Written evidence submitted by Safer Renting on behalf of Cambridge House to the Renters' Rights Bill Committee (RRB59)

1.0 Introduction

1.1 Safer Renting is a specialist renter advocacy project working under the Cambridge House & Talbot charity based in South London, and operating since 2016. In partnership with 16 local authorities across London and Suffolk, we have provided casework support on issues of harassment, illegal eviction and landlord criminality in the private rented sector.

1.2 Safer Renting is greatly enthused by the Renters' Rights Bill, particularly the abolition of section 21 and the extending of potential legal liability of certain offences to superior landlords as well as direct landlords.

1.3 We have contributed to, and support, *A Roadmap for Reform*, the report by the Renters' Reform Coalition, which lays out a number of measures that the Government should consider in order to improve the Bill.

1.4 However, we are particularly concerned by one element of the Bill, Ground 6A. We have exclusively detailed our concerns in this submission, offering an assessment of the impact that the Ground could have on renters and local authorities, including why it is legislatively unnecessary, while putting forward recommendations for amendments.

2.0 Executive Summary

2.1 The aim of Ground 6A is to provide landlords with a route to vacant possession in order to avoid a range of sanctions that could be imposed or taken by local authority as enforcement for these breaches.

2.2 We contend that this would be legislatively unnecessary, prejudicial to renter protections, and contrary to the intention of the Bill.

2.3 We present the following reasons in support of this view, expanded upon throughout this submission:

> 2.3.1 Ground 6A would undermine local authority enforcement strategies, potentially resulting in enforcement officers' hesitancy in serving notices that could have a detrimental effect on renters.
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> 2.3.2 Renters at the bottom end of the market - where an effective enforcement policy is most important – are disincentivised to make a complaint against the landlord to the local authority for fear of being made homeless.
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> 2.3.3 That renters who reasonably ask local authorities or housing advice agencies whether they might be made homeless in relation to the council's involvement, the local authority will be duty bound to acknowledge this is a risk.

2.3.4 Finally, it would be contrary to natural justice to permit the eviction of renters on the basis of poor behaviour on the part of the landlord.

2.4 We are asking the Committee to consider the following amendments:

2.4.1 To remove Ground 6A; OR

2.4.2 To make Ground 6A discretionary or include broader criteria for consideration by the court; OR

2.4.3 To retain sub-grounds B and C only; OR

2.4.4 Delegate the function to determine/vary the tenancy to the First Tier (Property) Tribunal; AND;

2.4.5 To the Land Compensation Act.

2.5 We note Amendment 1 tabled by the Rt Hon Angela Rayner regarding Ground 6A. We believe this is insufficient.

3.0 The Rationale for Ground 6A

3.1 We understand that the two primary reasons for the justification for the existence of Ground 6A are:

- Protecting renters;
- Enabling Landlords to comply with enforcement action.

3.2 We will address the former in more detail below through analysis of each specific sub-ground; it suffices to say that for many, eviction is neither appropriate nor necessary to protect renters and that the logic of potentially making renters homeless to protect them from poor housing conditions is unsound.

3.3 Where a property is unreasonable for a renter to remain in, residential occupiers will be considered as homeless and the local authority, under the Homelessness Reduction Act 2017, will be obligated to assist them to leave or, in the case of priority need households, to secure them residential accommodation to move into.

3.4 In the case of enabling landlords to comply with enforcement action, the logic is presumably that it is not desirable that landlords should face multiple fines for the same offence which they have had no way to bring to an end.

3.5 However, this concern is entirely misplaced in our view, as all the relevant offences relating to the various sub-grounds within Ground 6A have ‘reasonable excuse’ defences, as per Housing Act 2004 and Housing and Planning Act 2016.

3.6 We believe that these defences will always effectively prevent a landlord from facing multiple fines for the same breach which they have been legally unable to remedy. Thus ensuring no unfairness to landlords.

3.7 Therefore, an unintended consequence of introducing Ground 6A is that these reasonable excuse defences will no longer be available. Thus, where a landlord is breaching relevant local authority enforcement action, they will have no choice but to evict tenants or face further fines – no matter what condition the property is in, what the renters' preferences are, or how capable the renter may be in locating a new property.

4.0 The case against Ground 6A – analysis of each sub-ground

4.1 In the following sections, we offer a counterargument to the rationale of each sub-ground. The sub-ground is written as the sub-header and is numbered 5-10.

5.0 Sub-ground (a): Letting the dwelling-house causes the landlord to breach a banning order.

5.1 There are a large number of potential banning order offences, the vast majority of which are unrelated to the safety conditions of the property itself.

5.2 Banning order offences unrelated to property condition include:

- Unlawful eviction and harassment
- Violence for securing entry
- Various Housing of Multiple Occupancy (HMO) offences (unrelated to the condition of the property)
- Providing false or misleading information
- Failure to undertake right-to-rent checks
- Various fraud offences
- Various drug, violence, criminal damage, and organised crime offences.

5.3 A renter subject to any of these offences should not be evicted from their home where strong alternative protections are already available.

5.4 Moreover, a banning order may be granted because of offences that occur in one property that are unrelated to the state of a different occupied property.

5.5 Some criminal landlords with large property portfolios may have dozens of renters across their properties, all of whom will be at risk of homelessness if a landlord becomes subject to a banning order. This in turn will disincentivise local authorities even further from pursuing banning orders in the interest of protecting renters from homelessness.

5.6 A local authority has the power to introduce an interim management order on the property, which can both effectively protect renters from violent or criminal behaviour by their landlord, while also prolonging their security of tenure and preventing the risk of homelessness.

5.7 Alternatively, there are many other ways in which a landlord could comply with a banning order without Ground 6A needing to exist, with note of the other proposed Grounds. The landlord could sell the property (under the proposed Ground 1A), move into it (under the revised Ground 1), and under the Housing and Planning Act 2016, the local authority can suspend the banning order in relation to existing tenancies. Many local authorities do this under the condition that management is completely transferred to a third party.

6.0 Sub-ground (b): an improvement notice under section 11 or 12 of the Housing Act 2004— in relation to overcrowding.

6.1 Whilst overcrowding is itself a health and safety risk, for many renters, particularly at the bottom end of the market, an overcrowded property may be the only alternative to being homeless.

6.2 Moreover, Ground 6A will typically act as a disproportionate means to comply with the improvement notice. In the vast majority of instances, there is no legal mechanism to evict a proportion of occupants, rather the landlord applies for 'possession' of the property, which entails evicting every occupant, not only sufficient numbers to comply with the improvement notice.

6.3 Only in the comparatively unusual instance where individual rooms within a House in Multiple Occupation (HMO) are let (compared with the more common situation where an entire property is let to multiple renters on a joint tenancy) will a landlord be able to take proportionate action to render the property safe by evicting one or several occupiers rather than all of them.

6.4 The issue of council cooperation from the renters will still apply, as many renters won't be able to find somewhere else to move to, and a dangerously overcrowded house may still be highly preferable to homelessness.

7.0 Sub-ground (c): A breach of a prohibition order under section 20 or 21 of the Housing Act 2004 prohibits use.

7.1 As with sub-ground (b) above, we acknowledge the logic that where a prohibition order is served the property is clearly unfit for a renter to remain in. However, we would reiterate that in many instances, an unfit property is still preferable to becoming homeless.

7.2 Where a prohibition order is made, the renter becomes eligible for compensation from the local authority of a sum of up-to £7,800. The compensation issue is one of the reasons that local authorities very rarely serve unsuspended prohibition orders.

7.3 The Housing Act 2004 includes a provision to bring a tenancy to an end in order to comply with a prohibition order. Section 33 of The Housing Act 2004 disapplies all provisions of Part 1 of the Housing Act 1988, which would ordinarily prevent landlords from gaining possession when it is necessary to

comply with a prohibition order, thereby functionally turning these tenancies into “Common Law Tenancies”.

7.4 The Renters’ Rights Bill does not repeal section 33, but should do so.

7.5 As all tenancies are set to become periodic as part of the Renters’ Rights Bill, without such a repeal, a renter in a property subject to a prohibition order will only have one month’s notice period, rather than four months as intended by the proposed Ground 6A.

7.6 If Ground 6A was entirely removed from the Renters’ Rights Bill, the Housing Act 2004 could be amended to fit within the new system of periodic tenancies to comply with prohibition orders such that renters can be protected from truly dangerous accommodation.

8.0 Sub-grounds (d) and (e): The landlord held a licence, but the licence has been revoked; or the landlord has applied for a licence and been refused.

8.1 Sub-grounds (d) and (e) have similar issues as the banning order ground; there are a host of reasons for a licence being refused or revoked unrelated to property condition, including the licence holder being found not to be fit and proper.

8.2 In another example, many local authorities have put in place an Article 4 Direction planning policy (under the Town and Country Planning (General Permitted Development) Order 2015). This automatically refuses planning permission of an HMO application certain areas for instance, in order to limit the proliferation of conversions of family homes to HMOs.

8.3 In this (common) circumstance, a property may be in good condition and a landlord mostly responsible, yet it is likely a licence application will be refused in any case in areas where A4 directions against new HMOs exist because planning permission will be denied. Therefore, renters will be evicted due only to local planning decisions.

9.0 Sub-ground (f): The dwelling house is occupied by more than the maximum number of households or persons specified in the licence.

9.1 Often the landlord is complicit in the terms of the licence being broken; this sub-ground would enable the landlord to break the terms of the agreement and evict the renter in instances where the local authority investigates them or their property.

9.2 The maximum number of occupants in a property should be stipulated in the contracts written by any responsible landlord. This should include a term which the landlord can then use to gain possession at the discretion of the court (based on breach of contract).

10.0 Amendment 1, response

10.1 We note that Amendment 1 has been proposed by the Rt Hon Angela Rayner in relation to Ground 6A requiring compensation for the making of an order under Ground 6A.

10.2 .0 We believe that this amendment is insufficient and note the following problems.

10.2.1 It is not sufficient for an order to only provide compensation/damages for the housing order being made, compensation/damages should also be made for the consequences of the breach itself.

10.2.2 In a formal legal dsetting, it will be practically very difficult for tenants, most of whom are likely to be unrepresented, to present submissions on what the cost of the order to them will be.

10.2.3 The possession order is not conditional on the compensation payment being made, so many landlords will simply not pay the compensation in our view. This will be particularly prevalent where the landlord is a company, which is especially common for criminal landlords who are also most likely to breach the kinds of enforcement action specified in Ground 6A. In these cases, it will be effectively impossible for tenants to enforce the order against the company which is, in our view, likely dissolve before action can be taken.

10.2.4 The amendment does not solve the issue of tenants being disincentivised from cooperating with the local authority and it does not solve the issue of the local authority being disincentivised from commencing enforcement action against criminal landlords.

10.2.5 In our view, this amendment only very slightly mitigates one of the injustices of the Ground but does very little to respond to the practical impact on enforcement against criminal landlords.

11.0 Recommendations

11.1.0 Recommendation A – Amendment to remove Ground 6A

11.1.1 The existence of Ground 6A has the potential to significantly undermine the success of the Bill, with severe consequences for renters. It places further and unnecessary social and financial burdens on renters who live in unlicenced and overcrowded properties, or those whose landlords have been subject to a banning order.

11.1.2 These tenants are both most the likely to struggle to find somewhere else to move to, and those who are most in need of support from local authorities.

11.1.3 As outlined throughout, Ground 6A is not legislatively necessary to prevent landlords from being subject to multiple fines, nor to protect tenants from poor property conditions.

11.1.4 Local authorities have existing powers to support tenants and enforce compliance *without* forcing the landlord to evict renters in these properties, potentially into homelessness.

11.2.0 Recommendation B – Amendment to make Ground 6A discretionary or include broader criteria for consideration by the court.

11.2.1 If the Government is committed to the existence of Ground 6A, we would recommend that courts are given discretion to only evict tenants where such an action is completely necessary and alternative enforcement options are unavailable.

11.2.2 We would welcome an amendment similar to that proposed by Matthew Pennycook MP: Amendment 149 during the Committee Stage of the Renters' (Reform) Bill in October 2023.

11.3.0 Recommendation C – Amendment to retain sub-grounds B and C only.

11.3.1 We would recommend that only sub-grounds (b) and (c) be included, relating to prohibition orders and (overcrowding related) improvement notices. It is only in these circumstances where it can seriously be argued that reducing occupancy carries the potential benefit of improving tenant safety.

11.3.2 If a property does not meet the criteria of being legitimately unsafe, we submit that it can never be proportionate or necessary to evict residential occupiers.

11.4.0 Recommendation D – Delegate the function to determine/vary the tenancy to the First Tier (Property) Tribunal.

11.4.1 If the making of an order is considered to be completely mandatory, we would recommend that the Government take inspiration from the existing section 34 of the Housing Act 2004, which enables a landlord to comply with a Prohibition Order even where there is a substantial period of time to run on a fixed term tenancy.

11.4.2 Section 34 permits landlords to apply to the First Tier (Property) Tribunal to determine a tenancy or vary its terms so that it can be brought to an end sooner than the lease's terms provide for.

11.4.3 The tribunal within this function has an extremely wide discretion to make a fair and just order that has regard to the behaviour and circumstances of both landlord and tenant, as well as the condition of the property.

11.4.4 Moreover, the tribunal judge has the power to order any condition it thinks appropriate including a payment of money by way of compensation, or damages.

11.4.5 Unlike the proposed amendment advanced by the government, there is no limitation that the compensation or damages be limited to the consequences of the making of the possession order. Therefore, a tenant where appropriate may also be granted compensation related to the offence which gave rise to the making of the order to begin with.

11.4.6 This procedure has the added benefit of allowing a judge adequate time to consider all the circumstances, which have led to an order being made without placing an additional burden on the already overloaded County Court system.

11.5 Recommendation E – Amendment to the Land Compensation Act.

11.5.1 If no further amendments on Ground 6A are considered beyond Secretary Angela Rayner's Amendment 1, we would propose that the Land Compensation Act 1973 Section 39 be extended to support renters made homeless by reason of Ground 6A.

11.5.2 This Section places a duty on the local authority to secure adequate housing for a displaced residential occupier including where such an occupier is displaced because of a prohibition order.

11.5.3 We would propose that this be expanded to any instance where Ground 6A is the reason for displacement of a residential occupier and the residential occupier is not at fault for the ground being made out.

11.5.4 This will ensure that tenants have less to fear from contacting the local authority and will mitigate the tenants' disincentive against cooperating with their investigations.

Evidence submitted by Cambridge House

28 October 2024