

Annex 1: Overcoming the Barriers to Longer Tenancies in the Private Rented Sector – GLA detailed response to consultation proposals

Q10: Do you think that the protection for tenants from retaliatory eviction introduced in the Deregulation Act 2015 has been successful? Please explain

The GLA welcomes a focus by government on retaliatory evictions. However, the provisions in the Act are complicated and onerous in terms of the precise conditions that need to be met, and do not fundamentally alter the imbalance of power in the tenant-landlord relationship. Most tenants are not well-informed of their rights as renters, and do not feel sufficiently empowered to assert them. This is even more of a concern among vulnerable tenant groups, such as those for whom English is a second language. The numbers of tenants making complaints about their landlord to local authorities is unlikely to be representative of the scale of the issue.

The provisions also rely heavily on local authority intervention, placing a significant administrative burden on officers making complicated case-by-case assessments against the HHSRS. As MHCLG will know, many local authorities lack the capacity and resources to develop and maintain a dedicated team of enforcement officers, leading effectively to a postcode lottery in enforcement outcomes on the ground. With nearly two-thirds (62 per cent) of all ‘no fault’ evictions occurring in London, Local Authorities are in no position to ensure that all are carried out legally.¹

In some cases, enforcement teams may also prefer to work with the landlord informally on improvements to the property, rather than issuing a notice. This may be a suitable approach, but renters will only be protected if a notice is served. Just over 900 improvement notices were served in London last year, suggesting only a tiny minority of renters would be protected from an illegal eviction by the existing legislation, even if they were aware that it exists.² The Mayor believes that ‘no-fault’ S21 evictions must be abolished altogether, as advocated in his London Model proposal (see Annex 2).

Q11a: What do you consider to be the main benefits of a longer tenancy for landlords?

Securing a tenant who complies with their tenancy obligations, including on-time payments of rent, is likely to be the primary consideration of most landlords. Securing such tenants for longer periods through longer tenancies would therefore be a benefit to landlords. However, as pointed out in the consultation document landlords can already offer longer tenancies under the current regime to minimise void periods and reduce the administrative burden and cost of finding new tenants. As the consultation report illustrates, despite these benefits most landlords opt for shorter tenancies.

This is likely because the landlord can enjoy many of the benefits of a longer tenancy by simply renewing a short-term tenancy annually or placing the tenant on a monthly ‘rolling’ or statutory

¹ *Poverty, evictions and forced moves*, Joseph Rowntree Foundation July 2017

² *ROGUE LANDLORDS IN LONDON An update on local authority enforcement in the private rented sector*, Caroline Pidgeon AM, October 2017

periodic tenancy. By doing this the landlord retains flexibility over their property without losing their tenant. In the latter scenario the tenant may give notice at any time, which presents the risk of a void period, but in a buoyant market landlords often choose to accept this risk in return for flexibility. The tenant on the other hand has no assurances beyond the end of the fixed term. There are also perverse incentives in place for letting agents that encourage shorter tenancies, since agents stand to benefit from 'churn' via tenant fees and any rent increase (where they are paid on a percentage-of-rent basis). These industry-wide practices are symptomatic of the serious structural issues in the sector that need to be addressed.

Though a step in the right direction, three-year fixed term tenancies would not deliver significant benefits to tenants or landlords. There is no reason to believe the status quo, whereby long-term tenants find themselves on periodic tenancies, would be less likely to occur in most cases after three years rather than one. In addition, were a problem to occur in the final year of a three-year tenancy, renters would be in the same position as those with a one-year tenancy. Instead, the GLA believes that the introduction of open-ended tenancies, balanced with proper reforms to possession processes (as described in Annex 2) is the best way to achieve genuine change for both tenants and landlords.

Q11b: What do you consider to be the main benefits of a longer tenancy for tenants?

The GLA welcomes a commitment by government to addressing the barriers to promoting longer tenancies as part of broader tenancy reform package. For vulnerable groups, including older people and families with children in particular, longer-term tenancies would reduce the expense and stress of frequent moves, offering much-needed peace of mind.

However, these benefits will only fully be realised by the adoption of open-ended tenancies with no prescribed minimum length. Under the principles described in the Mayor's 'London Model', the rights of tenants to greater security will be balanced with the rights of landlords to greater certainty of/about regaining their asset in legitimate circumstances. This culture change will make for better informed and more empowered renters. It would also allow renters for whom home ownership is out of reach to realise their aspirations for a stable, long-term home.

Q13: What do you consider to be the main barriers to landlords offering longer term tenancies?

Many small landlords lack a long-term business plan and strategic approach to managing their property. Indeed, for many, it is a second home that they or their family members no longer need. Landlords in this situation are often renting their property out as an interim solution.

The GLA believes landlords can be reluctant to offer longer tenancies as they welcome the flexibilities that short-term and periodic tenancies offer to use and manage their asset. This degree of control is valued by landlords, offering peace of mind that if anything goes wrong, possession of the property can be quickly re-gained. Short-term and periodic tenancies also offer landlords greater flexibility to increase rents regularly – even if in practice, many landlords with long-term tenants choose not to do so. Landlords may further be concerned that offering longer tenancies risks abusing restrictive mortgage conditions.

Much of the concern over loss of control through long-term tenancies comes from landlords' fear of having to rely on lengthy and inefficient court processes if a problem arises within the tenancy. For example, the consultation paper sets out that the median time for obtaining possession using Section 8 is 17 weeks. Using this process to evict a tenant who in the meantime is building up significant arrears or causing other problems such as anti-social

behaviour is not appealing to landlords. For the landlord of the average London property a possession time of 17 weeks would mean absorbing arrears of just under £6,000. Bearing in mind that 17 weeks is only the median possession time, for many landlords the costs would be much higher.

Q14: Do you think that a three-year tenancy with a six-month break clause as described above is workable? Please explain

Q16: How long do you think an initial fixed term tenancy agreement should last (not considering any break clauses or notice periods)? Please explain

Q17: What do you think is an appropriate length of time for a break clause?

As set out more fully in Annex 2 the GLA disagrees with Government about the value of fixed-term tenancies in the private rented sector, and believes open-ended tenancies are the correct approach. The Mayor is concerned that six-month break clauses could become de-facto Section 21 notices and could be open to abuse by unscrupulous landlords. However, he also understands why both landlords and tenants may value this option. The GLA will work closely with key stakeholders on this issue via the London Model process to ensure these risks are mitigated.

Q18: How much notice should landlords be required to give to tenants when they want to recover their property to sell or move into?

Q19: How much notice should tenants be required to give to their landlords when they want to leave their tenancy?

The Mayor has committed to undertaking in-depth analysis and stakeholder engagement to develop his 'London Model' set of reforms for the private rented sector. As part of this work we will examine the detailed components of models adopted in Scotland and other European countries, including the mechanisms used for ending a tenancy and the associated notice periods for landlords and tenants. Consideration should be given to whether a blanket notice period on either the tenant and landlord side is appropriate, or whether, for example, different notice periods might be required in different circumstances.

Whatever notice periods are opted for, they need to consider the specific needs of both tenants and landlords and provide a fair and proportionate solution for both parties. Under the Mayor's London Model, open-ended tenancies with no default end date would be the norm. Tenants could then consider the property they live in as a long-term home, rather than simply a place they are 'passing through' and this positive shift must be taken into account.

Q20: Do you think that the grounds for a landlord recovering their property during the fixed term under any longer-term tenancy agreement should mirror those in Schedule 2 of the Housing Act 1988, with the addition of the right for the landlord to recover their property when they wish to move in or sell it?

The GLA agrees on the importance of balancing the right of tenants to live peacefully in their home with the right of recovery when a landlord's circumstances change, or a tenant is at fault. We support the headline principles of the existing grounds, but we know that for many landlords, the court process is too complex, open to abuse by some tenants, and not fast enough in resolving cases. This has caused a lack of trust in the court system and a consequent reliance on offering shorter tenancies and use of Section 21 'no-fault' evictions.

Government must use this opportunity to address the blockages and issues in the court system and must embrace wholesale reform if that is what is required. The GLA looks forward to the anticipated call for evidence in the Autumn regarding user experiences of the housing courts and tribunals. Thorough analysis combined with meaningful reforms are crucial if a genuine shift towards greater security of tenure is to be achieved.

The GLA agrees it is important to explore the introduction of new grounds for situations where the landlord needs to sell or use their property, as is the case in Scotland. The precise wording of such grounds will, however, be crucial to ensure they are not abused and that robust conditions of proof are met. There must also be strong deterrents in place for landlords who would seek to abuse such grounds. Anecdotal evidence from Scotland suggests it is hard for tenants who suspect they were falsely evicted to successfully prove their case and therefore be awarded compensation through the tribunals. In addition, though compensation is an important tool, in the interim the tenant will still have lost their home. Although these measures may eventually shift behaviour, some landlords may see such compensation as simply a business cost and a risk worth taking. For instance, evidence from local authorities suggests that a hardcore of non-compliant landlords see fines handed down as a result of licensing and HHSRS enforcement as simply a cost of doing business. As set out in Annex 2, the Mayor's London Model work will consider what alternative measures may be appropriate.

Government should clarify whether it is their intention under their proposed three year fixed-term model that the landlord would be prevented from using a Section 21 after the six-month break clause has expired. Although the Mayor disagrees with fixed-term tenancies and has concerns about break clauses, it is important to understand to what extent tenants would be protected from no-fault evictions under the Government's proposals.

Q21: Do you think that there should be any restrictions on how often and by what level the rent should be increased in a longer tenancy agreement? And if so what is the maximum that these restrictions should be? (Tick up to two)

The GLA welcomes the attention on affordability and rent levels in the private rented sector and a willingness by government to seek views on workable solutions. The proposal that landlords make clear when advertising how rents will increase and have this detailed in the tenancy agreement is a positive idea in principle. However, particularly in London, this would likely be open to abuse.

Vulnerable renters may not be in a position to fully understand the terms they are signing up to and as such may end up agreeing to rent increases they cannot afford. It would be difficult to ensure landlords and agents were displaying information about rent increases clearly. Current anecdotal evidence shows that, for many renters in London, where 70 per cent of adults living in the PRS were born overseas, language may present a barrier to understanding for many renters³. Finally, tenants at the lower end of the market, whose choices are restricted, may have no alternative but to sign contracts with unfavourable terms. The opportunities for exploitation are analogous to the high-cost consumer credit or payday lending industries at present.

In addition, any form of rental agreement that legitimises annual rent increases is likely to have a negative impact in the current market.

The GLA sets out its position on rents more fully in Annex 2, paragraphs 4.4-4.6.

³ GLA analysis of the Labour Force Survey Q4 2016

Q22: What do you think is the best way to ensure that landlords offer longer term tenancies to those that want them or need them? Please explain.

Q27: What other options to promote longer tenancies should be considered?

The Mayor is keen to stress that non-legislative solutions to the issues around security of tenure will be ineffectual and should not be considered. The problems in the sector are due to fundamental structural weaknesses in the legislative framework governing tenancies. They are not simply a result of individual landlord behaviour, or lack of tenant education.

Educational campaigns aimed at changing behaviours require a huge amount of resources over a long period of time, which Government is unlikely to be able to commit to. The Government's own Model Tenancy agreement for instance has suffered from low take-up, as did the London Rental Standard introduced by the previous Mayor of London. Moreover, vulnerable groups, who are least empowered to assert their rights and most at risk of experiencing sub-standard, insecure accommodation, would be very hard to reach in this way. Though educating renters about their rights is extremely important, the first-order issue is that the rights themselves are inadequate.

The Mayor believes Government should learn from the work of the Scottish Government in legislating for this issue to avoid a two-tier system emerging whereby English and Welsh renters suffer considerably weaker rights than their counterparts north of the border.

The GLA is also clear that the legislative approach we call for above must be backed up by a robust enforcement framework to tackle rogue operators and deter others from breaking the law. As a minimum, this must include powers with 'teeth', adequate resources and funding for enforcement, and the introduction of relevant criminal offences and/or penalties.

Q23: Which types of tenancy should be exempted from the proposed system?

As set out in Annex 2, the GLA agrees certain tenant groups and rented accommodation providers may require an exemption from any legislation making longer or open-ended tenancies mandatory, or alternative provisions of some kind. Student accommodation, short holiday or corporate lets, and providers of accommodation for homeless households, such as hostel and temporary and emergency accommodation may fall into this category.

Further consideration will also need to be given to those with short-term visas. Those on short term work contracts need not be disadvantaged by open-ended tenancies, as they would be with fixed-term tenancies. However, consideration is needed to ensure such renters are not disadvantaged when bidding for properties and left with restricted choice. The GLA is also keen to stress that these groups must not be left without any protections.

Q24: What do you think would be the benefits and disadvantages of changing the law to require all landlords to offer the longer-term tenancy model?

Q25: What, if any, financial incentive could encourage longer tenancies? Please explain

The Mayor believes that primary legislation is the only option to deliver a fundamental and lasting shift in tenants' rights towards open-ended security of tenure. The arguments for this are detailed in our response to Questions 22 and 27.

The GLA does not support financial incentives as the primary mechanism for delivering greater security of tenure. We believe this is a basic right that all tenants should have and not something that providers of rented accommodation should be rewarded for by the taxpayer. While some landlords may respond to such incentives, many others will continue with a high rent, high turnover business model because they believe it benefits them more.

As highlighted in our response to Question 10, it would be wholly unrealistic to burden local authorities with the administration of incentives such as cash payments to landlords when many are lacking the resources and capacity for enforcement of private rented sector issues.

Q28: Do you consider that any of the above would impact on people who share a protected characteristic, as defined under the Equalities Act 2010, differently from people who do not share it? If yes, please provide details.

The demographics of the private rented sector have been changing rapidly over the past decade with many more young children now calling it their home and a significant increase in the level of vulnerable persons and households in poverty living in the sector. 86 per cent of new arrivals to London from overseas are accommodated in the PRS, many of whom may be poorly equipped to understand and express their rights⁴. This suggests that measures to improve these rights may have a positive impact on those with the protected characteristic of race and ethnicity.

The number of families with dependent children living in the sector has more than doubled since 2004, and almost 600,000 children are now living in privately rented homes⁵. The number of private-renting households in London aged 45-64 has more than doubled in the last ten years⁶. These groups are among those most likely to suffer as a result of insecure tenancies and fear of sudden evictions. As a result, efforts to improve security of tenure are likely to disproportionately benefit those with the protected characteristics of age and maternity.

If Government delivers on its desire to provide increased security of tenure, it may significantly improve the quality of life of those private renters with a disability and those with poor mental health. For people with these characteristics, the threat of eviction and losing touch with local support networks can be detrimental to overall health outcomes. Evidence shows that frequent moves can also negatively impact on health and wellbeing for those who are otherwise healthy, in particular it can affect mental health^{7 8}.

Q29: Do you have any other comments that have not been captured elsewhere in this consultation?

The Mayor sets out his vision for reformed private rented tenancies more comprehensively in Annex 2, *The 'London Model': a blueprint for private rented sector tenancy reform*. The GLA would welcome an early discussion with Government on these proposals.

⁴ GLA analysis Labour Force Survey Q4 2016

⁵ Labour Force Survey 2004-2017

⁶ Living in Fear, experiences of Older Private Renters Age UK

⁷ 'Living in limbo', Shelter, 2004

⁸ 'People living in bad housing, numbers and health impacts', Shelter, 2013