

# Touch and go

How to protect private  
renters from retaliatory  
eviction in England



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# Summary

In most consumer markets, transactions come with customer guarantees. Consumers know that businesses will provide a remedy, reduction or refund for poor practice or sub-par products. This guarantee sits at the heart of well-functioning markets, with consumers able to complain or take their business elsewhere. This means that good businesses flourish and bad ones don't.

But in the private rented sector (PRS), this often isn't the case. With most contracts offering a 6 or 12 month fixed term, few tenants feel secure enough to plan ahead. The ease of eviction enables landlords to move unwanted tenants on rather than fixing problems. And the trouble and expense of finding a new home can keep tenants from making complaints. For the 4.7 million households living in the PRS - including 1.7 million families with dependent children - this presents a serious problem.<sup>1</sup>

In 2015, the government passed a law aimed at banning retaliatory eviction when a tenant raises complaints. Despite these efforts, this research finds that retaliation for raising complaints still occurs.

Tenants who made a formal complaint to either their local authority or to a redress scheme had a 46% chance of being issued with a section 21 eviction notice in the following 6 months. And compared to those who have not, tenants who have received a Section 21 notice are:

- **Over twice as likely** to have complained to their landlord in the previous 6 months.
- **5 times more likely** to have complained to their local authority in the previous 6 months.
- **8 times more likely** to have complained to an independent redress scheme in the previous 6 months.

Recent attempts to protect tenants from retaliatory eviction have failed:

- **Only 10% of Environmental Health Officers (EHOs)** report a reduction in the number of retaliatory evictions since 2015. And last year, **7 in 10 of our advisers** helped tenants who were facing a retaliatory eviction.
- **Local authorities rarely serve the notices required to protect tenants** due to a lack of resources and a preference for informal negotiation. Most EHOs focus on improving housing standards, and rarely see their role as preventing eviction. In fact, these two roles can be in direct conflict.

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<sup>1</sup> ONS, [English Housing Survey 2016-17](#), 2018.

- **The threshold for protection is unreasonably high**, covering only some health and safety hazards. This means in many cases landlords can legally evict tenants rather than carry out legally required repairs. And the length and complexity of the process to gain a notice means tenants can be evicted even when their home has a hazard that should protect them from eviction.

## Recommendations

This research raises questions about the role of Section 21, which gives landlords the power to evict tenants without reason. It's impossible to balance the rights of tenants and landlords unless tenants have meaningful protection from retaliatory eviction.

Relying on reactive local authority notices to protect tenants has not worked. A more proactive, upstream approach is needed to address the underlying flaws in the market. The government should:

- 1. Protect tenants from retaliatory eviction when they complain to independent redress or ombudsman schemes.** Tenants should be protected from the point of complaint.
- 2. Enable tenants to leave a fixed-term contract early, without penalty, if their landlord fails to uphold their legal responsibilities.**

Ultimately, however, tenants need increased security of tenure through restrictions on the use of Section 21. Short-term tenancies breed mistrust and make routine complaints high-risk. Greater security can rebuild this trust and give tenants the confidence to hold landlords to account. Good landlords can be reassured that their tenants will raise problems early, leading to a quicker and cheaper resolution. Bad landlords will find it harder to disregard their responsibilities, driving up standards and driving out rogues. The government should:

- 3. Introduce mandatory 3 year tenancies for all private rented sector tenancies.** Government proposals for 3 year tenancies are a step in the right direction. To make these proposals strong enough to prevent retaliatory evictions, they must be mandatory for all landlords. Less ambitious approaches, such as promoting tenant awareness of longer tenancies or providing tax incentives, are very unlikely to succeed.

# Background

Nearly 230,000 people came to Citizens Advice in England over the past 12 months with a housing issue, including 73,000 people with a private rented sector issue. Our online housing advice was accessed 4.1 million times. This makes housing the third largest advice area at Citizens Advice, after benefits and debt.

Within housing, problems with repairs and maintenance are the most common issue across all rented tenures. The recent English Housing Survey evidenced that two thirds of privately rented homes have some form of disrepair. And in 2016, 1 in 6 privately rented homes had a 'Category 1' hazard.<sup>2</sup> Despite this, 44% of tenants who have experienced a problem chose not to make a complaint.<sup>3</sup> Our previous research found that fear of eviction or rent increases is the main reason tenants don't pursue complaints with their landlords.<sup>4</sup>

In 2015, the government passed the Deregulation Act, which aimed to end retaliatory eviction. Citizens Advice supported its implementation as the government's first legal tenant protection from retaliatory eviction, in addition to wider reforms. Since then, research has indicated that these protections may have been insufficient and the government has recognised that 'more could be done'.<sup>5</sup> Earlier this year, the Housing, Communities and Local Government Select Committee recommended major improvements to protections against retaliatory eviction.<sup>6</sup>

The government's consultation<sup>7</sup> on longer tenancies acknowledges the growing call for tenancy security. It also cites retaliatory eviction as one of the reasons in favour of longer tenancies.

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<sup>2</sup> [English Housing Survey 2016 to 2017: private rented sector](#), July 2018.

<sup>3</sup> Survey of private renters conducted on behalf of Citizens Advice, April 2018.

<sup>4</sup> Citizens Advice, [It's Broke, Let's Fix It](#), July 2017.

<sup>5</sup> Housing, Communities and Local Government Select Committee, [Private rented sector: quality of accommodation and the balance of power](#), April 2018; Generation Rent, [Protection from Evictions: a postcode lottery](#), June 2018; Ministry of Housing, Communities and Local Governments, [Overcoming the Barriers to Longer Tenancies in the Private Rented Sector](#), July 2018.

<sup>6</sup> Housing, Communities and Local Government Select Committee, [Private rented sector: quality of accommodation and the balance of power](#), April 2018.

<sup>7</sup> Ministry of Housing, Communities and Local Governments, [Overcoming the Barriers to Longer Tenancies in the Private Rented Sector](#), July 2018.

# Research method

The Citizens Advice service covers England and Wales. Housing is a devolved matter and this report focuses solely on England.

This report draws on data from an online survey of 2,001 private renters in England, carried out by ComRes between 16 and 27 March 2018. The data is nationally representative of all private renters in England by age and region. The report also includes data from an online survey of 324 local Citizens Advice staff.

We also carried out an online survey of 97 Environmental Health Officers working in 59 local authorities across England in July 2018. This data is not nationally representative. However, we believe that it is indicative of the decisions made by local authorities on housing issues.

We would like to thank the Chartered Institute of Environmental Health (CIEH) and local Citizens Advice for their assistance in building and promoting our survey of Environmental Health Officers. We would also like to thank all Environmental Health Officers who completed the survey.

Finally, the report includes case studies and data analysis from our network of local Citizens Advice in England.

## Case studies

We carried out 2 detailed interviews with private renters who sought help with their housing from their local authority's Environmental Health team and also experienced retaliation from their landlord or agent. Direct quotes from these tenants are included throughout the report. Their stories are summarised below. We would like to thank the local Citizens Advice that helped organise interviews.



Jim<sup>8</sup> is in his early 20s, and lives in a flat with his girlfriend in Outer London. After having lived there for a year, their roof began to leak. Jim asked his agent and landlord to address this, and they agreed to do so. However, no action was taken and the problem persisted for several months, becoming worse over the winter period.

After noticing further damage to the interior walls of the flat, Jim reiterated his concerns to the landlord and agent. Four months later, when no repairs

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<sup>8</sup> All names used in this report have been changed.

had been made, he emailed them again, and made a formal complaint about how the issue had been handled. He also told them he would contact his local Environmental Health team unless progress was made on the repair. A week later, Jim and his girlfriend received a Section 21 notice.

He contacted his local Environmental Health team to ask for help. They issued his landlord with an enforcement notice, but told Jim they could not help with the retaliatory eviction because the Section 21 notice had been served before their involvement.



Kemah is in her mid 40s. She lives in North West England with her husband, whom she cares for. They have two children. Soon after moving in, she noticed a number of problems with the property, such as holes in the wall behind electrical sockets, damage to interior walls caused by a leaking roof and a plumbing problem. Kemah eventually arranged and paid for the plumbing repairs herself, but other repairs were still not addressed despite repeated requests to the landlady.

Having already experienced a retaliatory eviction in a previous tenancy, Kemah was reluctant to further push for repairs. Eventually, after black mould caused by the leaking roof led her husband's health to deteriorate, she requested an inspection by her local authority. The day before the inspection was due to be carried out, she received a Section 21 notice.

The council found a number of Category 1 and 2 hazards in the property, and issued her landlord with an enforcement notice.

# 1. Has the ban on retaliatory eviction been effective?

Tenants remain many times more likely to receive an eviction notice if they complain to their landlord, local authority or an independent redress scheme. They are also significantly more likely to receive rent increases or refusals to renew a contract following complaints. Most Environmental Health Officers have seen no improvement in the number of retaliatory evictions since the 2015 ban, and many of our advisers regularly encounter tenants facing retaliatory eviction. This shows that the government's ban on retaliatory eviction has not been effective.

## Complaints often lead to retaliation

Since October 2015, 43% of tenants who asked for repairs or made a complaint faced some form of action that could be considered retaliatory - with a small number experiencing more than one.



## Complaints frequently come before eviction notices

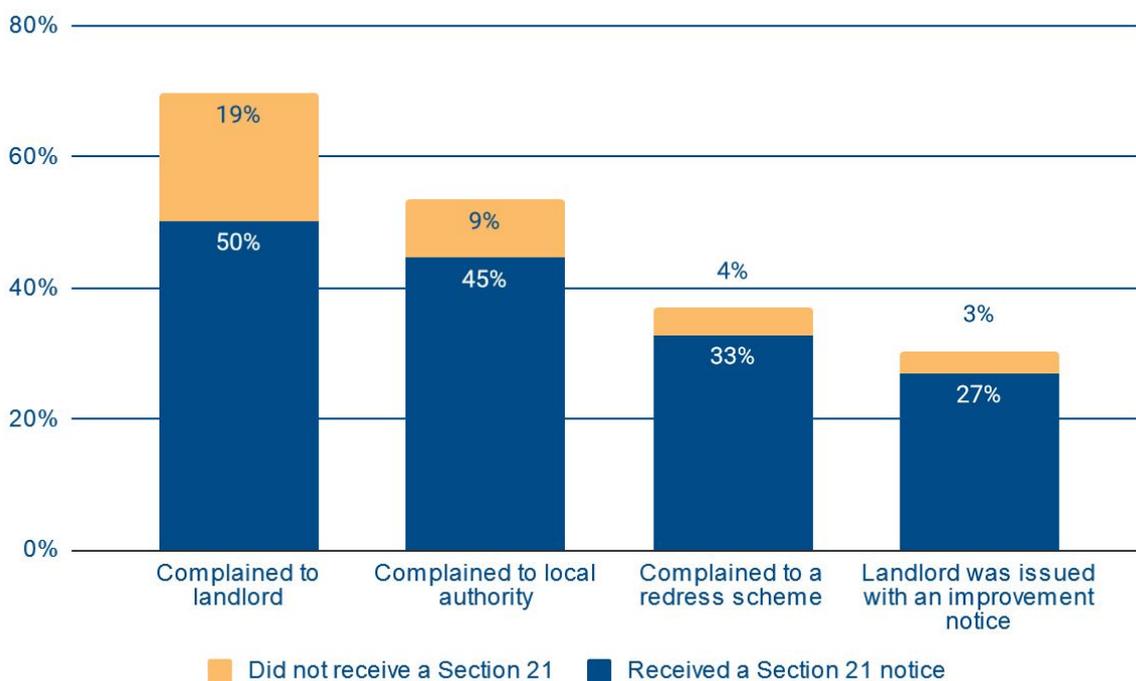


*"The penny really dropped when she suggested that we serve our notice, three times... it's like if you have an employer, and he says 'well, if you don't like it here you can find another job'... that was really, really unsettling and I think from that moment we knew something was up"*

- Jim, 18-24, London

Despite the efforts of the Deregulation Act 2015, tenants who try to enforce their rights are still vulnerable to landlord retaliation. Almost 3 in 5 tenants (57%) who received a Section 21 eviction notice had made some kind of complaint or request for repairs in the six months before receiving it, compared to less than a quarter of those who had not (22%). This discrepancy is particularly stark for more formal complaints:

**Figure 1: Proportion of tenants who made complaints, by whether or not they received a Section 21 within 6 months of doing so**



Source: Survey of private tenants conducted by Comres on behalf of Citizens Advice. Base: 148 tenants who have received a Section 21, and 849 who have not.

This research finds strong evidence that making a formal complaint increases tenants’ chances of receiving a Section 21 notice.

**Tenants who receive a section 21 notice are:**

**2 times  
as likely**

to have  
complained to  
their **landlord**  
directly

**5 times  
as likely**

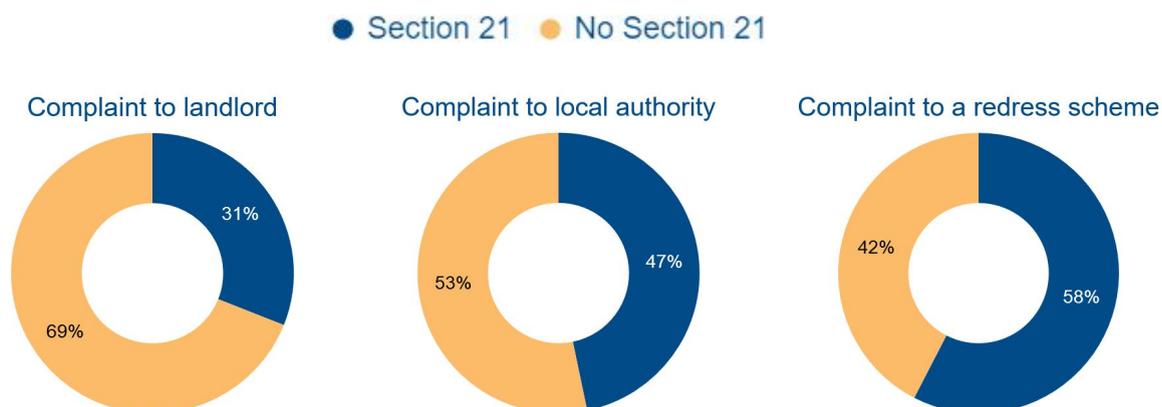
to have  
complained to  
their **local  
authority**

**8 times  
as likely**

to have  
complained to  
an  
**independent  
redress  
scheme**

Receiving a Section 21 notice after taking any one of these actions can be retaliatory. But only the tenants whose landlord has been issued with an improvement notice or emergency remedial action notice are likely to be protected under current legislation. For tenants to be confident raising complaints with their local authority or a redress scheme, it's vital that they are protected from the initial point of complaint.

**Figure 2: Proportion of tenants who received a Section 21 within 6 months of taking the following actions**



Source: Survey of private tenants conducted by Comres on behalf of Citizens Advice. Bases: complaint to landlord, 240; complaint to local authority, 141; complaint to a redress scheme, 84.

On an individual basis, the risk of raising a formal complaint is exceptionally high. Tenants who made a formal complaint to either their local authority or a redress scheme had a 46% chance of being issued with a section 21 eviction notice within 6 months. Raising a complaint should not result in a 'flip of a coin' chance of staying in your home.



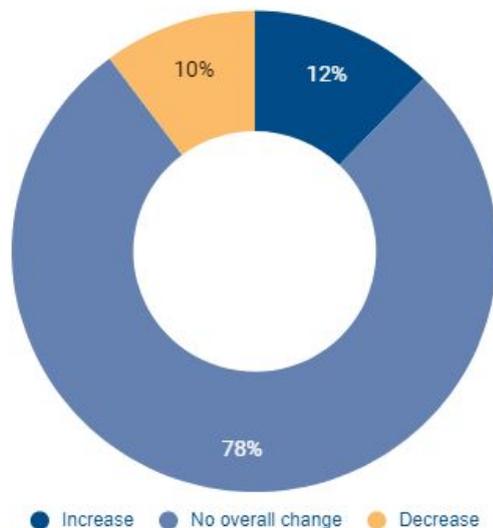
*"[the local authority] did say to us 'look, if you put [the complaint] in and they come round, there is a possibility that [the landlord] can just try and evict you'... So we left it... until it got to the point we couldn't leave it anymore. It was too much... We kind of knew that a revenge thing was on the cards, and lo and behold it came."*

- Kemah, mid 40s, North West England

## The Deregulation Act 2015 failed to address this

The Deregulation Act has not significantly reduced the number of retaliatory evictions taking place. Of the Environmental Health Officers who have been in their role since before the Act was introduced, 90% have not seen any decrease in retaliatory evictions in that time.

**Figure 3: Since October 2015, have you noticed any change in the number of retaliatory evictions your Environmental Health team has encountered?**



Source: Survey of Environmental Health Officers conducted by Citizens Advice. Base: 49.

3 in 4 (75%) Environmental Health Officers experienced tenants receiving a no-fault eviction notice in the last year, following a complaint to Environmental Health about their housing. Nearly a quarter (23%) reported this happening in the last month.

Our advisers report similar experiences. 7 in 10 local Citizens Advice advisers (70%) say their local Citizens Advice has advised clients facing, or threatened with, eviction after making complaints to their landlord in the past 3 months. 3 in 10 (31%) say they often advise clients in this position.

## 2. Why aren't existing protections working?

The Deregulation Act was a major step forward, putting in place the first ever legal protections for tenants against retaliatory eviction. However, the circumstances when protection applies are mainly limited to serious health and safety hazards, leaving many tenants without protection. Even where tenants can be protected in principle, the complexity of the process and the nature of Environmental Health's work means this rarely plays out in practice.

### The protections are too limited

The current retaliatory eviction legislation leaves many tenants without protection, even if their landlord is breaching the law.

To be protected against retaliatory eviction, the landlord must be served with the relevant enforcement notice from the local authority.<sup>9</sup> These notices are issued in response to health and safety hazards. But landlords' legal responsibilities to keep properties in repair and/or proper working order are much wider than these hazards. They include building structures, sinks, boilers and anything set out in the tenancy agreement, such as maintaining the white goods and furniture in furnished properties.

According to the English Housing Survey, 15% of homes in the private rented sector have a Category 1 hazard, which local authorities have a duty to address.<sup>10</sup> But previous research from Citizens Advice found that 64% of tenants have experienced a disrepair issue during the past four years that their landlord was responsible for fixing.<sup>11</sup> As such, many tenants will experience disrepair that their landlord should fix, but will not have any legal protections against retaliatory eviction. Limiting the protections in this way legitimises landlords who choose to evict rather than fix disrepair.

What's more, even where the Deregulation Act 2015 applies, the protection it offers is time-limited. The Act only prevents landlords from evicting tenants

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<sup>9</sup> Under the Deregulation Act, relevant notices might or may be given relating to category 1 hazards - mainly where there's a serious threat to health or safety, category 2 hazards - usually less serious / urgent threat to health or safety, or emergency remedial action - where it's there's a likelihood of serious harm in the near future if conditions don't improve.

<sup>10</sup> MHCLG, [English Housing Survey 2016-17](#), Jan 2018.

<sup>11</sup> Citizens Advice, [It's broke. let's fix it](#), July 2017.

using a Section 21 notice for 6 months after the relevant local authority notice has been served. This leaves tenants with little confidence that their tenancy will be secure in the long term.

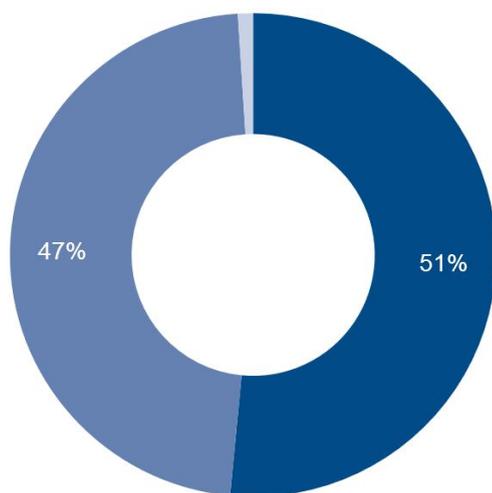
## Local authorities rarely take the action needed to protect tenants

Even in cases where there is a health and safety hazard, tenants cannot rely on being protected against retaliatory eviction.

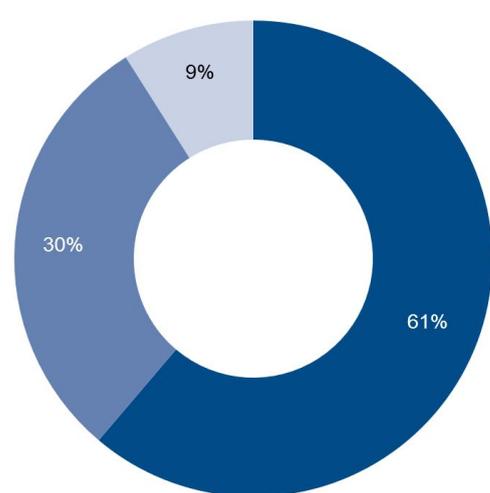
A survey of Environmental Health Officers in England found that when they identify a Category 1 hazard (the most serious threat to health or safety), just half (51%) will 'always' or 'often' serve an improvement notice. This is the notice required to protect tenants from retaliatory eviction.

### Figures 4 and 5: What actions are Environmental Health Officers most likely to take when they have identified a Category 1 hazard?

#### Issue an enforcement notice



#### Work with the landlord informally



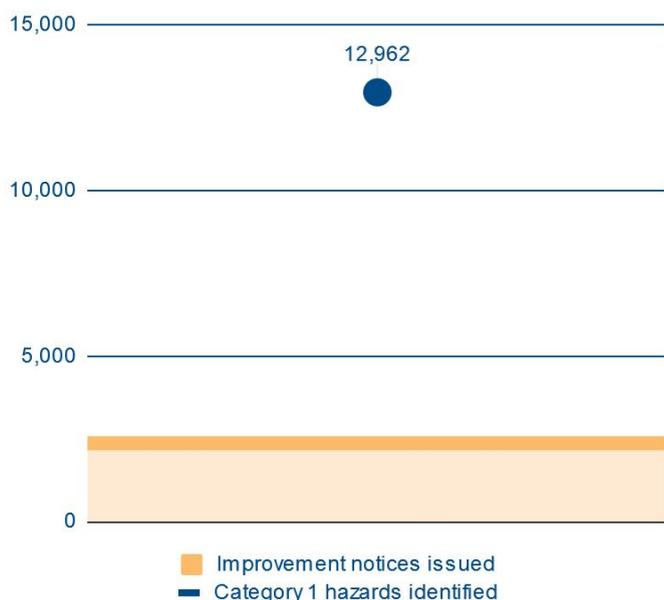
● Always/often ● Sometimes ● Never

Source: Survey of Environmental Health Officers conducted by Citizens Advice. Base: 70.

The majority (61%) 'always' or 'often' prefer to work informally with landlords instead. This might mean phoning the landlord to discuss options for fixing the disrepair or encouraging repairs through the threat of a formal notice. These findings chime with previous research that found a large disparity between the

number of Category 1 hazards that were recorded by 72 councils, and improvement notices that were issued:

**Figure 6: Number of Category 1 hazards recorded, compared to improvement notices issued by 72 councils in 2016-17**



Source: [Freedom of Information requests by Generation Rent](#).

However, encouraging local authorities to issue enforcement notices more often is not necessarily the answer. Where Environmental Health Officers take a 'softer' approach, rather than immediately issuing an improvement notice, landlords resolve the issue at hand without the need for a subsequent notice in 62% of cases, on average. And serving notices can be time-consuming and costly. In many cases this means Officers prefer a less formal approach, but this can leave tenants without the protection from eviction they need.

*"If an officer serves an improvement notice there is a 28 day period in which the landlord has to appeal. After this 28 day period the clock then starts ticking on whatever the deadline the officer can give."*

- Environmental Health Officer

*"A change in law is required to protect tenants with poor housing conditions. It would not be reasonable or practical to serve a notice for every hazard we come across."*

- Environmental Health Officer

In cases where an informal approach has been taken, tenants should not be left without protection. This creates a perverse incentive for Environmental Health Officers to escalate issues prematurely. It also contradicts the wider aims of local authorities to use their resources efficiently.

## Local authorities rarely see their role as protectors from eviction

*“It is not a case of councils using the 'retaliatory eviction' legislation to prevent evictions. The investigation officer can only deal with the landlord as calmly and professionally as possible to not inflame the situation.”*

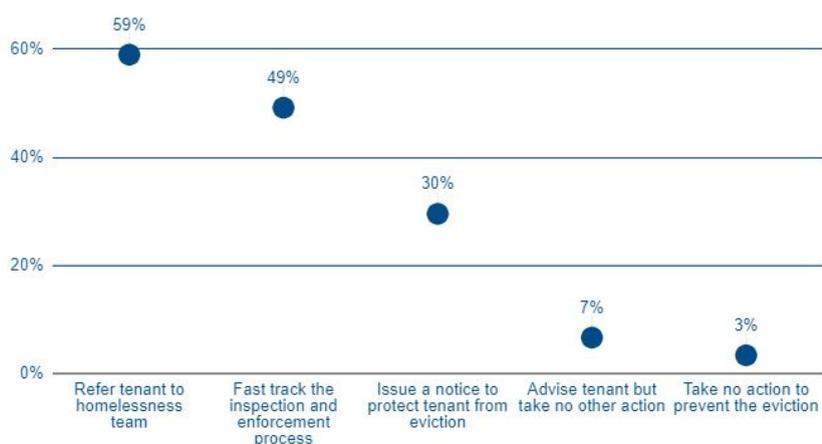
- Environmental Health Officer

This research finds that the majority of Environmental Health Officers do not see it as their role to protect tenants from eviction, and do not frequently take action specifically to do so. In fact, when a tenant is threatened or issued with an eviction notice after contacting Environmental Health, the most common response by is to refer them to their council’s homelessness team.

*“Sadly, we do not have time [or] adequate staff resources to deal with [retaliatory evictions]. We also do not have the required expertise and, therefore, feel that the tenant will receive better advice from the Housing Advice (homelessness) team on their rights as a tenant.”*

- Environmental Health Officer

**Figure 7: Actions taken by Environmental Health Officers when a tenant is threatened with, or faces eviction following a complaint**



Source: Survey of Environmental Health Officers conducted by Citizens Advice. Base: 61.

Following referrals to homelessness teams, the next most common response by Environmental Health Officers is to fast-track inspection processes. But there is no guarantee that an inspection will find hazards, or that a landlord will be issued with a relevant notice. Just 30% of Environmental Health Officers said they would take action specifically to protect the tenant from eviction.

## The pathway to protection is too complex.

Where a local authority chooses to issue an improvement notice, the complexity and length of the process can leave some tenants unprotected.

### Councils have to notify landlords of inspection

In order to issue a notice, the council must first inspect the property. This can cause problems because such an inspection can only take place after the landlord has been notified.<sup>12</sup> This effectively gives a landlord advance warning that a relevant notice may be issued, significantly increasing the likelihood of retaliatory action. Tenants are only protected from a Section 21 notice in these instances if the tenant has complained to the landlord in writing beforehand and a relevant local authority notice follows. Verbal complaints do not protect tenants.

*"We have to give notice before we inspect and the assessment can take time, giving a window for NTQ [Notice to Quit] to be served."*

- Environmental Health Officer

### Delays to get notices leave tenants vulnerable

Processing and acquiring a relevant notice often takes significant time, during which an unscrupulous landlord could pursue an eviction. This results in a 'race against time', with tenants hoping that a relevant notice will be issued before the landlord's possession hearing for eviction.



*"if the council had come round and done the inspection first and issued the [improvement notice] and then they'd tried to give the Section 21, that would be different...But because he'd already done it, it's a case of not much they can do really."*

- Kemah, mid 40s, North West England

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<sup>12</sup> s.293(5) Housing Act 2004

### 3. What does a better system look like?

Section 21 notices are a far too frequent response to tenant complaints. They leave tenants unable to act on their rights and give rogue landlords a get-out clause for avoiding their legal responsibilities. Relying on reactive local authority notices has not worked and cannot protect tenants from retaliatory eviction. A more proactive upstream approach is needed.

Requiring landlords to provide longer tenancies will give tenants greater security and greater ability to hold their landlord to account. This will help balance the rights of landlords and tenants, and bring England's private rented sector in line with other European countries.

#### Longer tenancies offer wrap-around protection

Tenants need confidence that raising a complaint will not result in a retaliatory eviction or rent increase. Tweaks to the existing system of local authority enforcement will not be able to deliver this. A new approach is needed that guarantees tenants wrap-around protection and ensures their complaints have genuine 'bite'.

Longer tenancies give tenants a form of customer guarantee. Tenants are guaranteed the right to stay in their home, unless they breach the contract or their landlord's circumstances change substantially. Good landlords can be reassured that their tenants will raise problems early, leading to quicker and cheaper resolution. And bad landlords will find it harder to flout their responsibilities. All landlords retain their right to evict tenants who don't meet contractual conditions or when they need to reclaim the property, such as to occupy it themselves.

Because of this, we welcome the government's proposition of 3 year tenancies.<sup>13</sup> This could help significantly in balancing the rights of landlords and tenants. To ensure tenants have genuine security to raise complaints, there are 6 areas the government needs to get right.

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<sup>13</sup> Gov.uk, [Overcoming the barriers to longer tenancies in the private rented sector](#), July 2018.

## 1. Make it mandatory

The government's proposal considers a range of options, from awareness-raising to new laws. A new law making it mandatory for landlords to provide 3 year tenancies is essential if the change is to benefit the tenants who need it the most: more vulnerable groups, those on the lowest incomes and families with school-age children. Other, less ambitious, approaches considered within the government's consultation are unlikely to be feasible or desirable.

Promoting tenants' awareness of longer tenancies through the government's 'How to Rent' guide, is unlikely to have an impact on the sector. Less than 1 in 5 tenants (17%) have read the 'How to Rent' guide, and only slightly over half of this group, or 9% of all tenants, say they fully understood the guide.

The government consultation also considers tax incentives for landlords who offer longer tenancies. However, the government itself states that this approach "could be administratively burdensome". It also risks longer tenancies being available only to particular groups of tenants, leaving those on lower incomes or reliant on benefits missing out.

Finally, the government considers requiring landlords to offer 3 year tenancies but allowing tenants to 'request' a shorter let. We believe this would leave a serious risk of abuse. It would be very difficult to distinguish between a genuine tenant 'request' and a landlord's demand or 'preference'. This is particularly true given the difficulty many tenants face securing a suitable, affordable property.

## 2. Remove the 'get to know you' period

*The government perspective: "We understand that there may be a need for a probation period for the tenant and landlord to get to know each other, which a six-month break clause might provide... An opportunity for landlord and tenant to leave the agreement after the initial six months if dissatisfied."*

- MHCLG, [Overcoming the Barriers to Longer Tenancies](#)

Allowing landlords to end tenancies 'if dissatisfied' risks legitimising retaliatory eviction. Legitimate reasons for dissatisfaction, e.g., rent arrears or anti-social behaviour, should be covered by specific grounds for eviction. This break clause could discourage tenants from making complaints in the first 6 month period.

Building in ambiguity like this undermines the government's intention to give all tenants greater stability. Under this model, there is potential for landlords to begin invoking the 6-month break clause as standard, actually reducing the level of security that many tenants currently have.

### **3. Limit rent increases within 3 year contract**

*The government perspective: "Rents can only increase once per year at whatever rate the landlord and tenant agree but the landlord must be absolutely clear about how rents will increase when advertising the property."*

- MHCLG, [Overcoming the Barriers to Longer Tenancies](#)

For tenants to have stability in their tenancy, they need to know that their rent will not be increased unexpectedly or unreasonably. It is therefore positive that the government will limit rent increases to once a year. But not limiting the amount of that increase is problematic. Our research demonstrates that evictions aren't the only form of retaliation that tenants experience. Unfair and extreme rent increases can have the same effect. This research finds that 13% of private tenants have experienced rent increases after complaining.

The government's proposal relies on tenants negotiating reasonable rent increases during the contract signing process. This is unrealistic. Over half of tenants (51%) do not see a copy of their tenancy agreement prior to putting down money on a property, substantially weakening the tenants' hand in negotiations. In addition, a third of tenants (33%) have signed a tenancy agreement without fully understanding it. And less than 1 in 5 tenants (19%) have disputed the terms and conditions of a tenancy contract.

Instead, the government should set an upper limit on rent increases within the 3-year tenancy, pegged to an independent measure such as inflation. This would prevent unfair rent increases and reflect the difficulty most tenants face in challenging unfair contract terms at the start of a tenancy.

### **4. Fair notice periods**

Previous research by Citizens Advice showed that almost a million renters think their notice period might be too short to find a new place to live, and a further

700,000 are sure that their notice period is inadequate.<sup>14</sup> As such, a 3-month notice period would allow tenants adequate time to find an affordable property, to save up for a deposit and to make arrangements to move. This is even more important for renters with children at home, who often have additional considerations when finding a replacement property such as school catchment areas and avoiding moving at key points in the school calendar.

This should not mean that tenants also have to give 3 months' notice. Sometimes tenants will need to move due to circumstances outside of their control, such as a job change, increased caring responsibilities, or a family breakdown. A 1-month notice period for tenants leaving the property would balance the need for landlords to find a replacement tenant with the need for tenants to leave at short notice. As the government suggests, tenants should be able to give notice from 6 months onwards.

### **Stopping tenants being trapped in unsafe tenancies**

Both landlords and tenants should be able to exit tenancy contracts if the other party is in serious breach of contract. The government's consultation emphasises that landlords need to recover their asset where a tenant breaches the contract or legal obligations. However, it fails to consider the need for improved legal rights for tenants in the equivalent scenario.

If a tenant is living in a property with disrepair that has serious health consequences, it should be simpler for them to move somewhere safe without remaining liable for the rent.

- 19% of tenants have wanted or needed to leave before the tenancy ended due to a landlord breaching the contract or failing to fix disrepair.
- Of these, 7 in 10 had to either pay a fee to leave, pay the full rent on their contract, or find a replacement tenant.

In these situations, though the landlord is at fault, it is the tenant who is put at risk and a financial loss. As the government moves towards longer tenancies, ensuring tenants can exit unsafe tenancies quickly and without cost will become increasingly important.

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<sup>14</sup> Citizens Advice, [A state of Disrepair](#), 2016; DCLG, [English Housing Survey 2014 to 2015: private rented sector report](#), July 2016

While tenants can initiate a court case to receive damages for a landlord's breach of contract, this does not give the immediate help some tenants need. If a tenant's home has serious health and safety hazards, it cannot be fair or safe for the tenant to live there and pay rent until a court decision is reached.

Giving tenants the right to leave unsafe properties at significantly shorter notice periods, where a landlord is not remedying the problem, would shift the balance of power between landlord and tenant. It would also ensure that no tenant is put at risk because of the failings of their landlord.

This is not a new idea. Other countries - Scotland, Ireland, Sweden, Germany, Denmark and the Netherlands - already give their tenants this right.

## 5. Review grounds for section 8 evictions

*The government perspective: "Landlords can recover their property during the fixed term if they have reasonable grounds...includ[ing] antisocial behaviour and the tenant not paying the rent... Additionally, there would be grounds which covered landlords selling the property... or moving into it themselves."*

- MHCLG, [Overcoming the Barriers to Longer Tenancies](#)

To ensure longer tenancies work for both tenants and landlords, there need to be efficient processes in place for cases where the landlord legitimately needs to recover their property. For this reason, we support the proposed addition of sale of property as grounds for eviction, providing there are protections in place to prevent its abuse. Evidence of a genuine sale of the property is vital and the proposed requirement, a letter from an agent, is open to abuse. Landlords can already sell their property with the tenant in situ, which should be encouraged to minimise disruption to the tenant.

## 6. Have secure default settings

When the initial fixed-term of a tenancy ends, it usually 'defaults' onto a monthly rolling contract. This leaves tenants with minimal security. A simple way to greatly improve the security tenants have is to change this default, so tenancies automatically renew as 3-year, rather than 1-month, tenancies.

We know from our work on behavioural insights in consumer markets how important default settings are. One of the strongest forces in consumer

behaviour is inertia; in many cases, consumers will maintain a default or perceived default, even where there may be benefits from switching.<sup>15</sup> Ensuring the default path for tenants won't leave them worse off is vital to establishing long-term security of tenure.

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<sup>15</sup> Behavioural Insights Team on behalf of Citizens Advice, [Applying behavioural insights to regulated markets](#), 2016.

# Conclusion

The government has rightly set its sights on rebalancing the private rented sector, ensuring that tenants have a stronger consumer hand. It's impossible to do this without giving tenants meaningful protection from retaliatory eviction. Relying on reactive local authority notices has not worked. A more proactive upstream approach is needed to address the underlying flaws in the market.

As a start, tenants who complain to their local authority, or to a redress scheme, should be protected from the point of complaint regardless of its outcome. And tenants should be able to leave a contract early, without penalty, when their landlord has not upheld their legal responsibilities. Ultimately, however, tenants need to be confident that they will not be unfairly issued with an eviction notice. There are serious questions marks over the power for landlords to evict without a legitimate reason.

Longer term tenancies are an important part of this, and the government's proposal for 3-year tenancies is a step in the right direction. But to make sure these tenancies are a success, the government must ensure that they are mandatory for all landlords. Flexibility for tenants to move at short notice is also essential, particularly if the landlord is in breach of contract. Less ambitious approaches, such as promoting tenant awareness of longer tenancies or supplying tax incentives, are very unlikely to succeed.

## Recommendations

1. **Ban retaliatory eviction in relation to complaints under consideration, or upheld, by the ombudsman.** As cited in [previous research](#), for the government's proposal for a private landlord ombudsman to be a success, protection against retaliatory eviction is key.
2. **Enable tenants to leave a fixed-term contract early, without penalty, if their landlord fails to uphold their legal responsibilities.** Tenants should have the legal right to leave properties without charge if the landlord breaches the contract or legal obligations.
3. **Introduce mandatory 3-year tenancies across the private rented sector.** Every tenant should have a right to meaningful security while living in the PRS. For renters to have the security they need, the government should introduce 3-year tenancies for all private rented sector tenants, with no break clause for landlords at the 6 months' point.

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Published August 2018

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Registered charity number 279057.