

Criminalising the vulnerable

Why we can't criminalise our way out of a housing crisis

A parliamentary briefing

18 May 2011



Introduction

The Ministry of Justice has announced it intends to launch a consultation on proposals to 'criminalise squatting' (England and Wales) in May 2011. Squatting has a long history in the UK, and is a common response to housing needs, especially in a time of housing crisis.

This briefing presents a preliminary analysis of the implications that the criminalisation of squatting may have. We argue that at a time of government cuts to frontline public services (including housing), cuts to housing benefit, rising house prices, and a corresponding rise in homelessness, the proposed criminalisation will:

- impact adversely upon some of the most vulnerable people in society
- empower unscrupulous landlords and property speculators
- burden the justice system, police force, and the public purse

SQUASH (Squatters Action for Secure Homes) is a volunteer-run campaign looking to raise awareness on the impacts of the proposed criminalisation. We are keen to work with others to provide resources towards the achievement of secure housing for all.



SQUASH

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1. The Housing Crisis We're in

"Where these cuts take place they will pull away the safety net from some of the most vulnerable families and individuals in our society and will inevitably lead to an increase in homelessness."

Campbell Robb, Chief Executive, Shelter

Housing costs exploding

As more and more households join the queue for a home of their own, the numbers of people on local authority housing waiting lists have nearly doubled since 1997 to around 5 million. The lack of social housing means that increasing numbers of would-be owners are remaining in the private rental sector, causing demand to outstrip supply in many parts of the country, not least London where over the past year rents have soared by 7.3 per cent and will soon hit £1,000 per month on average. Around 10 per cent of all rent is unpaid or late. Companies specialising in helping landlords to evict tenants say that evictions relating to rent arrears rose by 12 per cent in 2010 compared to 2009. Rising food and energy bills, falling incomes, increased economic insecurity and the associated reduced access to credit mean for growing numbers of people a weekly battle to keep a roof over their heads.

Repossessions and arrears

Large numbers of households can simply no longer afford their mortgage, arrears are rising and high levels of repossessions look here to stay for many years to come.

Crisis of house building

House building was already deemed by government to be 'too low' prior to the financial crisis, but since 2006-7, house building completions in England have slumped dramatically to their lowest levels for nearly 90 years.

First-time buyers locked out

Despite a 25 per cent average fall in house prices since 2008, unaffordability remains endemic because most first-time buyers cannot raise the £25,000 deposit typically needed to get a mortgage at affordable rates in the new era of risk-free lending.

Cuts to Housing Benefit will increase Homelessness and Rough Sleeping

More than 42,000 households are officially homeless and 50,000 are living in 'temporary' accommodation and in priority need in England alone. But the 'hidden homeless' figures could be closer to half a million because, according to Crisis, "the vast majority of homeless people exist out of sight in hostels and refuges, bed and breakfasts, squats, unsatisfactory or overcrowded accommodation and on the floors or sofas of friends and families".

The Coalition government's controversial cuts to Housing Benefit threaten to make this situation a lot worse. An estimated 88,000 households will be badly affected by cuts to Housing Benefit and parts of London and the South East will simply become unaffordable for low-income households. Mass displacement is likely. The cuts pose particular concerns for young single people renting in the private sector as adults between 25 and 34 will no longer be eligible for the 1-bed allowance and will instead only be allowed to claim the Shared Accommodation Rate. Housing professionals in local authorities and the voluntary sector are warning that these changes will increase homelessness.



North London squat, Boxing Day 2008

2. Homelessness and Squatting: How Criminalisation Will Affect Vulnerable People

“I wish to dispel the myth, once and for all, that squatters and homeless people are one and the same.”

Mike Weatherley, MP for Hove, 2011

“Contrary to the common perceptions of even those working with homeless people, squatting is in fact a common way in which they respond to a housing crisis.”

Crisis, Life on the Margins, 2004

According to the *European Typology of Homelessness and Housing Exclusion* (ETHOS), squatters are one group who make up the ‘Hidden-Homeless’: “people living rough”; “people due to be released from institutions who are at risk of homelessness” and “people living in insecure accommodation (squatting, illegal camping, sofa surfing or sleeping on floors, staying with friends or relatives)”.

For the homeless in particular, squatting forms a key survival strategy. The most recent academic study (May 2011) of single homeless people commissioned by Crisis found that of 437 single homeless people surveyed, 39% had squatted.

This corroborates a study by the same academic author in 2004 that more than one in four homeless people “had squatted as a direct response to a housing crisis since leaving their last settled home”.

The notion that squatters are somehow a group apart from the homeless is simply false. It not only contradicts all academic research on homelessness, but also the basis of housing law – according to Section 58 of the Housing Act 1985, every squatter is deemed to be homeless. Statements such as those by Mike Weatherley quoted above are grossly irresponsible and serve to entrench dangerous myths about those who squat.

We ask the Government: where will the hidden homeless move to in this time of austerity?

Once we accept that squatting and homelessness are intertwined, and that we are living in a period of rising homelessness, it is clear that criminalising squatters would only worsen the problems faced by people who are being hit hardest by the government’s cuts and the present housing crisis.

Instead of addressing the causes of inadequate housing provision, the government is seeking to criminalise the informal sector, which threatens to further marginalise the most vulnerable.

A dangerous lack of evidence

At the same time, however, there is a lack of hard evidence about the scale of squatting and the make-up of the squatter community. The Government currently estimates that the numbers of squatters in the UK to be 20,000, but it is likely that this is very conservative and there is no source for this figure. The Government has confirmed elsewhere that it does not hold information centrally on the numbers of properties occupied by squatters.

3. Protecting Ordinary Home Owners or Big Property Speculators?

We believe that a number of myths are serving to confuse the issues, exaggerate the problems and create a pretext for legislation that is not needed, but is in the interests of large private property owners.

Myth #1: Squatters are locking families out of their main homes.

Recent media coverage and government pronouncements that have preceded the consultation on criminalisation have portrayed squatters as a threat to ‘ordinary people’s homes.’ The typical newspaper story tells the sad tale of a home owner returning from holiday to find their primary home squatted. Commentators and government sources in turn feed off these high profile cases to cement false perceptions about today’s squatting phenomenon. For example *The Daily Telegraph*, quoting a “senior Whitehall source”, claimed that Ken Clarke, Justice Secretary, “has had enough of seeing hard working home owners battle to get squatters out” [emphasis added].

But just how accurate is this portrayal of both squatting and its victims? The growing media assault on squatting would suggest the above practice is rife. However, there is simply no reliable, systematically collected and verified evidence base to tell us what types of properties are being squatted, where, who owns them and what their current use is. The Ministry of Justice has certainly not provided any adequate evidence to support its claims about home owners being locked out by squatters.

There is, however, a large body of anecdotal evidence which suggests that such instances are in fact extremely rare. For example, Tessa Shepperson, a Landlord and Tenant Solicitor: *“Anyone unfortunate enough to be homeless and looking for somewhere to squat is not going to try somewhere which is being lived in. In fact that is probably the last place they would choose. They will be wanting somewhere they can stay long term and will not want any hassle with (for example) outraged returning dog walkers.”*

In the absence of hard evidence, do we believe sensationalist media stories and headline grabbing politicians, or solicitors and professionals working in the field on a day to day basis?

Myth #2: Further criminalisation of squatting is needed to protect the resident home owner

Lost in the current debate about squatting is the fact that the law already adequately provides mechanisms for both residential and non-residential property owners to evict squatters from their homes. Both ‘displaced residential occupiers’ and ‘protected intending occupiers’ have the right to force entry if they find their property squatted. It is already a criminal offence for a squatter to refuse to leave in such circumstances. The police can intervene and squatters face arrest.

Non-residential property owners who regularly use their properties can seek an Interim Possession Order (IPO) “within 28 days of the date when the owner first knew, or ought reasonably to have known, that the respondents were in occupation.” It is a criminal offence to fail to leave the property after 24 hours of being served with an IPO. Statistics disclosed by the Ministry of Justice state that only one person was prosecuted in each year between 2007-2009 for failure to comply with an IPO, which suggests that they are effective in removing occupiers.

The persistent use of the term ‘home owner’ rather than ‘property owner’ by much of the mainstream media and MPs spearheading the push towards criminalisation, reveals what appears at times to be a concerted effort to obfuscate the issue. Much of the time, coverage ignores the existence of adequate legislation which protects displaced residential occupiers and protected intending occupiers, whilst attempting to characterise non-residential and commercial owners who leave properties empty as facing the same type of ‘injustice’ as residential home owners. Why is this happening?

Boosting the Commercial Property Sector: the real agenda?

The answer almost certainly lies in government announcements that they are investigating a potential reform of Section 6 of the Criminal Justice Act 1977 and the potential creation of a new crime of ‘intentional trespass’.

Under Section 6, it is illegal for anyone to use or threaten violence to gain entry to a property if someone inside is opposed to their entry. This protects tenants against illegal eviction (and intimidation) by landlords seeking to evict outside of due legal process.

Rather than seeking to further criminalise those occupying properties with residents already in them – which as we have explained above is not necessary – it appears that Ministers are in reality examining ways to aid **non-residential property owners** - specifically **commercial property owners**. This is clear from the statement by Crispin Blunt, Conservative MP for Reigate, and Parliamentary Under Secretary of State (Prisons and Probation):

“Section 6 of the 1977 Act states that it is an offence for a person to use violence to enter a property where someone inside is opposed to their entry. The offence was designed to stop unscrupulous landlords from using violence to evict legitimate tenants, but its existence has led some squatters to display so-called section 6 notices on the door of properties notifying the property owner that it would be an offence for him to break back in...One option that we have been considering, therefore, is whether section 6 could be amended to give non-residential property owners the same rights as displaced residential occupiers to break back into their property. We think that that would effectively render section 6 notices meaningless.”

The proposed law change, both in terms of the removal of Section 6 and in the creation of a new crime of intentional trespass, is indiscriminate. It threatens to empower non-residential property owners (many of whom are companies) who purposefully leave properties empty for financial gain through aiding tax avoidance, speculating on property prices, degrading a listed status, and so on.

This has two very worrying implications:

Firstly, aiding commercial property owners to keep their homes empty will undermine **self-help housing solutions to homelessness**.

Empowering absentee owners to keep their properties empty would come at the expense of squatters and the hidden homeless who could be bringing some of the estimated 651,993 empty properties in the UK back into use, securing housing for themselves, maintaining empty buildings, and running social projects.

Paul Palmer, who has worked as an Empty Properties Practitioner for 20 years, and advised over 200 authorities, states that: *“Over the years I have visited over one thousand empty homes and spoken with hundreds of owners...I have been inside dozens of homes occupied by squatters, and they all had one thing in common, they had been improved...We are talking about long term abandoned buildings, vacant in some cases for ten years or more, in the heart of Mayfair, and the middle of sleepy old English towns. Buildings that are abandoned by their owners, where professional and ethical squatters have sought out an owner, and when one is not found, have taken up occupancy and started to repair the building. Is this to be classed a crime?”*

Secondly, criminalisation threatens to seriously **erode protections tenants have against unscrupulous landlords**. Any removal of section six would mean the empowerment of non-residential landlords to use violence to gain entry, and thus threatens an increase in illegal evictions. Unscrupulous landlords may exploit this change to wrongly classify tenants as ‘squatters’, and enact evictions themselves without having to seek permission from the courts.

Removing this process from the civil courts reduces the accountability of landlords. Instead of judges reviewing the evidence to determine possession, responsibility would be placed onto the police (should they arrive if conflict were to arise from a situation) to determine whether or not an occupier is a ‘tenant’ or ‘squatter’.

Potential formulations of the new crime of ‘intentional trespass’ could have similar impacts, particularly in the responsibility it grants the police to determine an occupier’s status as ‘tenant’ or ‘squatter’. Any formulation of a new crime of trespass is likely to impact negatively upon tenants, posing serious implications which the Ministry of Justice will need to explore.

It is mistaken to assert, as Mike Weatherley does, that the removal of section 6 would only impact on ‘squatters’ and not tenants faced with unscrupulous landlords. This is a serious implication of the proposed criminalisation of squatting which has by no means been adequately addressed by the Ministry of Justice.

4. Enforceability

Any consideration of criminalising trespass has to take into consideration how it will be enforced and whether this will involve the police.

Article 8 of the Human Rights Act 1998 stresses the right of individuals to not be deprived of their home without due legal process of a democratic society. The possibility of evictions without recourse to civil authority would make it impossible for an individual's human rights to be taken into consideration when considering a case. This could mean that the police or other local authorities could be liable to suits following this alleged breach of human rights, or could even mean that civil cases would need to be heard before any eviction could take place, the same situation as today.

A key issue when considering the criminalising of trespass is who will act to enforce this and on what basis.

If it were possible for landlords to evict with force (as has been suggested by Mike Weatherley MP) then

there would be serious implications. Landlords and other property owners leave themselves open to serious criminal charges such as assault and actual bodily harm, should they be encouraged to undertake evictions themselves. Secondly, the potential for landlords or police to evict tenants (who are protected by the Protection From Eviction Act 1977) on the claim that they were squatters, is a serious risk. It would be unreasonable to expect the police to be able to investigate and establish whether the property was squatted or not, yet if it were to be referred to the civil courts then the resulting process would not be very different from the current situation.

Any proof needed by the police to demonstrate a squatted property (and not one occupied by licensees or tenants) is unlikely to meet the standards of a civil court, and thus be open to a claim under Article 8.

Any attempted eviction by police officers will require a substantial amount of police time and resources.

5. Affordability

The proposed criminalisation of squatting threatens immeasurably increased cost for the public purse.

Immediate costs for a criminalisation law would include the cost of rehousing squatters, and the cost of evictions (including legal costs of organising prosecutions).

This threatens an increased demand for housing benefit, at a time when its provision is being cut.

The significant hidden costs would have dramatic impacts on the capacity of front line public services

who provide support for vulnerable people exposed to rooflessness and associated criminality. Any new law with this effect will burden these services enormously. Some of those who have successfully developed mid to long term self-help housing solutions will have access to legal and peer-network support to cope with criminalisation. However, a majority of those who would be criminalised won't have access to support, and will suffer greatly. The costs of such social problems are incalculable, and would fall financially on front line public services and therefore the taxpayer.

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