



**Society
of Labour
Lawyers**

Proposal for Housing Law Reform

Housing sub-group

14/09/2021

Introduction

This is a series of proposals for reforming housing law in England and Wales. It has been prepared by the housing sub-group of the Society of Labour Lawyers. Many of us are practising lawyers, and our members also have wide-ranging expertise in housing and related areas of policy.

The Society of Labour Lawyers is the legal think tank of the Labour Party. It is the pre-eminent professional association for lawyers on the left of politics and supports the Labour Party in developing legal policy and advising on legal proposals.

The Labour Party's housing policy became increasingly detailed over the course of the last few years. For the 2017 election there was a thorough mini-manifesto (*Labour's New Deal on Housing*), in 2018 the party published a green paper (*Housing For The Many*), and the 2019 general election manifesto included specific pledges that built on those documents.

Since then, however, the pandemic has had a drastic impact on housing, and a new leadership has been elected. We hope that the proposals set out below are comprehensive and appropriate to the challenges raised by the housing crisis of the 2020s.

We make 45 proposals on six topics:

- Access to justice;
- Council & social housing;
- Fire safety;
- Homelessness;
- Ownership; and
- Private renting.

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Access to Justice

Access to justice rests on two pillars:

- Legal entitlements to rights; and
- A means of making those rights effective by being able to take action, in the courts if necessary.

Much of the law reform proposed in the sections below is in vain if there are no effective mechanisms for enforcing rights. We must therefore ensure that legal rights do not just exist on paper. The justice system is a key component of the democratic state.

Key tenets of access to justice have been eroded in recent decades. The courts are not free or affordable to use. Fees are payable, and where they can be waived, there is a great deal of caveats and bureaucracy (particularly means tests, which takes valuable time). This reduces accessibility, particularly to the increasing number of people who are ineligible for legal aid.

The need for access to justice was recognised by the post-War Labour government that introduced the Legal Aid and Advice Act 1949, effectively creating the first comprehensive and publicly supported legal services system in the world. By the 1980s, eligibility for civil legal aid covered around 60 per cent of the population, removing the prohibitive costs of going to court, but only using the state's resources where that was merited. Parts of the system were entirely self-supporting via costs orders against opponents. The scheme was also used to support mediation and other forms of dispute resolution.

This comprehensive system has been eroded by cuts, and ultimately torn apart by the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO). With it, a whole sector of trained and experienced lawyers is being lost, legally aided cases are restricted to all but those that cause the most dramatic threats to human rights. Dismantling LASPO and restoring our comprehensive system of advice and legal action must be key to Labour's future policy on legal services.

The courts themselves have been beset by cuts, closures and fee increases, delaying justice and placing it further out of reach. The court system itself has been subject to funding cuts, delays were growing even before the pandemic, and now even urgent matters are taking months to get to court, if not years. We must rebuild a well-functioning judicial system.

Other means of law enforcement are under attack: advice 'deserts' are a growing problem. In housing standards, enforcement by local authorities has been eroded by cuts to funding.

There has been some discussion of a single-access housing court or tribunal. We would prefer to see a re-invigorated County Court system rather than a specialist housing tribunal, but whatever the forum for litigating housing disputes, there must be

a level playing field, with adequately funded legal advice and representation at all stages.

Alternative means of achieving justice (such as negotiation and mediation) do not necessarily resolve matters fairly if this takes place against a background of urgency, lack of knowledge or an imbalance of resources as between the parties. We oppose methods of alternative dispute resolution that operate in the context of an imbalance of power.

There is also confusing array of ombudsmen and other informational systems. Critics press for various solutions such as a single portal housing tribunal. However, new systems take a long time to design and bed in.

Proposals: access to justice

The Labour Party should:

1. Restore the mainstream courts and ensure sufficient funding to eliminate the historic backlogs.
2. Ensure national coverage for housing advice where this no longer exists.
3. Dismantle LASPO and restore a comprehensive system of access to legal services, including accredited alternative dispute resolution.

Council Housing

There is a severe shortage of council housing in most areas of the UK. That is for the following reasons:

- A good deal of council housing has been sold off under the right to buy;
- Historically, caps on local authority borrowing made lost stock difficult to replace;
- There is a lack of affordable, available land;
- Under-investment in existing stock, together with the profitability of land, has led many local authorities to conclude that demolition and redevelopment is more economical than refurbishment;
- Public investment in housing was dramatically reduced during the early 1980s by the Thatcher administration (by approximately 66%) and never restored. Instead, reductions have continued; and
- Property prices have increased exponentially.

There are also very serious problems for existing council tenants. Poor conditions are widespread, and (as the government acknowledged in its recent social housing White Paper) negative attitudes towards social housing tenants prevail.

In that context, we make the following proposals.

End the right to buy

The right to buy is a proven disaster. Homes that were sold were never replaced, and the number of council homes is dwindling. It is easy to understand why this is such a harmful policy: building council housing is an enormous and complex endeavour, and even the most ambitious and pro-council-housing local authorities will be reticent to build if the new stock is likely to end up in private hands. The right to buy must be ended in England (as it has in Scotland and Wales), or at least very severely restricted.

Increase funding to local authorities

A recent [independent investigation](#) into severe disrepair for Croydon Council's tenants found that the problems were ultimately down to under-resourcing. The repairs department was under-staffed by 50%, which had led to neglect, poor staff morale and lack of expertise. In our experience, the problems that Croydon faced have become increasingly common among local authorities' housing departments since the start of the austerity regime.

Proper funding would allow local authorities to reinstate annual external maintenance on blocks, particularly gutter clearance (which would save money in the long run), and to reinstate local staff with individual responsibility for blocks/estates. This would facilitate rent recovery and ensure better relationships between tenants and council staff.

Councils also, of course, need proper funding or state-backed financing if adequate numbers of council housing are to be built. This currently comes in two forms: capital funding (to build homes) and funding for repairs (which is paid solely through council rent receipts into the 'Housing Revenue Account'). This proposal may involve allowing councils to receive funding into the Housing Revenue Account from other sources, i.e. allowing the subsidising of social housing repairs, given the scale of the problem faced by so many council tenants.

Committing to building social housing

One of the major housing policies of recent Labour manifestos has been a commitment to building council housing on a mass scale. In the 2019 manifesto, the commitment was for 150,000 new homes within the lifetime of a parliament. That commitment should be maintained.

Balloting for estate demolitions

Major estate demolitions are a national scandal, having led to massive loss of council housing stock and displacement (or social cleansing) of many inner-city areas.

This balloting requirement is currently party policy, having been adopted at the 2019 conference, and it needs to remain a clear commitment. Estate ballots drive community engagement, and allow residents the opportunity to challenge local authorities' assessments as to the viability of refurbishment.

Set up and support local land commissions

Following the [example of the Liverpool City Region](#) (which has recently set up a local land commission to advise on the best use of public land), independent local land commissions can play an important role in ensuring that public land remains both publicly owned and usefully employed. As well as supporting community land trusts and socially conscious land use, commissions can play an important role in slowing the privatisation of public land.

Take action to restrict or discourage development vehicles

Many councils have prioritised private development vehicles in their policies for housing provision. Not only are these incredibly risky financially (as demonstrated by Croydon Council's failing 'Brick By Brick' scheme), but it is logically impossible for them to succeed: they work on the basis of land value speculation, but large-scale council-backed speculative development projects can only serve to drive up prices locally, compounding the crisis of affordability and housing need in the local area.

There needs to be a national policy restraining the use of development vehicles by local authorities, pending legislative reform under a Labour government.

Reform 'hope value' on land purchases

This should be pushed higher up the Party's legislative reform agenda. Within the broader context of identifying sources of increased revenue to build council houses, Labour must tackle the current over-generous compensation to landowners when effecting compulsory purchase of land and/or property (CPOs). Sections 14 – 16 of the Land Compensation Act 1961 currently require compensation for the "hope value" of any land, which reflects its estimated increased value after a grant of residential planning permission to be paid to the landowner. This should be reformed to reflect the current value of the land on purchase.

Action on empty homes

New legislation is required to bring empty residential homes into use. Local authorities' powers to find and purchase empty homes are extremely limited. Such legislation would need to strengthen the current Empty Dwelling Management Orders (EDMOs) scheme, removing the need to apply to a tribunal. It could provide for empty properties to be transferred to local authority ownership after a certain number of years, possibly one or two. Similarly, steps required of the local authority to identify absentee owners could be more clearly defined. Greater powers on local authorities to bring empty residential homes into use would increase the stock of publicly owned homes. It would also provide an incentive on owners to let out the properties so that they are properly used for residential purposes.

Benefit reform

- The bedroom tax (a reduction in the amount of benefit with regard to rent payable if a property is allegedly under occupied) should be repealed by amending the Housing Benefit Regulations 2006.
- Local housing allowance (which is calculated by reference to local market rents) should be reformed to link it to the retail price index, which will help to keep rents and government spending under control.
- The benefits cap (an absolute maximum amount of benefit for rent payable, regardless of the number of occupants and amount of rent) should also be repealed.
- Women's refuge services such as charges for counselling, accessing legal remedies, and employing support workers should fall within the scope of housing benefits entitlement (they have been excluded since 2006). This exclusion has forced many refuges to close.
- Discretionary Housing Payments (DHPs) and council tax payments are currently payable by local authorities as top-ups when the implementation of the above caps cause undue hardship to vulnerable tenants. For as long as benefits rules cause hardship, these discretionary measures must also remain with full, not partial re-imburement from central Government.

Tenure rules

Labour should legislate so that all council tenancies are to be secure tenancies after their first year, and terminable only for reasons set out in Housing Act 1985. Labour would repeal the provisions for fixed term tenancies in Localism Act 2011 and Housing & Planning Act 2016, with effect that any existing fixed term tenancies become secure tenancies.

Planning reform

There needs to be an increase in the current requirement in National Planning Policies Framework that regeneration includes 10% affordable housing. Amendments to the legislation are needed to increase that percentage to 20%, and it should be genuinely affordable housing. Planning reform is also needed to improve the building of accessible homes for people with disabilities. Local Authorities need more resources to contest developers' plans and inspect the works.

Proposals: council housing

The Labour Party should:

4. End the right to buy.
5. Increase funding for local authorities.
6. Commit to building 150,000 council homes within five years.
7. Ensure ballots are held in respect of estate demolitions.
8. Support the establishment of local land commissions.
9. Oppose development vehicles.
10. Reform 'hope value' rules.
11. Take action on empty homes.
12. Ensure adequate housing benefits.
13. Enshrine security of tenure.
14. Protect council housing through planning reform.

Fire Safety

Issue 1: The need for a full audit: What is the scale of the problem?

There are thousands – likely tens of thousands (and possibly hundreds of thousands) – of properties in England which contain one or more fire safety problem. We are still in the dark as to the full range of fire safety defects and the true scale of the problem as well as, crucially, the total likely remedial costs. That is because the government simply has not asked for the relevant information.

Everyone should be able to go to sleep at night without worrying about waking up to another Grenfell disaster.

We know how many tall (i.e. 18m+) buildings with ACM (Aluminium Composite Material) cladding (i.e. Grenfell cladding) there are in England because the government has required local authorities to survey their areas and identify those buildings pursuant to its power to direct local authorities to carry out these surveys under Part 1 of the Housing Act 2004. However, we have no idea how many other residential buildings with fire safety defects need to form part of this conversation so that they can be made safe without delay.

The first step should be to follow Australia's lead and conduct a **full audit** of residential multi-occupancy buildings with cladding and other fire safety defects.

The government should direct local authorities to survey *all* residential properties of *whatever height* in their area and produce a comprehensive list of unsafe buildings. From that information we will be able to see how many buildings are affected and, crucially, what the patterns are as regards those defects. For example:

- How many have unsafe cladding material? (e.g. the same ACM cladding as Grenfell or High-Pressure Laminate and other unsafe cladding (e.g. untreated timber))
- How many have unsafe cladding *and* insulation material? (e.g. Kingspan insulation products that the Grenfell Tower Inquiry has shown had misleading safety certificates)
- What other products are defective? (e.g. combustible fire barriers or fixings)
- How many have defective fire doors?
- How many cladding systems have been installed without effective fire/cavity barriers?

As regards the defective cladding types and other products, we recommend legislation similar to the Housing Defects Act 1984, which declares that those products are defective and must be removed in accordance with a scheme to be published by the Secretary of State. That then brings us to Issue 2.

Issue 2: Risk assessment

Armed with information as to the nature and scale of the fire safety issues plaguing residential properties, the second step should be an assessment of which buildings are the highest risk and need to be prioritised for remediation without delay. For example, a new-build house which has defective fire doors but which has working fire alarms is unlikely to pose the same degree of risk as a block of flats with defective cladding and no fire breaks. Presently, it is pure happenstance which of those gets remediated first, depending on eligibility for funding, availability of contractors, etc. The government should draw up plans to identify and prioritise those buildings which are most dangerous and take control of the process.

Issue 3: Funding

This is the crucial one. The government should take initial responsibility for procuring and funding remedial works upfront. It cannot be left to the private sector.

First, that would be a logical consequence of the government having identified and prioritised certain buildings for remediation. Second, the likely costs involved in remediation are far, far beyond the means of most leaseholders or tenants and the way in which landlord and tenant law works means that the costs will ultimately fall on them.

The government's ACM cladding remediation fund and Building Safety Fund for non-ACM cladding systems are not the answer. The Building Safety Fund:

- does not cover leaseholders living in housing under 18 metres high. The government's lending scheme for these buildings does not equate to funding;
- is only open for applications until 30 June 2021 (except only on a "case by case basis" where more time is required for procurement, etc.);
- is governed by strict eligibility criteria for limited remedial works;
- does not cover work that started before 11 March 2020; and
- only covers leaseholders and not other bodies such as housing associations unless their financial viability is threatened.

The government should only forward-fund these works. It should then seek to recover those funds from those responsible for the defective buildings, including architects, engineers, developers, product manufacturers or vendors or building inspectors, etc. (or all of them).

Shadow Housing Secretary Lucy Powell MP has called on the government to introduce a legally enforceable deadline for remedial works of June 2022, five years on from the Grenfell tragedy.

Proposals: fire safety

The Labour Party should:

15. Support a full audit of residential multi-occupancy buildings.
16. Support a full risk assessment in light of the audit.
17. Ensure that fire safety works are forward-funded by the government.

In addition to those three major proposals, we would also propose adopting the following policies:

18. Ensuring that it is a condition of any funding for remedial works that all rights to sue are automatically transferred from the landlord/leaseholder to the government, so that the government can sue the relevant people in due course. Taxpayers should not bear the costs of these remedial works.
19. Amending or suspending the Limitation Act 1980 to stop the clock running down before the government gets around to suing those responsible for fire safety defects.
20. Introducing a duty on each person who carries out construction work to exercise reasonable care to avoid economic loss caused by defects. This would provide a substantial remedy in negligence for owners and occupiers and would help plug the current gap in available remedies for those living with dangerous cladding.
21. Pursuing those responsible to recover remediation costs as far as possible. In reality, this is likely to take the shape of negotiations between the government and the industry bodies that would leave to an agreed damages payment.
22. Ensuring an ongoing levy on those developers/product manufacturers responsible to recoup costs in the form of a fee for planning permission and/or a tax on profits (beyond the £2 billion the government hopes to recoup in the next 10 years).
23. Enacting legislation to make “phoenix” companies liable for the damage caused by their predecessors. The legislation should also make directors of such companies personally liable for the damages awards. The practical effect of this would be to encourage developers and others to make more generous offers to settle litigation.
24. Charging a National Cladding Taskforce with navigating the issues relating to insurance and mortgage lending to ensure leaseholders are not stuck in their flats in the meantime and insurance can be secured.
25. Ensuring the new Building Safety Regulator is properly funded and suitably independent. The new Regulator’s focus must be on safety, not only compliance with existing Building Regulations.

Homelessness

Introduction

Homelessness should not exist, particularly in a country as prosperous as ours. All people should be helped to find affordable, secure, safe and sustainable accommodation. People should not be sleeping rough on our streets, or constantly having to move between sofas provided by family or friends because they cannot find or afford accommodation. The success of the current government's Everyone In scheme during the coronavirus pandemic and lockdown, where over 37,000 were accommodated and helped to move into longer-term accommodation, shows that we can end rough sleeping and homelessness with political will and resources.

Labour's aim must be to end rough sleeping and to help people rapidly out of homelessness and into secure and long-term accommodation.

Homelessness legislation is devolved to the four devolved governments. These proposals are for England only.

The current situation

The current law requires that councils provide accommodation only for people who are, or might be, in "priority need" as defined by law, for example families with children, or people who are "vulnerable" again as defined, so not adults without children, unless they come within the "vulnerability" test. (Those who do not have a priority need can be helped by councils to find their own accommodation, but they will not be accommodated whilst they find them). They must also be "eligible for assistance" as defined by law and based on immigration status. A person may be "intentionally homeless" because of an act which leads to homelessness even if that was not the person's intention when the act was committed.

Nor is it the case that councils must give those whom they do accommodate a council property. Those in priority need and who have not become homeless intentionally will often be put on the council's waiting list (or allocation scheme) but may also be offered private rented accommodation by way of an Assured Shorthold Tenancy (AST) for a minimum period of no more than 6 or 12 months.

Our proposals

We plan to end homelessness first of all by preventing homelessness from occurring. Our proposals (as set out in the sections above and below) to build 150,000 social homes for rent a year and to legislate so that private rented sector tenancies are indefinite and affordable will mean that more homes are available for rent, and everyone looking for a home is able to find one, without experiencing homelessness. We should also ensure that anyone who is threatened with homelessness is given

practical assistance, including financial assistance, to find their own accommodation before they actually become homeless.

If somebody does become homeless, by which we mean that they do not have a safe and secure place to live, which they have a legal right to occupy and is reasonable for them to continue to occupy, they should be provided with emergency accommodation by councils while they and the council look for longer-term accommodation for them (the “housing first” model). We anticipate that the period in emergency accommodation and the search for longer-term accommodation will be a short time, because more genuinely affordable homes will be available.

That means Labour should legislate to abolish the current requirement that homeless people must be eligible for homelessness assistance and will provide accommodation regardless of immigration status. This would avoid the enormous complications which have arisen as a result of Brexit. It would also restore the position to as it was before the (Tory) Housing Act 1996 when, as an old (1991) version Homelessness Code of Guidance (3rd ed) at para 4.11 provided, “Authorities cannot refuse to rehouse a family because they are immigrants. Everyone admitted to the country is entitled to equal treatment under the law: their rights under Part III of the Act [Housing Act 1985] are no different from any other person”. Removing eligibility restrictions would ensure that housing costs could be met by welfare benefits.¹

Labour should also abolish the “priority need” and the “becoming homeless intentionally” tests in England, building on the decisions already taken in Scotland and in Wales.² Every homeless person should receive an offer of suitable accommodation, either from the council’s waiting list (including housing association accommodation) or of affordable accommodation in the private rented sector.

¹ It is noticeable that local authorities, as well as housing campaigners, called for the suspension of NRPF during the pandemic (see <https://www.local.gov.uk/lga-responds-government-funding-allocated-new-homes-rough-sleepers>) and that the Administrative Court has held that councils’ emergency powers under s.138 Local Government Act 1972 and/or s.2B National Health Service Act 2006 to provide emergency accommodation are not circumscribed by any consideration of eligibility or immigration status (*R (Ncube) v Brighton & Hove Council* [2021] EWHC 578 (Admin) <https://www.bailii.org/ew/cases/EWHC/Admin/2021/578.html>).

² “Priority need” has been repealed in Scotland (*Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012*) and Wales is considering its abolition (<https://gov.wales/review-priority-need-wales-summary-html>). “Intentional homelessness” is not being applied to families and young people who are in priority need in Wales (*Section 75(3) Housing (Wales) Act 2014 brought into force in December 2019*) and Scotland is considering re-drafting the present test (*Ending Homelessness: Final report on the recommendations of HARSAG*, Scottish Government, June 2018 at <https://www.gov.scot/publications/homelessness-and-rough-sleeping-action-group-final-report/>).

In order to achieve this:-

- We should tackle the acute housing crisis, by building 150,000 social homes for rent each year, legislating so that the private rented sector provides homes at indefinite tenancies and genuinely affordable rents, and using powers to require owners of empty homes to bring them into use or be subject to compulsory purchase;
- We should fund councils so that they can help people who are threatened with homelessness to find alternative accommodation at a very early stage, including by providing deposits, rent guarantees etc, with the aim that no one actually becomes homeless;
- We should invest in emergency hostel-type accommodation, which will be provided at a decent standard;
- We should encourage councils to use the housing first model;
- We should provide helpful and tailored support to people looking for their accommodation; and
- We should not permit councils to provide accommodation to homeless people outside of their local area except in very unusual and specified circumstances.

Homeless people who are dealing with the council should receive free early legal advice to help them navigate the system (see the access to justice section, above). Where councils and other organisations make mistakes, the cheapest and fairest method of recognising and dealing with the consequences of those mistakes is where the person is helped to complain, review or appeal the wrong decision early on. People who need to challenge homelessness decisions in court should be represented with legal aid funding (subject to the usual merits and means tests). Where courts hear appeals against a council's decisions in the area of homelessness, the court should have the power to order that the council should make accommodation available, until the appeal is heard and at the conclusion of the appeal, where someone is homeless.³

³ At present, the Courts do have such a power prior to the hearing, but its exercise is severely restricted: s 204A(5) and (6) Housing Act 1996 providing 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 main 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.

Finally, Labour should repeal the Vagrancy Act and prohibit use of Public Space Protection Orders and similar powers against people who are rough sleeping and/or begging.⁴

Cost

We are not economists and appreciate that this plan for public spending requires costing. We also appreciate that this requires resources from central government to be directed towards councils. We point out that the aim is to prevent homelessness early on, by making more accommodation available in both social housing and the private rented sector, to those who are looking for accommodation and facing the prospect of homelessness. In addition, this plan envisages early assistance to those who are threatened with homelessness. Assisting people who are threatened with homelessness to find their own accommodation and thereby avoid actual homelessness is cheaper than funding emergency accommodation. The aim is that, whilst emergency accommodation should be provided for all, it will be occupied for a short period because the greater supply of accommodation will make it easier to move people on. We also note that controlling rents in the private rented sector will result in a considerable diminution of the housing benefit/housing cost universal credit bill, as well as the indirect costs (such as health and social care) that homelessness generates.

Proposals: homelessness

The Labour Party should:

26. Abolish restrictions on providing accommodation to homeless people because due to their eligibility, “priority need” or “intentionally homeless” status.
27. Fund local authorities to provide adequate homelessness services.
28. Invest in homelessness hostels.
29. Encourage the ‘housing first’ model of providing adequate housing straight away.
30. Impose restrictions on local authorities accommodating homeless people out-of-borough.
31. Empower courts to order local authorities to accommodate homeless people during legal disputes.
32. Repeal the Vagrancy Act and restrict the use of Public Space Protection Orders.

⁴ This would not prevent use of existing criminal offences, such as under the Public Order Act 1986, where begging might be in the form of harassment or threats. However, we do not believe that begging in itself, with no aggravating features, should be criminalised. See *Lacatus v Switzerland* (application number 14065/15, 19 January 2021) where the European Court of Human Rights held that imposing a fine on begging in public was disproportionate and a breach of Article 8 right to respect for private life.

Home Ownership

The ownership debate

The ownership debate is well encapsulated by this comment:

“Should wider home ownership be a public policy objective? It is one of the big fault lines in housing policy debates. Advocates argue that ownership represents better value than renting, offers people a way to build up capital and creates more stable neighbourhoods. Sceptics say that our obsession with property ownership is diverting investment from more socially useful channels and fuelling a monstrous bubble of unaffordable house prices”.

Richard Brown, *OnLondon*, June 2021.

On home ownership, we make six policy recommendations in two main areas:

- First time home buying; and
- Tenure issues, comprising of:
 - Leasehold reform; and
 - Liability for unmanageable costs (including, of course, the cladding remediation crisis).

Political significance

Labour has responded positively to home ownership because of the strong link with voter preferences. We cannot ignore the fact that 64% of households are in owner occupation, and half of these households are outright owners. This does not necessarily mean that ‘getting on the property-owning ladder’ should be the prime goal in this area.

Although ownership is popular and apparently successful, many owners are in severe financial distress through debt (including mortgage debt), disrepair, the cladding crisis and insecure earnings, among other things.

Since the Thatcherite ‘right to buy’ policy was introduced, Labour has been caught between the popularity of owner occupation in electoral terms and the need for ‘affordable’ housing.

The right to buy reduced public housing from 32% to 18% of all tenure, skimming some of the best public housing into private hands that translated into outright freehold houses, or leasehold flats.

Economics and housing availability

Many analysts of the housing crisis analysis argue that there is a shortage of homes in all sectors, and that this can be blamed on numerous factors. Housing shortage is

believed to have fuelled ever-inflating private rents and the home ownership bubble on one hand, and homelessness and poverty on the other.

At present, home creation is focussed on the private market for home ownership (with a small but growing build-to-rent sector). There are several reasons for the buoyancy of the private housing market, particularly in London and the south-east.

- Following the 2008 crash, house prices and the development and financial services profits that accompany new-build for ownership were preserved by fiscal and monetary measures.
- The long-term buoyancy and medium-term recovery of prices fuels extremes of wealth. Private wealth is invested into residential property for high returns. Increasing indebtedness and private capital gain operate at opposite ends of the same housing market. Both trends are intensifying inequality within as well as outside the sector, so that the housing market is a major engine of poverty.
- Housing makes up a large part of the UK's economic activity (even people 'flipping' (improving) owner-occupied homes expect to make up to 25% profit).
- A lot of the owner-occupied housing stock is aging. At the lower end, many owner occupiers struggle with the cost of maintenance and repair, as well as work to cope with and defend against climate change in terms of flooding, coastal erosion, and the cost of retrofitting for carbon reduction.
- Huge profits continue to be derived from creating homes. A major growth point in development, particularly in cities, are high blocks of flats. The forthcoming abolition of ground rents is a reform of the outmoded leasehold system. But a new generation of unilaterally imposed contractual obligations for leaseholders is emerging, despite the 'right to manage'. Such service and repair contracts are heavily weighted towards the interests of building 'owners' and management companies.

The corporate sector driving ownership (if not owner occupation) is powerful and the Tories are responsive to it. Recent reports suggest the majority of big donors to Conservative Party funds are property developers who contribute tens of millions.

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 the financial sector and at the upper end of personal ownership. Working, ordinary people are no longer earning enough to participate in the market safely. Both parties have attempted to stimulate the key first time buyer market and ownership for essential workers. But solutions such as 'shared' ownership and quotas of 'affordable' homes in new developments, have, essentially, failed or have complex flaws.

The pandemic

During the pandemic, buying was stimulated by a Stamp Duty holiday at the lower end of the market – representing public subsidisation of taxable transactions. Movement

in the market has also been affected by homeworking and signs of a trend towards moving out of expensive urban centres.

Recent economic movements also include:

- A significant drop in London rents, which might trigger a further flight from buy-to-let, rentier/AirBNB behaviour, freeing more reasonably priced homes for purchase by owner occupiers. However, people on modest incomes who derive an income from rentals – many in their own homes - may find themselves with reduced incomes and at worst, negative equity (particularly if the boom be followed by bust).
- Increased unemployment, and lower paid and insecure employment.
- Across the board downward movements in the housing market can help first time buyers but also create negative equity at the lower end of the market.
- But persistent buoyancy in prices contributes to inflation and puts home ownership further out of reach.

How future events could affect homeowners

Climate Change: Many owner occupiers and small combined businesses/homes around the country are now being confronted with regular flooding. This reduces insurability and potentially devalues vulnerable homes.

Much of our housing stock requires retrofitting for insulation, solar and natural heat transfer, and in the next few years, replacement of a vast gas burning infrastructure. But control rests with many separate owners. A smaller proportion of property (such as local authority and housing association homes) benefits from institutional ownership that can make the required level of investment.

There is no social or commercial infrastructure within walking distance of many homes, leading to unnecessary personal vehicle use and severely disadvantaging non-car owners, and people with disabilities.

There are traditional sources of unexpected costs (subsidence etc), while novel problems could create unmanageable liabilities that will undermine leaseholders' equity. For instance, the movement to add cladding to large residential buildings resulted from efforts to improve heating efficiency. Climate change, and the potential for endemic COVID infection, present numerous other challenges to home-owners such as flooding, air conditioning and ventilation improvement, solar generation, and unforeseen problems of using new materials and building techniques.

Cladding Remediation and the Risks to Leasehold Flat Owners and Commonholders: The cladding crisis is not a 'one-off' problem. The current situation cries out for a fair and immediate solution for leaseholders. But it also underlines a

major issue in the drive for Commonhold, namely, how to create an effective solution for the potentially very high-cost building failure, whatever the source.

Residential Leasehold Reform: The majority of leaseholds are flats. But a leasehold ‘crisis’ in 2017 connected to house building stimulated new political interest in tenure, and its impact on homeowners. The crisis itself was the miss-selling of new build houses under leases, many of the sales embodying unconscionable terms and conditions, for instance, rapidly rising ground rents that would make the houses unsaleable in the future and could put owners at risk of becoming short term ‘tenants’.

This aspect of leasehold problems has largely been dealt with by measures brought in by the government, for instance:

- to make information about tenure mandatorily available to buyers;
- referral of the most egregious instances for professional negligence claims; and
- referral to the Competitions and Markets Authority, which is taking punitive action against some firms.

Thanks to Parliamentary Select Committee activity and pressure from MPs on all sides, a Law Commission investigation was set up to consider all aspects of residential leases. The Commission reported in detail in July 2020⁵.

All the proposed reforms are likely to improve a complex and often financially draining position for leasehold owners. The main thrust of the report was towards all the major tenets of Labour policy. Commonhold was recommended as the predominant form of tenure for the kind of dwellings (mostly flats) that are currently in leasehold ownership. We explain what Commonhold is below.

Commonhold is a way of owning flats and other ‘structurally interdependent property’ as freehold, and so avoiding the shortcomings of leasehold home ownership. It provides a solution to managing the relationship between separately owned properties which share common parts, such as communal hallways, or gardens. Labour introduced Commonhold in 2004 to make possible the freehold ownership of flats. In Commonhold, an individual property, such as a flat, is referred to as a “unit”. Each unit is owned freehold by a “unit owner”. Unit owners will also be members of a company, called the “Commonhold association”, which owns and manages the common parts.

The Law Commission analysed the complex legal foundations that allowed developers and the management companies or ‘building owners’ that succeeded them to make

⁵ The Law Commission: ‘Reinvigorating commonhold: the alternative to leasehold ownership’, HC 586, 20 July 2020

extraordinary profits from the ongoing payments of leaseholders, and control of the extensive common parts and curtilage of new high-rise buildings.

Projecting this policy is problematic. Tenure is a complex field and there are no short or easy answers to bringing the change about. Last January, the government has announced an effective end to ground rents and said it will introduce a new calculation to allow some leaseholders to purchase their freeholds. New legislation is awaited, but it is unlikely that the present government would take steps that would reduce the lucrative long-term profits from flat developments.

Current Commonhold legislation has proved unsuccessful, partly because mechanisms to convert old leases into Commonhold units were ineffective. Very few dwellings are held under this system. The most successful Commonholds are new builds that begin life as Commonholds.

The viability of Commonhold for high buildings includes high and unexpected costs that would automatically devolve on Commonholders.

Proposals: home ownership

Ownership and lower income earners

33. We recommend a holistic review of housing costs confronting lower income owners, both as a result of climate change and other challenges that require the resources of the state to meet them and in the context of the full range of available tenure and long-term costs.

Tenure and Commonhold

Labour needs to update its policy. The Law Commission has single-mindedly put its weight behind Commonhold as the most appropriate tenure of flats.

34. We recommend that the party supports the Law Commission's proposals and insists on full implementation. In the process, Commonhold will be reformed and made fit for purpose.

35. We recommend that Labour entrenches Commonhold into planning law, so that consent for new flat building carries a legal presumption that units, including a share in curtilage and associated property (such as communal facilities and shops), are held under a Commonhold agreement and not under leases. This process would help **capture the full returns on development sites**, and not just the dwellings on them, for Commonholders.

36. We recommend wealth-based property taxation designed to:
- a. Make local taxation (council tax) more progressive, and more reflective of large home-owners' relatively high land use and carbon footprint.
 - b. Penalise or otherwise turn vacancy to the public good. Local authorities may now treble Council Tax on vacant properties. But additional measures could be considered.
 - c. Create revenue for public housing.
37. We suggest continuing Labour's 2019 manifesto pledge of buying out or leaseback of private leases within social housing blocks in order to restore and consolidate social housing. Local councils and their proxies have proved to be the best managers of crises, such as the remediation crisis, having the economic weight and authority to deal more effectively with the scale of management and execution required, which a myriad of individual lessees lack.
38. We recommend legal measures to re-allocate liability for disasters, climate change and exceptionally high costs, particularly where residuary liability currently lies with ordinary people who did not cause and cannot afford to remedy the problem (see also the fire safety recommendations). We suggest:
- a. An extension of the Defective Premises Act;
 - b. A system of long-term public guarantees backed by bonds or deposits;
 - c. Rules on incorporation of builders to prevent the use of impermanent structures, and phoenix companies; and
 - d. A Building Development Levy similar to the Banking Levy introduced in 2011 to compensate the economy for the impact of high-risk trading. (See note 00). An industry levy would help to overcome the problem of phoenix companies, by which individual developers avoid liabilities.

The Private Rented Sector

Background

The current private rented sector framework was introduced by the Thatcher and Major governments in the late 1980s and mid-1990s. The policies were explicitly aimed at creating a profitable housing market through a new, deregulated, legislative regime. Those governments were concerned that the private rented sector was too small. It had gradually shrunk as local authorities built adequate levels of council housing, and in a context where private homes were not a particularly profitable growth asset for landlords or owner-occupiers (before the 1980s, house price growth was generally slow).

Seen through that lens, the policies were staggeringly successful. Essentially, a system of insecure short-lets with no adequate rent regulations allows housing costs to rise uniquely quickly. Under this regime the private rented sector grew from 8% of homes in the UK in 1988 to about 20% (and growing) today. More importantly, the prices of homes rose as intended, and have now reached crisis levels. When we talk about a 'housing crisis' in the UK, we generally mean a crisis of affordability: there has been no significant change in the number of homes-per-capita since before the crisis, but more and more people are priced out of adequate accommodation as prices have continued to balloon.

It is agreed by everyone that there is now a housing crisis. Homes are unaffordable. Any meaningful solution to that crisis necessarily involves changing that permissive legislative framework, which is aimed at making sure prices continue to rise. Any government that is serious about the housing crisis needs to tackle its root cause: the laws that make homes profitable by design.

Our proposals

These proposals are for England only, as housing law is a devolved matter for Wales, Scotland and Northern Ireland.

In recent years, Labour has committed to providing for new rights for renters, ending no-fault evictions, curbing excessive rents, rowing back on the reductions in the scope of housing benefit introduced by successive Tory governments, and strengthening the powers requiring the maintenance of housing standards so that lettings are safe and in good repair. We welcomed those proposals at the time, and would re-emphasise their importance. In particular, we would recommend that Labour re-commits to its proposals to:-

- Repeal s 21 of the Housing Act 1988 (promised in the Tory 2019 manifesto and the subsequent December 2019 Queen's Speech, and in Labour's 2019 manifesto, but not yet implemented, Queen's Speech May 2021 which promised

consultation on Renters' Reform Bill) so that Assured Shorthold Tenancies (ASTs) become Assured Tenancies (ATs) with no additional grounds of possession created (the existing grounds are, chiefly, non-payment of rent, anti-social behaviour and mistreatment of the property). This will meet the growing demands for fairness in the private rented sector, where currently courts are required to order possession. The landlord is not required to provide any justification, but must simply give notice to the tenant. S 21 is also a significant factor in increasing homelessness⁶.

- Repeal ground 8 in Schedule 2 Housing Act 1988 (court required to grant possession if the tenant is in 8 weeks or more arrears of rent at the time of the notice seeking possession and the hearing of the claim) which does not allow the court to consider the reason for non-payment, e.g. delay in payment of housing benefit. The law currently prohibits the court from refusing to order possession or suspend such an order, regardless of the circumstances. It is particularly unfair as even the average tenant who pays no rent at all for two months would cause the average landlord to lose £1,400 (the average rent being £700), but that landlord would also have gained £3,512 over the same period (the average house price having increased 8.5%, to £260,000, during 2020): the tenant *must* be evicted for arrears even where the landlord has seen a net gain of £2,000.

- Extend the defences preventing eviction (which currently apply only to ASTs) to ATs, i.e. the courts cannot order an eviction if the landlord has failed to comply with the tenancy deposit regulations, or the gas safety/energy performance certificate requirements, or where possession proceedings follow a complaint about the condition of the property and the local authority has served an improvement notice under the Housing Act 2004 (retaliatory eviction).

- Provide for a system of rent control to curb excessive rents (which would include criteria for rent assessment and a means of enforcement). This has recently been approved as part of the power sharing agreement between the Scottish National Party and Scottish Greens, and is widely supported by Labour city and regional mayors. This proposal could involve a right to have rents (proposed or contractual) to be considered by a locally based expert tribunal (similar to or part of the current Residential Property Tribunal). The tribunal would take into account all relevant factors as 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. The rent would be fixed for a period of time and any rent paid in excess could be recovered by the tenant by

⁶ Also recommended by the All Party House of Commons Housing Communities and Local Government Committee 6th Report "Protecting the homeless and the Private Rented Sector - the MHC&LG Response to Covid 19" printed 22/03/21

claim or by deduction. It would be an offence to charge rent higher than that fixed⁷.

At present, there is no functioning system of rent control, so the landlord can increase rent from one short term tenancy to another (or even during the term, under the threat of an eventual eviction). Rents have rocketed as a result. This proposal would also reduce the housing benefit burden on the public purse, as should Labour's plan for increasing the provision of social housing. At present, an enormous amount of public money goes straight into the pockets of private landlords.

- Pass radical reforms to benefit payments towards housing costs:
 - End the 'bedroom tax' (which reduces housing benefit if the claimant's home is deemed to have an unnecessary bedroom). This has caused particular hardship to households with a disabled member.
 - End the benefits cap (which sets a limit on the total sum a claimant can receive if entitled to a number of benefits and is enforced through a reduction in payments towards housing costs so that the claimant is left with a shortfall, often substantial, being her rent and the amount received in benefit to pay the rent).
 - Set the local housing allowance at a rate that reflects market rates and will not fall below the 50th percentile locally (to enable HB to again cover full rent in the private sector in most cases).
 - End the two-child rule (the child allowance element in HB reduced if there are more than 2 children in the family)⁸.

All these (benefit) measures have caused increased hardship to households already poor and on low incomes. Labour would also review the concept and operation of the Universal Credit system.

- Repeal the so-called "right to rent" provisions of the Immigration Act 2014 which require landlords effectively to act as enforcement officers for the Home Office by obliging them to check all tenants' documents to establish if they are lawfully in the UK and which can lead to wrongful refusal to grant a tenancy as well as involving landlords in an area in which they are not experts and in which they risk prosecution if they fail to satisfactorily comply. These provisions have been heavily criticised by the National Residential Landlords Association.

⁷ These criteria draw on, but do not exactly mirror, the Rent Act 1977 s 70, Housing Act 1988 s 13 and 14 (which currently provide for rent assessment of Assured Tenancies), Guidance on Rent for Social Housing DCLG May 2014 esp paras 1.4 and 2.3.

⁸ As similarly recommended by the All Party Committee para 89, page 34.

- Ensure proper funding for local authority Environmental Health Departments, so that housing standards legislation can be enforced, and for Tenancy Protection Officers (or the equivalent), so that action can be taken against landlords who unlawfully harass or evict tenants.

- Assist tenants to enforce their legal rights by ensuring adequate legal aid (see the access to justice section, above).

Conclusion

These proposals will restore fairness, enable the provision of properly affordable housing from both private and public sources which is safe and in good condition, better direct financial resources and provide a means of redress for any matters of concern.

Proposals: private renting

The Labour Party should:

39. End 'no fault' evictions.
40. End mandatory rent arrears evictions.
41. Import the private sector requirements concerning deposits, gas & electrical safety and 'retaliatory evictions' as defences for all assured tenancies.
42. Introduce rent controls.
43. Ensure that housing benefits are adequate to meet housing costs.
44. Repeal the racist 'right to rent' legislation.
45. Ensure proper funding for environmental health enforcement.

Appendix 1 – Affordability

As a result of Labour’s Green Paper on Housing, the Party fixed on an ‘affordable’ amount for any housing at one third of ‘household income’. This seems to have ignored big changes in industry assessment of a potential borrower’s financial resilience. These changes have come in the wake of the financial crisis and offer a bulwark against the kind of financial instability that arose from unregulated credit, and which had such serious consequences for people without savings or assets to fall back on when the crash came. Focus is now on risks such as the borrowers’ family commitments and existing outgoings.

The Party fixes, rightly, on the ‘blue collar’ wage. It is clear that regulated formulations of affordability now make Labour’s plans for affordable housing in the last election look hopelessly over-optimistic.

Affordability and first-time buyers. Between the wars the **Debt To Income** ratio (DTI) was around twice annual earnings. Renting continued to be the predominant tenure until the late 1980s. Now DTI is much steeper – at around five times earnings. After the crash, new rules imposed on the market established financial affordability in terms of security for lenders, who insisted on **Lower Loan to Value (LTV) ratios**, resulting in higher deposits particularly for first time buyers. Checks on affordability are now quasi-legal obligations.

The *Guardian* recently published research based on figures from Nationwide, ONS and Registers of Scotland demonstrating how a nurse and a partner (jointly earning £65,382 (based on median incomes)), would find 22% of council areas (most of south-east of England) ‘unaffordable’, while a single nurse would not be able to afford to buy in 74% of council areas (*Guardian* 31 March 2021).

An affordability calculation for a single parent on a nurse’s salary of £30,000 paying £600 per month in childcare costs and £1000pm in rent (plus other outgoings) could qualify for a mortgage of between £80K and £120K (using current criteria). At £120K (paid at 3% over a 25-year term) the monthly payments would be approximately £428.00. This repayment is much less than her rent, and less than one third of take-home income. However, the stress test indicates that the mortgage plus ‘fixed and committed spending’ of £1,050.00 per month puts the total at more than 60% of take-home pay, placing her at a “very high risk” of overstretching her budget and consequently vulnerable to interest rate rises and life events. (Source of calculation: *The Money Advice Service*, part of the The Money and Pensions Service (MaPS), an arm’s-length body sponsored by the Department for Work and Pensions.)

Appendix 2 – Industry Levies

<https://www.gov.uk/government/publications/bank-levy-changes-to-scope-and-administration/bank-levy-changes-to-the-scope-and-administration#background-to-the-measure>

The Banking Levy introduced a surcharge on Banking sector profits from implementation until it entered a period of phased reduction from 2016.

The Bank Levy was introduced in 2011. Its purpose is to ensure that banks and building societies make a fair contribution, reflecting the risks they pose to the financial system and the wider UK economy. The Bank Levy was also designed to create appropriate incentives to encourage banks to move away from riskier funding models. The Bank Levy has raised £8bn since 2011.

Summer Budget 2015 set out a long-term plan for taxation of the UK's financial services industry. This balanced the need to ensure that the financial sector remains robust, highly competitive and open for business against the ongoing need for banks and building societies to make an appropriate tax contribution that reflects their unique risks to the UK financial system and wider economy.

The plan included the introduction of a new 8% Corporation Tax surcharge on banking sector profits from 1 January 2016 and a phased reduction of the Bank Levy rate between 2015 and 2021. In addition, to reflect significant changes in international regulation and resolution planning that are reducing the risk of overseas banking operations to the UK, a change in the scope of the Bank Levy was announced. The Bank Levy will therefore only be chargeable on UK balance sheet equity and liabilities from 2021.

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