

NPF SUBMISSION

HOUSING RESPONSE

POLICY CONSULTATION: A FUTURE WHERE FAMILIES COME FIRST

SUBMITTED BY: THE SOCIETY OF LABOUR LAWYERS HOUSING AND LEVELLING UP GROUP

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5. How can Labour make home ownership a reality for more families, give private renters the security they need and tackle the scourge of homelessness? How can the next Labour government build more social and council housing and ensure greater investment in genuinely affordable homes?"

Introduction

1. We believe that the question above rightly identifies that ambitious reform, and resources, are necessary so that all three housing sectors – home-ownership, the social rented sector and the private rented sector – become accessible, affordable and safe. To tackle Britain’s housing crisis, we need a commitment to build more than 300,000 new homes a year (the government’s current commitment) and at least 150,000 of new homes should be social homes for rent.¹ We set out the case for more social and council housing at paras 31 - 38.
2. The principles underlying Labour’s housing policy should be that “Levelling up” means nothing less than demolishing inequality. Residential property and housing development are major economic sectors. Relatively cheap borrowing and house price inflation have been significant drivers of inequality, not only in higher end owner occupation, but also in the private rental sector, where incentives to private landlords have allowed them to outrun the capacity of ordinary renters to buy in. The private rental sector has also been fuelled by the ‘right’ to buy Council homes with a high proportion no longer in owner occupation long-term. We discuss home ownership policies at paras 6 - 15 and the private rented sector at paras 16 - 24.
3. The core value of any Labour programme for housing and law reform should be a commitment to housing as a human right. This would mean that Labour will respect and implement Art 11 of the International Covenant on Economic, Cultural and Social Rights “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.”²

¹ The figure of 150,000 comes from *Building the Social Homes We Need* (New Economics Foundation, 2019 at Building the social homes we need | New Economics Foundation). The figure was adopted by Labour Party Conference in September 2021: Inside Housing – News – Labour conference backs pledge to build 150,000 social homes per year.

² We note that the Welsh Government Co-operation Agreement (2021) between Labour and Plaid Cymru states that the Government will “publish a White Paper to include proposals for a right to

4. We discuss below proposals to end the scourge of homelessness (paras 25 - 30), measures to improve housing standards (paras 39 - 45), building safety and standards (paras 46 - 48) and planning and levelling up (para 49).
5. Finally, by way of introduction, the rights we propose below are meaningless if they cannot be enforced. The legal aid sector is in a crisis of sustainability and Law Society research shows that 41% of the population do not have access to a legal aid housing lawyer in their local authority area. We propose that early legal advice should be reinstated in all areas of law, but particularly to include early advice to resolve welfare benefit and debt issues. Where representation is necessary in housing cases, the scope of legal aid available needs to be extended. Finally, the legal aid sector needs to be adequately resourced in order to continue. Access to justice requires no less (see paras 50 - 56).

Home Ownership

6. Increasing the numbers of homeowners has been government policy since Thatcher. Although ownership is popular and apparently successful, many owners are in severe financial distress through debt (including mortgage debt), disrepair, the cladding crisis, insecure earnings and the cost of living crisis. Home ownership has become increasingly unaffordable and separates the generations. Since 2013 – 2014 there have been more outright owners than owners with mortgages, as the baby boomer generation reaches retirement age and pays off mortgages.³ The numbers of owner-occupiers aged 25 – 34 or 34 – 45 are gradually decreasing, and a greater proportion of those age groups are found in the private rented sector.
7. Many younger people face unaffordable rents and unaffordable house prices. This leaves them without choice, and faced with impossible decisions about how and where to live. Uncontrolled and unfulfilled planning decisions (on ‘affordables’, and social and economic facilities, as well as competition from buy-to-let landlords at home and abroad), have fuelled unaffordable prices, particularly in the South-East. This is reflected by the increase from 5.05 to 8.92 in the ratio of median house price to median gross annual earnings in England and Wales.⁴
8. These factors drive inequality, leading to extremes of property wealth, with significant variations regionally, and between generations. Huge profits can be derived by house developers, and private wealth is frequently re-invested into residential property.

adequate housing”: The Co-Operation Agreement (gov.wales). Acknowledging that housing is a human right would commit the government to progressive realisation of the goals of eliminating homelessness and providing for adequate housing. See *Housing is a Human Right*, Labour Housing Group and Labour Campaign for Human Rights, 2022 at Labour Housing Group – Housing for the Many.

³ English Housing Survey 2021 – 2022, ONS, December 2022

⁴ House price to residence-based earnings ratio, ONS, March 2022

9. Further, property poverty does not simply stop at the purchase of the house and there is a risk the idea of home ownership is simply shifting where the problem lies. For example, a government report estimated that, of the 29 million existing homes in the UK, most of those need upgrades to their heating systems.⁵ This is to be considered together with a report published by Green Alliance, which stated that UK homes are some of the worst insulated and least energy efficient in Europe, with only 15% of current housing stock having being built after 1990.⁶ This is now being exacerbated by the ongoing energy crisis. A study undertaken by EDF indicated that the insulation installed in the UK's current housing stock is on average at least 46 years old and in need of urgent updating.⁷ Prospective purchasers who purchase existing housing, rather than new-build, are then potentially required to contend with the cost of maintaining and upgrading what may be considered dilapidated properties.
10. Labour should carefully consider the limits of ownership and whether to continue to apply subsidy to a sector that is creating very high profits in property development and the financial sector and at the upper end of personal ownership, while working people are no longer earning enough to participate in the market safely. Some of the properties sold in the leasehold scandal (below) were bought with first time buyer subsidy.
11. The Party should also consider fiscally neutral options, particularly in flat ownership, that would put more power and control in the hands of leaseholders, as well as ensure that onerous and unfair burdens are removed.
12. During the former Labour Government, innovative Commonhold and Right to Manage measures were introduced,⁸ but have needed reinforcement and workability. Previous Shadow Housing Ministers have published on the scandal of leasehold and pledged to extend the right to manage.⁹ Labour should support the Law Commission's 2020 proposals to reform and expand commonhold for residential properties (predominantly flats) that are currently owned or sold into leasehold ownership.¹⁰ The leasehold system is outmoded, England and Wales being the last developed economy to consider a more equitable system of tenure. One fifth of all residential property is leasehold. This proportion is rising with the preponderance of flat developments, mostly at the lower end of the market and, by definition, applies to those who are finding it hardest to buy.
13. The Law Commission proposals are fully prepared for legislation. They are cost-neutral and hold the potential for a long-term reduction in housing costs for

⁵ Decarbonising heat in homes, Seventh Report of Session 2021-22, BEISC, 3 February 2022

⁶ Reinventing retrofit – How to scale up home energy efficiency in the UK, Green Alliance, February 2019

⁷ Insulation age of homes revealed to be at least 46 years old, EDF, 3 May 2022

⁸ Commonhold and Leasehold Reform Act 2002

⁹ John Healey MP & Sarah Jones MP *Ending the scandal. Labour's new deal for leaseholders*, 2019.

¹⁰ *Reinvigorating commonhold: the alternative to leasehold ownership*, Law Commission, July 2020.

lessee flat owners, together with much greater control on management for residents, and potential returns to them on commonly held retail and other space.

14. Labour should undertake a holistic review of housing costs confronting lower income home owners, including means-tested financial assistance to keep properties in good condition and to meet the challenges of climate change (insurance, making homes more energy efficient, solar generation etc). In addition, Labour must look at area-wide measures to protect existing housing that is vulnerable to extreme weather events. Labour should also consider how to regulate service charges effectively, and legislate so that the lessors cannot recharge the cost of defending tribunal proceedings brought by leaseholders, where the leaseholders are successful in reducing the service charges levied.
15. Labour should also consider wealth-based property taxation designed to make local taxation (council tax) more progressive, and to reflect large home-owners' relatively high land use and carbon footprint, penalising properties left empty (in line with local authority power to take those properties into public ownership)¹¹ and start to tackle the inequalities of wealth distribution caused by house price inflation.

Private rented sector

16. After 40 years of little or no regulation of the private rented sector, the government is finally planning to abolish s.21 no fault evictions. We support several of the Government's proposals in its White Paper *A Fairer Private Rented Sector*¹², including the setting up of an Ombudsman for private rented tenants and a Property Portal so as to expose rogue landlords. The proposals in the White Paper, whilst welcome, are not sufficient.
17. We believe that grounds for possession against tenants should always be discretionary, permitting the Court to take into account a tenant's position. Legislating to ensure that all grounds for possession are discretionary, rather than mandatory, would not prevent a Court making a possession order in the landlord's favour where the landlord needed possession (for example, in order to sell the property or move into it if either of these proposed grounds are enacted) but it would allow a Court to balance the needs of the tenant and the landlord. We are particularly concerned that the existing mandatory Ground 8 (8 weeks' rent arrears) and the new proposed mandatory grounds (in the White Paper & if enacted) of landlord's intention to sell or to move into the property should be made discretionary.
18. Currently, there are specific defences that can be raised where a landlord is seeking possession following service of a s.21 notice (no fault eviction). A s.21 notice cannot be relied on if the landlord has failed to comply with his or her legal obligations: to protect a tenancy deposit, to give the tenant a gas safety certificate or an energy performance certificate, to give the tenant information about "how to rent" or to install a smoke or carbon monoxide alarm. Additionally, a s.21 notice cannot be relied upon

¹¹ See para 37.

¹² DLUHC, June 2022

where a tenant has complained in writing first to the landlord and then to the local authority about the condition of the property, and the local authority has served a notice on the landlord in respect of the condition of the property and the s.21 notice was served after the tenant had complained.¹³ This last defence is known as “retaliatory eviction”.

19. Those defences only apply to claims for possession based on a s.21 notice and so, once the s.21 ground for possession has been abolished, they will no longer be defences to any claims for possession. We consider that they are important tools regulating and enforcing compliance by landlords with legal obligations and that they should be enacted as defences to all grounds for possession. We would not expect local housing authorities or private registered providers (housing associations) to be in breach of those requirements, but the defences should be available nevertheless, for consistency and compliance.
20. We consider that the defence of “retaliatory eviction” should be extended, so that it applies where a landlord seeks possession in response to any complaint of disrepair from his or her tenant, rather than the current requirement that it only applies where a tenant has complained to a local authority.¹⁴ If, contrary to our submission at para 17 above, mandatory grounds for possession are to remain, it would be particularly important to make this defence available for mandatory grounds for possession.
21. Private rented tenancies are the most expensive housing across the three tenures and rents continue to increase. Generation Rent reported in December 2022 that half of private tenants face a rent increase, and 41% of tenants surveyed said that paying rent was their biggest concern.¹⁵ Labour should legislate to provide a system of rent regulation, so that proposed rents, or proposed rent increases, can be considered by a locally based expert Tribunal. The Tribunal would take into account all relevant factors including the age of the dwelling, its condition and state of repair, its locality and the facilities provided, including furniture if any, and the effect of any scarcity of dwellings in the area. Labour should also consider the case for regional authorities to have powers to limit rent increases, as called for by the Mayor for London.
22. Local housing allowance must be reformed so as to cover rents in the 50th percentile or below, locally. The benefit cap and the bedroom tax, both of which require a tenant to pay the shortfall between the actual rent and benefits, must be abolished, along with other restrictions on benefits which are not related to means, such as the two child limit. Controlling rents would save public money.

¹³ Deregulation Act, s 33.

¹⁴ See para 18.

¹⁵ Generation Rent “Paying rent is biggest concern for tenants as half face hike” 19 December 2022
Paying rent is biggest concern for private tenants as half face hike - Generation Rent

23. The “right to rent” legislation in Immigration Act 2014 turns landlords into immigration enforcement officers, and is applied in a discriminatory manner.¹⁶ Labour should repeal it.
24. Local authorities should be resourced and encouraged to enforce the minimum housing standards in Housing Act 2004 (Housing Health & Safety Rating System, “HHSRS”) against private landlords.¹⁷ All private landlords should be registered on a public register that is open for inspection and contains addresses of all properties let and any enforcement action taken against the landlord (as is in the case in Wales). We understand the Property Portal proposed in the government’s White Paper to contain that requirement, but if it does not, Labour should introduce it.

The scourge of homelessness

25. Labour should develop and implement a Plan to End Homelessness.¹⁸ This is best achieved by preventing homelessness from occurring. Plans to build 150,000 social homes for rent each year, and to legislate for indefinite and affordable private rented tenancies should mean that more homes are available for rent and everyone looking for a home is able to find one, without experiencing homelessness.
26. Homelessness assistance from councils should always be a last resort. Where someone is threatened with homelessness, councils should provide practical assistance, including financial assistance, at an early stage to find alternative accommodation so as to ensure that the person does not actually become homeless and does not experience “the scourge of homelessness”. Early intervention and prevention is best.
27. Where someone does become homeless (because they do not have a safe and secure place to live which they have a legal right to occupy and which is reasonable for them to live in), he or she should be provided with emergency accommodation by councils regardless of any test of eligibility, priority need or ‘becoming homeless intentionally’.¹⁹ Following the Scottish and Welsh governments, Labour should legislate to abolish the tests of eligibility for assistance, priority need and the

¹⁶ *R (JCWI) v Secretary of State for the Home Department* [2020] EWCA Civ 542, [2021] 1 W.L.R. 1151, CA, where the Court found that some landlords were discriminating on the basis of nationality but dismissed the claim that it was contrary to human rights on the basis that the scheme was capable of being applied lawfully.

¹⁷ See paras 39 - 45.

¹⁸ See *Plan to End Homelessness*, Crisis, 2018.

¹⁹ This proposal would make emergency accommodation available to all those who are homeless. In practice, however, it is envisaged that the numbers of people would be limited, since the approach of homelessness services will be to help an applicant find his or her own accommodation before he or she becomes homeless (prevention) and the increase in supply of available accommodation in both the social rented sector and affordable private rented accommodation should assist that task. Similarly, an increased supply will make it quicker for an applicant to move on from emergency accommodation into longer-term accommodation, so those who do need emergency accommodation will occupy it for shorter periods than the current months or years, see *Still Living in Limbo*, Shelter, 2023 which found that “*six in ten (61%) households have spent a year or more living in temporary accommodation, increasing to more than two thirds (68%) of families.*” At *Living In Limbo - Survey of Homeless Households Living in Temporary Accommodation - Shelter England*.

'becoming homeless intentionally' test.²⁰ Every homeless person, having been provided with emergency accommodation, should receive an offer of suitable accommodation.²¹

28. Councils should be funded so to improve the amount of, and standards of, emergency accommodation. Councils should be required to apply the "Housing First" model for applicants who have multiple and complex needs, so that they are provided with accommodation and support to retain that accommodation.²² The practice of routinely making offers of accommodation out of district to homeless people should cease, and only be available in very unusual and specified circumstances.
29. Labour supported the repeal of the Vagrancy Act. Labour should not circumvent that repeal by permitting Public Space Protection Orders or other such measures to be used against those sleeping rough or who are begging (unless they are also committing criminal offences).
30. Labour should amend s.204A Housing Act 1996 so as to give Courts a broad discretion to order that councils should provide temporary accommodation during the process of an appeal against a homelessness decision.²³

The case for more social and council housing

31. 1.6 million households live in council housing, fewer than in owner-occupied homes, the private rented sector or housing associations.²⁴ Prior to the introduction of Right to Buy in 1980, five million households lived in council housing. Right to Buy and stock transfer of council housing has seriously diminished the numbers of council homes. Scandalously, 40% of former council homes in England, bought under right to buy, are now let to private tenants by private landlords.²⁵

²⁰ Priority need has been repealed in Scotland (Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012). In Wales 'intentional homelessness' is not applied to families and young people (Housing Wales Act 2014, s 75(3)) and local authorities can choose not to apply it to other homeless applicants. Both Scotland and Wales are considering repealing other parts of the statutory tests.

²¹ The accommodation might be of social housing (accessed through the council's allocation scheme) or of private rented sector accommodation. In all cases, accommodation secured through homelessness must be suitable for the applicant which means that it must be affordable.

²² See *Home for All: The case for scaling up Housing First in England*, Crisis, September 2021

²³ At present the Courts have that power, but its exercise is severely restricted, see s204A(5) and (6) Housing Act 1996 which provide that on appeal to the County Court against a negative homelessness decision, the court may only order accommodation pending appeal if the court is satisfied that failure [to order accommodation] would substantially prejudice the applicant's ability to pursue the appeal. The circumstances in which an appellant's ability to pursue the main appeal is prejudiced are limited, since the appeal rests solely on a point of law and legal submissions.

²⁴ English Housing Survey 2021 – 2022, published 15 December 2022. There are 15.6 million owner occupied households, representing 64% of all households in 2021-22. The private rented sector makes up 4.6 million or 19% of households. The social rented sector accounts for 4 million or 17% of households in England. Of those, 2.5 million or 10% of the total of households rent from housing associations and just 1.6 million households or 6% rent from councils. We refer to private registered providers as housing associations throughout.

²⁵ UK Housing Review 2022, Chartered Institute for Housing, March 2022

32. As of March 2022, there were 1.19 million households waiting on local authority waiting lists for council or housing association properties in England. There were 246,000 new social housing lettings in 2020/21, far below the demand for social housing.
33. Right to Buy has been abolished in Scotland and in Wales.
34. Labour should commit to building at least 150,000 new social homes a year, in order to start to meet the demand for social housing. In order to ensure that those social homes remain in the public sector, Labour should abolish right to buy in England (together with the government's new proposals of right to shared ownership of council homes and any proposals to introduce right to buy in the housing association sector) so that houses that have been built with public money remain in the public sector. Alternatively, right to buy should only continue upon strict conditions of one-for-one replacement,²⁶ with punitive consequences to prevent sale of the property within ten years of purchase and conditions against letting the property.²⁷
35. Local housing authorities are woefully under-resourced and urgently need better funding. Whilst the social rented sector has the lowest numbers of Non-Decent Homes,²⁸ the Housing Ombudsman reports that the biggest area of complaints received relate to property conditions.²⁹
36. Major estate demolitions have led to a massive loss of council housing stock, and disrupted communities. Commitments to rehouse social tenants are not always honoured and the driving up of property prices means that local people are unable to afford to rehouse themselves. Labour committed not to carry out major estate works without a residents' ballot and must retain that commitment. Private development vehicles, set up by local authorities, are inherently risky, do not represent value for money and have the effect of driving up local property prices.³⁰ Labour should fund local councils to undertake major new building projects and refurbishment projects without having to resort to such financial vehicles.

²⁶ We note research for the Local Government Association which found that the current policy of "141 agreements," in operation since 2012, has resulted in no more than 58% of homes replaced and that in the next decade, total replacements are unlikely to be more than 43%, resulting in a net loss of around 60,000 from public stock: *HRA Research Right to Buy*, Savills for the Local Government Association, 2023 at Almost 60,000 homes sold through Right to Buy will not be replaced by 2030 | Local Government Association. It follows that any conditions of one-for-one replacement would have to be a new scheme, much more rigorously enforced by government.

²⁷ Currently a proportion of the discount has to be repaid if the property is sold within five years of the tenant having bought it under right to buy and, for properties bought after April 2005, if the property is to be sold within ten years of purchase, it must first be offered to the council to buy back at market value (which will be greater than the original purchase price).

²⁸ 10%: English Housing Survey 2021 - 2022

²⁹ 44%: Housing Ombudsman Annual Report 2021 – 2022, February 2023

³⁰ As the history of Croydon Council's Brick By Brick shows.

37. We support innovative ways of ensuring that public land remains both publicly owned and usefully employed, for housing where possible. Local land commissions can play an important role in slowing privatisation of public land and support community land trusts and other forms of socially conscious land use. So as to allow local authorities to bring empty residential properties into use, the system for Empty Dwelling Management Orders³¹ could be reformed, removing the need to apply to a tribunal, so as to make local authority ownership the default position after a defined period. More enforcement action on privately owned empty homes will both increase the stock of publicly owned homes and incentivise private owners to let out properties.
38. Council tenancies should be a “home for life”, provided that the tenant complies with conditions. Labour should repeal the provisions for fixed term tenancies in Localism Act 2011 and Housing & Planning Act 2016³² so that all council tenancies are secure after the first introductory year. It should also take steps to buy back former council properties now in private hands, where those properties are rented out.

Housing standards

39. The death of Awaab Ishak from prolonged exposure to mould was described by the Coroner as a “defining moment” for the housing sector.³³ His shocking death highlighted the national scandal of unfit homes in the social and private rented sector. The Housing Ombudsman’s annual complaints review for 2021-22 shows that property condition remains the biggest area of complaint about social landlords and more action is needed by social housing landlords to improve the quality of homes and service.³⁴ In the private rented sector, 23% of properties are non-decent homes, and 11% have problems with damp. Private rented dwellings have the lowest scores for energy efficiency.³⁵
40. Tackling appalling housing standards requires resources for enforcement and investment to improve properties. The legislative framework already provides that all rented homes must be fit for human habitation, which would include that they are free from damp and mould and other Category 1 hazards.³⁶
41. Michael Gove is proposing “Awaab’s Law”, to be enacted via amendments to the Social Housing (Regulation) Bill which will require social landlords to fix certain defects within specified time limits.³⁷ This is an understandable reaction to the tragedy and adds to the existing armoury by which tenants can enforce their rights (through litigation for breach of contract and/or complaint to the Housing

³¹ Sections 132 – 138, Housing Act 2004.

³² The latter never brought into force.

³³ *Awaab Ishak death: the coroner’s verdict in full*, Inside Housing, 16 November 2022

³⁴ Housing Ombudsman Annual Review 2021 - 2022

³⁵ English Housing Survey 2020 – 2021, ONS

³⁶ Housing Act 2004 and Homes (Fitness for Human Habitation) Act 2018 (which inserted s.9A into Landlord & Tenant Act 1985).

³⁷ *Government to deliver “Awaab’s Law”*, DLUHC, 9 February 2023

Ombudsman). We observe that the time limits are not intended to apply to the private rented sector and that they should do so.

42. Our main point, however, is that the problem is not so much a lack of adequate legal remedies, but resources. Labour should commit to investing so that all social housing is renovated to the Decent Homes Standard and private rented landlords are subject to enforcement where their properties contain Category One or Category 2 hazards.
43. Enforcement and investment are necessary in both the social and private rented sectors. Local authorities lack resources to bring properties up to legal standards or to invest in improvements. Moreover, local authorities cannot be held to account under Housing Act 2004 for breach of the Housing Health and Safety Rating System (HHSRS) in their own properties.³⁸ So only individual tenants can bring enforcement proceedings, as a claim for breach of their tenancy conditions, or by complaint to the Housing Ombudsman. Putting the onus on the individual tenant does not represent a holistic solution to systematic problems. If a tenant is to contemplate court action, he or she is dependent upon the postcode lottery of finding a specialist housing solicitor and the very limited availability of legal aid.³⁹
44. In the private rented sector, enforcement by tenants is even more difficult, despite the legislative framework. Although there is a restriction on “retaliatory evictions”, that only apply in certain circumstances⁴⁰ and so tenants who complain about breach of their tenancy can be evicted. We propose that the defence of “retaliatory eviction” should be extended to all possession claims, and should include a wider range of complaints, such as complaining directly to the landlord.⁴¹ Local authorities have extensive powers to enforce HHSRS against private landlords under Parts 1 – 4 Housing Act 2004 but use of those powers is discretionary and environmental health departments are under-resourced.
45. Labour should be investing in local authority environmental health and tenancy relations officers, so as to take enforcement action against private landlords who let unfit properties, breach tenancy conditions or unlawfully evict their tenants.

Building safety and standards

46. We have recently seen the introduction of the New Homes Quality Board (NHQB), which was launched in February 2021, to oversee reforms in the build quality of new homes and the customer service provided by new homes developers to consumers. The NHQB launched its Code of Practice on 4 October 2022 increasing the

³⁸ *R v Cardiff City Council ex parte Cross* (1983) 6 H.L.R. 1, CA. We consider that this decision of the Court of Appeal could be overturned by legislation, so that local housing authorities would be able to investigate the condition of their own stock or, alternatively, each other’s stock.

³⁹ See para 56.

⁴⁰ As a defence to a claim for possession under s.21 Housing Act 1988, rather than to all claims for possession, and only where the tenant has complained to the local authority and the local authority has served an improvement notice, see para 18.

⁴¹ See para 20.

protections available to consumers buying new build homes from developers signed up to the same.

47. At present, there is no legal obligation on developers to register for the Code. While many major developers are voluntarily committing to the Code, there is a risk smaller developers may forgo signing up to the Code creating a gap in the protection offered to some consumers. Consideration should be given to codifying a legal requirement for developers to sign up to the Code.
48. Michael Gove is committed to requiring developers to pay for the remediation of unsafe buildings, rather than leaseholders. Labour should commit that it will take all necessary action to force developers and/or freeholders to pay for remediation without passing the costs onto leaseholders. The Building Safety Fund should be extended to include all properties with unsafe cladding, not just 18 metre high properties.

Planning & Levelling Up

49. We believe that for too long Labour has failed to recognise that the planning system, and in particular planning policy, provide well-established tools to enable us to fulfil our policy objectives. So long as local development plans contain the right locational social objectives, planning authorities will be able to decide whether a proposal (whether for housing or another form of development) is in conformity with those objectives, and make planning decisions accordingly. They will also be able to use planning agreements, not merely to facilitate but also positively to promote, socially acceptable development. The use of these powers will be critical in enabling authorities to insist on key regional development sites being invested in rather than those where the biggest profits can be made.

Access to justice

50. Legal rights that cannot be enforced are meaningless to people who cannot locate advice or pay for legal services.
51. Any new legislation and regulation planned by an incoming Labour government will be a dead letter unless it can be used and enforced by individuals (through several avenues, including effective complaints procedures, complaints to the relevant Ombudsman and litigation in the Courts). Enforcement means that those needing to use an adversarial legal system must be enabled to do so in terms of obtaining adjudication in court or tribunal when necessary.
52. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into force in 2013 and made significant changes to civil legal aid provision, reducing the scope of legal aid, and the means-test. In the area of housing law, legal aid for disrepair claims was restricted to cases where there is a serious and present risk of

harm to the health or safety of any occupier.⁴² Legal aid is therefore not available for cases where any disrepair had been remedied but the tenant is still entitled to compensation.

53. Most egregiously of all, LASPO removed the provision of early legal advice in the area of welfare benefit law. As a result, legal aid is not available for an adviser to help a tenant who has rent arrears recoup any money by resolving benefit issues. Nor is legal advice available for debt. The government has recently realised that omission and is starting to fund a Housing Loss Prevention Advice Service, for advice, including advice on welfare benefits, for tenants facing possession proceedings before and at Court.⁴³
54. We believe that early legal advice should be available, subject to means, regardless of the area of law for which advice is sought. Most importantly, it should be restored for cases of welfare benefits and debt advice.
55. In addition, legal aid should be extended to include all claims for damages by a tenant against a landlord for disrepair.
56. The legal aid sector is experiencing a crisis of sustainability and requires intervention if it is to continue to exist. Legal aid rates of pay have remained static since 1996 and must be increased. The Law Society's interactive map (Housing – legal aid deserts | The Law Society) shows graphically that the number of solicitors firms or law centres providing housing legal aid has significantly diminished since LASPO. 41% of the population do not have access to a housing legal aid lawyer in their local authority area. Legal aid has become increasingly uneconomic, despite the dedication of legal aid lawyers and their wish to work in that sector. A Labour government, besides investing in early advice in order to resolve problems and restoring legal aid for all housing litigation, must invest in legal aid remuneration rates in order to ensure that legal aid advice and representation continue to be available to the public.

⁴² LASPO, Sched 1, para 35.

⁴³ <https://www.gov.uk/government/consultations/housing-legal-aid-the-way-forward>