



Labour Campaign
for Human Rights

HOUSING IS A HUMAN RIGHT

How Labour can make it a reality

HOUSING IS A HUMAN RIGHT: HOW LABOUR CAN MAKE IT A REALITY

Edited by
Sheila Spencer, Labour Housing Group
and
Labour Campaign for Human Rights

Foreword by
Matthew Pennycook MP

With contributions from
Kathy Bole, Karen Buck MP, Dr Koldo Casla,
Liz Davies QC, Leilani Farha, Cllr Nick Forbes,
Martin Gallagher, Mark Griffin MSP, Steve Hilditch,
Dr Stuart Hodgkinson, Marianne Hood,
Baroness Alicia Kennedy, Sem Moema MLA,
Neil Munslow MBE, Giles Peaker, Cllr Amanda Pinnock,
Peter Roderick and Sheila Spencer

Additional editing and design by
Simon Hilditch

About

Labour Housing Group

LHG is a socialist society affiliated to the Labour Party, dedicated to developing housing policy that addresses the shortage of decent affordable housing across the UK.

www.labourhousing.org

Labour Campaign for Human Rights

LCHR believes that human rights are core Labour values. Its campaigns aim to foster debate and discussion within the Party about human rights and ensure they remain at the heart of Labour's policy and practice.

www.lchr.org.uk

Authors

The authors in this collection were invited to contribute because they have experience or expert knowledge of the issues involved. Some are Labour Party members; others are not but want to contribute in a non-partisan way to this important debate. Most are writing in a personal capacity.

Special thanks go to Steve from LCHR and Sheila from LHG for coordinating the project.

Foreword

In 1948, the post-war Labour Government signed the Universal Declaration of Human Rights (UDHR). That document set out, for the first time, the “equal and inalienable rights of all members of the human family”, affirming those rights as inherent, inalienable, and common to all peoples and all nations. It was a landmark moment in the global struggle to protect and enhance human rights.

Rebuilding their continent in the aftermath of the Second World War, the Council of Europe drew on the Universal Declaration when drafting their own European Convention on Human Rights and the Attlee government was the first to sign in Rome in 1950.

Subsequent Labour governments reaffirmed that commitment to human rights, culminating in the introduction of the Human Rights Act 1998, designed to “bring rights home” by defining and protecting in law a framework of moral principles, and the Equality Act 2010, which introduced the concept of protected characteristics and consolidated the prohibition of discriminatory behaviour.

How shameful then that, following a visit to the UK to investigate the state of British housing under the Conservative-led Coalition Government, the UN’s Special Rapporteur on the right to adequate housing from 2008 to 2014, Professor Raquel Rolnik, was forced to conclude that housing rights were being eroded across the board to the detriment of the most vulnerable. Sadly, under the Cameron, May and Johnson Governments things have got much worse.

The continuing relevance of human rights to housing is painfully apparent to anyone with experience of those at the sharp end of our country’s housing crisis. If the right to adequate housing were taken seriously there wouldn’t be families living in sub-standard temporary accommodation; social tenants forced to live in squalid conditions; and growing numbers of people without a home of any kind.

As Keir Starmer argued forcefully in his 2015 maiden speech focused on defending the Human Rights Act: “It will be those in low pay, those in poor housing, those with physical and mental health needs, the vulnerable, the put upon and the bullied...who will be the losers if we abandon the guarantee of equal rights for all”.

This excellent series of essays edited by Labour Housing Group and Labour Campaign for Human Rights is a timely clarion call to the Labour movement to refocus its efforts on re-establishing that guarantee, on securing decent, safe,

and stable homes for all, and on placing human rights at the centre of our policymaking.

While it does not represent Labour Party policy, I believe our party and our movement can draw extensively on the ideas, examples and principles outlined within when thinking about how a human rights approach to housing can help us make decisive progress toward tackling the housing crisis.

Matthew Pennycook MP
Shadow Minister for Housing and Planning
March 2022

Contributors

KATHY BOLE is a disability activist and life-long trade unionist in the United States with the CWA and with Unison in the UK, Chair of Disability Labour, Chair of Suffolk Coalition of Disabled People and Co-Chair of Chronic Illness Inclusion.

KAREN BUCK MP has been a Labour MP (for Regent's Park and Kensington North and then for Westminster North) since 1997. She is currently Shadow Minister for Social Security. Karen's Private Member's Bill received Royal Assent as the Homes (Fitness for Human Habitation) Act which came into force on 20 March 2019. She was named Child Poverty Action Group's 'MP of the Year' in recognition of her work to alleviate conditions of young families living in poverty.

DR KOLDO CASLA is a Lecturer at the School of Law of the University of Essex, and the Director of the Human Rights Centre Clinic. Between 2017 and 2019, he co-drafted the first Bill on Economic, Social and Cultural Rights in the UK at Newcastle University, while he was the Policy Director of the social rights NGO Just Fair. He holds a PhD in European and International Studies from King's College London.

LIZ DAVIES QC is a barrister specialising in housing and homelessness law at Garden Court Chambers. She is co-author of Housing Allocation and Homelessness: Law and Practice (LexisNexis, 6th edition forthcoming), a member of the Society of Labour Lawyers and contributor to the Society's recent publication Proposals for Housing Law Reform. She is due to be appointed Queen's Counsel in March 2022.

LEILANI FARHA is a former UN special rapporteur on the right to adequate housing and is now the Director of The Shift, focused on securing the human right to housing around the world. She is the co-host of PUSHBACK Talks, a podcast about finance, cities, housing and human rights. Her final report as the UN Special Rapporteur is "Guidelines for implementation of the right to adequate housing".

CLLR NICK FORBES is Labour Leader of Newcastle City Council. He negotiated one of the first City Deals with government and helped secure a devolution deal for the North of Tyne. His current roles include Vice Chair of Tyne and Wear Fire and Rescue Authority, Chair of the Core Cities, and Competitiveness portfolio holder for the North of Tyne Combined Authority. Nick is the Leader of Labour in local government, sits as a member of the Shadow Cabinet and is a member of Labour's NEC.

MARTIN GALLAGHER is an Irish Traveller, and is now currently undertaking his PhD fellowship, as well as his role as a researcher with Northumbria University. He works to raise awareness of inequalities that Gypsy, Roma and Traveller communities face and is an activist for equality.

MARK GRIFFIN MSP is a Member of the Scottish Parliament for Central Scotland and Scottish Labour's Shadow Cabinet Housing and Local Government Spokesperson.

STEVE HILDITCH has been a Labour member for 50 years and an LHG member for 40 years. He is a former assistant director for a London borough and Head of Housing Policy for Shelter, drafted Ken Livingstone's first London housing strategy and was adviser to several Select Committees. He founded the Red Brick Blog, publishing a compendium book in 2020, and was co-editor of LHG's 2021 'Missing Solution' report.

DR STUART HODKINSON is an academic and campaigner focusing on different dimensions of the housing crisis. He has been based at the University of Leeds since 2005 where he is Associate Professor in Critical Urban Geography. Stuart's research covers the politics, policies and lived experiences of housing privatisation and regeneration. Stuart first became involved in housing activism in 2006 in Leeds when he supported a local residents' association's struggle against a housing PFI scheme that threatened their homes.

MARIANNE HOOD has worked with and for tenants' groups across England for over 35 years. A founder member and former Chair of LHG and founding Director of the Tenant Participation Advisory Service for England, she pioneered many aspects of tenant involvement and helped set up and was a member of the Board of the Independent Housing Ombudsman Service. She also chaired the National Housing Forum and the (Labour) Government's Advisory Panel for the Beacon Scheme.

BARONESS ALICIA KENNEDY had a 25-year career operating at the highest level of politics in local government, in parliament, as a former Deputy General Secretary of the Labour Party, Labour Leader advisor and Chief of Staff to the Deputy Leader. She leads Generation Rent, the campaign to ensure every home in the private rented sector is safe, secure and affordable. She was made a life peer in 2012.

SEM MOEMA MLA has represented the North East constituency on the London Assembly since 2021, as a Labour and Cooperative Assembly Member. She is the housing lead on the London Assembly's Housing Committee. A longstanding

campaigner for better regulation of the private rented sector and a Labour programme of council housebuilding, Sem has also chaired London Labour Housing Group since 2020. She is also the Mayoral Advisor for the Private Rented Sector and Affordability in LB Hackney.

NEIL MUNSLOW MBE has worked for Newcastle City Council since 1989 and is Service Manager for Active Inclusion Newcastle, which supports residents to have the foundations for a stable life: somewhere to live, an income, financial inclusion and employment. He chaired the Eurocities Homelessness Group between 2009 and 2011. Newcastle were the Government's 2008 Regional Homelessness Champions, 2009 Rough Sleeping Champions, 2016 Homelessness Prevention Trailblazer and in 2020 won the World Habitat 2020 Gold Award for their work on homelessness prevention. Neil was awarded an MBE for services to local government in 2011.

GILES PEAKER is a solicitor specialising in housing law at Anthony Gold Solicitors. He is co-author of *Housing Conditions: Tenants Rights* (LAG 7th Edition) and editor of the *Nearly Legal: Housing Law News and Comment* website.

CLLR AMANDA PINNOCK is a qualified Housing Solicitor, employed by a charitable organisation and representing the public on evictions, welfare issues, disrepair and homelessness. She is a councillor representing a ward in Huddersfield on Kirklees Council, and is currently a member of the Housing Scrutiny Panel looking at social housing, safety and risk and improving the experience for tenants and leaseholders.

PETER RODERICK is a researcher in the Population Health Sciences Institute at Newcastle University and a barrister. He has worked for nearly 40 years in private practice, the oil industry, as a public interest environmental lawyer, and, since 2012, as an academic researcher specialising in health and pharmaceutical law. He coordinates the Article 22 initiative to develop a Bill to put economic, social and cultural rights into domestic law.

SHEILA SPENCER has worked in housing for 40 years, primarily in homelessness and housing needs, including stints in housing advice, homelessness services, academia, training, and consultancy. As Secretary of Labour Housing Group since 2018, she has been working to push housing up the political agenda, and is currently leading the LHG campaign to get housing to be recognised as a human right in England.

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Introduction

"You can make your home the base for your adventures, but it is absurd to make the base itself an adventure"
- Aneurin Bevan, 'In Place of Fear'

In recent years it has become common for senior Labour figures to describe housing as a human right. In his leadership campaign, Keir Starmer declared that "we have to start treating housing as a fundamental human right"¹, while Andy Burnham has said he wants to "make safe and affordable housing a human right in UK law."² At Labour Party Conference in 2021, Lucy Powell, then Labour's Shadow Secretary of State for Housing, declared that "housing as a human right [will be] at the heart of our New Settlement,"³ while delegates unanimously passed a motion in support of this goal.⁴

At the same time, however, many people find themselves asking what such declarations really mean in practice. Is talk of human rights merely rousing rhetoric, a throw-away applause line, or does it represent something more? Are human rights just pleasant words, or can they be a tool to transform peoples' lives?

This publication, coordinated by Labour Housing Group and the Labour Campaign for Human Rights, brings together academics, advocates and politicians from inside and outside the Party to share ideas about what it could mean were a future Labour Government to put human rights at the heart of its housing strategy. It seeks to demonstrate what difference could be made when homelessness and inadequate housing are considered not merely as social problems, but as violations of our most fundamental human rights. The contributions are not intended to be conclusive or definitive, but to illustrate and to provoke discussion and debate.

In the opening chapter, Dr Koldo Casla from the University of Essex outlines what the human right to adequate housing means in international law, noting how 'social rights' such as housing, food and social security have yet to be protected in domestic law in the same way that the Human Rights Act has done for our civil

¹ Keir Starmer MP, 24 December 2019. See: bit.ly/hiahr-intro1

² The Times, 'Should housing be recognised as a human right in the UK?', 12 September 2021. See: bit.ly/hiahr-intro2

³ Lucy Powell MP, Labour Party Conference, 26 September 2021. See: bit.ly/hiahr-intro3

⁴ Conference Arrangements Committee, 26 September 2021. See: bit.ly/hiahr-intro4

and political rights. These most basic rights, writes Dr Casla, have not yet been brought home. Leilani Farha, formerly the UN's leading housing expert, highlights the positive impacts of Canada's recent moves to recognise the human right to housing in domestic law, as well as other experiences around the world including in Finland, Portugal and Argentina. Closer to home, she notes progressive moves being made in this regard in both Scotland and Wales - and calls on England to follow suit.

The following chapters highlight problems and potential solutions in relation to a number of core elements of the human right to housing – notably the right to affordable, secure and decent homes. Steve Hilditch, LHG founder member, highlights how “the means exist to bring about a rapid expansion in the supply of social rented housing”, while Sem Moema MLA argues that rent controls could be a key tool to help the 2.4 million private renters in London who spend on average more than 40% of their income on rent. Baroness Alicia Kennedy, Director of Generation Rent, calls for action to end the chronic insecurity faced by millions of tenants who may fear ‘no-fault’ or ‘revenge’ evictions, while Mark Griffin MSP highlights how some steps have already been taken to reduce this insecurity in Scotland, albeit without also improving affordability or reducing waiting lists.

“A human rights approach can offer a powerful, long-term and legally binding framework that maintains a sharp focus on key issues that enable a life of dignity, while forcing us to confront the gaping inequalities that scar our society.”

Karen Buck MP, the driving force behind the Homes (Fitness for Human Habitation Act) Act passed in 2019, highlights how nearly 1 in 4 private homes are still estimated to be ‘non-decent’, while Dr Stuart Hodgkinson from the University of Leeds highlights the shocking human rights violations inflicted on the victims of the Grenfell Tower disaster. He calls for a transformation of building safety with an approach “that places the

onus firmly on the state to create and police a safety-first regulatory environment and act on behalf of residents living in unsafe homes.”

Demonstrating the decisive role local authorities can play, Councillor Nick Forbes and Neil Munslow from Newcastle City Council write about how their ground-breaking work to prevent homelessness in the city has been influenced by key human rights principles, making key progress despite facing brutal funding cuts from central government.

The principles of equality and non-discrimination are central to any serious human rights approach, just as they are to the values of the Labour Party. Councillor Amanda Pinnock writes about the extra barriers and sharp inequalities faced by women and ethnic minorities, highlighting the impact of domestic abuse, lower incomes and disproportionate experiences of substandard housing. Kathy Bole from Disability Labour and Sheila Spencer from Labour Housing Group highlight the centrality of adequate housing to a life of dignity and autonomy for disabled people, and contrast this with the reality that over 400,000 wheelchair users are living in homes that are neither adapted nor accessible. Martin Gallagher, an Irish Traveller and researcher, describes the persistent housing discrimination and neglect of Gypsy, Roma and Traveller communities that have led to unacceptable outcomes in both physical and mental health, which will only be made worse by the government's Policing, Crime, Sentencing and Courts Bill.

In the following chapters, contributions focus on key principles that are critical to any serious human rights policy, but often neglected in practice – participation, accountability, remedy and legal obligations. Marianne Hood, a long-term campaigner for tenants' rights, calls for legislation to ensure the participation of people affected by housing policies and decisions, because they "are best placed to identify the housing problems and shortcomings they face." Liz Davies QC and Giles Peaker QC highlight the need to better enforce housing rights, including through enhanced legal aid, as well as to follow Scotland in abolishing the 'intentionality' test when providing support to people who are homeless. Finally, Peter Roderick from Newcastle University shares ideas of how legislation could be developed to include the right to adequate housing in UK law, concluding that "There are many good reasons for putting housing and other social rights into domestic law...The question is not whether to do so, but when, and how."

Of course, a human rights approach does not provide a magic bullet to solve Britain's housing and homelessness crisis, nor a replacement for good policies, effective politics or a progressive Labour government. What it can offer is a powerful, long-term and legally binding framework that maintains a sharp focus on key issues that enable a life of dignity, while forcing us to confront the gaping inequalities that scar our society. It can also go hand in hand with the drive towards achieving net zero. And by reframing housing as a right rather than a commodity, it demands that governments do not ask themselves whether to put an end to homelessness, but how it can be done.

We are extremely grateful for the valuable contributions of our expert authors, and hope that their ideas and passion will help us all focus on how Labour can make the human right to housing a reality as we aim to form the next government.

Housing as a Human Right – what does it mean?

Dr Koldo Casla

“The right to housing should be defined as the right to live in a home in peace, security and dignity, and include security of tenure, availability of services, affordability, habitability, accessibility, appropriate location and cultural adequacy.”

- UN Guidelines for the implementation of the right to adequate housing

A house is much more than a ceiling, four walls and a floor. A house is also the space where people develop their personalities, realise their dreams, grow their families, build communities, and flourish as citizens. Adequate housing is a human right, and it is a condition for the fulfilment of many other human rights.

The right to adequate housing has been described as “the right to live somewhere in security, peace and dignity”.¹ It is also clearly intertwined with other human rights, such as the rights to health and social security. The right to adequate housing is also closely connected to the right to home, which is part of the right to private and family life, and considered to be “of central importance to the individual’s identity, self-determination, physical and moral integrity”.²

Adequate housing is recognised as a human right in international legal standards voluntarily subscribed to by the United Kingdom in exercise of its national sovereignty. A central component of the right to an adequate standard of living, adequate housing can be found, among others, in Article 25 of the 1948 Universal Declaration of Human Rights, and in Article 11 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).

However, by and large the right to housing and other social rights recognised in international law have not yet been incorporated into UK law. Largely absent from the Human Rights Act, for example, the human rights to health, housing or social security have not been brought home. This is not only a problem in regard to Britain falling short of meeting its international obligations; it also has harmful consequences for people living in the UK. The actions and omissions that lead to homelessness, generalise unfair evictions, or push people to live in squalid conditions are not just poor social policies; they are also human rights violations.

¹ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: Right to Adequate Housing (1991), para. 7. See: bit.ly/hiahr-casla1

² European Court of Human Rights (ECtHR), *Connors v United Kingdom*, Application No. 66746/01 (Judgment of 27 May 2004), para. 82. See: bit.ly/hiahr-casla2

In order to ensure that the UK's laws, policies and practices are consistent with the human right to adequate housing, it is necessary to fully consider seven internationally accepted criteria, many of which are explored further throughout this publication. These are:

- Legal security of tenure, including protection from forced evictions;
- Availability of services, materials, facilities and infrastructure essential for health, security, comfort and nutrition;
- Affordability, including protection from unreasonable rent levels and increases;
- Habitability, in terms of protection from cold, damp, heat, rain, wind and other threats to health and safety;
- Accessibility, paying particular attention to the requirements of groups and individuals at greater risk of harm, disadvantage and discrimination;
- Location, allowing access to employment, healthcare services, schools, transport and other facilities; and
- Cultural adequacy, recognising and expressing the cultural identity and diversity of the population.³

Crucially, it would also mean ensuring that those affected by housing policies have a voice in their development, and those whose rights have been violated have ways of seeking remedy and holding authorities to account.

Under international human rights law, public authorities bear the responsibility to prove that they are putting in place the most appropriate policies, and allocating their resources in the most strategic way to progressively fulfil the right to adequate housing. There is an expectation that public authorities will move as quickly and effectively as possible to improve the general enjoyment of social rights such as housing in society.⁴ Deliberate retrogressive measures like the bedroom tax, reductions in housing allowance, and other so-called welfare reforms over the last decade are also not compatible with social rights⁵, and the application of legal protections of these human rights may have helped prevent them.

³ CESCR, General Comment No. 4, para 8. See: bit.ly/hiahr-casla1

⁴ Article 2(1) ICESCR; CESCR, General Comment No. 3: Nature of States Parties' Obligations, contained in UN doc. E/1992/23 (1991). See: bit.ly/kiahr-casla4

⁵ UN Special Rapporteur on Extreme Poverty and Human Rights (Philip Alston), Report on the UK, UN doc. A/HRC/41/39/Add.1 (2019). See bit.ly/hiahr-casla5

Human rights duties extend to all branches, all public authorities and all levels of government, central, devolved, national and local.⁶ My own research in Newcastle showed that, despite austerity and local government funding cuts, both introduced by central government, when there is good will, local authorities can achieve positive results in allocating their resources strategically towards reducing homelessness and protecting the right to housing.⁷

“Human rights are, above all, what we need in order to be truly free and to make a meaningful contribution to our society.”

Fulfilling the right to adequate housing requires changes in policy, but also increased investment. If we take the right to adequate housing seriously, public authorities are expected to make use of the “maximum

available resources” at their disposal with a view to progressively achieving the full realisation of the right.⁸ Some of those resources will be public; some others will be privately owned. That is why it is so important to have a public conversation about the taxation we need to ensure that everyone contributes their fair share. Britain has the sixth largest economy in the world; advanced economies have the necessary resources to ensure an adequate standard of living for everyone, including decent housing, and we should not tolerate anything less than that.

Enhancing the legal status of human rights does not take power from the people to give it to judges. On the contrary, human rights are a democratic victory. Human rights enshrine in the law the standards that a society believes everyone should be entitled to. They also set up a roadmap for public policy, a series of benchmarks to track progress, and a system to sound the alarm when there are backwards steps.

Human rights also help us – researchers, campaigners and concerned citizens – to hold the government to account about their direction and speed of travel. Human rights are about ensuring that public authorities are transparent and actively seek our opinion about what they are doing. Taking human rights seriously means paying particular attention to the needs of groups and individuals that suffer discrimination and who pay a heavy price for the inequalities in our society. The person who earns too little to pay the rent, or who

⁶ Article 28 ICESCR; Article 50 of the 1966 International Covenant on Civil and Political Rights; UN CESCR, General Comment No. 9: The domestic application of ICESCR, UN doc. E/C.12/1998/24 (1998), para. 9; UN Human Rights Committee, General Comment No. 31: The nature of the general legal obligation imposed on State Parties to ICCPR, UN doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 4.

⁷ K Casla, Making the right to housing real in Newcastle How can Newcastle City Council implement the internationally recognised right to adequate housing to end homelessness? (June 2021). See: bit.ly/hiahr-casla7

⁸ Article 2(1) ICESCR. See: bit.ly/kiahr-casla4

lives in an overcrowded flat, is not a free citizen. Human rights are, above all, what we need in order to be truly free and to make a meaningful contribution to our society. And that's why we need to bring home the right to adequate housing.

Housing as a Human Right: Experiences around the world

Leilani Farha

*“Housing is a human rights issue — it makes or breaks us.
It is the difference between life and death.”¹*

While there is barely a country in the world without an urgent need to ensure that the human right of everyone to adequate housing is respected, protected and fulfilled, in recent years there are encouraging signs that at least some countries are beginning to rise to the challenge more seriously.

When I began my mandate as the UN’s Special Rapporteur for the Right to Adequate Housing in 2014, I noted that little progress had been made in making this right a reality for over one billion people. This holds true still. Despite the substantial guidance international law has provided, there has been a severe lack of progress on the right to housing around the world. At the domestic level, this right has been neglected in the design of public policy, there has been a lack of government commitment, and an absence of necessary resources due to the prioritization of the interests of wealthy investors over the human rights of others. The global state of housing, tied so inextricably to dignity, security, and to life, is in crisis.

While the global crisis continues, made worse in fact by the pandemic, there are increasing examples around the world – including from my own country, Canada – that show that progress can be made when human rights are put at the heart of efforts to ensure a safe and decent home for all.

Putting human rights at the heart of Canada’s National Housing Strategy

On 21st June 2019, Canada’s National Housing Strategy Act was given Royal Assent, and for the first time incorporated the country’s obligations to uphold the right to adequate housing into domestic law.² This was something I described at the time as a model that “can serve as an example for countries all over the world.”³

¹ Leilani Farha, UN Special Rapporteur on the Right to Housing. See: unhousingrapp.org

² National Housing Strategy Act (Canada). See: bit.ly/hiahr-Roderick1

³ OHCHR, ‘Canada: New rights-focused housing policy shows the way for other countries, says UN expert’. See: bit.ly/hiahr-farha3

The NHS Act embedded into law Canada's National Housing Strategy, first announced in November 2017, which committed to "progressively implement the right of every Canadian to access adequate housing," reduce homelessness by 50% within a decade, and to introduce legislation to require future governments to implement rights-based strategies.⁴ Following a mass campaign from civil society organisations, the Act also included the creation of meaningful accountability mechanisms – to ensure the government's record could be challenged and reviewed in an ongoing way.

While the NHS Act does not give individuals the right to a court order forcing them to be adequately housed, it does enable citizens to hold the Government to account through means such as a Federal Housing Advocate and a National Housing Council - an expert Review Panel. These bodies will hear cases about systemic issues and barriers to adequate housing, to which the Federal Government must respond in a meaningful fashion within set time limits. The National Housing Council also has the role of advancing the National Housing Strategy, providing advice to the relevant Minister, and monitoring the progress of the Strategy, in order to improve housing outcomes.

While it remains far too early to know the longer-term impact of the NHS Act, there are signs of promise. Issues of homelessness, house prices, and how to control the housing market were at the forefront of the 2021 Federal Election, and the Government has created a Ministry of Housing. There are now targets to end chronic homelessness and build more affordable housing. Perhaps most significantly, investment in housing has increased.

"Progress is not always inevitable, and has to be won."

Of course, it has not all been plain sailing. The government has not ensured that lived experience or expertise with respect to the right

to housing is well represented within the membership of the Housing Council, or by the Federal Housing Advocate, who after considerable delay was finally appointed in February 2022. And perhaps most importantly, the government has yet to revise and implement its housing policy to ensure it is consistent with the standards and obligations established under the right to housing in international law.⁵ These are key reminders that progress is not always inevitable, and has to be won.

⁴ Canada's First National Housing Strategy. See: placetocallhome.ca

⁵ Letters of Concern, The Shift and National Right to Housing Network. See: bit.ly/hiahr-farha51; and bit.ly/hiahr-farha52

It is important to highlight that the passage of the NHS Act itself did not just happen, but was the result of over 30 years of campaigning, grassroots advocacy, engagement with UN human rights bodies and court challenges, all in a country which was previously vocal in saying it would not follow this path. This collective organizing meant that when there was an opening, and the government was ready to re-engage on housing, civil society was organized and at-the-ready to help pave a human rights-consistent path forward.

The bumps in the road remind us that legislation is never enough, can only be the start, and does not replace the need for good policies, progressive politics and strong accountability mechanisms. While human rights legislation may set the framework and obligations, it needs to be accompanied by training on what it means in practice, how other policies should be funnelled through this framework, and what resources are required to drive change. Human rights must be seen as a carrot, not a stick. A way to govern, such that every decision taken by the state moves forward the right to housing.

The human right to housing around the world

Beyond Canada, there is also promise. Over 80 constitutions around the world include a right to housing⁶, in reality many of these lack the necessary legislation or policies to implement or enforce it. While such provisions have been beneficial in a number of countries, such as in South Africa, France and Brazil, in too many contexts the rights conferred on paper have remained too theoretical. Things may be changing, however, and beyond Canada there is important work being done to embed the human right to housing in countries including Portugal, Finland and Argentina – as well Scotland and Wales.

In keeping with a recommendation I made to the government of Portugal after a country visit in Portugal in my capacity as UN Special Rapporteur, the government of Portugal approved the Framework Law for Housing (Lei de Bases da Habitação) in September 2019, following a process launched by the Portuguese Parliament in 2017. The Basic Housing Law emphasises the "social function" of housing, and has explicit goals to eradicate homelessness, as well as prioritising the use of public real estate for affordable housing, and prohibiting tenant evictions across Lisbon unless the state is able to provide similar accommodation nearby. The law is seen as a foundation and roadmap for future policies.⁷

⁶ Michelle L. Oren and Rachelle Alterman (2022), 'The Right to Adequate Housing Around the Globe: Analysis and Evaluation of National Constitutions'. See: bit.ly/hiahr-farha6

⁷ Peter Yeung, 'Portugal makes housing a right', Pacific Standard. See: bit.ly/hiahr-farha7

In Finland, Article 19 of its Constitution includes obligations to legislate for the protection and fulfilment of economic and social rights, which has contributed to an approach that considers homelessness “as a housing problem and a violation of fundamental rights, both solvable, and not as an inevitable social problem resulting from personal issues.”⁸ Finland is the pioneer of the ‘Housing First’ approach to tackling homelessness that is rooted in human rights, centred around a commitment to housing people as quickly as possible, then providing dedicated support to whatever needs they may have, rather than making housing conditional on other factors. As a result, Finland has seen consistent reductions in homelessness for over a decade and is set to eliminate homelessness by 2027, three years ahead of schedule.⁹

“Over 80 constitutions include a right to housing. In reality many of these lack the necessary legislation or policies to implement or enforce it.”

In Argentina, courts have been able to intervene to protect occupiers, and to raise standards of habitability, following the incorporation of international human rights law directly into the constitution.¹⁰ However, during a 6-day human rights investigation in Buenos Aires carried out in 2020, we found despite a very robust legislative framework from which to work, lives are at serious risk due to the extremely precarious and grossly inadequate housing conditions in which many are living.¹¹

Closer to home for British readers, there are interesting developments within the devolved nations. In Wales, proposals for adopting a direct and indirect approach to incorporating the right to housing into Welsh legislation have been put to Ministers following a detailed feasibility study.¹² In Scotland, the Scottish Government plans to introduce a Bill to embed civil, political, economic, social, cultural and environmental human rights into Scots law¹³, and has made a commitment to realise the right to adequate housing in its ‘Housing to 2040’ strategy.¹⁴ Such initiatives could surely serve as a source for reflection right across the UK.

⁸ FEANTSA, quoted in: bit.ly/hiahr-farha8

⁹ Finland Overview, Housing First Europe Hub. See: bit.ly/hiahr-farha9

¹⁰ Visit to the Metropolitan Area of Buenos Aires: End of Mission Statement, The Shift. See: bit.ly/hiahr-farha10

¹¹ Buenos Aires: Right to housing failures puts lives at risk, The Shift. See: bit.ly/hiahr-farha11

¹² The Right To Adequate Housing In Wales: Feasibility Report, Shelter Cymru. See: bit.ly/hiahr-farha121 and bit.ly/hiahr-farha122

¹³ New Human Rights Bill, Scottish Government. See: gov.scot/news/new-human-rights-bill/

¹⁴ Housing to 2040, Scottish Government. See: gov.scot/publications/housing-2040-2/

A paradigm shift

The global housing crisis is stubborn. In order to change the circumstances of the 1.8 billion people across the planet currently living in grossly inadequate housing and homelessness will require more than just tinkering around the edges with a progressive policy here and there. A seismic shift is required: one that repositions housing as a fundamental human right and not a financialised commodity, that holds governments accountable to their international human rights obligations, and that understands the implementation of the human right to housing will create more equal, peaceful and sustainable cities.

With growing examples around the world, I am hopeful that this paradigm shift will take place, and urge the UK to put itself at the forefront.

Human rights and affordable homes

Steve Hilditch

“Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised.”
- UN Committee on Economic, Social and Cultural Rights, General Comment 4.¹

Under the *Agenda for Sustainable Development*² and the *New Urban Agenda*³, States have committed to ensuring access for all to adequate, safe, and affordable housing by 2030. If these historic commitments are to be taken seriously, and not become hollow promises, each State must design and implement a human rights-based housing strategy.

Yet in the sixth largest economy in the world the assault on dignity that is represented by homelessness, bad housing, and unaffordability is still accepted as a fixed feature, indeed an inevitability. If the UK can't deliver the right, how can much poorer nations be expected to do so?

The UK has failed to deliver a sufficient number of new genuinely affordable homes or to ensure that existing homes remain affordable as rents have risen and benefits have been cut. The UK does not meet the obligation under international human rights law to ensure that housing costs do not threaten the satisfaction of other basic needs, as a growing number of households have been forced to choose between paying the rent, heating their home or buying food and essentials.

Homelessness is the most severe manifestation of the failure to meet housing need. Although the number of households becoming homeless fell temporarily during the pandemic, in 2021 we still have around 96,000 households living in temporary accommodation in England, often for many years, including 124,000 children.⁴

These official figures are themselves the tip of the iceberg of housing need, with many more households staying with friends, sleeping rough or living in unfit, overcrowded, or insecure accommodation. Over 1 million households are on

¹ CESCR General Comment 4: The Right to Adequate Housing, para 8c. See: bit.ly/hiahr-casla1

² UN Sustainable Development Goals. See: globalgoals.org

³ Habitat New Urban Agenda. See: habitat3.org/the-new-urban-agenda

⁴ Households in temporary accommodation (England), By Wendy Wilson and Cassie Barton 23 November 2021. See: bit.ly/hiahr-hilditch4

local authority housing waiting lists.⁵ Nearly half of people in the poorest fifth of the working-age population spend more than a third of their income (including Housing Benefit) on housing.⁶ One estimate puts the number of households in the private rented sector that are under housing stress at over 2 million.⁷ Prior to the pandemic emergency (and temporary) suspension of evictions, the ending of a private rented tenancy was the largest single reason for homelessness.

Clearly the application of human rights in housing does not infer a right to any particular 'solution', for example to a public sector home, and appropriate solutions should be closely related to the structure of housing provision and the traditions of each country.

In the UK, the housing tradition has changed over time. A hundred years ago private rented housing was dominant. During the period up to the 1980s, it was gradually replaced, under the policies of all governments, by homeownership and by social housing provided by local authorities and by housing associations. The growing sectors were encouraged by various forms of subsidy and tax reliefs, and the private rented sector was allowed to wither away.

The Thatcher government reversed these trends with strongly ideological policies. In 1988 private renting was deregulated, with 'free market' rents and much reduced security of tenure. This was successful in its own terms, reviving the sector over the following 30 years. Her government also adopted an overt policy of reducing the share of social housing, supporting limited provision by housing associations but virtually ending the building of new homes by local

"A growing number of households have been forced to choose between paying the rent, heating their home or buying food and essentials."

authorities, whilst also selling off a large number of existing council houses through the Right to Buy with very high discounts (effectively a large subsidy).

Curiously, we ended up in the position where the tenures most preferred by the public were declining and the most unloved and least desired tenure was growing rapidly. Inevitably, many more people, especially those on low incomes, were forced to depend on private renting – the tenure that offers the least value-for-money, the least security, and the poorest conditions.

In a frantic attempt to revive homeownership, governments since 2010 have committed vast public resources to subsidising *demand* through policies like

⁵ Local Government Association, October 2021. See: bit.ly/hiahr-hilditch5

⁶ Joseph Rowntree Foundation, UK Poverty Statistics. See: bit.ly/hiahr-hilditch6

⁷ Final Report of the Affordable Housing Commission. See: bit.ly/hiahr-hilditch7

'Help to Buy'. Basic economics tells us that over time this will have more impact on increasing prices than on increasing supply. In rented housing, additional subsidy through housing benefit has gone to help private tenants pay unregulated market rents and increased rents in the social sector. Neither of these expensive policies directly encourage investment in new and additional homes.

It is extraordinary that the tenure that provides best value for money and meets housing needs most directly has been the tenure most neglected by government. The first act of the coalition after 2010 was to cut investment in social housing by more than 60%. The rents of new social homes were greatly increased: the government's

favoured 'Affordable Rent' product, requiring rents at up to 80% of market rates, replaced the traditional social rent where rents came out at between 40 and 50% of market rates. In language that was rightly termed Orwellian, the government's 'Affordable Rent' homes were not in fact affordable. In addition, hundreds of thousands of genuinely affordable social rented homes were sold or converted to the new higher rent regime.

"It is extraordinary that the tenure that provides best value for money and meets housing needs most directly has been the tenure most neglected by government."

Looking more specifically at housing supply, the overwhelming evidence is that we need to build between 300,000 and 340,000 new homes each year; of these between 90,000 and 150,000 need to be at *social rent* levels.

The failure to build enough homes has been a feature of UK housing now for more than 40 years. The gap between supply and demand has become entrenched since the ending of councils' role as major providers. Yet the model of council housing has been tried and tested over many years and it works - it only stopped working because of underinvestment and the ideological decisions of the Thatcher Government after 1979.

The means exist to bring about a rapid expansion in the supply of social rented housing as the best and most effective method of providing genuinely affordable and high-quality homes directly to households facing homelessness or extreme housing need. Housing associations could expand the provision of social rented homes, many councils are building again at low levels and are champing at the bit to be allowed to do more. The missing partner is government, and the reason

is ideology, as Labour Housing Group's recent report *'The Missing Solution: Council Homebuilding for the 21st Century'*⁸ showed.

Social rented housing involves targeting subsidies towards building homes in the first place, with rents set so that no subsidy is necessary for subsequent running costs: this is the most efficient use of resources. The focus is on investment and construction and there are strong multipliers in the wider economy so that the Treasury gets a big slice of its money back. Rents rise over time while borrowing costs flat line, so the pooling of rents allows a cross subsidy from older properties to newer properties, helping to keep them all affordable. Councils and housing associations can borrow money to build at the best possible rates, but government grant is needed to make the initial development viable. Rents related to the cost of provision are significantly lower than those determined by the market and, because they are also linked to local incomes, there is much less need for long-term housing benefit. A better-housed population makes fewer demands on other services such as health, saving money in other areas.

There is a real – but long-term - prospect that the right to decent affordable housing can be met through policies which will, over a generation or two, actually pay for themselves.

⁸ The Missing Solution: Council Homebuilding for the 21st Century, Labour Housing Group. See: bit.ly/hiahr-hilditch8

Using rent controls to make housing affordable - the plan for London

Sem Moema MLA

"States must regulate business in order to prevent investments having any negative impacts on the right to housing, including by... Maintaining a rental regulatory framework that preserves security of tenure and affordable housing for tenants, including through rent caps, controls or rent freezes where needed".

- UN Guidelines for the implementation of the right to adequate housing¹

It is clear that by any metric, the marketisation of housing has failed, and failed spectacularly. As the nation faces up to a cost of living crunch, one aspect of affordability of daily life that continues to be studiously ignored is that of rents in the private rented sector. As a nation, we are rightly concerned by a doubling of households' gas and electricity bills and the impact of the energy price cap increasing costs by up to 54%.² The Labour Party has a clear approach on how to definitively tackle reducing and stabilising these increases for households and businesses. It affects all of us.

But what of the crisis of affordability in the Private Rented Sector (PRS)? Where is the equivalent moral outrage? In the capital, 2.4 million Londoners rent from a private landlord. They spend over 40% of their incomes to simply keep a roof over their heads.³ Against the backdrop of Tory austerity, with associated job losses and below inflation pay rises for public and private sector workers, those same rents have gone up by 33%, Local Housing Allowance (LHA), apparently based on rents, has been reduced meaning that, since 2011, they can only afford the bottom 30% of rental properties.

In London, this means prospective tenants and councils alike cannot afford their own local housing markets. Particularly galling for tenants and local authorities in London is the fact that 42% of homes sold under Right to Buy are now rented by a private landlord, very often to former social housing tenants or by local authorities desperate to house homeless households and reduce ever-increasing housing waiting lists.

¹ OHCHR, Guidelines for the implementation of the right to adequate housing. See: bit.ly/hiahr-moema1

² Ofgem, Feb 2022. See: bit.ly/hiahr-moema2

³ Getting rents under control, New Economics, July 2019. See: bit.ly/hiahr-moema3

So what of solutions, of making housing a human right for the 40% of households so far denied that by successive governments? We could finally fix our broken housing market and comprehensively address related social issues such as homelessness and poverty, both driven in no small part by housing costs and private rents.

I believe the solution is a combination of devolution and regulation. In London, the Mayor, Sadiq Khan, has proposed an independent Private Sector Rent Commission, which would create and enforce measures to reduce rents and keep them at lower levels.⁴ Proof of concept already exists – City Hall’s London Affordable Rent is set at up to 1/3 of local income at ward level, reinstating the link between household income and affordability. Scaled up and with powers to apply across London, this would be a life-changing measure, in one fell swoop.

The proposed Commission would create a register of private landlords, providing an evidence base on the private rental market, landlords and the properties they own, and the rents charged. By devolving power from the Government to the Mayor, London would be able to determine what is a genuinely affordable rent in the private rented sector for the first time in a generation. All this can, and needs to happen, whilst we continue to increase the amount of social housing that is so desperately needed. Rather than remove focus, the work of the Commission would bring into relief the fact that the housing crisis, whether in London or other nations and regions of the UK, can only be solved by a large-scale council house building programme.

Great work is already underway to overcome the likely political, legal, ideological and policy obstacles that will be put in the way of a Commission specifically and rent control generally. The Housing Subcommittee of the Society of Labour Lawyers, a fellow socialist society, have outlined in detail how to overcome legal obstacles, making detailed submissions to the National Policy Forum, the Policy Review and Labour Front Bench in 2021. Labour-run local authorities like Hackney, Islington and Waltham Forest, have introduced landlord licensing schemes to improve standards in the PRS for tenants and remove the fear of

“Clearly there are policy solutions to an intractable problem which has been allowed to fester.”

retaliatory evictions for tenants; across the capital, all 32 boroughs plus the City of London, are signatories to the Mayor of London’s rogue landlord register, doing what they are able to within the limited powers the Government has given councils.

⁴ The Mayor of London’s Blueprint - A proposal for reforming tenure and rents. See: bit.ly/hiahr-moema4

Campaigning organisations such as the London Renters Union, Generation Rent and Toynbee Hall; trade unions like UNISON and the Royal College of Nursing; advocacy support groups such as Age UK, have made the case, consistently and clearly, on the crippling impacts on the lives of Londoners of all ages, all backgrounds, professions and incomes.

Clearly there are policy solutions to an intractable problem which has been allowed to fester. The time has come to make this a reality, and we have the solutions to fix the affordability crisis in the private rented sector whilst at the same time building genuinely affordable council housing. Boroughs such as Hackney, Islington and Waltham Forest, with 37,500 households on housing waiting lists, are at the sharp end of the affordability crisis. Through the Levelling Up White Paper and the still-awaited Renters Reform Bill, there is an opportunity for Government to make good on their pledges on devolution and enable London to set rents.

Londoners desperately need rent control to bring back a sense of stability, so that they can afford to live and work, to raise their families, and to retire, all without a fear of entrenching the poverty and inequality that exists in one of the richest cities in the world.

Ensuring good security and rights for private renters

Baroness Alicia Kennedy

"All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats."

- UN Committee on Economic, Social and Cultural Rights, General Comment 4.

Millions of private renters in England are deprived of their right to adequate housing.

For an advanced economy it is a disgrace that private renters are exposed to arbitrary eviction, with many denied affordable legal advice or a chance to be consulted. On top of this, many renters occupy homes unfit to live in, and pay sky-high rents that leave them unable to meet other basic needs. In each of these ways renters are denied their human right to adequate housing.

Tackling the problems within the private rented sector would therefore be one of the most important interventions the government could make to level up and reduce inequality and poverty. In its recent White Paper, the government recognised the role of housing in levelling up, but we still await the detail of what this will mean in practice.

This Government, and future governments need to develop legislation to reform the private rented sector, and in doing so think about this in terms of the human right to adequate housing. The right to safe, secure and affordable homes should be the starting point of national housing policy.

While the need for action to ensure homes are affordable, safe and decent is covered by other contributors to this publication, these qualities are inseparable from, and reinforced by, security of tenure.

A home must be secure

Despite the UK having ratified international human rights treaties that entitle everyone to secure housing and protection from forced evictions¹, Section 21 of the Housing Act 1988 means most private renters in England lack security of

¹ International Covenant on Economic, Social and Cultural Rights (ratified 1976) and European Social Charter (ratified 1962)

tenure, with landlords needing no reason to seek an eviction order, and just two months' notice for the tenant to find a new home, with no financial support.

The Protection from Eviction Act 1977 protects tenants from evictions that are not carried out by court-appointed bailiffs, but police officers commonly fail to enforce this when asked to intervene.

In 2019-20, 26,000 households were made homeless because their landlord wanted to sell or re-let their home, or responded with an eviction notice to a complaint by the tenant. A further 1,040 households were made homeless following an illegal eviction.

As well as its direct effect on security of tenure, Section 21 undermines the quality and affordability of renters' homes. With the threat of an arbitrary eviction hanging over you, making a complaint about the condition of your home or challenging a proposed rent increase is a risky move. Even a law introduced in 2015 to prevent retaliatory evictions relies on councils taking appropriate action, which they do in only one quarter of cases.² Furthermore, half of councils in England and Wales have not prosecuted a single criminal landlord in the past three years, despite a rise in the number of complaints from tenants.³

By making it easy for landlords to sell up and leave the market, Section 21 has encouraged many investors to put money into property in the first place. This has raised house prices and kept many would-be first-time buyers in the rental market paying more in rent than they would in mortgage payments. Similarly, poorer renters are stuck in the private sector because inflated property values

have made it uneconomic to build social housing.

“To level up is to make housing a human right and ensure everyone has the right to live in a safe, secure, and affordable home.”

Following a campaign by the End Unfair Evictions Coalition, led by Generation Rent, the Government committed in

2019 to abolish Section 21. Progress on a Renters Reform Bill following the General Election has been delayed, with the Government blaming the pandemic for the postponement. In May 2021 the Government promised a White Paper on rental reform, pledging an end to Section 21 and other measures such as a “lifetime” tenancy deposit.

² Generation Rent, 'Three quarters of tenants in unsafe homes go unprotected'. See: bit.ly/hiahr-kennedy2

³ Adam Bychawski, Open Democracy, 'Councils in England and Wales failing to prosecute law-breaking landlords'. See: bit.ly/hiahr-kennedy3

The danger is that if we don't get the details right private renters will still be denied the right to safe, secure and affordable homes. Safeguards are needed to ensure justifiable evictions that continue following abolition of Section 21 do not violate renters' human rights. Labour parliamentarians must push for these in the coming months and if unsuccessful make further legislation a priority if they form the next government.

"If we don't get the details right private renters will still be denied the right to safe, secure and affordable homes."

Renters need to be compensated for unwanted moves beyond their control

Generation Rent research showed the cost of moving belongings, rent on a new tenancy and time taken to find a new home all adds up to more than £1,700 for the typical household⁴ – which is devastating when the move is outside your control.

While councils have duties to people facing homelessness, lack of social housing leaves them between a rock and a hard place. Landlords who disrupt their tenants' lives should therefore bear some responsibility for rehousing them. Existing measures that require landlords to pay relocation costs to blameless tenants should be extended to the no-fault grounds that replace Section 21.

Renters need proper notice if they are required to move out of their home

Any new system must provide much more than two months for a tenant to find a new home, and give the courts discretion over whether the eviction is reasonable. Evictions at night, during school term times, bad weather and the winter months need to end.

In winter 2020-21, the Government rightly suspended bailiff enforcement of evictions, albeit in response to surging Covid infections. But this is standard practice in France, where "la trêve hivernale", a five-month truce, protects renters from the prospect of an unwanted move in freezing conditions.

Renters need access to legal support when facing eviction

Those tenants who qualify for legal aid can benefit from this – but cuts to the system have left "legal aid deserts" in much of the country. Government must do much more to ensure renters have access to justice.

⁴ Generation Rent, The cost of unwanted moves, 28 August 2021. See: bit.ly/hiahr-kennedy4

Illegal evictions must be stopped

In England only court-appointed bailiffs can perform evictions but poor resourcing of local authority tenancy relations officers and training of police officers means unlawful evictions still take place. The Government must beef up enforcement of the Protection from Eviction Act 1977, by expanding the investigatory powers and duties of councils and the police to create an effective deterrent.

Conclusion

To level up is to make housing a human right and ensure everyone has the right to live in a safe, secure, and affordable home

This Government wants young adults to be able to stay in the areas where they grew up. But without protection from eviction, thousands will continue to be pushed away from their communities.

The Government wants to instil pride of place. But you cannot achieve that without giving renters a reason to believe they can live somewhere for the long term.

The Government wants everyone to live their best life. But private renters cannot if their savings are wiped out every time their landlord wants their property back on a whim. Without security of tenure, levelling up is just a slogan.

By applying a human rights approach to the regulation of the English private rented sector, a future Labour government can help deliver a right to a safe, secure and affordable home.

Generation Rent campaigns to ensure every home in the private rented sector is safe, secure and affordable. For more information visit www.GenerationRent.UK, @GenRentUK on Twitter, GenerationRentUK on Facebook and Instagram.

Rebalancing the rights of tenants and landlords in Scotland

Mark Griffin

Background

Three years ago, private renters in England were told Section 21 “no fault” evictions would finally be abolished. And though this was first proposed during the dying days of Theresa May’s Government, renters still have no legislation to show for it.

Pledging to “end unfair evictions – preventing private landlords from evicting tenants at short notice and without good reason” - the Government claimed it had an ambition to make the “biggest change to the private rental sector for a generation”.¹ Given the UK Government’s promised Renters’ Reform Bill is still undelivered, the reform will be years away. Is it any wonder renters’ good faith is threadbare?

If there is one constant in this insecure, unaffordable sector, Section 21 remains a legal threat that risks making private renters homeless. Countless numbers will have been asked to leave their home at the whims of their landlord since 2019, struggling to fund a new deposit or rent increase on a new home, while others will have felt unable to ask for maintenance and renovations to be undertaken knowing the risks involved.

The changes in Scotland

No-fault evictions under Section 21, or section 33 as it was in Scotland until recently², have always been a misnomer: neither tenant or landlord might have been at fault, but the concept masks the simple fact that tenants have fewer rights and less power in law than a landlord.

Since 1 December 2017, there is no such right in new tenancies agreed in Scotland. The Private Residential Tenancy (“PRT”) drawn up under Private Housing (Tenancies) (Scotland) Act 2016, rebalances the rights of tenants and landlords. Gone from Scots law is the right to evict on a no- fault basis, but so too is the very idea that a tenancy lasts six months before rolling on. To appreciate the logic, a tenancy is not “short” assured anymore, and the removal of any time indicator makes tenancies open-ended.

¹ UK Government press release, ‘Government announces end to unfair evictions’. See: bit.ly/hiahr-griffin1

² Housing (Scotland) Act 1988. See: bit.ly/hiahr-griffin2

Gone too is a tenant's right to end the tenancy immediately; a month's notice is now required. To evict under a PRT a landlord must give a tenant notice to leave and specify which ground for eviction they are using; that notice must be 28 days for tenants of less than 6-months, then 12 weeks after 6-months. If the tenant does not vacate at the end of the notice period, the landlord must seek an eviction order from the First Tier Tribunal Housing and Property Chamber.

And crucially, the 2016 Act provides a backstop for tenants: the Tribunal has power to issue wrongful termination orders if it finds the landlord misled the tenant or Tribunal for the reason for ending the tenancy.

In support of delivering stability and a modicum of affordability, the PRT permits rents to be increased only once in a 12-month period, after the initial rent and tenancy is agreed. There must be three months' notice before the rent increase

“Though we know the need for a safe warm affordable home is permanent and universal, the pandemic taught us that our homes have never been worth so much to us.”

takes effect, and should the tenant disagree they can refer it to a Rent Officer. These powers would of course be meaningless if the landlord retained a right to a no-fault eviction; likewise an English “rent review” clause or section 13 is worthless when a landlord can seek recovery and re-let the property at the rate desired.

Although the legislation broke new ground in the UK, introducing powers for rent pressure zones to be established by councils, in reality this feature of the legislation was a flop. A precursor to the rent controls my colleague Pauline McNeill MSP tried to introduce through a Members' Bill (which the SNP, with the Tories, voted down), the legislation has been widely criticised³ as an unworkable failure owing to the stringent criteria required for a zone to be proposed, consulted on and thus created.⁴ Not a single zone has been established⁵ and Ministers have conceded that the policy requires reform.⁶

Progress?

Though the PRT does not yet deliver the same security and affordability as the social and owner tenures or to make a private rental a true home, there is some evidence of the impact the PRT is having. Regardless, renters in England will be

³ Scottish Housing News. See: bit.ly/hiahr-griffin3

⁴ Progressive Policy Research Group. See: bit.ly/hiahr-griffin4

⁵ See: mygov.scot/rent-pressure-zone-checker

⁶ Scottish Government, Housing to 2040. See: bit.ly/hiahr-griffin6

looking on enviously to see if the Government meets its 2019 commitment, even if progress is now a full parliamentary cycle behind Scotland.

Prior to the pandemic, the number of homelessness applications in Scotland coming via the private rented sector peaked at 5,698 the year the PRT was implemented.⁷ Although the overall number of homeless presentations increased by 2,000 by 2019-20, the private rented sector presentations fell 10% in the same period.

Evaluating the changes in 2019, Shelter, using official statistics, a survey of Scottish renters and interviews with homelessness workers, reported that tenants on the new open-ended tenancy feel half as likely to worry about becoming homeless, and less “locked-in” to a fixed tenancy.⁸

When Scottish Labour voted in support of the bill my former colleague Ken Macintosh set out the scale of change in Scotland since 1999: the numbers in the private rented sector had by then doubled to 330,000. In 2020 the number was 360,000⁹, supporting the position Shelter came to: that though it may have been too early to tell, the change had not “kill[ed] off the private rented sector” with “key indicators of Scotland’s market staying in line with comparable regions”, and the size staying in trend with the rest of the UK.

Ultimately, this new, modern, simpler tenancy was a necessity, because people have been priced out of home ownership, or cannot get a social home. When the Act was passed 28% of young people in Scotland owned their own homes, down from 48% in 1999. And as Ken said in the chamber, 150,000 people were on local authority waiting lists for a new home; six years on, there still is.

The impact of the PRT and the 2016 Act on improving affordability has been even more clear-cut: there has not been one. Shelter reported “no significant change to rents in Scotland as a result of the new tenancies” and though there has been no excessive upward pressure, rents have continued to increase ahead of CPI across Scotland.¹⁰

Further change

Our true understanding of the PRT reform has been deeply impacted by the pandemic, distorted by the utterly vital protections put in place to keep tenants in their homes. As the United Nations special rapporteur on the right to adequate housing put it, our homes were “the front-line defence against the coronavirus”.

⁷ Scottish Government, Homelessness in Scotland: 2020 to 2021. See: bit.ly/hiahr-griffin7

⁸ The New Private Rental Tenancies, Shelter, 2019. See: bit.ly/hiahr-griffin8

⁹ Scottish Household Survey 2020 - telephone survey: key findings. See: bit.ly/hiahr-griffin9

¹⁰ Scottish Government housing statistics. See: bit.ly/hiahr-griffin10

And though we know the need for a safe warm affordable home is permanent and universal, the pandemic taught us that our homes have never been worth so much to us.

Like in England, the eviction ban has now been lifted. However, the Scottish Government has already laid legislation proposing to make permanent some other pandemic protections – the 6-month notice period, all eviction grounds

shifting from mandatory to the discretionary column, and private rented sector pre-action protocols – that will further extend a tenant's rights to a secure home.

“Though housing regulation is frequently incremental, playing catch up with the market, the PRT has begun rebalancing the rights of tenants and landlords.”

However, it is the forthcoming and Human Rights Bills¹¹ which could set Scotland a further legislative and campaign cycle ahead of England.

The expectation on the SNP-Green government is high: that it will lay the ground-work for a national system of rent controls, in the process establishing a new rent-data collection system and improved landlord registration system, and with the promise that the right to housing will be cemented in Scots law in the Human Rights Bill. But unless it is made easier for tenants to challenge unfair rents and simultaneously limit rent rises while improving quality standards in the private rented sector, this opportunity will be missed. Current commitments include implementing in law a Rented Sector Strategy, establishing a PRS regulator that enforces standards, increasing penalties for landlords and compensation for tenants in the event of illegal evictions, as well as creating rights for tenants to keep pets, decorate, and have protection against winter evictions.

Though it is the case that housing regulation is frequently incremental, playing catch up with the market, the PRT has begun rebalancing the rights of tenants and landlords on a limited scale. While we are still some way off delivering the same security and affordability as the social sector, it has established a pathway to levelling the playing field further, so people can make a rental a true home: capable of allowing the tenant to settle, with security, and where the home can be personalised.

¹¹ See: gov.scot/news/new-human-rights-bill/

Decent homes and human rights: improving conditions for tenants in all sectors

Karen Buck MP

“Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well.”

- UN Committee on Economic, Social and Cultural Rights, General Comment 4.

The slum neighbourhoods portrayed so vividly by Dickens, chronicled by Mayhew and Rowntree and campaigned against so vigorously by the likes of Octavia Hill have largely gone. Over the course of a century and a half, slum clearance, social housing construction and legislation, from the Housing of the Working Classes Act of 1885 to the Homes (Fitness for Human Habitation Act) 2019 have promoted decent housing conditions and overall the trend has been a positive one.

Yet one of the most powerful media stories of 2021 has been the series of broadcasts by ITV journalist Daniel Hewitt, including most recently a programme called ‘Surviving Squalor’.¹ These programmes have given public prominence to the staggeringly bad conditions in which, even now, many tenants are forced to live. They have been rightly lauded, and yet few indeed will be the MPs, councillors, charities and housing lawyers who don’t nod in recognition of a problem which has never gone away; more hidden, perhaps, but still real. And while ITV have focused primarily on social housing, we know that the unfit housing is more common still in the private rented sector, and as Julie Rugg demonstrated in her major report on this issue in 2018, it is increasingly the case that the most vulnerable people are becoming concentrated in the worst housing.²

The latest English Housing Survey figures found that 23.3% of homes in the private rented sector are ‘non-decent’ compared with 12.3% in social housing and an average of 17% across all tenures - figures which have rather flat-lined in the last five years after sustained drops. 619,000 private rented dwellings contained

¹ ITV ‘Surviving Squalor: Britain’s Housing Shame’ report by Daniel Hewitt, 2021. See: bit.ly/hiahr-buck1

² Julie Rugg and Daniel Rhodes, ‘The Evolving Private Rented Sector: Its contribution and Potential’, University of York Centre for Housing Policy, 2018. See: bit.ly/hiahr-buck2

at least one Category 1 Housing Health and Safety Ratings System hazard, as did 217,000 social tenancies.³ Research by both Shelter and the Citizens Advice Bureaux found that over 6 in 10 renters had experienced some issues with disrepair, or conditions such as damp, mould, leaking roofs or windows, electrical hazards, animal infestations and gas leaks.

“Figures show that rates of overcrowding in the social and private rented sectors have risen to the highest levels seen since data collection began.”

What is even more disturbing is the extent to which substandard housing reflects wider inequalities. Take damp as an example: lone parents are more than half as likely to be affected as the population as a whole; Black and Asian households are more than twice as likely to be in damp homes than are white households; and with grim inevitability, the poorest households are over-represented in the

worst housing. Most recent figures also show that rates of overcrowding in the social and private rented sectors have risen to the highest levels seen since data collection began.

There is no disputing the impact of human wellbeing that poor housing can have. Bad housing conditions are closely associated with poor health and disability. The independent Marmot Review commissioned by the Government and published in 2010, concluded that housing is a “social determinant of health”.⁴ The most recent estimate by the Building Research Establishment suggests that the costs of bad housing add up to £1.4 billion to the NHS alone, including from accidents, respiratory conditions, and poor mental health.⁵ People with disabilities frequently face a double disadvantage: unfit homes may be cold and damp, and may also be unadapted to the requirements of their disability.

The issue of housing safety - which has come to the foreground in the light of the Grenfell disaster and subsequent policy debacle over cladding removal - is addressed elsewhere. But the distinction between ‘decency’ and ‘safety’ in housing terms is a very fine one, and the absence of one very quickly drives the absence of the other.

The importance of housing is recognised in the United Nations International Covenant on Economic, Social and Cultural Rights, which includes ‘the right of everyone to an adequate standard of living for himself and his family, including

³ Ministry of Housing Communities and Local Government, English Housing Survey Headline Report 2019-20. See: bit.ly/hiahr-buck3

⁴ Michael Marmot, ‘Fair Society, Healthy Lives: Strategic Review of Health Inequalities in England post 2010.’ The Marmot Review, 2010. See: bit.ly/hiahr-buck4

⁵ Helen Garrett et al, ‘The cost of poor housing in England’, BRE 2021. See: bit.ly/hiahr-buck5

adequate ... housing’.⁶ But housing is, of course, inseparable from other social and economic conditions, such as income and employment.

Housing is, however, a qualified right in domestic human rights law. The ‘human right’ to a home of a particular quality is not protected under current English law, nor is the modern notion of a ‘decent’ home, although the courts have recognised that there have been circumstances where housing conditions are so bad as to interfere with a tenant’s human rights. There are of course major obstacles to applying human rights legislation in this way, or relying on it as the sole or primary way to improve housing conditions. As Douglas Maxwell writes in ‘A Human Right to Housing’ (Oxford Law Faculty 2019) “Merely legislating in a manner that purports to embody socio-economic rights does not necessarily result in their greater realisation”.⁷

“There is so much more that can and should be done to make sure that everyone has the right to a decent home.”

There is so much more that can and should be done to make sure that everyone has the right to a decent home. Whilst the recent Homes (Fitness for Human Habitation) Act, drafted by lawyers Giles Peaker and Justin Bates, and which I was able to take through Parliament in 2018, extended and strengthened tenants’ rights, enforcement remains patchy. Other authors in this collection will go into more detail about how to achieve this, but we currently face restrictions on Legal Aid, a shortage of housing lawyers and advice deserts across parts of the country. Cash-strapped councils do not use their powers as much as they could, as Environmental Health departments are squeezed along with so much else.

Debate continues over the best way to update the Housing Health and Safety Ratings System, with a government review under way to “make the system easier to understand for landlords and tenants, correct the disconnect between the HHSRS and other legislative standards, and facilitate the effective enforcement of housing standards by local authorities”.

Above all, there are the constraints imposed by the shortage of housing supply-constraints which limit tenants’ ability to act, and certainly limit the ability of councils to offer alternatives. I look at my own casework to see:

- a family of 5, with a disabled child, where the whole family must sleep on the floor as there is no space for bedding

⁶ International Covenant on Economic, Social and Cultural Rights, adopted by UN General Assembly 1966. See: bit.ly/hiahr-buck6

⁷ Douglas Maxwell, ‘A Human Right to Housing?’ University of Oxford Faculty of Law, 2019. See: bit.ly/hiahr-gallagher11

- an 89-year-old stroke victim trapped in a private flat which the landlord refuses to adapt, unable to use the bathroom, but languishing like so many others, on a 'waiting list'
- a teenager left wheelchair bound after an accident, stuck in hospital for a year because his family home is unsuitable for his needs and the council can't find a way of assisting
- a family enduring an insect infestation so bad they must pick bugs out of their meals and drinks
- a mum who must roll towels around the window frames every night to soak up the water leaking into her flat

There can be no question that substandard housing infringes on human rights and we should be able to strengthen the protection that is afforded to people in such circumstances. Yet with the Human Rights Act itself once again under attack by this Government, we must remain focused on what can be achieved and must be demanded right now, to end the misery endured by so many people trapped in unfit homes.

Safe as Houses? Making the human right to housing safety a reality

Stuart Hodgkinson

“... there is an intrinsic link between the right to life and the right to adequate housing [...] There is little doubt that where people are forced to live in buildings which are covered in materials which have been tragically shown to be a risk to life, this triggers right to life interests”
- Letter from UN Special Rapporteur on adequate housing to the UK Government¹

Introduction

In 21st century Britain, all housing should be safe to live in. It is a basic human right, enshrined in international law. Sadly, the reality is different, most tragically represented in the 2017 Grenfell Tower disaster in London, which fundamentally violated the human rights of the 72 people killed, their families and the neighbouring community. A small kitchen fire spread rapidly to the entire 24-storey building, trapping those on the highest floors who had followed the official advice to stay put in the event of fire.² Those who died included vulnerable, elderly and disabled residents, as well as young children, who were unable to self-evacuate. The Public Inquiry³ has found a litany of failings led to the disaster, primarily the shoddy refurbishment project between 2014 and 2016 that unlawfully wrapped their concrete building in flammable cladding and insulation, and undermined its fire-resisting compartmentation. Residents who raised safety concerns in the years and months preceding the fire were routinely ignored and bullied by their social landlord and its contractors, and found existing statutory and legal routes impossible to get redress. As I will argue, Grenfell has exposed a broken system of housing safety and can only be addressed through state intervention that puts safety before profit.

After Grenfell: the Building Safety Crisis

Grenfell reminded us not only of the enormous power asymmetries between the real estate-landlord complex and residents, but the heightened fire risks of living

¹ Farha, L (2020), Letter from UN Special Rapporteur on adequate housing to the UK Government concerning the situation faced by leasehold owners in buildings clad with flammable materials, 29 April, GBR 2/2020. See: bit.ly/hiahr-hodkinson1

² Farha, L (2017), Grenfell is a terrible betrayal of human rights', *The Guardian*, 21 June, See: bit.ly/hiahr-hodkinson2; Nadj, D (2019). The Grenfell Tower Fire as a Breach of the Right to Life. See: bit.ly/hiahr-hodkinson3

³ grenfelltowerinquiry.org.uk

in taller buildings with multiple dwellings. These risks were *supposedly* recognised in national building codes, but post-Grenfell investigations have uncovered a systematic failure of regulatory compliance in thousands of buildings across the UK. An estimated 650,000 people in England alone are living in around 2,000 high-rise blocks (18m or taller) with life-threatening fire risks, a figure that will significantly increase once 100,000 medium-rise blocks (11-18m tall) are properly inspected.

This national building safety crisis was built on decades of neoliberal policies pursued zealously by both Conservative and Labour governments that deregulated the construction and landlord sectors, putting the profits of financiers, developers and builders firmly before safety. A prescriptive system of building standards policed by local authorities was replaced by a more flexible environment marked by greater self-regulation, allowing cheaper and ultimately less safe routes to compliance.⁴ The Grenfell Inquiry has since revealed that fraudulent marketing of product safety tests, corporate cover-ups, unregulated fire risk assessors, the gradual commercialisation of product safety testing and building inspection, and the refusal of government to act on evidence of fire safety concerns, all contributed to the production of unsafe residential buildings.⁵

Yet, nearly five years since Grenfell, and despite endless government promises, countless reviews, and a whirl of new legislation, very little has

“Nearly five years since Grenfell, and despite endless government promises, countless reviews, and whirl of new legislation, very little has actually changed.”

actually changed. The government has so far failed to fully implement a single Grenfell public inquiry recommendation; its Building Safety Programme and the £9bn public funding pledged for remediation only focus on high-rise and specific types of cladding and insulation; and at current rates it will take 397 years just to complete the buildings that have applied for funding.⁶ The government has restricted the use of combustible materials in the external walls of new residential buildings over 18 metres in England, but has stalled its own proposals to extend the ban to over 11 metres; similarly, tougher sprinkler laws for new residential buildings over 11 metres high (instead of 30 metres) will not retrospectively apply to existing buildings. Meanwhile, the financial, mental and physical wellbeing of leaseholders who bought flats in dangerous buildings

⁴ See Hodkinson, S. (2019), *Safe as Houses: Private greed, political negligence and housing policy after Grenfell*. Manchester University Press

⁵ Apps, P. (2021). “‘One of the major scandals of our time’: key revelations as the Grenfell Tower Inquiry turns to government”, 6 December, *Inside Housing*. See: bit.ly/hiahr-hodkinson5

⁶ City A.M. (2022), Government will take almost 400 years to complete cladding remediations at current pace of fund, 18 January. See: bit.ly/hiahr-hodkinson6

continue to go through the floor from bankrupting bills thanks to the government's steadfast refusal to legally protect them from all costs and compel the developers who defectively built or refurbished them to fund their remediation.⁷

Enforcing the human right to safe housing

Unsurprisingly, legal scholars view both the Grenfell disaster and the post-Grenfell building safety crisis as breaching the UK's positive obligations to preserve life under Article 2 of the European Convention on Human Rights (ECHR).⁸ However, bringing successful human rights claims is notoriously difficult, expensive, time-consuming, and stressful, and can normally only apply to public authorities. The problem is compounded by the continuing refusal of the UK government to put the right to adequate housing in domestic law. Strengthening both human rights law and access to justice to help victims bring claims is thus vital.

Nevertheless, the power iniquities of residents *individually* bringing complaints and legal claims against the state/real estate complex requires a parallel approach that places the onus firmly on the state to create and police a safety-first regulatory environment and act on behalf of residents living in unsafe homes. In practical terms, a future Labour government could enact a human right to housing safety as follows:

- *Implement the Grenfell Inquiry recommendations in full.* These include new national guidelines for conducting full-scale evacuations of high-rises and require by law the owner and manager of every high-rise residential building to prepare personal emergency evacuation plans (PEEPs) for all residents whose ability to self-evacuate may be compromised.
- *Nationalise the remediation of unsafe buildings.* Task the new Building Safety Regulator with overseeing a national remediation programme that: identifies all buildings at serious fire risk, funds a public building agency to carry out the works, and then recovers monies from those deemed responsible. In the interim, there should be a national-funded rollout of building alarms and sprinklers to replace the expensive yet ineffective waking watches.
- *Legally protect and reimburse tenants and leaseholders from the failure of state regulation and industry.* The Polluter Pays Bill, drawn up by affected leaseholders, provides a potential legal basis for this approach by creating

⁷ Preece, J (2021), 'Living through the building safety crisis: Impacts on the mental wellbeing of leaseholders', 18 November, University of Sheffield. See: bit.ly/hiahr-hodkinson7

⁸ Bright, S and Maxwell, D (2019), Human Rights and State Accountability for Fire Safety in Blocks of Flats, Human Rights Law Review Vol 5(2). See: bit.ly/hiahr-hodkinson8

a statutory administrative determination process to require developers (or their parent companies) who erect buildings non-compliant with regulations at the time to pay all remediation and interim safety costs and sue their own contractors where relevant.⁹ Government would need to forward-fund the works, with any financial shortfalls met from levies on the construction and cladding manufacturing industry.

- *Toughen regulations and legal requirements on building owners.* The state should champion new regulation as life-saving 'green tape' including: a zero combustibles policy for external walls and extending the sprinkler mandate to all multi-occupancy residential buildings of any height; a requirement that all new high-rise buildings have a second means of escape; reducing the amount of combustible plastic in our homes; and a moratorium on timber-framed construction and modular homes until their safety can be proven.
- *Take the profit motive out of product safety and regulatory enforcement.* The scope of self-certification must be rolled back, and product safety testing, building control services and fire risk assessment brought back into public ownership through the creation of a national arm's length body responsible for safety and compliance, funded through an annual levy on developers and the building industry or a windfall tax.
- *Empower residents to make their homes safe.* As well as restoring legal aid cuts and reinstating the statutory right of all tenants to a secure tenancy (as discussed in other chapters), a new national housing safety emergency service could provide a simpler and speedier non-court-based route to redress urgent health and safety conditions. With anyone able to contact the service to raise urgent concerns about housing conditions that pose a threat to health or life, the proposed inspectorate would have strong legal powers to rapidly investigate and take enforcement action where necessary. Private landlords that consistently fail standards could face compulsory purchase at less than market value, with the homes made safe and then rented out as social housing.

⁹ The Polluter Pays Bill can be found on the Building Safety Crisis website: buildingsafetycrisis.org/polluterpays/introduction

Homelessness and human rights in Newcastle upon Tyne

Cllr Nick Forbes, assisted by Neil Munslow MBE

“The lived experience of homelessness and inadequate housing challenges the very core of what it means to be human, assaulting dignity and threatening life itself. It is these experiences that make homelessness and inadequate housing violations of human rights and not merely programme failures.”

- Leilani Farha, former UN Special rapporteur on the right to adequate housing¹

Homelessness has been endemic in the UK for five decades, but has shown a big rise under the policies of the last 10 years. Despite operating under the same legislative framework, local councils can also have widely varying approaches to the problem. This chapter highlights the innovative work being done by the progressive Labour Council in Newcastle.

Human rights principles have influenced Newcastle's homelessness prevention approach for most of the last 10 years. Leading in local government is about making decisions, sometimes very tough ones that help deliver on the priorities set out in elections. During the Tory austerity years, Newcastle's Labour Council set out on a long journey to do all we can for those who are most vulnerable in our city. Winning the Council back from the Liberal Democrats in 2011, in January 2012, we adopted the 'Socio-economic Duty',² including those who are least well off in the decisions we have made since. We are a co-operative council with a focus on social value and the local economy, we see the money we spend as a council as an investment in our city - we now invest 70% in the North East and almost 50% in our city. We maintain a focus on financial inclusion to respond to the welfare reform cuts.

In 2013, we worked on a very challenging 3-year budget plan. Our homelessness work as part of 'Active Inclusion Newcastle' was a real focus from those times.³ We had little funding, so we had to work creatively, building good relationships with partners based on our values of honesty, integrity and fairness. As a result, 8 or 9 years on, the most vulnerable people in our city are better supported. We have protected the core of our prevention services, acknowledging that crisis support costs the whole system more.

¹ Report of the Special Rapporteur on adequate housing, January 2018. See: bit.ly/hiahr-forbes1

² Section 1, Equality Act 2010

³ Active Inclusion Newcastle – briefing note 2020-21. See: bit.ly/hiahr-forbes3

This Government continues to reward failure. More money goes to those councils spending millions each year on bed and breakfast support. Those political decisions made by national Government are wrong, and they waste limited resources. As a learning council, we also know we haven't got everything we have worked on right so we continue to tweak and change and transform the system and processes.

So the work described in this article is politically-led, values-driven, effectively managed and supported by a team of hard-working and committed officers. It delivers the change and support needed for residents facing the most difficult times.

Our journey continues. We have had too many people in hostel accommodation for too many years. We need to support people into suitable and sustainable homes and we need the support of other statutory partners to help those with long term addictions to enable those individuals to get to a better place and live well. We know that poverty is biting even harder for many people, and that we will have to do more to prevent them from facing the crisis of homelessness.

Our journey on human rights and homelessness

Human rights principles have influenced Newcastle's homelessness prevention approach, as well as our responses to the increased risks created by the Government's austerity, welfare reforms and localism programmes, which are taking over £500m a year from our local economy.

Our Active Inclusion Newcastle partnership approach co-ordinates responses to the challenges that residents faced due to the cuts.⁴ The principle of 'active participation' is seen in our work to make it everyone's business to prevent homelessness and financial exclusion at the earliest opportunity. Being transparent about these hard choices helped us to reduce costs whilst maintaining a focus on wellbeing by bringing partners together through our quarterly homelessness⁵ and financial inclusion⁶ reviews.

Our approach was recognised by Government in 2017 when they made Newcastle an early adopter Homelessness Prevention Trailblazer⁷ and by our receiving the World Habitat's 2020 Gold Award⁸. The judges said: "Newcastle's approach has prevented over 24,000 households from becoming homeless since 2014. There are things that others can learn from this project, in particular linking

⁴ Active Inclusion Newcastle Briefing note on the Partnership Approach. See: bit.ly/hiahr-forbes3

⁵ Newcastle Homelessness Prevention Forum. See: bit.ly/hiahr-forbes5

⁶ Financial Inclusion Group. See: bit.ly/hiahr-forbes6

⁷ Homelessness Prevention Trailblazers. See: bit.ly/hiahr-forbes7

⁸ 'World Habitat's 2020 Award Winners' on YouTube. See: bit.ly/hiahr-forbes8

housing, homelessness, the voluntary sector, social care and welfare – there’s no way you can end homelessness unless you make those links.” Dr Koldo Casla in Human Rights and Local Government – lessons from human rights cities⁹ said that Newcastle has “implemented local initiatives in the areas of housing and homelessness that resonate with human rights principles”.

Newcastle’s relative successes in upstream homelessness prevention are seen in our reducing evictions into homelessness, not using bed and breakfast and providing accommodation or reconnection for everyone sleeping rough, which shows our commitment to the rights principle that housing should be ‘accessible’ and ‘affordable’. We know that there is more to do to support residents to benefit

“We know that poverty is biting even harder for many people, and that we will have to do more to prevent them from facing the crisis of homelessness.”

from having a more stable LIFE: somewhere to Live, an Income, Financial inclusion and Employment opportunities.

We broadly welcomed the Homelessness Reduction Act 2017, but wanted Government to go further than a 56 day window for responding to

homelessness¹⁰ and include a duty to prevent and a duty to co-operate. Therefore, we maintained our aim to proactively work to make it ‘everyone’s business’ to prevent homelessness at the earliest opportunity. The policy direction set by national political leaders can have a self-fulfilling effect: if the aim is to respond to crisis, there is likely to be more crisis than if the aim is to prevent crisis.

To respond to the estimated £105m per year our residents faced from welfare reform cuts, we consolidated our financial inclusion¹¹ support e.g. by retaining welfare rights, housing and debt advice services, that in 2020-21 advised 31,466 residents and secured over £25,611,181 in unclaimed benefits and prevented 4,110 cases of potential homelessness. This casework is complemented by primary level information e.g. 125,346 website visits, 3,638 information subscribers, 279 people trained and 142 partner agencies. These examples show adherence to the rights principle of the ‘availability of services’.

⁹ University of Essex Human Rights Centre, Lessons from Human Rights Cities in Europe See: bit.ly/hiahr-forbes9

¹⁰ Local authorities have a duty to respond to a threat of homelessness if the person is likely to become homeless within 56 days.

¹¹ Newcastle City Council, Information for professionals and volunteers - financial inclusion. See: [http://www.bit.ly/hiahr-forbes11](https://www.bit.ly/hiahr-forbes11)

At the heart of our homelessness prevention approach¹² are 27,000 council homes managed by Your Homes Newcastle (YHN). The Sustaining Tenancies Guidance¹³ was created in response to evidence that some residents were being 'recycled' via homelessness, rather than supported to sustain their home. Prior to the pandemic we saw a 75% reduction in YHN evictions and now have a commitment to have no YHN evictions into homelessness and aim to extend this to housing associations.¹⁴ This meets the rights principle that nobody should become homeless because of an eviction.

Preventing evictions led to looking at further opportunities to prevent homelessness by having a personalised preventative rather than punitive

"We believe we have created more of a collective sense that homelessness is wrong, preventable and should not be used as a threat to residents in poverty."

approach to debt, to help a problem like debt becoming a crisis like homelessness. YHN have converted some of their rent collection officers into a Financial Inclusion Team to help us move from 'collection to connection', to help people pay their rent rather than punishing them for not being able to.

Other work involves helping asylum seekers to manage the transition to being refugees, improving accommodation for all groups, involving residents in decisions and plans, and providing proactive support to rough sleepers (currently an average of around 5 people, all of whom have been offered access to accommodation or reconnection with their former home areas).

We do not claim to have solved everything but believe we have created more of a collective sense that homelessness is wrong, preventable and should not be used as a threat to residents in poverty. This focus on transparency aligns with the rights principles of 'accountability' and 'active participation'.

Newcastle's experience could help inform a future Labour Government's approach to tackling homelessness. As part of that plan, we would like to see the following legislative or policy changes:

- Create a duty to cooperate and financial incentives and penalties for homelessness prevention for all public agencies, including the Home Office for supporting refugees

¹² Newcastle City Council, Information for professionals and volunteers – homelessness prevention. See: bit.ly/hiahr-forbes12

¹³ Newcastle City Council, Sustaining tenancies guidance for social landlords. See: bit.ly/hiahr-forbes13

¹⁴ National Housing Federation, 'How can housing associations' role as anchor institutions help prevent homelessness?' See: bit.ly/hiahr-forbes14

- Support an inclusive house building programme to meet local requirements
- Adopt the socioeconomic duty to help reduce inequalities that cause homelessness
- Support the creation of statutory homelessness prevention boards
- Improve welfare benefits policy fairness e.g. on benefit cuts and affordability when Job Centre Plus can't find work for a resident they could reinstate benefits until they can

The above will need resourcing and a mindset change for a revised welfare state, that is both a safety net to catch people in crisis but also a springboard to a stable LIFE.

Inequality in housing: still causing misery to many

Cllr Amanda Pinnock

Having a stable environment, a place to call home, has become increasingly difficult for so many over the years, and nothing has exposed and exacerbated socio-economic factors more than the Coronavirus pandemic. This is especially true for women and people of colour who face ever greater and more acute challenges in accessing safe, decent and affordable housing.

A key feature of international human rights law - and at the heart of the Labour Party's values - is the centrality of equality and non-discrimination, which must be understood not only as removing legal forms of discrimination, but also as taking proactive measures to identify and overcome the specific barriers faced by different groups so that they achieve substantive equality in the enjoyment of their rights. Human rights bodies are clear that groups including women, ethnic minorities, people with disabilities and others who may suffer inequalities should be given "due priority" in the design of policies.¹

Women, especially those with children, have long faced inequalities in housing and the pandemic housing crisis has hit them extremely hard, especially those with children. There has been a sharp increase in the number of women becoming homeless because of domestic abuse: between July and September 2021, 6,310 households were accepted as homeless by local councils because of domestic abuse, an increase of 13.7% from the figure recorded in the same quarter in 2020, and up a huge 34.3% from the figure for the third quarter of 2019.²

Although many do escape violence by leaving, domestic abuse and the lack of financial support often discourages women from leaving abusive relationships, putting themselves and children at risk of further harm. Leaving the family home is also likely to be tempered by financial risks such as the Benefit Cap, inadequate local housing allowances, and lack of funding for household costs such as furniture.

In addition to the problems of access to sufficient finance to leave a home where they have lived with an abusive partner, any woman who suffers domestic abuse is likely to have suffered financial or economic abuse as part of this, and

¹ UN Committee on Economic, Social and Cultural Rights, General Comment 4 on the right to adequate housing

² The Guardian, Domestic abuse rises sharply as cause of homelessness in England'. See: bit.ly/hiahr-pinnock2

economic abuse will often continue long after the relationship has ended. As a result, victims will often have a history of arrears on their rent or mortgage, as well as other debts, acting as a barrier to moving forward with their lives.

Other issues include language barriers, digital exclusion, and lack of professional services and support. Shelter reports that 1 in 2 single women are denied the right to a safe home, and 1 in 4 women with children live in a home putting them at risk of physical or mental harm. More alarmingly, 75,000 women and families are homeless living in temporary accommodation. Women make up 60% of homeless adults living in temporary accommodation today.³

Gender inequality contributes to difficulty finding homes: the Women's Budget Group reported in 2019 that no region in England was affordable to rent privately on women's median earnings, whereas men could at that time afford every region except London.⁴

Gender inequality in incomes is also likely to contribute to women's ability to leave the home following domestic abuse, and indeed, limits women's access to their own housing at all. The gender pay gap in 2020 was 14.9% for all employees. The rate is highest for women aged 50–59 (it starts to increase from the average for women over 40), and for Pakistani and Bangladeshi women. It has increased for some groups of women since the start of the pandemic: for women aged 40–49 working full-time, they earn an average of 12.3% less than their male counterparts, an increase of 1% since 2019.⁵

The gender pay gap also varies widely around the country: for example, in the South West of England, a woman on an average woman's salary would need to spend 48% of her income to afford a private rented home, but a man on an average male salary would need to spend only 31% of their earnings; this compares with 68% for women and 53% for men in London, whereas in the North

“Women and people of colour face ever greater and more acute challenges in accessing safe, decent and affordable housing.”

West, women need to spend 36% of their income on PRS rents, compared to men at 25%.⁶ This disparity leads to some women being stuck being dependent on others for many years, being forced to live in shared housing, or as shown above, staying with abusive partners.

³ Shelter, Fobbed Off, 2021. See: bit.ly/hiahr-pinnock3

⁴ A home of her own, Women's Budget Group, 2019. See: bit.ly/hiahr-pinnock4

⁵ Gender Pay Gap in the UK: 2021, Women's Budget Group. See: wbg.org.uk/blog/gender-pay-gap-in-the-uk-2021/

⁶ A home of her own, Women's Budget Group, 2019. See: bit.ly/hiahr-pinnock4

Around the country, availability of facilities such as women's refuges varies widely too. In 2021, it was reported that whilst there was a 30% shortfall in refuge space across the UK, Devon has only 1 charity-funded refuge, with 25 bed spaces and a further 3 safe houses for a population of around 1.2 million people.⁷

“Labour should put ending inequalities at the heart of a strategy focused on making the human right to housing a reality for all.”

Add race inequalities and structural inequities to the tenuous mixture and we see even harsher outcomes for black, Asian and ethnic minority (BAME) families. The Government's own race disparity audit found that black and minority households are more likely to live in overcrowded housing, suffer fuel poverty and live in substandard housing than white households.⁸

The Joseph Rowntree Foundation has reported that⁹:

- More than a quarter of people from black and minority households spent over a third of their income on housing compared to over 1 in 10 white workers
- People from minority backgrounds in the lowest paid jobs are far more likely to face unaffordable housing costs than white workers in the same occupation
- 8 in 20 households affected by the benefit cap in England are from black and minority backgrounds, even though these communities make up 3 in every 20 of the population
- Immigration laws and other social welfare policies drive inequalities
- Ethnically diverse local authorities in England are more likely to have significantly higher rates of eviction possession claims than the least diverse areas and this is mainly driven by labour and housing market factors
- All these factors have led to a serious lack of access to secure, good quality and affordable housing

The Government's draconian immigration laws have a significant part to play in causing unnecessary misery to families who want to work and contribute positively to society. One of the most corrosive is the Right to Rent legislation¹⁰ which places the onus on landlords creating criminal sanctions and financial

⁷ Input from a SW women's services worker at LHG Policy Day 2021.

⁸ Race Disparity Audit. See: bit.ly/hiahr-pinnock8

⁹ Joseph Rowntree Foundation. See: bit.ly/hiahr-pinnock9

¹⁰ Immigration Act 2014. See: bit.ly/hiahr-pinnock10

penalties for renting to the wrong person. This then leads to discrimination and suspicion against anyone without a British passport.

In a recent High Court ruling it was found that, although the Right to Rent policies actively caused discrimination and was incompatible with human rights laws, 'the scheme is justified as a proportionate means to achieve its legitimate aims'.¹¹ These provisions act as a deterrent, and encouraging discrimination on the grounds of race, which directly contradicts other protective laws to safeguard equality and fairness.

Further drivers of inequalities around immigration are directly linked to the policies of 'No Recourse to Public Funds' which affects people with limited immigration status and prevents them from accessing social welfare structures such as benefits, social housing and allowances. Although some may argue access to welfare in the UK is a controversial and complex issue, not having access to basic income and adequate housing is indeed inhumane.

In isolation, BAME communities generally experience poorer outcomes linked to inadequate income, housing, health and education and the determinants of these were often complex and multi-layered even pre-pandemic.

Today, the coronavirus pandemic has presented even greater challenges, shining a bright light on areas of deprivation that already existed. No-one should be denied a secure, habitable place to live irrespective of their socio-economic status, race, legal status or disability. No woman should have to face a choice between a life of abuse and one of financial hardship.

With food, fuel and living costs set to rise even more in the coming months, the Government must grasp the nettle and level up what seems to be a never-ending stream of perpetual housing problems for so many.

The Labour Party should put ending inequalities at the heart of a strategy focused on making the human right to housing a reality for all. Specific actions should include:

- Investing in new social housing homes in all areas
- Increasing the number of refuge spaces across the country, with greater investment in areas with less than the recommended rate of supply
- Repealing the Right to Rent legislation
- Removing No Recourse to Public Funds restrictions

¹¹ The Guardian, "Right to rent rule 'justified' finds UK appeal court". See: bit.ly/hiahr-pinnock11

Housing rights for disabled people

Kathy Bole and Sheila Spencer

“For persons with disabilities, choosing where and with whom to live, being part of a community and having access to adequate and accessible housing are central to a life of dignity, autonomy, participation, inclusion, equality and respect for diversity. The indivisibility and interdependence of the right to adequate housing with other human rights are at the heart of the lived experience of persons with disabilities”

- Leilani Farha, UN special rapporteur on the right to adequate housing¹

The United Nations Convention on the Rights of Persons with Disabilities (‘the Convention’) is an international legal agreement (agreed in December 2006) about the human rights of disabled people.² The UK signed up to the Convention in March 2007 and ratified it in June 2009, thereby making a commitment to promoting and protecting disabled people’s human rights. The Convention has not, however, been incorporated into domestic UK law, though the 2019 Labour manifesto committed to giving effect to it.

Article 19 of the Convention says that disabled people:

- have an equal right to live in and take part in the community
- have the right to the same choice and control as non-disabled people

and that Governments should:

- do everything they can to ensure disabled people enjoy these rights
- ensure that disabled people have the right to choose where they live and who they live with

The United Nations Committee on the Rights of Persons with Disabilities (‘the UN Committee’) regularly reviews progress made by signatories. It last reviewed the UK’s progress on the Convention in 2017 and concluded that the UK Government should³:

- Make the Convention a part of UK law, so that it can be enforced in UK courts

¹ Thematic Report on the Right to Adequate Housing of Persons with Disabilities, January 2017. See: bit.ly/hiahr-bole1

² UN Convention on the Rights of Persons with Disabilities. See: bit.ly/hiahr-bole2

³ United Nations Committee recommendations for the UK, 2017. See: bit.ly/hiahr-bole3

- Ensure that the human rights model of disability is protected by law and informs policies affecting disabled people across the UK
- Carry out a full review of the UK's laws and policies to bring them into line with the Convention

The human rights model of disability

It has been common in the UK for the medical model of disability – where the disabled person is viewed as having a need for medication, equipment, and treatment since they need “fixing” because of impairments or differences - to take precedence over the social model – which regards disability as being caused by barriers resulting from the way that society is organised.

The Convention goes further still in taking a human rights approach. It recognises that people with impairments are excluded by obstacles created by society, and so are disabled by inaccessible services, barriers in the built environment or prejudice and stigma, all of which can change over time for the individual.

The human rights approach treats such barriers in society as discriminatory. It is up to the states where disabled people live to take responsibility for eliminating these barriers. There should also be an avenue through which disabled people can challenge discrimination.

Disability campaigners have succeeded in changing society's views to some extent, but it is clear from the UN Committee's latest report that there is still more to do on changing attitudes and removing the barriers.

Shortfalls in housing and income affecting disabled people

In relation to accessibility of homes for disabled people, and wheelchair users in particular, the Committee's report noted that there was a massive shortfall in housing to meet the needs of disabled people, as well as a lack of security of tenure for many.

Limited progress has been made in recent years to develop sufficient housing adapted or adaptable to meet disabled people's needs. According to Habinteg, only half of local authority plans for meeting housing needs include a policy to set a percentage of new homes to be built to an accessible standard.⁴ Habinteg also reported that only 9% of homes provide the four main features to be considered 'visitable' by a wide range of people including wheelchair users, and that over 400,000 wheelchair users were living in homes that are neither adapted

⁴ Habinteg: A forecast for accessible homes, 2020. See: bit.ly/hiahr-bole4

nor accessible.⁵ Habinteg and Age UK call for 10% of new homes to be built to wheelchair accessible standards and for regulation to ensure all new homes are built to accessible, adaptable standards (Category 2) as a minimum.⁶

The latest assessment of home adaptations set out in the English Housing Survey (2019/20) reported that 53% (1 million) of households did not have all the adaptations that they needed and 19% (374,000) of households required adaptations and considered their accommodation unsuitable for them.⁷ 9% (176,000) of households needing adaptations said they wanted to move to get somewhere more suitable.

Homes which are unsuitable for disabled people means additional costs for the health service, in addition to that for families and individuals. As the Equality and Human Rights Commission's Enquiry found, this can include mental health stress as well as physical strain:

*"During this inquiry, we heard from over 400 disabled people, which exposed stories of people eating, sleeping and bathing in one room, and of people having to be carried around their homes by family members. Inadequate housing has also led to many disabled people, carers and family members experiencing a serious deterioration in their mental wellbeing."*⁸

The Housing Made for Everyone (HoME) coalition estimates that there is an annual cost of £624m to the MHS as a result of poor housing for the over 55s alone.⁹

Families with children with disabilities also often face problems with housing that do not enable their children to lead a normal life. A quarter of families with disabled children live in a home that makes their condition worse.¹⁰ The shortage of accessible social and affordable housing for families with disabled children adds to lengthy delays for financial help to adapt homes, putting disabled children at risk, and causing additional stress on families.

A wider range of disability issues also need to be addressed. These include the difficulty which people with learning disabilities, learning difficulties, and mental health can have in securing appropriate housing and thus meeting their human

⁵ Habinteg press release on English Housing Survey 2018/19. See: bit.ly/hiahr-bole5

⁶ Home Truths: Rebutting 10 myths about building accessible housing, Habinteg & Age UK. See: bit.ly/hiahr-bole6

⁷ English Housing Survey Home adaptations report, 2019/20. See: bit.ly/hiahr-bole7

⁸ Housing and disabled people: Britain's hidden crisis, EHRC 2018. See: bit.ly/hiahr-bole8

⁹ See: habinteg.org.uk/homecoalition

¹⁰ Counting the Cost research, Contact 2021. See: bit.ly/hiahr-bole10

rights to lead a normal, independent life, as well as the significant shortfalls in income that have resulted from cuts in welfare benefits. The UN Committee also noted in its report that since the closure of the Independent Living Fund in 2015, responsibility for supporting severely disabled people to live independently has been transferred to devolved governments and local authorities without sufficient dedicated funds, and this some local authorities are telling disabled people that they must live in care homes because it is cheaper than living in the community.

A case study

Steve is a 28-year-old wheelchair user with other complex health needs including severe sleep apnoea. He works very limited hours due to his other disabilities, and so has to claim welfare benefits. He has round-the-clock care in case he stops breathing during the night. He therefore needs a two-bedroom flat so as to provide a room for his carer to use. Under current legislation, he may be penalised by the Bedroom Tax, which normally assumes that a single person should receive benefits only enough to cover the rent of a home with a single bedroom.

Steve has taken the daunting decision to move as he currently lives in an area where there is not enough accessible transport capable of carrying a wheelchair. Since he is on benefits, he would most likely be looking for a home owned by a local authority or housing association. In addition to navigating the system for applying for such a move, he may need to have an occupational therapist to determine what his housing needs are and what adjustments would need to be made. He might need someone who is non-disabled to go with him to view properties in case the accommodation is not as accessible as described, for example, if doorways are not wide enough for a powered wheelchair.

He will need to check that his carers will agree to travel to his new home: both Brexit and the pandemic have taken their toll on numbers of people prepared to work as home carers, and the cost of travelling to work for home carers can be prohibitive, particularly in rural areas.

A human right to housing: impact on disabled people

For disabled people, recognising the human right to adequate housing in law and domesticating the Convention on the Rights of Persons with Disabilities would be great strides forward. By placing obligations on state bodies, disabled people could expect decent and affordable homes, located where they want to live, with adequate adaptations, facilities and services to lead a fulfilled life, and the right to be able to enforce their access to their rights. Disabled people, who have the

expertise to say what housing conditions and facilities they really need, would have the right to be consulted, to make decisions about their lives, and to be involved in the design of homes and estates. It would also mean local authorities being required to plan for enough homes with facilities for disabled people, for their own occupation or for visiting family and friends.

It is in everyone's interests to support access to such rights: everyone is one accident, injury or illness away from becoming disabled.

The right to housing for Gypsy, Roma and Traveller communities

Martin Gallagher

“The lack of appropriate and culturally adequate residential and transit accommodation is often at the root of the stigma and discrimination faced by Gypsies and Travellers in the United Kingdom, underpinning a range of other problems, from access to education or work to appropriate health care or inclusion in community life.”

- Raquel Rolnik, UN special rapporteur on the right to adequate housing, 2013.

Gypsy, Roma & Traveller (GRT) accommodation has long been a heavily contested issue within communities and amongst policymakers. What is often absent in those discussions, is the context of human rights to bring to light the right of everyone to non-discriminatory, adequate housing. The reality of many GRT people is that there is a desperate need for adequate and culturally appropriate accommodation and a consistent lack of will to provide it, contributing to the extensive inequalities the community still face, despite clear obligations under international human rights law.

To first understand the complexity of accommodation, the umbrella term ‘GRT’ must be explored. ‘GRT’ incorporates different groups of Gypsy, Roma & Traveller communities, all of which have different cultural traditions. Irish Travellers, Gypsies and Roma are protected by equality and human rights laws as ethnic groups and acknowledging the different groups within this umbrella term is important in considering what accommodation is needed. It is also important to note that a person’s status of nomadic travel does not change a person’s ethnic status and their right to protection from discrimination.

Whilst some members of the GRT community continue to travel, they are met with a continued lack of transit sites. Friends, Families & Travellers state in their research that only 42 transit pitches (and 59 permanent site pitches) were available nationwide, with 20 pitches having no sources of electricity and locals deeming it not fit for use.¹ Having a home where one can live in security, peace and dignity is a basic human right, and when pitches are unavailable, or their standards are uninhabitable, this right is violated and some GRT people are forced to trespass.

¹ Friends, Families and Travellers, ‘Last on the list: An overview of unmet need for pitches on Traveller sites in England’, January 2021. See: bit.ly/hiahr-gallagher1

Part of the problem stems from local authorities – sometimes deliberately - underestimating the need for pitches. Each local authority undertakes its own ‘Caravan Count’, which determines the need for available sites or pitches in their locality and how many people are in each family per plot. For example, BEMIS conducted research with staff who have been responsible for these counts highlighting concerns with the accuracy of this data collection, commenting on barriers such as policy, poor counting practice, commitment, community mistrust and geography.² BEMIS highlights that some authorities would knowingly reduce the data of GRT members within their area to minimise the need for further sites or GRT, accommodation, support, and services.

More positively, the Welsh Government has shown that enabling GRT families to buy their own land to construct sites (commonly referred to as a ‘private site’) have drastically taken the financial and strategic burden off local authorities. While this is seen as a success, local councillors are still the gate keepers of processing these plans, and cases have been found to be subject of discriminatory practice, with the vast majority of applications for private sites refused at first hearing.³

Historically, local authorities across the UK used to have a duty to provide authorised sites to GRT communities, but this was repealed as part of John Major’s Criminal Justice Act in 1994. Fortunately a duty to provide accommodation and respect the human right for communities to practise their

“Having a home where one can live in security, peace and dignity is a basic human right, and when pitches are unavailable, or their standards are uninhabitable, this right is violated.”

ethnicity and culture was restored by the Welsh Government in 2014.⁴

While this aspect of Welsh policy is positive in comparison to England, GRT communities are still an afterthought in terms of *healthy* site locations, GRT

families are still being consistently let down in terms of the provision of adequate *quality* sites. For example, many permanent and transit sites are located next to motorways or major roads where air pollution can be at its most dangerous, and those residing on those sites face the consequences in terms of poor health. This

² BEMIS. (2006). Counting Gypsies & Travellers: A Review of the Gypsy Caravan Count System. See: bit.ly/hiahr-gallagher2

³ Equality and Human Rights Commission (2009), Inequalities experienced by Gypsy and Traveller Communities, A Review. See: bit.ly/hiahr-gallagher3

⁴ Housing (Wales) Act, 2014. See: bit.ly/hiahr-gallagher4

is well illustrated an interview conducted by Patrice Van Cleemput with a lady who had to move to a local authority site, as part of his research into the ill-health faced by GRT communities:

*"I blame moving there caused my health ... I mean it's a health hazard down there ... that's when my health started to go wrong. See I'm right against the motorway, then the tip and then the sewerage. Honestly you want to go there in the summertime. It's horrible, the smell, it's unfit for 'em. I was never really well. You had to shut your doors on the summer day because the flies were as big as that."*⁵

This experience resonates with my own upbringing on a Flintshire Council site, located on a dual carriageway and next to a sewage plant, with human waste being filtered into the River Dee minutes from the site. I am 35 with chronic asthma, due to the decision to allow people to reside in these conditions. With the A494 discovered to have exceeded the EU's nitrogen oxide 40µg/m³ air pollutant cap by more than 20%, the Welsh Government has since implemented a speed limit of 50mph, but no further actions have been taken to reduce air pollution for site residents.

The 'Office of High Commission for Human Rights' fact sheet 'The Right to Adequate Housing' states that housing is deemed inadequate if the right to express culture and identity is not considered and if locations are situated in polluted and dangerous areas.⁶

The failure to ensure both an adequate quantity and quality of sites is a major factor in GRT families feeling forced to reside in 'bricks and mortar' accommodation, as they feel there is no other option of adequate housing.⁷ The 2011 Census highlighted that 76% of the GRT population live in 'bricks and mortar' housing.⁸ For some within 'bricks and mortar', isolation and depression are prevalent which contributes to some of the poorest health outcomes in the UK.

Rather than tackle the chronic shortage of both permanent and transit sites across the UK, the current UK Government has instead chosen to focus on criminalising unauthorised encampments through the 'Police, Crime, Sentencing and Courts Bill'. The Bill, if passed, will introduce a new law that 'criminalises

⁵ Van Cleemput, P. (2008). Health Impact of Gypsy Sites Policy in the UK. *Social Policy and Society*, 7(1), 103-117. See: bit.ly/hiahr-gallagher5

⁶ Office of the United Nations High Commissioner for Human Rights. (2014). The Right to Adequate Housing. See: bit.ly/hiahr-gallagher6

⁷ Welsh Government, *Travelling to Better Health*, 2019. See: bit.ly/hiahr-gallagher7

⁸ Cromarty, H. (2019). *Gypsies and Travellers*. See: bit.ly/hiahr-gallagher8

trespass, with the intent to reside', giving police the power to remove caravans and vehicles, leaving families homeless. Even the government's own Equalities Impact Statement admits that this approach will affect GRT and Black

communities disproportionately, though claims that such discrimination could be "objectively justified".⁹

"The Labour Party must show that they are not afraid to be allies to GRT communities."

Even the police have stated that these powers are not needed, and the vast majority of police bodies have indicated that their preferred solution to unauthorised encampments would be better site provision.¹⁰ Unless this advice is heeded, the years that will follow the introduction of the Police Bill will drastically highlight the breaches of human rights that GRT experience daily.

The Labour Party must show that they are not afraid to be allies to GRT communities and will undo the massive damage to GRT human rights by the Conservative Party. Firstly, the Police Bill must be scrapped to ensure that no ethnic minority is at a disadvantage, or at risk of becoming homeless and criminalised for expressing their cultural rights.

Labour must also reverse the lack of political will to provide GRT communities with healthy and suitable homes for us to express our culture but also access what society has to offer us in terms of better life chances. Like the Welsh Government, they must make the provision of healthy and safe sites a statutory duty on each local authority. It must then ensure that measures are in place to ensure that these sites and accommodation needs are being met once identified and sites remain engaged with and maintained.

Lord Dubs offered a quote from Václav Havel to the House of Lords that stated, "the litmus test of civil society is the way it treats its Gypsy, Roma and Traveller communities" and currently, society still is, and has for generations, criminally failed the GRT community.¹¹

⁹ Dearden, L. (2021). Government says discrimination against black people and Travellers 'objectively justified' with new laws. See: bit.ly/hiahr-gallagher9

¹⁰ Friends, Families and Travellers. (2020). Police repeat calls for more sites, rejecting Home Office proposals to criminalise trespass. See: bit.ly/hiahr-gallagher10

¹¹ Maxwell, D. (2019). A Human Right to Housing? See: bit.ly/hiahr-gallagher11

Why participation is integral to housing as a human right

Marianne Hood

"You can make your home the base for your adventures, but it is absurd to make the base itself an adventure"

- Aneurin Bevan, 'In Place of Fear' 1952

"Participation is central to human rights-based housing strategies because it challenges exclusions and silencing"

- UN Special Rapporteur on Housing¹

The active involvement of residents, tenants, prospective tenants, and those who are experiencing homelessness or inadequate housing, must be at the heart of any human rights-based housing policy and strategy. In any locality, it is the people who live there - especially those from groups who are often marginalised - who are best placed to identify the housing problems and shortcomings they face. In human rights language, they are the 'rights holders' to whom the state has obligations, and who know best how those obligations should be met.

Since its inception, Labour Housing Group (LHG) has argued not only that everyone should have the right to a safe, secure, affordable home but also that all tenants should have rights to be closely involved in the development, design, and management of their homes. LHG's original 1983 'Charter for Council Housing' said council housing should be a 'more democratically controlled, responsive, housing service, shaped by the demands of present and prospective occupiers, where rights of tenants are clearly established.' It called for tenants to be involved in the design of their housing, for recognition of democratically constituted tenants' associations and for consultation and negotiation with tenants and tenants' associations, including consultation over matters of rents and finance.

LHG's longstanding call is shared by the TAROE Trust, the tenants' organisation representing tenants and tenants' groups across England, which has called for tenant engagement and empowerment to be a regulated, enforceable 'right' based on prescriptive standards.²

¹ Guidelines for the development and implementation of human rights-based housing strategies, January 2018. See: undocs.org/A/HRC/37/53

² TAROE TRUST, 2018. 'Ensuring fairness for tenants: A manifesto for change.'

However, since the 1980s, tenants of housing associations and local authorities have seen their rights come and go, while private sector tenants have fared no better. Without clear human rights obligations laid out in law, changes in regulations and legislation have resulted in a strange 'participation waltz': three steps forward, two steps back. While some tenants and residents have had opportunities to become involved in housing decisions, others have not, and the involvement agenda is not always based on their needs and priorities. Instead, it is usually set by the housing organisation and, at national level, reflects the

“Without clear human rights obligations laid out in law, changes in regulations and legislation have resulted in a strange ‘participation waltz’.”

Government's priorities. Further, much of what has developed over the last 50 years has sadly been based more on a passive 'consumer' approach to consultation rather than any form of active participation and empowerment for present and prospective occupants.

Perhaps things could have been different had the last Labour government had the confidence to follow through on its promise in 1998 to “use the full power of the law, if necessary, to empower local people as stakeholders in their own housing management and decision-making.”³ While the government introduced many positive changes during this period, important measures to strengthen tenants' and residents' voices were not embedded in law and ultimately relied upon the support and cooperation of local authorities and housing organisations. As a result, few tenants' and residents' priorities made it into statute, and many advances made were easily overturned when power eventually changed hands.

From 2010, the Coalition Government wasted little time in muffling the voices of tenants and residents, including by scrapping the requirement for housing authorities to produce tenants' compacts, abolishing the Tenants' Services Authority, and pulling the plug on a new national organisation being developed to provide a voice for tenants. Security of tenure – an essential precondition for meaningful participation – was also severely weakened and access to support and resources, including independent help and advice, was slashed.

As things stand, few actual rights to participate exist in law, including rights of recognition for tenants' and residents' organisations, rights to support and resources, and rights to effective redress. This is despite all the evidence that

³ Speech by Hilary Armstrong, then Minister for local government and housing, at a Chartered Institute of Housing conference, June 1998.

tenant and resident involvement is integral to improving the provision and management of homes and local neighbourhoods.⁴ For example, an Audit Commission report in 2004 identified how involving tenants had led to better, more efficient and cost-effective services. Examples from the Beacon Scheme – a programme launched in 1998 to drive improvement and raise standards across local government – also demonstrated how participation had changed and improved housing management practice, making services more responsive, effective and efficient.⁵

“If participation is limited only to those with the loudest voices and sharpest elbows, it loses its power and its purpose.”

Looking forward, a future Labour Government should learn the lessons of the past and set down specific rights in law to enable occupants and prospective occupants to participate in policies and decisions affecting their housing. To ensure housing meets the needs and priorities of the people for whom they are intended, and that housing

authorities are genuinely accountable to their tenants and prospective tenants’ participation should include the whole process of setting housing policies and strategies, as well as monitoring, reviewing and enforcing performance standards.

Critically, measures should be taken to ensure that everybody concerned is able to participate, noting international human rights standards that “equal participation must be ensured for women, informal and homeless residents, persons with disabilities and other groups experiencing discrimination or marginalization.”⁶ If participation is limited only to those with the loudest voices and sharpest elbows, it loses its power and its purpose.

Finally, if such participation is to be meaningful it must go hand in hand with strengthening tenants’ security of tenure. What is the point of getting involved if you may have to move house at any time? Why would you risk speaking up when it could cost you your home?

Such steps should not be restricted to changes in policies or regulations, but be embedded in law as part of a human rights-based housing strategy. Specifically, rights in law are required to ensure:

⁴ 1985 NFHA Inquiry into British Housing report

⁵ ODPM The Beacon Scheme 2006/07, ‘Improving Housing Services by Involving Tenants’

⁶ UN special rapporteur on adequate housing, Guidelines for the Implementation of the Right to Adequate Housing, December 2019. See: undocs.org/A/HRC/43/43

- Security of tenure across the rented sector to underpin rights to participate
- Equal rights for all occupants and prospective occupants to participate in the development, implementation, and review of housing policies and strategies including financial matters
- Rights of recognition for tenants' and residents' organisations
- Rights to support for involvement, especially tailored support to help those who are vulnerable and often marginalised such as people with learning difficulties and those who are homeless.
- Rights of access to resources including provision of accessible information and training
- Individual and collective action over poor or failed performance and effective remedies and redress for tenants and residents to ensure rights to participate can be upheld.

If these rights can be enshrined in law then we would be well on the way to ensuring that everyone has an equal right not just to a physical shelter, but to the fulfilment of their human right a home where they can live in “security, peace and dignity”.⁷

⁷ UN Committee on Economic, Social and Cultural Rights, General Comment 4.

Accountability: claiming rights, remedy and redress

Liz Davies and Giles Peaker

“The provision of legal remedies for the violation of the right to housing is a core component of States’ obligation to ensure the realization of this right.”

- UN Guidelines for the implementation of the right to adequate housing.

The European Convention of Human Rights, incorporated into UK law by the Human Rights Act 1998, protects a person’s “right to respect for his [or her] home” (Article 8). The right is qualified; it can be interfered with where that is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others (Art 8(2)) and any interference must be proportionate. The last part of the test raises issues about whether there is an alternative to eviction, or whether the consequences of eviction are particularly draconian.

But this is a limited right. It is well established that the “right to respect” for a person’s home in the Human Rights Act does not mean a right to a home.¹ It is also well established that the protection of Article 8 only applies against a public authority (central government, local government and bodies that carry out the functions of a public authority, often including housing associations²). The European Court of Human Rights has made it clear that Article 8 protection does not apply in the private renting context.³

What does this mean? If someone is facing eviction by a public authority, he or she can ask the Court to consider the reasons for wanting possession, his or her personal circumstances and anything else relevant, even though the law might not otherwise provide for those issues to be raised.⁴

Where a home is provided by a public authority, its conditions should be at least a minimum standard, so as not to amount to inhuman or degrading treatment (Article 3), or breach respect for his or her private life (Article 8), such as not being

¹ O’Rourke v UK (Application No 39022/97) (2001), ECtHR.

² R (Weaver) v London & Quadrant Trust [2009] EWCA Civ 587 | [2010] 1 W.L.R. 363.

³ FJM v UK Application no. 76202/16 (2018) ECtHR

⁴ While the right is available, the Supreme Court held (in the very same case in which it decided that the right was available) that “in virtually every case”, an eviction would be proportionate: *Pinnock v Manchester City Council* [2010] UKSC 45; [2011] 2 A.C. 104 per Lord Neuberger at [54].

able to access a toilet.⁵ Nowadays, the requirement that all homes let to tenants, whether by public or private landlords, must be fit for human habitation, is more effective.⁶

If there were a human right to housing, what would this add to the current right to respect for his or her home? And how could this be enforced?

First, all evictions would require a Court order, and occupiers would have the right to argue that evicting them would be disproportionate, whether the landlord was a public authority or a private individual. The Court would balance the occupier's circumstances with those of the owner (including the owner's right to respect for his or her property at Article 1 of the First Protocol of the ECHR). While in many cases, an eviction might be proportionate, the balancing exercise would be important and the court should ensure it is carried out.

Second, it would give a right to immediate temporary accommodation for those who are homeless and a subsequent offer of accommodation (in the public or private sector) of suitable accommodation. This would be enforceable through the courts.

Scotland has already abolished priority need and is considering phasing out the 'becoming homeless intentionally' test.⁷ Wales has come close to abolishing the 'becoming homeless intentionally' test and is considering the abolition of priority need.⁸ If England also abolished the tests of priority need and 'becoming homeless intentionally', so that everyone who is homeless is accommodated by a council and subsequently given one offer of long-term accommodation, this would go some way to achieving this aspect of housing as a human right.⁹

Third, such legal rights can only be effective if there is an adequate supply of genuinely affordable, secure and decent housing, both in the public and private

⁵ R (Anufrijeva) v Southwark London Borough Council [2003] EWCA Civ 1406, [2004] QB 1124, CA.

⁶ Homes (Fitness for Human Habitation) Act 2018, in force for all tenancies from March 2020.

⁷ Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012, SI 2012/330, which came into effect on 31 December 2012; Housing (Scotland) Act 1987, s 28(2) as amended by Homelessness etc (Scotland) Act 2003, s 4 and brought into effect by Homelessness etc (Scotland) Act 2003 (Commencement No 4) Order 2019, SSI 2019/316 from 7 November 2019.

⁸ Housing (Wales) Act 2014, ss 75(3) and 78, the 'becoming homeless intentionally' test can only be applied where local housing authorities have taken a decision to have regard to the test, and even then only to applicants who do not have children or young people in their household; Review of Priority Need in Wales, Mackie, Gray, Hughes, Madoc-Jones, Moustერი, Pawson, Spyropoulos, Stirling, Taylor & Watts, Government Social Research & Welsh Government, October 2020.

⁹ These proposals were put forward by Crisis in its Plan to End Homelessness, June 2018. Crisis proposes that the test of 'becoming homeless intentionally' should be amended to a much more restrictive test of 'deliberate manipulation'.

sector. Housing as a human right can only be realised if there is sufficient suitable housing.

Lastly, legal rights are only effective to the extent that people are able to enforce them. Any vision of housing as a human right must include the legal support necessary for those rights to be realised, through advice and representation. Many tenants and all homeless people are reliant on legal aid for such advice and representation. But this system is in crisis. The Law Society has demonstrated how 40% of the population in England and Wales do not have a housing legal aid provider in their county.¹⁰ Many areas of legal work necessary for people to maintain their tenancies, such as welfare benefits, were removed from scope in 2013. The means test for legal aid is so restrictive that now only some 25%¹¹ of the population can qualify for legal aid. A properly funded legal aid scheme, covering all relevant areas of law, and open to much of the population would be vital to make housing as a human right more than an abstract concept.

We recommend:

- Primary legislation to enact the right to housing. We are aware that other contributors are discussing international examples, so we do not provide a form of words.
- Amendments to Protection from Eviction Act 1977, Housing Act 1980, Housing Act 1985 and Housing Act 1988 to provide that Courts, when considering applications for possession orders, must consider the reasonableness of making an order.
- Amendments to Housing Act 1996 Part 7 so to abolish the tests of priority need and 'becoming homeless intentionally' and to amend the test of eligibility so that all homeless people who are habitually resident have the right to emergency accommodation and to an offer of suitable accommodation.
- Labour should restate its commitment to building 100,000 social rented homes per year.
- Reform of the Legal Aid Sentencing and Punishment of Offenders Act 2012, so to provide for early legal advice to anyone at risk of losing his or her home, increase the scope of legal aid to include welfare benefits, debt, and disrepair claims; reform the means test for legal aid and increase legal aid rates of payment so as to attract lawyers back into providing legal aid services; and ensure that all geographical areas have specialist legal aid providers.

¹⁰ The Law Society, 'Housing – legal aid deserts'. See: bit.ly/hiahr-davies10

¹¹ Detailed recommendations by House of Commons Justice Committee, The Future of Legal Aid, July 2021, HC 70. See: bit.ly/hiahr-davies11

Accountability: how could the right to housing be put into domestic law?

Peter Roderick

“States, including their judiciaries, must ensure that the right to adequate housing is recognized and enforceable as a fundamental human right through applicable constitutional and legislative provisions or through interpretations of interdependent rights such as the right to life.”

- UN Guidelines for the implementation of the right to adequate housing.

Introduction

Human rights language is a powerful advocacy tool. But public bodies cannot be held accountable for failing to meet human rights standards unless legislation is passed which holds them to those standards. So, what should a Bill on the human right to housing look like? And what difference would it make anyway?

Scepticism about the ability of the law to significantly improve the material conditions of life for most people is entirely understandable and historically justified. ‘Slow’, ‘incremental’ and ‘insufficient’ are the lessons I take from the law’s contribution to eliminating racial and sex discrimination, for example. The law abolished slavery, but only incrementally over decades and then replaced it with a form of indentured labour and gave compensation to slave ‘owners’. The law eventually allowed married women to own property, and allowed women to vote only much later and again in stages. Outlawing racial and sex discrimination came much later and incrementally, again, yet widespread inequality and discrimination still persist. There are other examples. Don’t over-promise, in other words.

But imagine what the situation of, say, people of colour and women, would be today if those laws had not been passed. And there’d be no National Health Service without the law. So the other lesson I take from the law’s attempts to remedy social injustices is that they are necessary, but far from sufficient. The key question then becomes, how sufficient can the law be made? Or, put another way: how much injustice will we still be left with afterwards?

What could a Bill look like?

A Bill putting the human right to housing into domestic law would require ministers and other public bodies to adopt and implement policies and decisions across central and local government, and beyond, to respect, protect and fulfil the right within a legally-mandated framework.

Such a Bill could as a minimum, for example, consist of a clearly formulated right, generally equal in status with rights under the Human Rights Act 1998, with corresponding obligations on public bodies that allow for a carefully drafted degree of judgement on their part, enforceable individually and collectively, underpinned by pre-legislative scrutiny of future Bills and a strong institutional mechanism.

New and amended statutory duties and powers have been suggested or implied in previous chapters each of which can be thought of as elements of a right to housing – such as to prevent homelessness and to ensure investment and construction, affordability, safety and remediation, security of tenure, availability - not least for disabled people and the GRT community - and participation, as well as addressing the discrimination and inequalities that exist in all these elements and through immigration and welfare policies.

A Bill which only addressed some or all of these issues as standard, ‘free-standing’ statutory functions would offer practical and piecemeal support for the right. But it would not be systematic or over-arching, and because it would fall short of enacting the right as a human right it would have no human rights standards to be tested against. That’s not to say though that a human right to housing Bill could not also include such provisions, in which case they could be drafted as in furtherance of the duty to respect, protect and/or fulfil the right (as the case may be).

Another option would be to follow the approach of the 2018 Social Security (Scotland) Act which provides that “social security is itself a human right and essential to the realisation of other human rights”, as one of eight social security principles. This would also fall

short, however, as breach of the principles cannot be the basis for a legal challenge although a court can take them into account in a relevant case.

“Public bodies cannot be held accountable for failing to meet human rights standards unless legislation is passed which holds them to those standards.”

Canada's National Housing Strategy Act 2019,¹ discussed in chapter 4, offers another less direct and comprehensive model which stops short of putting the right into domestic law. It 'declares' the federal government's housing policy to be to recognise, and to further progressive realisation of, the human right to adequate housing. This policy must in turn be furthered by a national housing strategy which takes into account key principles of a human rights-based approach to housing.

Accountability mechanisms include new statutory institutions with advisory, monitoring, research, consultation, review, submissions, hearings and reporting functions. People are not though entitled to go to court to challenge violations of the right.

"There are many good reasons for putting housing and other social rights into domestic law. The question is not whether to do so, but when, and how."

Four aspects of a potential Bill to put the human right to housing into domestic law are discussed below.

1) A clearly formulated right

Formulating the right could be simple: 'everyone has the right to housing' - as it is phrased in the revised European Social Charter, which the UK signed in 1997 but has not ratified.

'Everyone has the right to adequate housing' would be an alternative if the wording of the International Covenant on Economic, Social and Cultural Rights (ICESCR) was favoured: "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".

That wording raises yet other possibilities: should the right be formulated as a component right of a wider right to an adequate standard of living? If so, what about the other component rights, such as food? The 2021 Labour Conference passed a motion stating that "access to food should be a legal right in the UK".

Similar, though more, questions would arise if Article 25 of the Universal Declaration of Human Rights was our starting point.

¹ OCHCR, 'Guidelines for the implementation of the right to adequate housing'. See: bit.ly/hiahr-roderick1

Yet another possibility would be wider still: to enact a Bill which put into our law the social, employment and cultural rights that the UK has accepted internationally, as set out in the ICESCR. I was part of a group of academics, lawyers and campaigners who drafted such a Bill in 2019.²

2) Equal in status with the Human Rights Act 1998 (HRA)

Human rights are indivisible. Social rights are human rights as much as civil and political rights. The starting point of a Bill should therefore be that a right to housing must be equal in status to the civil and political – and, indeed, social – rights that are contained in the HRA. This would mean, for example, that courts would be obliged to interpret legislation compatibly with the right, could issue declarations of incompatibility, and could in certain cases award damages.

This is not to say though that the HRA should not be departed from, as discussed below.

3) Corresponding obligations and (4) a degree of judgment

What would be the obligations? And how much wriggle room would be permitted?

The Bill would impose over-arching legal duties applicable to all public bodies, and indirectly to private bodies, aimed at delivering the human right to housing. They would have to refrain from interfering directly or indirectly with the enjoyment of the right (respect); act to prevent third parties from interfering with enjoyment of the right (protect) and adopt reasonable administrative, budgetary, judicial, promotional and other measures, including secondary legislation, towards the full realisation of the right (fulfil).

There will be various alternative active steps that a government could take to deliver the human right to housing, to a large extent dependent on its political complexion. Taking proactive steps may also involve public expenditure. A Bill on the human right to housing would be a non-starter if it did not recognise the legitimacy of different policy options, but at the same time pretty worthless if it could not address the effectiveness of the options chosen, or the allocation of public expenditure. These aspects do not make it fundamentally different from, say, HRA rights such as the rights to a fair trial or to education. But in my view they have to be politically engaged with, and will inevitably be an area in which the HRA would have to be departed from. The challenge will be to devise careful drafting which permits a degree of judgement on the part of government, at the

² Newcastle University, Article 22 Consultation. See: bit.ly/hiahr-roderick2

same time as not allowing for a hands-off approach that would make the Bill toothless and purely procedural.

Put another way: some will say that housing and other social rights are political issues that belong in Parliament not in the courts. It's quite correct and proper to say that social issues are primarily political. But they are not only political, and never have been. The key question is where to draw the line between Parliament and the courts, not to deny its existence.

Conclusion

There are many good reasons for putting housing and other social rights into domestic law. I have briefly outlined here some of the main issues involved in doing so. The question is not whether to do so, but when, and how.



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