Closing the Gaps:
Health and Safety at Home

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Introduction

- Helen Carr, David Cowan, myself and Ed Burtonshaw-Gunn
- Commissioned by Shelter post-Grenfell – gaps in legislation which may make housing less safe and/or prevent households from remedying problems; set out where lack of enforcement undermines existing legal protections; to identify legal remedies to strengthen protection for tenants.
- Broad approach to legislation – encompassing regulations, policy & common law
- KEY: TENURE NEUTRAL APPROACH

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Methodology

- Advisory Board
- Questionnaire, 25 August-22 September 2017: **940 responses**

Type	Number	Percentage
Occupier (renter or owner)	642	68
Legal professional	45	5
Other professional	84	9
Social landlord	13	1
Tenant's association	26	3
Private landlord	130	14
Total	**940**	**100**

Type	Number	Percentage
Owner-occupier	456	71
Social tenant	84	13.1
Private tenant	68	10.6
Lodger	2	0.3
Other	32	5
Total	**642**	**100**

- Other professional: EHO (40), surveyor (13), manager/agent (10), architect (5), planning (2).

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Headline responses

- 85% of professional respondents – the current law is not fit for purpose
- 94% of professional respondents – the protections the law offers are undermined by a lack of enforcement
- Complexity of law reflected in occupier responses – law makes obscure distinctions which have little relationship with the everyday experiences of poor conditions.

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Thematic analysis

- Piecemeal development of the law, interventions on a range of grounds; public health & morality, health and safety, concern with particular types of dangerous housing (eg HMOs), dealing with disrepair, a concern with thermal efficiency.
- Law now incoherent – no focus on overall coherence
- Judicial narrowing of statutory legal protections & the complexity of the adjudicatory space
- The role and limits of local authority enforcement – the importance of culture, see eg…

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The role and limit of local government

Suppose I, as a jobbing EHO, carried out a survey of Grenfell Tower and decided that it was a serious fire hazard on the 12th June 2017, and reported that to my boss; I rather suspect I'd be told to get real, not over react, that it complied with Building Regs, had been inspected by the Fire Service, etc etc., rather than being told "OK, go forth and serve an immediate emergency prohibition order under the Housing Act 2004, and we'll organise the evacuation and accommodation of the approximately 500 people who live there, no problem". If I'd been persuasive and persistent, then we'd have engaged the management rather than serving an Order - as Pandora's box would have been opened by such an Order, it would never, ever happen.

Housing enforcement is difficult labour-intensive work. Reductions in staffing levels to private sector housing teams in Council Environmental Health Departments (arising from cuts to local authority budgets) reduce the number of inspections that are carried out and complaints that are investigated. In two local authorities that I have worked for such cuts in resources have meant that Councils have [] cut back services to Housing Association tenants - complaints are now dealt with via a letter in the first instance and rarely result in visits/enforcement.

Furthermore, such cuts have greatly reduced the number of student EHO placements on offer. Student EHO's nowadays are rarely paid during their placements at a local authority. There is a real shortage of qualified and experienced EHOs working in the privately rented sector in London. Often, Councils rely on self-employed contractors on short term contracts rather than permanent staff. Accordingly, the quality of work may be fall and the greater turnover of staff means that a tenant with a complex case may deal with a succession of Council officers. Licensing schemes are a useful way to recoup money but, particularly in the initial stages, the pressure to get licenses in and recoup funds makes it difficult to carry out enforcement work.

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The law

- The Landlord & Tenant Act 1985: s.8 (fitness for human habitation) but rent cap, and limitations of s.11 (disrepair)
- Housing Act 2004: resourcing/delay/culture, no route for residents to compel, improved guidance
- Environmental Protection Act 1990: s.79, lack of legal expertise/legal aid, problems with magistrates, out of date
- Building Regs: complex, inaccessible, issues with enforcement
- Fire Safety Regs: no route for residents to raise issues
- Leasehold: confusion over access
- Deregulation Act 2015: s.33 retaliatory eviction not effective

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Filling the Gaps

- A clear rationale to justify the intervention of the State – should be based on the health and safety of the occupiers of the building in the context of consumer protection.
- Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill – a good intervention BUT NOT ENOUGH:
- Propose a new Act – the Housing (Health and Safety in the Home) Act

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The Housing (Health and Safety in the Home) Act

- Retaliatory eviction
- Health and Safety enforcement & review of the HHSRS
- Tenure neutral – extending to local authority housing
- Tightened up fire safety regulations & s.38 Building Act 1984
- Clear rights of access to all properties
- Abolition of statutory nuisance
- Statistical monitoring
- Rationalisation of adjudicatory space

The law relating to health and safety in people's homes is piecemeal, out-dated, complex, dependent upon tenure, and patchily enforced. It makes obscure distinctions, which have little relationship with everyday experiences of poor conditions. Tenants wanting to remedy defects face numerous and often insurmountable barriers to justice. The law needs to evolve; no longer should occupiers be treated as posing health and safety risks, instead they should be treated as consumers of housing with enforceable rights to ensure minimum standards are adhered to. The state needs to accept its role as the primary enforcer of those standards.

Not only does the law require reform, there also needs to be a cultural change, so that those responsible for the health and safety of occupiers become pro-active in fulfilling those responsibilities.

We recommend a new Housing (Health and Safety in the Home) Act which is tenure neutral, modern and relevant to contemporary health and safety issues, and which encourages and provides resources for pro-activity by statutory authorities.