



**Zacchaeus 2000**

**Z2K response to the Department for Communities & Local  
Government's Review of Property Conditions in the Private Rented  
Sector**

**27 March 2014**

## Introduction

Zacchaeus 2000 Trust (Z2K) is a London-wide anti-poverty charity that promotes the improvement of living conditions on the basis of economic and social justice through the promotion of evidence-based policy alternatives. We provide advice and advocacy services which involve direct engagement with the lives of the poorest and most vulnerable.

Z2K's *NextDoor* project works to raise awareness of the impact of welfare reform on tenants in the Private Rented Sector (PRS), and acts to mitigate the worst effects of these changes for low income households. *NextDoor* currently offers a specialist casework and advice service aimed at households threatened with homelessness as a result of cuts to their housing benefit and a Private Rented Sector Access Scheme, which aims to help those moving within the PRS to access sustainable tenancies with reputable landlords.

## Rights and responsibilities of tenants and landlords

**Question 1:** In addition to the production of the Tenant's Charter, is there further action that could be taken to raise awareness amongst tenants and landlords of their rights and responsibilities? Who needs to take this action?

The Tenant's Charter is a totally inadequate response to the challenges facing those living in the private rented sector, particularly the growing number of young families and vulnerable single people forced into it because of the desperate shortage of genuinely affordable social housing. Simply knowing your rights as a tenant is of very little value when those rights are so limited, especially in relation to the ending of the tenancy.

Z2K is surprised to note the claim on paragraph 2 that only *"a small minority of properties in the sector are in a poor condition."* This seems to fly in the face of the facts. For example, research commissioned by the Department for Communities & Local Government itself found that, in 2010, 33 per cent of PRS stock in England failed to meet the basic decent homes standard, making it the tenure with the highest rate of non-decency.<sup>1</sup> Around two-thirds of those are non-decent because of the presence of a Category 1 hazard under the Health & Safety Rating System (HHSRS). That would suggest that around a quarter of private rented sector homes contain Category 1 hazards – a figure which most people would not see as being a "small minority".

Similarly, paragraph 4 claims that the *"vast majority of private sector landlords provide decent accommodation that is free from hazards to health"* and paragraph 5 goes on to say that there is only *"a small minority of landlords that are not always aware of the various legal requirements with which they must comply"*. Again, this seems to misrepresent the significant minority of landlords letting properties containing hazards to health as well as making quite a big assumption that their ignorance alone is responsible for this failure. In our view, these homes are in such conditions because of the landlord's refusal to bring them up to a decent standard and pro-actively inspect them for Category 1 hazards.

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<sup>1</sup> English Housing Survey – Headline Report 2012/13

Z2K believes that the lack of any meaningful security of tenure within Assured Shorthold Tenancies (ASTs) lies at the root of many of the problems within the PRS. It is too easy for landlords to gain possession with no cause at two months' notice or impose unaffordable rent increases. More vulnerable tenants, including low income families with children, struggle to compete in such a market and often end up losing out to young professionals and students. This makes it very difficult to make the dwelling a home. Ministers must take action to improve the security of tenants in the private sector.

**Question 2:** What is best practice in raising awareness amongst tenants of their right to seek help and advice from their council and how can this be shared between local authorities?

**Question 3:** What is best practice in dealing with requests for help and advice from private sector tenants and how can this be shared between local authorities?

Z2K believes that it is a complete abdication of responsibility for central Government to place additional burdens on local authorities to tackle poor standards in the private rented sector without giving them the legal powers necessary to protect tenants. Equally, the deep cuts in central government funding for local authorities since 2010 have made it very difficult for councils to sustain the level of Environmental Health Services needed to maintain a regime of pro-active inspections of private-rented sector dwellings.

**Question 4:** Should the guidance for landlords be updated and widened to include information for tenants, to help them understand whether a property contains hazards?

Yes, but this action will not be sufficient to ensure that hazards are eliminated.

### **Retaliatory eviction**

**Question 5:** Do you think restrictions should be introduced on the ability of a landlord to issue or rely on a section 21 possession notice in circumstances where a property is in serious disrepair or needs major improvements?

**Question 6:** What would be an appropriate trigger point for introducing such restrictions?

**Question 7:** How could we prevent spurious or vexatious complaints?

At this stage, a quarter of a century after the de-regulation of the private rented sector, the dangers inherent in complaining about disrepair and maintenance issues are widely understood by tenants. Not only is this likely to receive little attention from the local authority, it is also likely to see an unscrupulous landlord claiming possession of the property - the so-called "retaliatory eviction". Many of Z2K's clients live in the private rented sector and we regularly see people who are scared that our making representations on their behalf either to their landlord or local authority will result in them losing their home.

Z2K therefore welcomes the acknowledgement in paragraph 11 that, the *“fear of being served with such a notice can act as a powerful disincentive to tenants, deterring them from asking their landlord to carry out a repair or improvement”* and the proposal in paragraph 13 to introduce restrictions on the use of section 21 possession procedure where repairs or improvements are outstanding. We believe such a restriction will give tenants greater confidence to report disrepair to their landlord and pursue it if nothing is done.

In our experience, however, tenants almost always make a complaint to their landlord first rather than the local authority. We do have some anxieties, therefore, that a proposal for the restriction only to come into effect once the local authority has become involved may be too late to prevent a retaliatory eviction. Nevertheless, we recognise that applying the restriction from the time any complaint is made to the landlord may prompt some spurious or vexatious complaints and that the moment of inspection is probably appropriate.

That said, we are not persuaded that the threshold for the introduction of a restriction should be the presence of a Category 1 hazard. There are many more Category 2 hazards in the higher bands which still pose significant risks to health and safety. For example, damp and mould problems are unlikely to be assessed as a Category 1 hazard, and yet they clearly have an adverse impact on a tenant’s health. In our view, the proposed restriction should apply to all repairs where a Category 1 or Category 2 hazards has been identified.

### **Illegal evictions and hazards in the home: rent repayment orders**

**Question 8:** Do you think Government should introduce Rent Repayment Orders where a landlord has been convicted of illegally evicting a tenant?

Yes

**Question 9:** Should this be in addition to, or instead of, any damages the tenant may have received, or action taken by the local authority, for example a prohibition on renting out the property?

In addition

**Question 10:** Should a Rent Repayment Order be issued automatically where a landlord has illegally evicted a tenant?

Yes

### **Rent Repayment Orders where a property contains serious hazards**

**Question 11:** Do you think a landlord should be subject to a Rent Repayment Order if they rent out a property that contains serious hazards?

Yes

**Question 12:** What should be trigger point be?

Failure to comply with an Improvement Notice

**Question 13:** Should a Rent Repayment Order be in addition to, or instead of, any damages that the tenant may also be awarded, or other action taken by the local authority, for example a prohibition on renting out the property?

In addition

**Question 14:** Is there a need to review the sanctions currently available to local authorities when dealing with less serious housing condition breaches?

Yes

### **Safety conditions**

**Question 15:** Should private sector landlords be required to install, and maintain, smoke alarms in their properties, or would a non-regulatory approach to encourage greater take-up be a better option?

Yes, landlords should be required by law to install and maintain smoke alarms in their properties.

**Question 16:** Should private sector landlords be required to install, and maintain, carbon monoxide alarms in their properties or would a non-regulatory approach be a better option?

Yes, landlords should be required by law to install and maintain carbon monoxide alarms in their properties.

### **Landlord & Tenant Act 1985**

**Question 17:** Does the Landlord & Tenant Act 1985 cover the right areas, or should it be broadened to cover other issues?

Z2K believes the Landlord & Tenant Act 1985 is now outdated and does not sufficiently protect the rights of tenants.

## Inspection of electrical installations

**Question 18:** Do you think that the current approach strikes the right balance or should there be a statutory requirement on landlords to have electrical installations regularly checked?

There should be a statutory requirement on landlords to check electrical installations on a regular basis.

## Licensing of rented housing

**Question 19:** How effective is voluntary accreditation as a way of driving up standards?

**Question 20:** Should we consider introducing tighter restrictions on the use of selective licensing to avoid putting unnecessary burdens on good landlords?

**Question 21:** Should we consider introducing an approach which would enable local authorities to focus any licensing scheme solely on rogue landlords?

The PRS is typified by amateur landlords who own a small number of properties. Nationally only 8 per cent considered themselves to be full-time landlords and only one-third of had heard of the HHSRS.<sup>2</sup> There are fewer regulations for letting a property to humans than to run boarding kennels. Z2K believes that accreditation schemes must involve compulsory training. This reflects the recommendations of the Law Commission.<sup>3</sup>

Although we think accreditation is a step forward, we question the extent to which this will address the deep-rooted problems in the sector. While it remains voluntary, and without any clear financial incentive, it is likely only the best landlords (who probably already meet the standard) will come forward for accreditation. By definition, this means those tenants at greatest risk of exploitation are the least likely to be protected.

At the bottom end of the market, where unscrupulous practices are rife, the imbalance between the demand and supply of affordable PRS accommodation mean prospective tenants lack the power to choose between accredited and non-accredited landlords. This is a particular problem for the increasing numbers of low income and vulnerable households seeking accommodation in the PRS, who are less likely to be aware of their rights as tenants or fearful of enforcing them lest they lose the accommodation.

Z2K therefore welcomes the decision of the London Borough of Newham to introduce a mandatory Borough-wide selective licensing scheme for the PRS and significantly increase the number of Environmental Health Officers available to undertake HHSRS assessments and enforcement activity. In our view, the pilot demonstrated the real benefits of such a scheme and the authority undertook detailed consultation with landlords, tenants and other stakeholders to ensure the scheme was not too onerous when rolled out borough-wide.

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<sup>2</sup> *Private Landlords Survey 2010*, Department for Communities & Local Government (2011)

<sup>3</sup> Cm 7456 *Encouraging Responsible Renting*

Although we recognise that such schemes might not be appropriate in every area, the problems that were prevalent in Newham, are equally seen elsewhere and we do not support tighter restrictions on either the introduction of selective licensing or the extension of HMO licensing schemes to smaller Houses in Multiple Occupation below the current mandatory threshold of three or more storeys and five or more occupants.

**Question 22:** Should the relevant provisions of the Greater London Powers Act 1973 be reviewed or updated, does London need separate rules from the rest of England, and what comments would you have on how regulations could better support and reflect modern technology?

Z2K has no views on this proposal.

### **Housing Health & Safety Rating System**

**Question 23:** Do you think the methodology that underpins the Housing Health & Safety Rating System and/or the accompanying operational guidance need to be updated?

The HHSRS was introduced as part of the Housing Act 2004 to replace the outdated Housing Fitness Standard and improve physical conditions in residential accommodation. There is no doubt that the HHSRS is complicated, but in our view, it is the rapid expansion of the PRS over the past decade and the more recent cuts to local authority funding, rather than the HHSRS that has left most councils struggling to keep up with assessments. As a consequence, we do not believe either the methodology or the guidance are in need of fundamental revision at this stage.