

Written evidence submitted by Safer Renting (RRB30)

1. Safer Renting works in partnership with 10 London Boroughs to deliver a Tenancy Relations service. We protect renters from harassment and illegal eviction, sustain tenancies, and prevent homelessness, whilst working directly with our clients to navigate the legal system and facilitate access to justice. This partnership model is unique amongst frontline housing services; working across districts allows us to monitor landlord and agent activities, help partner councils to build intelligence and work together to target and address the worst offenders.
2. Our work is funded by these partnerships with local authorities and through funding from charitable foundations; it is delivered by Cambridge House, a community organisation established in 1889. Our 2020 *Journeys in the Shadow Private Rented Sector* report describes tenants' experiences of fear, intimidation, and illegal evictions at the hands of criminal landlords. We also publish an *Illegal Eviction Count*¹ to address the question: just how often does illegal eviction take place?

Executive summary

3. We offer evidence in support of three vital clauses in the Renters Reform Bill:
 - i. **Part 1, Chapter 3 in full:** for the creation of the PRS² Database;
 - ii. **Part 2, Chapter 1, clause (4) (i) and (ii):** The Secretary of State may by regulations amend this Chapter to change the meaning of “residential landlord” in relation to an assured tenancy sub-tenancies— to include (or not) any or all superior landlords in relation to that tenancy, to protect sub-tenants by reducing fraud; and
 - iii. **Part 3, clause 58 in full:** for giving effect to the intentions of the PFEA³, by introducing a duty to enforce it and to prevent illegal evictions.
4. Our evidence in support of the above is set out sequentially in the body of our evidence below. Further, Appendix 1 provides more detailed data of the prevalence and current trends of illegal evictions to underline the urgency of introducing Part 3, clause 58 to protect renters from this brutal offence.

(i) Evidence in support of Part 1, Chapter 3 in full

5. Enforcement of this Bill relies on enforcement authorities and renters being able to locate compliance failures in the PRS. The Centre for Public Data has called for a national register of PRS properties providing a Unique Property Reference Number, for this purpose.
6. Many respected independent reports agree that lack of data on the PRS means local authorities cannot accurately assess the sector and are inefficient at locating the worst conditions, relying on renters to complain; this is not a consistent source of data. The National Audit Office highlighted that DLUHC lacks data on “key issues where regulatory action may be required such as harassment, evictions and disrepair that is not being addressed”.

¹ Appendix 1

² Private Rented Sector

³ Protection From Eviction Act 1977

7. The lack of accurate data also contributes to the painfully low rate of prosecutions under the PfEA: in 2022 there were just 26 prosecutions for illegal evictions, compared to 8,689 recorded in our count for the same year.
8. Data is also essential for the future impact of this Bill to be assessed. Our data suggests that the impact of pandemic restrictions on lawful evictions using section 21 led to unintended consequences; against a backdrop of the intended and actual drop in lawful evictions there was an increase of 75% in the proportion of those evictions that were illegal. The committee will rightly want assurance that this Bill avoids any such unintended outcome.
9. Some parts of the landlord community object to the register, yet in most other professions providing key public or social goods, impact assessment and compliance monitoring is a well-established principle; the case for the PRS to be considered an exception to this has not been made and its continued exemption is not justified.
10. Objection to regulation on grounds of increasing bureaucracy is disingenuous: done properly, the register will streamline and reduce bureaucracy and needless expense across the sector.

(ii) Evidence in support of Part 2, Chapter 1, clause 4 (i) and (ii)

11. The purpose of this clause is to provide a mechanism for the Secretary of State to close a loophole in the law that has followed the decision of the Supreme Court in *Rakusen v Jepsen*⁴. Following *Rakusen*, a superior landlord cannot be held liable for offences committed by an agent or a tenant that sub-lets a property, even if the superior landlord may have been complicit or aware of the offending.
12. The scale of the problematic phenomenon of ‘Rent-to-Rent’ scams, in which landlords perpetrate identity fraud or create shell companies to shield the landlord from liability for offences, is not known to DLUCH or local authorities. These arrangements deny renters any realistic prospect of civil or criminal redress.
13. Our data shows that in the two-year period 2021-2022, one in ten private tenancies encountered by Safer Renting (total: 530) appeared to be ‘Rent-to-Rent’ scams that were successful in denying tenants access to justice.
14. This clause allows Government time to reformulate the definition of who is a “residential landlord” so that those property owners who knowingly enrich themselves in this way, at the expense of renters, may be brought within the scope of landlord and tenant law.

(iii) Evidence in support of Part 3, clause 58

15. Government has not been monitoring offending under the PfEA, even though these offences represent the very worst practices a renter can experience; loss of home in any circumstances constitutes a substantial injury to emotional and psychological wellbeing.⁵ Illegal eviction is a form of domestic abuse, usually conducted behind

⁴ [2023] UKSC 9

⁵ Appendix 1, Box 1

closed doors, often with violence, which impacts the victim's sense of safety and security at home.

16. Our most up to date data from 2022 shows the prevalence of and recent trends in harassment and illegal eviction, which is necessarily an under-estimate. This updates our 2021 ground-breaking work to establish the scale of the problem, showing trends for the first time.⁶ The trend from 2021 to 2022 shows a rise in offending of 18%. The total number equates to one illegal eviction every hour.

17. Appendix 1 provides further evidence in support of this Clause.

⁶ Appendix 1

Appendix 1: Annual count of offences and prosecutions under the PFEA in England to 2022

Headline figures for 2022

1. This count for 2022 updates our 2021 baseline report. For reasons set out below, we believe the count of illegal evictions is significantly under-estimated in these figures. Prosecutions recorded by the MoJ are unlikely to be similarly under-reported.

Table 1. Reported offences under the Prevention from Eviction Act, by selected agencies, 2020-2022¹			
	2020	2021	2022
Shelter	not available	797	885
Citizens Advice	4,505	5,475	6,366
Legal Aid Agency	1,355	151	128
H-CLIC	1,070	830	1,110
Safer Renting	not available	88	200
Total	6,930	7,341	8,689
Prosecutions under the Eviction Act 1977, as reported by the Ministry of Justice²			
Proceeded against	32	112	48
<i>Convicted</i>	17	29	26
¹ As collated in this report; ² MoJ: https://www.theyworkforyou.com/wrans/?id=2021-10-26.63835.h&s=illegal+eviction#g63835.q0			

Results and trends in the 2022 count

2. The raw numbers of PFEA offences at 8,689 indicates a rise of 18% on the previous year. A total of only 26 landlords were prosecuted and convicted under this legislation. These offences are committed roughly once every hour, 24 hrs/365 days per year.
3. During the same period, the total numbers of households renting in the private rented sector, according to the English Housing Surveys, was broadly stable at 4.6m.
4. Absence of official data on illegal evictions creates challenges for ascertaining the reasons for this increase. Nevertheless, we suggest that factors may include:
 - a. Court backlog post emergency pandemic restrictions may be continuing to affect landlord access to lawful evictions;
 - b. The current cost of living crisis has included domestic and other fuel cost increases, which are likely to have had significant impact on the bottom end of the PRS, particularly HMO¹s where landlords are more likely to be charging rent inclusive of fuel bills, sometimes without a mechanism for recovering increased costs; and
 - c. The sharp rise in inflation that resulted in a series of increases in Bank of England base rate from 0.25% at the beginning of 2022 to 3% by the end. Some landlords' finances may have been impacted by consequent increases

¹ Houses of Multiple Occupancy

in Buy-to-Let mortgages interest; some may have resorted to adopting unlawful ways to achieve vacant possession on their rental properties.

Rationale for the count

5. There are four reasons why this count is necessary:
 - i. No data is routinely collected on the incidence of harassment and illegal eviction. There is no single data collection point and evidence of the problem is patchy;
 - ii. H-CLIC² data indicates that the incidence of harassment and unlawful eviction has increased as a reason for loss of last settled accommodation;
 - iii. The Renters Reform Bill requires a baseline to measure harassment and unlawful eviction in order to assess the impact of the Bill; there is recent evidence of legislative intervention having unintended consequences in this complex area of law;³
 - iv. As illustrated in Box 1 below, illegal eviction is arguably the most vicious of any housing offence.

Box 1: Wilma, who was illegally evicted by her landlord

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

R. Spencer, B. Reeve-Lewis, J. Rugg & E. Barata (2020) *Journeys in the Shadow Private Rented Sector*, Cambridge House/Centre for Housing Policy, 47.

Use made of the PfEA

6. This report updates the original count of advice activity focused on and around offences under the PfEA to reveal the year on year trend from 2021 to 2022. The counts have two elements: the incidence of prosecutions under the Act, and evidence of offences committed under the Act; both are essential to highlight the disparity between convictions under the Act and a measure of problems that renters are encountering.

Problems with counting

Verification and understanding

7. Our count takes a pragmatic approach; we collate data from various agencies to quantify the number of renters who are assessed by housing and advice professionals as having experienced a PfEA offence.

² Homeless Case Level Information Collection

³ Written evidence of Safer Renting, para 8

8. These counts are inevitably a substantial underestimate. We suggest that there are several reasons for this:
 - a. Demand for services is not a good proxy for the prevalence of legal problems.
 - b. One complaint often reflects the experiences of multiple households, for example, where landlords 'disestablish' a house in multiple occupation.
 - c. Agencies included in this count have far more requests for advice than they are able to handle, and provision can be patchy.
 - d. The count only measures the number of people who were both willing and able to access advice and support.
 - e. One of the measures only counts cases where the applicant has the right to access advice. H-CLIC data is collected by local authorities from households who are eligible for assistance and does not include applicants whose immigration status excludes them from homelessness assistance.⁴
 - f. Renters who may have the right to seek assistance sometimes do not do so out of fear of the consequences, or because they know that the local authority would be unable to offer better accommodation.

9. The rough sleeper count is overseen by government and is also regarded as substantially underestimating the phenomenon. Nevertheless, and despite not meeting the 'National Statistics' standard, government accepts the model has value for analysing trends and scrutinising developments.

Interpreting the count

10. Any count requires caution as numbers may be affected by external factors such as:
 - a. an increase or decrease in the number of complaints could reflect growth or decrease in the size of the PRS;
 - b. more effective regulation of harassment and unlawful eviction might be taking place through other means, such as prosecutions for offences under the various Housing Acts in circumstances where the offenders are also perpetrating PfEA offences; and
 - c. a fall or increase in staffing amongst participating agencies affecting the capacity to meet demand.

Data definitions for replicable counting method

11. Our count does not include instances of renters being induced to leave a tenancy unwillingly or subject to practices 'calculated to interfere with the peace or comfort of the residential occupier'.

12. Our count does include:
 - a. The number of instances of individuals approaching advice or housing agencies for assistance with problems with their landlord where the agency records this as harassment or unlawful eviction; and
 - b. Prosecutions logged by the Ministry of Justice under crime code 087.

Data and agencies consulted and included in the count

13. After consulting widely, we identified 5 agencies that had the capacity to judge robustly whether or not the renter had been subject to or threatened with offences under the PfEA:

⁴ Housing Act 1996, s185

- i. local authority H-CLIC data;
- ii. Centralised data collection by CA⁵;
- iii. Centralised data collection by Shelter;
- iv. LAA⁶; and
- v. Safer Renting Caseload Data.

A summary of each data collection mode follows.

(i) H-CLIC data

14. H-CLIC provides valuable time-series data, collected in a uniform way nationally. Since 1996, local authorities submit quarterly returns of homelessness activity ('P1E'), providing longitudinal data on homelessness trends, revised in 2018 to collect more data on causes of homelessness.

15. The criteria used by local authorities when recording a case included in this count is whether 'the applicant was evicted by their landlord or agent without due legal process when they had the right to continue to occupy'.⁷

(ii) CA data

16. CA delivers advice through 265 independent local charities across England and Wales. In 2022, CA helped a total of 219,584 people with housing advice, including in person advice, on-line and by telephone. CA clients are given a unique identifying number: there is, therefore, no risk of double counting within the CA data.

17. The complaint type is logged by their trained professionals and volunteers, recorded in 3 mutually exclusive categories: Harassment and illegal eviction (threatened homelessness); Harassment and illegal eviction (actual homelessness); and Illegal eviction.

(iii) Shelter data

18. In 2022/23 Shelter offered specialist housing advice, support and legal services, to 15,555 callers to its emergency help line; 16,588 were separately provided with professional advice services and 6.2 m used their website.

19. Shelter advisors log 'cases' of harassment and/or illegal eviction, either an individual, household or property where there is a tenancy (excluding those where there is no tenure and/or limited rights, as they are likely to fall outside the protections of the Act).

(iv) LAA data

20. The LAA funds legal aid services for people otherwise be unable to secure legal advice and deals with both civil and criminal matters. Legal Aid is available for housing matters including unlawful eviction and harassment injunctions.

⁵ Citizens Advice

⁶ Legal Aid Agency

⁷ https://gss.civilservice.gov.uk/wp-content/uploads/2018/05/H_CLIC_v1.4.1_guidance.pdf

21. LAA 'cases' may comprise an individual, a household or a whole property. Solicitors log cases against valid indicators of offences committed under the PfEA. The assessment is for civil redress rather than a criminal prosecution, but the substantive offences are the same.

(v) Safer Renting data

22. The unit of measurement for the data is the 'case', which may be an individual, household, or property. There is no risk of double counting within the data, as each case is assigned a unique code.

23. A report was generated for all cases with case strategies or details that indicated an offence under the PfEA may have taken place. The cases identified were then assessed by caseworkers, with in-depth understanding of both the legislation and the facts of each of their own cases. Cases were included in the count if the caseworker considered that the actions of the landlord in that case were likely to amount to a relevant PfEA offence.

Limitations of the data

24. Both Safer Renting and Citizens Advice log their assistance using a unique reference number preventing double-counting if an individual approaches the agency twice or more with the same problem. Other agencies included in the count do not follow this protocol. However, we believe that incidence of double-counting is outweighed by under-counting.

25. Cases are recorded against pre-set categories, with no guarantee the cases would meet the strict legal definition of offences under the PfEA as required by this measurement exercise. Nevertheless, in all cases assessment is by a trained housing advice providers using classification informed by legal definitions of the Act.

Prosecutions under the PfEA

26. The most robust count of prosecutions of PfEA offences is undertaken by the Ministry of Justice, which collates annual data on crime under specific codes. Code '087' relates to offences under the PfEA. In 2022, 48 landlords were proceeded against (compared with 112 in 2021), and 26 (compared with 29 in 2021), were convicted of offences under the Act.

27. Arguably, the number of prosecutions under the Act is less an indicator of the scale of offences, and more an indicator of local authority willingness or capacity to prosecute. In response to a written Parliament question asked in March 2021, data were presented indicating that around half the prosecutions in England under the PfEA were being undertaken by just two police force areas (South Yorkshire and Metropolitan Police) of the 41 English areas listed.⁸

November 2023

⁸ <https://questions-statements.parliament.uk/written-questions/detail/2021-03-08/HL13982>, accessed 24 March 2022.