or the numbers of those at risk of homelessness, is actually declining*.

The categories of intentionality and priority need serve to narrow the legislative duty on LHAs. The categories of those in priority need are narrow, covering only:

> households with dependent children or a pregnant woman; those made homeless or threatened by homelessness due to a disaster such as flood or fire; those who are vulnerable because of old age, mental illness, handicap or physical disability or other special circumstance, those aged 16 or 17; those aged 18 to 20 and previously in care; those previously in custody; those previously in Her Majesty's Forces; or those who were forced to flee their home because of violence or the threat of violence.[188]

Intentionality operates so that some vulnerable individuals and families, and those who fall foul of the legislation in good faith through misunderstanding, for example,[189] remain ineligible for assistance or rehousing.

As commentators note, the statutory safety net works very well in straightforward cases, but can significantly disadvantage complex or difficult cases, and places a significant burden on the vulnerable, who have to prove their vulnerability. Thames Reach notes that:

> The statutory safety net works very successfully where the proof of statutory rights is easy to establish; e.g. where you are required to prove that you have

[184] Ibid at para 1.5.
[185] *Homelessness Monitor 2016*, above note 29 at 58 and 18.
[186] Ibid at 151 – 54.
[187] Ibid at 58.
[188] See Housing Act 1996 Part VII s 189 as amended by The Homelessness (Priority Need for Accommodation) (England) Order 2002.
[189] See for example *Ugiagbe v Southwark LBC* [2009] HLR 35.

> dependent children. It is less helpful where you have to prove not only circumstances, but vulnerability. For example a person with a physical disability has to prove that their disability makes them vulnerable "so that they may suffer in a situation where another homeless person would be able to cope without suffering". A process of assessment is required to ascertain vulnerability and this is carried out by the local authority to which the person has applied.[190]

Those who do not fall within the narrow categories of 'priority need' will be unable to benefit. Single people, and those with complex needs, are a poor fit within the legislative framework and LHAs report that they have 'struggled' to provide for the needs of these groups in many cases.[191] Thus, this is a safety net in which significant holes exist.

b) Recent Weakening of Local Authority Homelessness Duties

The already problematic legislation under the Housing Act 1996 is further weakened by recent legislative changes under the Localism Act 2011, which have served to make it easier for LHAs to discharge their homelessness duties, without necessarily remedying homelessness itself. Overall, these changes have a negative impact on the enjoyment of the right to housing in England. *They impact particularly on security of tenure, affordability, and the potential adequacy of housing*.

The Government's aim in making these changes was to increase the possibility for LHAs to bring an end to their housing duties.[192] Severe financial cuts facing Local Authorities operate as a significant push factor to use the legislation in this way, and there is evidence that LHAs have embraced the opportunity to bring their homelessness duties to an end under the Act.[193]

The Localism Act 2011 allows LHAs to discharge their duty to a homeless individual or household by making an offer of accommodation in the private rental sector, *even if the homeless individual does not accept that offer*. This significantly weakens the position of the homeless individual, who was previously able to remain 'statutorily homeless' and gain, for example, temporary accommodation, while waiting to access permanent social housing.[194] While the requirement that the private rental accommodation is 'suitable' takes account of factors which protect the elements of location, accessibility, and habitability, (such as links with carers, schools, employment and family)[195] and may act as a safeguard, the factors are not binding on the local authority, but merely indicative of the local authorities' judgement on whether accommodation is or is not suitable.

Notably, LHAs are increasingly placing homeless households outside their own districts: at the end of December 2015, just over one quarter of households in temporary accommodation were outside their local authority. The rate of increase of placements

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[190] Thames Reach *Homelessness Facts and Figures* (Thames Reach, 26 February 2015).
[191] *Homelessness Monitor 2016*, above note 29 at 18.
[192] Department for Communities and Local Government, *Local Decisions: A Fairer Future for Social Housing Consultations Document* (DCLG, November 2010) at para 6.7 – 6.9.
[193] Bevan, above note 112 at 971. See for example Oxford City Council, *Homeless Discharge into the Private Rented Sector Policy* (2013).
[194] Bevan, above note 112 at 970 – 972.
[195] Homelessness (Suitability of Accommodation) (England) Order 2012 No. 2601 Articles 2 and 3.

outside the local authority over the previous year was 17%.[196] *This is in potential violation of the location element of the right to housing under the ICESCR, if links with family, support or care networks, livelihood and educational opportunities are denied and disrupted*.

The likely result of the new legislation, combined with the budgetary pressure facing Local Authorities, is that people will remain equally vulnerable and ill-housed, but now fall outside the scheme of legislative protection. Such a situation illustrates that the Localism Act amendments to the Housing Act 1996 may represent a regressive step in the realisation of the right to housing.

Given the very real concerns with the quality, security of tenure, and affordability of the private rental sector in England (discussed in greater depth below Part 4.2), reliance on this sector to ensure the right to housing of homeless individuals is unlikely to ensure adequate housing in practice. It is more likely to lead to a repeating cycle of homelessness and vulnerability.

c) The English Legislative Regime Falls Well Below the Rights Protection Levels in Wales and Scotland

It is important to note that the English legislative regime contrasts strikingly with the legislative regime in both Scotland and Wales. In Scotland, the Homelessness (etc) Act 2003 makes housing an enforceable right,[197] and the CESCR recommended the UK government take it in to account as best practice in its previous Concluding Observations.[198] The legislation also removes priority need categories, and places an obligation on LHAs to house all those found unintentionally homeless. This is coupled with stronger emphasis on prevention and relief.

In Wales, the 2014 Housing (Wales) Act[199] imposes obligations on LHAs to take reasonable steps to aid any homeless household within 56 days. Priority need categories are no longer used, and the Welsh Government has committed to end the 'intentionality' text for households with children by 2019.[200] The legislation also sets out specific steps LHAs should take, which makes it easier for applicants to challenge the LHA's (in)action.

The Welsh and Scottish examples indicate that better legislative models for protecting the right to housing exist within the UK, and that households subject to the English model are significantly disadvantaged in their ability to have breaches of their right to housing redressed under the English legislation.

Key Recommendations: Homelessness

1. The government should take immediate measures to end homelessness, ensuring an adequate supply of affordable, permanent, decent, and habitable

[196] DCLG *Statutory Homelessness Statistics Oct – Dec 2015*, above note 167at 11.

[197] Amending the main housing legislation, the Housing (Scotland) Act (2003).

[198] CESCR, Concluding Observations on the United Kingdom of Great Britain and Norther Ireland, the Crown Dependencies and the Overseas Dependent Territories, E/C.12/GBR/CO/5 12 June 2009 para 29.

[199] Suspending the Housing Act (1996)

[200] Fitzpatrick et al, 'The Homelessness Monitor: Wales 2015 (Crisis 2015) at 18.

housing, by building and/or facilitating the building of at least 250,000 new homes per year.

3. In the absence of an adequate supply of affordable, decent and habitable housing, the government should take immediate measures to ensure affordability in the short-term through:
    a. the adequate provision of state benefits to those unable to afford housing costs; and
    b. sustained investment in existing affordable housing stock.

4. The government must take immediate measures to reduce the exceptionally high levels of street homelessness, including through:
    a. ensuring adequate numbers of hostel, or shelter, or emergency accommodation places;
    b. ensuring adequately resourced frontline support is available to all homeless or threatened homeless individuals and families;
    c. taking immediate legislative measures to strengthen security of tenure across the
        i. social housing sector; and
        ii. private rental sector ; and
    d. taking policy measures to ensure housing is affordable in line with recommendations 1 and 2 above.

5. The government should reform legislation to:
    a. ensure the statutory housing safety net provides meaningful assistance to all homeless and threatened homeless individuals regardless of 'priority need', and 'intentionality' taking the Welsh and Scottish legislation as best practice;
    b. reinstate the crucially protective link between the discharge of LHA homelessness duties and the provision of social housing to ensure all vulnerable individuals and families remain adequately and securely housed;.
    c. ensure Local Housing Authorities:
        i. cannot discharge their duties to the homeless through provision of private rental accommodation without the consent of the homeless person;
        ii. discontinue the use of inadequate, temporary accommodation such as bed and breakfast accommodation for homeless and threatened homeless individuals and, particularly, families.

6. The government should take immediate steps to improve and ensure the reliability, trustworthiness and value of the statistics used to measure homelessness with regard to
    a. rough sleeping;
    b. statutory 'homeless acceptances'; and
    c. local authority prevention and relief activities.

4.2 Private Rental Sector (PRS)

The private rental sector (PRS) in the UK has, in recent history, accounted for only a small part of the tenure picture.[201] However, the sector has grown rapidly, and set against a shrinking social housing sphere, and ever increasing house prices, the private rental sector now forms the second largest form of tenure in England, at 17% of the total households.[202] It remains a poorly regulated sector, with weak legislative controls.[203] For example, no checks are imposed on prospective landlords, and there is no requirement for a written tenancy agreement.[204]

The government has increasingly presented the PRS's expansion as based on lifestyle choice, and as a form of tenure suited to greater labour market mobility and flexibility.[205] While this may be the case for some economically empowered renters,[206] the overall context of private rentals suggests that the sector provides housing for a number of households, particularly families, for whom a private rental home is a source of anxiety over tenure security, cost, habitability, and quality, rather than a sought-after choice.[207] In addition, for those unable to access the housing safety net, discussed above, 4.1.4 the PRS is often the only option, rather than a choice.

More than one quarter of those households living in the PRS are in receipt of Housing Benefit, which subsidises their housing cost. This is a substantial increase since 2008-9 (when the figure stood at 19%)[208] indicating that issues of affordability in this sector continue, including for those who are employed.[209]

The majority of tenancies in the PRS are regulated by the Assured Shorthold Tenancy (AST). ASTs set a minimum tenancy period of six months, after which the tenancy can be renewed, or the landlord can terminate at will with two months' notice.[210] The landlord can increase the rent at the renewal period as he or she sees fit. A small number of tenancies, pre-existing 1990, continue to be regulated by the previous, rent-controlled legislation.

The major issues for enjoyment of the right to housing in the PRS are: the extreme poor quality of dwellings in the sector; lack of security of tenure, and specifically the worrying practice of the retaliatory or revenge eviction; and substantial barriers to accessing the sector, including affordability, discrimination against applicants living on benefits, and the 'right-to-rent' legislation.

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[201] Cowan, above note 178 at 51. See further Hughes & Lowe, *The Private Rented Housing Market: Regulation or Deregulation?* (Ashgate, 2007).
[202] *English Housing Survey 2013/14*, above note 3 at 13.
[203] Cowan, above note 178 at 53-4.
[204] Crisis, *Response to the Communities and Local Government Select Committee Inquiry into the private Rental Sector* (January 2013) at para 4.4
[205] Department for Communities and Local Government, *Improving the Rented Housing Sector*, (2013) at https://www.gov.uk/government/policies/improving-the-rented-housing-sector--2/supporting-pages/private-rented-sector.
[206] See van Lohuizen & Emmett, 'The Flyers and the Triers' (Shelter, March 2015) at 11.
[207] Shelter, *Consultation Response: Shelter's Response to the Review of Property Conditions in the Private Rented Sector* (March 2014) at 2. See further *Home Truths*, above note 1 at 15.
[208] *English Housing Survey Headline Report 2013/14*, above note 52 at 8.
[209] 10% of working households in the PRS are in receipt of housing benefit, up from 9% in 2009-10, See *English Housing Report 2013/14*, above note 3 at 70 and at Annex Table 4.1.
[210] Housing Act 1988, particularly s 5, as amended.

4.2.1 Quality

It is widely accepted that the quality of property in the PRS is poor.[211] The most recent government statistics reveal that 29% of the private rented sector is classed as 'non-decent.'[212] In unemployed households in the PRS, 43% lived in non-decent housing. Older renters, those who live alone, and those who have lived in their home for more than 10 years were also more likely to be in non-decent housing.[213]

It should be a matter of significant concern for the enjoyment of the right to housing that almost *one third of households in the private rental sector are living in housing that is substandard to the point that it is unsafe or unhealthy, and that vulnerable groups such as the elderly in the PRS face an increased incidence of non-decent living conditions*

Although the HHSRS risk assessment system provides a fairly sophisticated tool for the assessment of the quality of housing,[214] monitoring of quality in the private rented sector cannot in fact be considered rigorous:[215] there are no mandatory checks on properties, and investigations by local authorities into the adequacy of a property will normally only be taken at the instigation of the tenant, the implications of which are discussed below in 4.2.2.

A rigorous quality control regime should lead to substantial increases in quality, and thus in enjoyment of the right to housing in England, yet there are no adequate, binding, measures currently planned by the government.

4.2.2 Retaliatory Evictions – a Failure of Security of Tenure

Forced evictions are, *prima facie*, a violation of the right to housing under the ICESCR. Whether undertaken by private parties, or by state agents, any eviction taken for retaliatory or punitive purposes is in violation of the right.

Evictions, when carried out, should not negatively impact on other rights of the individual or family, particularly by rendering the person homeless. Yet, government statistics show that the loss of a private sector tenancy is now the single biggest push into homelessness in England.[216]

A major issue in this area relates to the insecurity of tenure in the PRS, and is, significantly, tied to the extreme poor quality of the sector, with one third of homes within it being classed as non-decent (see further above section 4.2.1). This is the issue of the retaliatory or revenge eviction.

A retaliatory eviction occurs where a private landlord takes steps to evict a tenant, normally by serving a section 21 possession notice under the Housing Act 1988 on an Assured

[211] See Cowan, above note 178 at 56; Gousy *Safe and Decent Homes: Solutions for a Better Private Rented Sector* (Shelter, 2015); *Shelter's Response to the Review of Property Conditions in the Private Rented Sector* above note 207 at 3.
[212] DCLG, *English Housing Survey Headline Report 2014/15* at 4, 32.
[213] English Housing Survey 2013/14, above note 52 at 80.
[214] *Housing Health and Safety Rating System: Guidance for Landlords* above note 52.
[215] Fitzpatrick et al, *The Homelessness monitor: England 2013* (Crisis, 2013) at 15.
[216] DCLG, *Statutory Homelessness: Jan-March 2015* above note 159 at 5.

Shorthold Tenancy (AST),[217] in response to a tenant's request that the landlord repair or improve the property, or when the tenant has involved the local authority's environmental health department in seeking improvements to the safety or quality of the property.[218]

Although there are no official statistics on retaliatory eviction, in part due to the unregulated nature of the PRS, major housing charities estimate that in 2014, over 200,000 private renters were evicted or served with an eviction notice 'because they complained to their landlord, letting agent or council about a problem that wasn't their responsibility.'[219] In addition, the fear of retaliatory eviction further disadvantages tenants who would otherwise seek repairs or improvements to a property,[220] and many may face a stark choice between inadequate, unsafe and unhealthy housing, and the risk of losing their home.

There are currently no adequate legislative or practical safeguards against retaliatory eviction. While the previous legislation allowed landlords to evict tenants without establishing any tenant fault, the Deregulation Act 2015[221] is a welcome legislative change, which has brought some safeguards into play. The new legislation provides that where a Local Authority has served a landlord with an improvement notice after a tenant has complained to it about poor conditions, the landlord is prevented from serving a section 21 eviction notice for a period of six months. The legislative change is welcome, but must be strengthened, as it depends upon the Local Authority having adequate resources to inspect premises and serve improvement notices in every case. In the overall context of the under-resourcing of Local Authorities, and the scale of the problem of retaliatory evictions, it is unlikely that these resources will be forthcoming.

Moreover, the short minimum term of six months on ASTs means that tenants have very little security of tenure in the first place. Practically, in a climate of undersupply (and thus high tenant demand) and with landlords able to demand increasingly high rents, there is an incentive for landlords to evict sitting tenants in order to raise rents for new potential renters.

4.2.3 Barriers to Accessing the Private Rental Sector

a) Affordability

The average rent in the PRS is almost double the average rent for houses in the social rental sector.[222] In fact, private renters experience the highest weekly housing costs of any tenure type.[223]

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[217] Housing Act 1988, particularly s 5, as amended.
[218] Wilson, *Retaliatory Eviction in the Private Rented Sector – Commons Library Standard Note SN07015* (13 February 2015) at 3.
[219] Gousey, *'Can't Complain': Why Poor Conditions Prevail in Private Rented Homes* (Shelter, March 2014). The RLA contests these figures, and cites alternative grounds upon which landlords have sought to evict. See Wilson, above note 218.
[220] Shelter, a major housing charity, reports that 12% of renters have not asked for a repair to be carried out or challenged a rent increase, for fear of eviction. *Shelter's Response to the Review of Property Conditions in the Private Rented Sector* above note 207 at 25- 26. See further Gousey, *'Can't Complain'* above note 219; Gousy *Safe and Decent Homes* above note 211.
[221] Deregulation Act 2015, ss 33 and 34.
[222] Weekly average rent in the social housing sector was £99 compared with £179 in the private sector. See *English Housing Survey Headline Report 2014/15*, above note 212 at 3, 15.
[223] *English Housing Survey 2013/14*, above note 3 at 14.

Over a quarter of those renting in the private sector are dependent on housing benefit to pay their rent. This is a substantial increase, from 19%, in 2008-09.[224] A number of these households – 18% - were reliant on housing benefit despite being in work.[225] Recent government statistics showed that one third of private renters were finding it difficult to pay their rent,[226] with 31% of those households citing the decrease in housing benefit or local housing allowance as a factor, along with 20% citing unemployment, and 25% mentioning their other debts and responsibilities.[227]

In addition to the monthly or weekly cost of rent, access to housing in the PRS will normally require paying agency fees, a tenancy deposit and advance rent.[228] In an already unaffordable market, these fees can prove prohibitive.[229] Moreover, the costs of tenancy deposits required by landlords are rising sharply, up 34% since 2007.[230]

Statistics show that the shorter one's tenancy, the more likely one is to be paying a higher level of rent.[231] Accordingly, affordability is impacted by short term tenancies. With over half of private renters having lived in their current address for less than two years,[232] it is evident that lower protection of tenancy is not only a security of tenure issue but an affordability issue, illustrating how all elements of the right to housing are interrelated and enjoyment of one will impact on enjoyment of others.

b) Discrimination Against Homeless People and Households on Benefits

Recent research on the PRS reveals that 55% of private landlords are unwilling to rent to tenants who are reliant on housing benefit.[233] A shocking 82% are unwilling to rent to homeless people.[234] There is evidence that landlords require additional 'safeguards' when they do rent to homeless people, such as a higher deposit, higher rent, and more stringent reference and guarantor requirements.[235] The government has an obligation to protect individuals from the discriminatory and rights-violating actions of private parties. In this context, it is clear that the government must take steps to ensure that homeless individuals and households can access housing without discrimination.

In addition, research demonstrates that cuts to social benefits, including housing benefit, are themselves drivers of the unwillingness of private landlords to rent to households in receipt of these benefits because it is perceived that these benefits are too low to allow the tenant to sustain the tenancy.[236] In light of this finding, it is incumbent on the government to ensure

[224] *English Housing Headline Survey Report 2014/15* above note 212at 19.
[225] Ibid at 20.
[226] *English Housing Survey 2013/14*, above note 3 at 74.
[227] Ibid.
[228] Gousey, *Home. No Less* at above note 6 at 6.
[229] Ibid at table 4.1.
[230] My Deposits 'Tenancy Deposits Rise by a Third Since 2007' (My Deposits, 4 August 2014) at xx.
[231] English Housing Survey Headline Report 2014/15, at 18 - 19).
[232] *Housing Survey Report 2013/14* above note 3 at 70.
[233] Reeve et al, *Homeless Peoples' Access into the Private Rented Sector* (Crisis, 2016). See also Gousey, Home. No Less above n 6 at v and 8-10.
[234] Reeve, et al, Ibid.
[235] Gousey, Ibid at 7. See also Reeve et al, ibid at xx.
[236] Gousey ibid at vii and at 9; Beatty et al 'Monitoring the Impact of Changes to the Local Housing Allowance System of Housing Benefit: Interim Report, Research Report 798 (Department of Work and Pensions, 2013).

that benefit levels remain high enough to enable individuals to sustain what is, given the current housing legislation discussed above in Section 4.1.4, for many the only available housing option.

c) The 'Right to Rent'

The 'Right to Rent' is now imposed on landlords, those taking in lodgers, and those sub-letting a property, across England under s 22 of the Immigration Act (2014). It requires landlords to refuse occupancy of their property as the only or main home of an adult individual unless he or she is a British Citizen, EEA or Swiss National, or has the 'right to rent' in the UK. The 'right to rent' is established when someone is present lawfully in the UK in accordance with immigration law.[237]

In order to comply with the legislation, the landlord must make certain checks for all adults living in the property, even if those adults are not named on the tenancy agreement, there is no formal tenancy agreement, or the tenancy agreement is not in writing. Checks involve the landlord viewing the visa documents and/or passports, or birth certificate and photo ID[238] of all occupants, checking that the documents are genuine and belong to the tenant, and making and keeping dated copies.[239] While the checks must be conducted before occupancy, the landlord has continuing obligations, particularly if the person's right to be in the UK expires during the tenancy.[240] Civil penalties of up to £3000 can be imposed on landlords who rent to someone who does not have the 'right to rent.' The 'right to rent' effectively deploys private landlords across England as UK immigration officials, with the aim of making the UK a 'hostile environment' for irregular migrants.[241]

The effect on tenants is heightened risk of discrimination against those tenants who 'appear' to be foreign, or who have complicated immigration status or documents, and increased costs associated with the tenancy. Both aspects make access to the PRS even more difficult particularly for the worst off and most vulnerable.

First, the 'right to rent' checks are resulting in direct discrimination against those who appear foreign, although in fact the legislation requires landlords to check every occupant. In its evaluation of the pilot scheme on the 'Right to Rent' the UK Home Office found that black and minority ethnic (BME) applicants had been asked to provide more information to

[237] See s 22 Immigration Act.
[238] Civil Society initiatives have resulted in a list of acceptable alternative documents, available at Home Office Right to Rent Document Checks: A User Guide (Home Office, 2016) at 3.
[239] Gov.UK 'Check your Tenant's Right to Rent' at https://www.gov.uk/check-tenant-right-to-rent-documents/who-to-check; Home Office, 'Summary of Guidance for Landlords: Right to Rent Checks' at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370559/guidance_0_summary_checklist.pdf.
[240] Home Office 'Summary of Guidance' Ibid.
[241] Alan Travis, 'Immigration Bill: Theresa May Defends Plans to Create 'Hostile Environment' The Guardian 10 October 2013 at http://www.theguardian.com/politics/2013/oct/10/immigration-bill-theresa-may-hostile-environment.

landlords, although in the end they were able to access housing.[242] The Joint Council for the Welfare of Immigrants (JCWI)'s independent review of the pilot 'Right to Rent' found that 42% of landlords said the requirements made them less likely to consider an applicant who does not have a British Passport, 27% were reluctant to engage with those applicants who had foreign names or accents, and that checks were not being undertaken uniformly, but were directed at those who appear foreign.[243] Similarly, the Residential Landlord Association (RLA) surveyed their members and found that 44% of landlords would only rent to those with familiar documentation.[244] This indicates discrimination against both foreign applicants, and also British applicants who lack passports, who, as the RLA noted are 'likely to be a higher portion of young people and the less well off.'[245]

Secondly, the 'right to rent' checks indirectly discriminate against vulnerable individuals. Many homeless individuals lack identity documents; women fleeing domestic violence may not have been able to take documents with them when they fled.[246] Applicants who cannot provide their documents immediately are further disadvantaged in a competitive rental market.[247] In addition, and in line with the legislation's stated aim, the Right to Rent further marginalizes and stigmatizes irregular migrants, who remain one of the most vulnerable groups in society, and who will be further driven to street homelessness, where the numbers of recent migrants remain startlingly high.[248] Finally, landlords and letting agents are entitled to charge a fee for conducting the checks, further increasing the cost of accessing a tenancy in the PRS. There is evidence that the fee charged may be higher for applications where the documentation is perceived to be complex,[249] thus the costs will likely be higher for minorities, vulnerable people who have fewer standard documents, and those with complicated immigration status.

Key Recommendations: Private Rental Sector

(1) The State must take immediate legislative measures to strengthen security of tenure in the private rental sector including through:

b) stronger and better resourced legislative measures to prohibit retaliatory evictions, including through preventing landlords from bringing eviction procedures as reprisal

[242] Home Office, Evaluation of the Right to Rent Scheme, Research Report 83 (Home Office October 2015) at 22 - 24.
[243] JCWI, 'No Passport Equals No Home: An Independent Evaluation of the 'Right to Rent' Scheme (JCWI, 3 September 2015) at 37.
[244] RLA 'Government Failing Landlords on Right to Rent' 1 Feb 2016 at http://news.rla.org.uk/news-rla-org-uk8424-2/
[245] Ibid.
[246] See Sarah Macfayden, 'The Unintended Consequences of the Right to Rent, Crisis Blog, 1 Feb 2016 at http://blog.crisis.org.uk/the-unintended-consequences-of-right-to-rent/
[247] JCWI found that 65% of landlords are much less likely to consider tenants who cannot provide documents immediately, JCWI, above note 243 at 43.
[248] Rough Sleeping Statistics reveal high numbers of rough sleepers are recent migrants to the UK, many of whom are ineligible for housing outside the PRS. See Rough Sleeping Statistics Autumn 2015, above note 115 at Table 3.
[249] JCWI, above note 243 at 50.

for well-founded maintenance and improvement requests where a property is in a serious state of disrepair or serious hazards are present;
   c) legislative measures to prohibit arbitrary or retaliatory rent increases; and
   d) increasing the minimum tenancy term of private rental agreements to give tenants security and stability.

2) The State must take immediate steps to ensure housing in the private rental sector meets the 'decent homes' standard including through:
   a) immediate and rigorous monitoring of the safety and quality of housing in the sector; and
   b) taking progressive steps, alone and in conjunction with the private sector, to improve the quality of housing in the sector through new building and improvements to existing housing stock.

3) The State must take steps to ensure affordability in the private rental sector including through:
   a) stimulating and creating new housing across tenure types;
   b) providing tenants with immediate legislative protection against arbitrary or retaliatory rent increases; and
   c) preventing private landlords form discriminatorily imposing higher costs on homeless applicants, applicants on benefits, and applicants who appear foreign or have non-straight-forward documentation under 'Right to Rent' checks.

4) The State must take steps to ensure that homeless and vulnerable persons can access housing without discrimination including through:
   a) prohibiting discriminatory letting practices against homeless households and households in receipt of housing benefit by private landlords;
   b) providing funding for private rented sector access schemes to assist homeless households and households in receipt of benefit into the PRS.
   c) preventing discriminatory checks in the 'Right to Rent' process;
   d) ensuring that welfare policy particularly cuts to benefits – does not create a barrier to access to housing.

5. Conclusions

The overall context for the enjoyment of the right to housing in England is one of crisis. Exceptionally high numbers of people are homeless, or vulnerable to homelessness. The current housing environment is characterised by profound issues of lack of supply, high and further increasing housing costs, cuts to social benefits and social housing, lack of security of tenure, and homes of such poor quality that they are unfit for habitation. These issues plague all of England's main housing tenure types: the owner occupied, the private rental, and the social housing sector. Housing insecurity affects not only people on low incomes, but broad swathes of the English population, who currently live in situations of insecurity and uncertainty.

In this context of crisis, the government is manifestly failing to meet its obligations to ensure the right to housing of its population, so that everyone can enjoy a standard of living in homes that are adequate, safe, and secure.

These failures can be seen strikingly in the areas of homelessness and in the private rental sector.

Homelessness is increasing, with numbers of rough sleepers, those using shelter and hostel accommodation, and the 'threatened' homeless rising. Rather than responding by strengthening the safety net for these most vulnerable of individuals, the government has cut back funding and weakened existing legislation. These actions represent regressive steps, a serious failure to respect, protect and fulfil the right to housing as required by the government's obligations under the ICESCR.

In the private rental sector, as many as one third of households are living in non-decent accommodation. The cost of a private rental is high, and for many, state support is needed to meet that cost even if the household is working. Supply can only be considered inadequate, and there are multiple barriers to accessing housing in the PRS The combination of these factors results in a private rental sector which is, despite government statements to the contrary, often the tenure of last resort, even where it often represents the only available option.

In these two areas, the government must respond by taking steps, in line with the key recommendations outlined in this report, to end the housing crisis and fulfil its obligations under the ICESCR for the right to housing of its population.

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