


RESEARCH ARTICLE

# Opening Pandora's box? Capturing the edifice of 'hopefulness' in the private rented sector

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## Abstract

It is estimated that there are in excess of eight million unfit homes in England and that one in five excess deaths are attributable to poor housing conditions, costing the NHS some £1.4bn per year. While the policy focus tends to be on housing supply, it is the private rented sector (PRS) that is a key vehicle for provision. The pandemic has given rise to some unexpected outcomes, not least in regulating that sector. This paper will consider how strategies have changed and generated new modes of regulation in the sector, which may have important longer-term effects for the relation between tenant and landlord. Using the frame of vulnerability and risk theories as a starting position, the paper will critique the role of law in allocating landlord rights and responsibilities. It will look at the implications of moving towards an appreciation of the relational, as opposed to physical aspects of housing provision in regulating landlord behaviour and the attendant risks of so doing. It will be argued that the literatures of vulnerability and risk only make sense if a further element is added in this case: the notion of hope.

**Keywords:** housing; private sector landlords; regulation; vulnerability; risk

## Introduction

risk signals a rising societal vulnerability and a growing friction between technology, risk management and societal institutions. Thus, 'risk' indicates a loss of technological and societal control.<sup>1</sup>

The proposed Renters' Reform Bill gives cause for some optimism for tenants in the private rented sector (PRS).<sup>2</sup> The idea of a 'hopeful', resilient PRS that reflects the interests of both landlords and tenants seems, however, to be some way off. Is this an optimistic vision, held only by fools who overlook the reality of a sector riven historically with conflict, or at worst an ambition impossible to achieve in the given context? The common trope is one pitching landlords against tenants in an endless cycle of attrition, with the former carrying out pathological rent-seeking behaviours and the latter being passive observers unable to extricate themselves from the clutches of the 'new Rachman'.<sup>3</sup> Media reports, academic research and policy critique all point to a sectoral crisis that it would seem impossible to

<sup>1</sup>M Huber 'Colonised by risk – the emergence of academic risks in British higher education' in B Hutter (ed) *Anticipating Risks and Organising Risk Regulation* (Cambridge: Cambridge University Press, 2010) p 114.

<sup>2</sup>Renters' Reform Bill 2019–20, Queen's Speech (19 December 2019) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/853886/Queen\\_s\\_Speech\\_December\\_2019\\_-\\_background\\_briefing\\_notes.pdf#page=46.com](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/853886/Queen_s_Speech_December_2019_-_background_briefing_notes.pdf#page=46.com).

<sup>3</sup>The term Rachmanism derives from the notorious Peter Rachman who in the 1960s exploited and intimidated his tenants in the Notting Hill area of London.

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redress.<sup>4</sup> However, the pandemic has given rise to some unexpected outcomes, not least in regulating the sector. The paper will consider how the occurrence of Covid-19 has generated – or rather has the potential to invoke – new modes of regulation in the sector, which may have important longer-term effects on the relation between tenant and landlord. The coincidence of the Bill, announced in the Queen’s Speech of 2019 and Government’s 2022 White Paper – *A Fairer Private Rented Sector* is not perhaps accidental, given the wider costs to society that the sector imposes.<sup>5</sup> Government policy gives reason to be optimistic that those renting in the sector will see their lives improved. Philosophers have promoted the idea of ‘hope’ as a way of understanding human agency and its potential. This view derives from both Aristotle and Kant.<sup>6</sup> The Kantian approach especially views hope as having rational potential and intrinsic value.<sup>7</sup> As Bovens states, ‘Hope is instrumentally valuable in that it has an enabling function, ... it counteracts risk aversion, and ... spawns more attainable constitutive hopes.’<sup>8</sup>

It can enable reflection and set in train new hopes that may (or may not) be realised but will potentially align with individual or indeed collective values. In focusing on the instrumental value of hope, Bovens argues that it is possible to reimagine current states of the world and re-evaluate circumstances beyond the short sighted – and self-interested. In short, ‘hope’ contributes to what we can imagine and how, in constitutive terms, as a society we can grow.<sup>9</sup> Others suggest that hope has epistemic virtue as both an intellectual pursuit that imparts knowledge, and gives qualities to agents that include resilience, perseverance, transparency and flexibility (and even kindness). It can function also as a method to pursue intellectual projects. I argue that hope offers the prospect of imagining how, in constitutive terms, society can grow and, in so doing accommodate the needs of all within the PRS. Hope might be seen as a way of enabling agents’ intellectual projects; fostering resilience, perseverance, flexibility and even collective kindness.<sup>10</sup> It opens up a reflexive responsiveness to facts and, simultaneously, the possibility of a belief in a future of new beginnings, which can institutionally inform practices.<sup>11</sup> This idea gains real traction in the form of Government’s White Paper, which attempts to shift the balance of rights as between landlords and their tenants. However, hope alone could be seen a wistful form of optimism, and for this reason, I use the paper to explore how hope serves to anchor the established notions of risk and vulnerability in the PRS in a more positive way. Thus in using the risk and vulnerability literatures, embedded in the conceptual language of hope, my intention is to explore new regulatory modes in this light.

The pandemic has highlighted and, indeed, amplified many of the challenges confronting modern society. They centre around our capacity to respond to, manage and cope with often unseen or novel hazards. To date, coronavirus (Covid-19) remained the leading cause of death in England and Wales, accounting for 11.5% of all deaths registered.<sup>12</sup> It is estimated to have cost the UK economy some £251bn with a drop in GDP in 2020 of 9.7%, the steepest drop since records began in

<sup>4</sup>House of Commons Library Research Briefing *Tackling the Under-supply of Housing in England*, 4 February 2022; House of Commons Secretary of State for Levelling Up, Housing and Communities *Levelling Up the United Kingdom* White Paper CP 604, p 223.

<sup>5</sup>Above n 2; Department for Levelling Up, Housing and Communities *A Fairer Private Rented Sector* CP 693 (June 2022) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1083381/A\\_fairer\\_private\\_rented\\_sector\\_print.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1083381/A_fairer_private_rented_sector_print.pdf).

<sup>6</sup>I Kant *Critique of Pure Reason* (London: Bell and Daldy, 1781, transl from the German by JMD Meiklejohn); Aristotle’s *Nicomachean Ethics* 3.6 (Oxford: Oxford University Press, 1980).

<sup>7</sup>Kant, *ibid*; L Bovens ‘The value of hope’ (1999) 59(3) *Philosophy and Phenomenological Research* 667.

<sup>8</sup>Bovens, *ibid*, at 670.

<sup>9</sup>NE Snow ‘Hope as an intellectual virtue’ in MW Austin (ed) *Virtues in Action* (London: Palgrave Macmillan, 2013).

<sup>10</sup>Bovens, above n 7, and Snow, *ibid*.

<sup>11</sup>S Trotter ‘Hope’s relations: a theory of the “right to hope” in European human rights law’ (2022) 22(2) *Human Rights Law Review* ngac007 <https://doi.org/10.1093/hrlr/ngac007>.

<sup>12</sup>The Office for National Statistics (ONS) figures for 2021, 9 June 2022. The same can be said for 2020 where 73,766 deaths where 12.1% of all deaths, were attributable to Covid-19: <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/conditionsanddiseases/articles/coronaviruscovid19/latestinsights#cost>

1948.<sup>13</sup> Further, scholars note the unequal distribution of impact on society, with health inequalities becoming more pervasive on those poorer in relative terms.<sup>14</sup> Social theorists have used the lens of risk to highlight the broadly institutional and environmental pathologies in post-industrial society. The approach highlights an inability to calculate and indeed compensate for institutional, organisational and accountability deficits and the impossibility of limiting the consequences of hazards or dangers, creating what has been termed the ‘risk society’.<sup>15</sup> Risk becomes, as the quote shows, not just an indicator of vulnerability, but one which amplifies the responses that perhaps paradoxically further amplify the very vulnerability which is being challenged.<sup>16</sup> The solution to risk and vulnerability in the PRS in England in our ‘post-lockdown’ world can perhaps only be understood if hopefulness is factored into the equation. Some of the pathologies evident in the sector (such as the absence of protection available to those in society least able to help themselves and the growing divide between the ‘haves’ and the ‘have nots’) are to be addressed by Government through ostensibly radical policy proposals. Others have been created by the very solutions offered in these times of great uncertainty. As will be shown, the sources of risk derive from state structures, including its institutional configuration, as much as individual activity, and it is the ‘loss of control’ cited above (see text to n 1) that is addressed or proposed to be addressed – as with the Government’s ‘Levelling up’ agenda (albeit not wholly satisfactorily) through regulation, often encompassing a recourse to law.<sup>17</sup>

Unlike the conceptual lens of risk, vulnerability can be seen as, ‘a universal, inevitable, enduring aspect of the human condition’, that invites a reconsideration of existing social structures and moves forward in a positive fashion to the creation of a more responsive and egalitarian idea of the state that will foster a resilience that transcends the divisive neoliberal ideal.<sup>18</sup> According to scholars such as Fineman, it is a positive force, unlike potentially the concept of risk and yet the two are closely aligned.<sup>19</sup> Vulnerability can embody risk whilst also addressing the human subject as opposed to the calculative or statistical.<sup>20</sup> The very fact of vulnerability generates risks on a collective and individual basis. In the housing context, the vulnerable subject creates risks for the individuals concerned but also systemic risks for Government. A loss of a home can give rise to additional economic cost (including welfare provision) for the person concerned and collectively make communities less stable. Yet, paradoxically, an acceptance of vulnerability points to the potential for a fostering of resilience strategies throughout society.<sup>21</sup> The tacit expectation (and hope) is that law can resolve concerns relating to societal vulnerability, in its many forms, akin to the analysis offered by the regulation of risk. From a risk perspective, the idea of law has a compensatory function, providing the structures to generate and compensate for modernity’s reflexive response (as in diffusing the excessive response by providing forms of balance or equilibrium).<sup>22</sup> In essence, both conceptual visions require an institutional

<sup>13</sup>CEBR ‘One year since lockdown: the £251 billion cost to the UK economy’ (22 March 2021) <https://cebr.com/reports/one-year-since-lockdown-the-251-billion-cost-to-the-uk-economy/>; House of Commons Library Research Briefing *Coronavirus: Economic Impact* (17 December 2021) <https://commonslibrary.parliament.uk/research-briefings/cbp-8866/>.

<sup>14</sup>E Kontopantelis et al ‘Excess years of life lost to COVID-19 and other causes of death by sex, neighbourhood deprivation, and region in England and Wales during 2020: a registry-based study’ (2022) *PLOS Medicine* 15 February 2022, <https://doi.org/10.1371/journal.pmed.1003904>.

<sup>15</sup>See the preface to U Beck’s *Risk Society: Towards a New Modernity* (transl M Ritter) (Newbury Park, CA: Sage, 1992).

<sup>16</sup>A Giddens *Consequences of Modernity* (Palo Alto, CA: Stanford University Press, 1991); Beck, *ibid*.

<sup>17</sup>Department for Levelling Up, Housing and Communities Policy Paper *A Fairer Private Rented Sector* updated August 2022 (from 16 June 2022) <https://www.gov.uk/government/publications/a-fairer-private-rented-sector/a-fairer-private-rented-sector>.

<sup>18</sup>MA Fineman ‘The vulnerable subject: anchoring equality in the human condition’ (2008–9) 20(1) *Yale Journal of Law & Feminism* 8.

<sup>19</sup>*Ibid*.

<sup>20</sup>M Foucault ‘Security, territory and population’, *Lectures at the Collège de France 1977–1978* (trans G Burchell) (New York: Palgrave Macmillan, 2007).

<sup>21</sup>See M Roark and L Fox O’Mahoney’s Resilient Property Theory in ‘Comparative property law and the pandemic: vulnerability theory and resilient property in an age of crises’ (2022) 82(3) *Louisiana Law Review* 789.

<sup>22</sup>U Beck ‘The politics of risk society’ in J Franklin (ed) *The Politics of Risk Society* (Cambridge: Polity Press, 1998) pp 9–22.

response, often through recourse to law. They also suggest a more positive role for legal structures that might be considered 'hopeful'.

The domains of housing and property reference not only institutional vulnerability but the physical vulnerability present for those in housing need (whether in the short term or those seeking greater housing stability) and the financial risks associated with owning rental property. The competition for accommodation, where public resources are limited, creates a heavy reliance upon the private sector to compensate for a lack in public provision. Statistics drawn from the headline Report to the English Housing Survey 2018–19 show that 19% of households in England (equating to 4.5 million households) live in the private rented sector, a figure double that in 2002.<sup>23</sup> This compares to 14% of households in England in 2008–09 and signifies growing reliance by both Government and individuals to satisfy housing need.<sup>24</sup> As Government recently stated,

[the] Private Rented Sector ... offers the most expensive, least secure, and lowest quality housing to 4.4 million households, including 1.3 million households with children and 382,000 households over 65.<sup>25</sup>

This raises questions of how far successive governments have been able to foster resilience for both those individuals concerned and, indeed, wider society in its growing dependence on the sector. Government's response in regulating the PRS in England has been to try and balance the needs of those renting and those owning property to rent. Historically the balance has been firmly in favour of the landowner. However, policy responses pre-dating the pandemic in the form of the 'right to rent' provisions made under the Immigration Act 2014 (as amended) requiring landlords to effectively become 'gatekeepers' as immigration officials – checking the migration status of their tenants – and now the regulations made during the course of lockdown arguably shift the focus, exacerbating rather than overcoming widespread vulnerability and, in doing so, embedding rather than dissipating risk.

With the ending of the 'eviction moratorium' in England and the Government White Paper (proposing positive renter reforms and empowerment under the Renters' Reform Bill), this problem is amplified. Central policy, historically perpetuating disadvantage, creates multiple sites of vulnerability in forms perhaps not previously imagined, which can worsen the housing crisis. What might be termed a 'sea change' in the Government's stance on regulating the PRS in England, which includes improving housing condition and ending 'no fault' eviction, although welcome, may yet prove counterproductive if using the lens of vulnerability.

Although scholars have worked on vulnerability in the housing sector in England, little of this addresses Fineman's conception of human vulnerability as a universal – one that is not limited to sections of society but affects all.<sup>26</sup> This paper seeks to contribute to that discussion by exposing not only those known iniquities in provision where tenants are vulnerable but also sees the notion of

<sup>23</sup>See Ministry of Housing, Communities and Local Government *English Housing Survey: Headline Report, 2018–19* [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/860076/2018-19\\_EHS\\_Headline\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/860076/2018-19_EHS_Headline_Report.pdf), confirming the Ministry of Housing Communities and Local Government *English Household Survey: Private Rented Sector 2017–18* Introduction and Main Findings, p 3 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/817630/EHS\\_2017-18\\_PRS\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817630/EHS_2017-18_PRS_Report.pdf).

<sup>24</sup>Department for Communities and Local Government *English Housing Survey: Household Report 2008–09* Ch 1, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6695/1750765.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/6695/1750765.pdf).

<sup>25</sup>Above n 5, drawing on statistics taken from the Ministry of Housing, Communities and Local Government, *English Housing Survey: Private Rented Sector, 2019/20* (8 July 2021) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1000052/EHS\\_19-20\\_PRS\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1000052/EHS_19-20_PRS_report.pdf), Department for Levelling Up, Housing and Communities *English Housing Survey: Private Rented Sector, 2020–21* (7 July 2022) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1088486/EHS\\_20-21\\_PRS\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1088486/EHS_20-21_PRS_Report.pdf).

<sup>26</sup>H Carr et al (eds) *Law and the Precarious Home: Socio Legal Perspectives on the Home in Insecure Times* Oñati International Series in Law and Society (Oxford: Hart Publishing, 2018); D Rhodes and J Rugg 'Vulnerability amongst low-income households in the private rented sector in England' (University of York, 2018) <http://www.nationwidefoundation.org.uk/wp-content/uploads/2018/09/Vulnerability-report.pdf>. Note also that many governmental policy papers focus on the

vulnerability as a universal to suggest future and more inclusive and collaborative ways of regulating the sector – an emerging trend identifiable during the pandemic and now found in the policy proposals of the White Paper and proposed Bill. It will be argued that, whilst vulnerability may be relative, it is a universal (and an indicator of risk) that is ignored by policymakers at their peril. In exploring the close nexus between risk and vulnerability it could be asked if there is reason to be hopeful. The primary focus will be on how Government strategies, pre- and post- the pandemic, undermined the perceived resilience which property (and contract) law potentially offers, and indeed the capacities to foster trust between the parties concerned. Paradoxically, the pandemic and current policy orientation of the Government are suggestive of a different trajectory that offers the prospect of lessening vulnerability overall if we accept some of the learning drawn from regulation theory. This paradox will be highlighted in central attempts to foster collaboration and co-operation between landlords and tenants on an individuated basis which, perversely, can lead to potentially more productive outcomes.

### The Renters' Reform Bill (2019–20)

An explicit reference to landlord and tenant relations and the need to rebalance this has existed in the political discourse for decades. In the 2015–16 session a Private Members' Bill was introduced under the Ten-Minute Rule by the Liberal Democrat Member for Carshalton and Wallington to extend tenants' rights and further regulate the sector. That Bill did not progress beyond its First Reading.<sup>27</sup> The Renters' Reform Bill, announced in the Queen's Speech on 19 December 2019 has yet to be presented before either House. The Government's proposal is to 'deliver a fairer and more effective rental market', where tenant security in the sector would be improved while strengthening landlords' rights to recover their property, 'where they had a valid reason to do so'.<sup>28</sup> It is envisaged that the 'tenant experience' of letting will be enhanced by improving housing standards in the sector, introducing a 'lifetime deposit', so that deposits would only be paid once, rather than when tenants move from one tenancy to the next, and to professionalise letting agents' practice. The overarching aim seems to be to improve the sector and drive out the 'rogue' landlord. One important strand of the Bill is to abolish 'no fault' evictions, which enable landlords' to recover property on the service of a notice, despite tenants not being in breach of their agreement, where an appropriate notice has been served before the tenancy began. Tenants will, if the Bill becomes law, have greater security by not being subject to a risk of 'retaliatory eviction' if they make complaints about the condition of the property lived in. Further, they will have more clearly enforceable rights to live in safe conditions, and not be required to leave on the service of notice.<sup>29</sup> This aspect of the original Bill was driven by a number of policy actors including Shelter, the Housing charity.<sup>30</sup>

### The Government White Paper

In providing a 'New Deal' for those in the PRS in England, the Government seeks to both improve the quality of homes in the sector and reconceptualise renting so that tenants are more able to see the roof over their head as a 'home'.<sup>31</sup> Although integral to the broader, 'Levelling up' programme, the policy continues to support quite a radical revision in defining landlord and tenant relations, which draws on

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plight of tenants rather than considering the resources available to landlords eg CP 693, above n 5; NAO *Regulation of the Private Rented Sector* (6 December 2021).

<sup>27</sup>The Landlord and Tenant (Reform) Bill, from the 2015–16 House of Commons session, 27 April 2016. The session ended on 12 May 2016. The Bill was scheduled for a Second Reading on 13 May 2016.

<sup>28</sup>Above n 2, p 46.

<sup>29</sup>With privately rented accommodation being made subject to the Decent Homes Standard, and the trialling of enforcement practices: Policy Paper. Department of Levelling Up. Housing and Communities, Policy Paper, above n 17.

<sup>30</sup>Shelter 'Our Renters' Reform Bill campaign' [https://england.shelter.org.uk/support\\_us/campaigns/renters\\_reform\\_bill](https://england.shelter.org.uk/support_us/campaigns/renters_reform_bill).

<sup>31</sup>*Ibid.*

an earlier consultation.<sup>32</sup> The White Paper envisages also a revision to the current tenancy structure beyond an abolition of the ‘no fault’ eviction process to a general periodic tenancy and a reform of the grounds for possession for property recovery. The proposals extend to introducing an Ombudsman scheme (backed by powers to impose penalties on landlord transgression), limiting rent reviews to once a year, working with HM Courts’ Service to expedite possession actions, and creating an online Property Portal – effectively registering all landlords on a database. Further, the proposed legislation enhances local authority enforcement, proscribes blanket bans on the characteristics of tenants that landlords can accept (eg families in receipt of benefits) and limits the ability of landlords unreasonably to refuse the right of a tenant to have a pet at the property.

Currently, the proposals remain sketchy and lobby groups including Shelter continue to advocate for an implementation date of the Bill and a strengthening of reforms to provide true protection.<sup>33</sup> Others suggest that the true problem remains the unaffordability of housing generally.<sup>34</sup> One thing remains clear: there is some evidence, albeit largely anecdotal, of an increasing level of landlord exit from the sector.<sup>35</sup> As yet, no date for implementation has been set. Questions regarding the resilience of the PRS and how hopeful we can be for future housing provision remain.

## Shifting the lens from physical property to relational property?

### *Constructing vulnerabilities*

The idea of property as a construct is neither a monolithic constant, nor a uniform entity. As understandings of property alter, so does its institutional form. Interpretations of property law reflect the tension between individuated and collective ambition, and this is particularly so at the margins existing between public and private spaces, such as in the PRS where contractual rights, property interests and Government ambition intersect. In England, PRS tenures are founded in contract, with added protection (or otherwise) being given by statute. Tenants usually acquire no proprietary rights or interests. It is the landlord who will have these. Foundational models of property range from the individualist (emphasising the primacy of autonomy and the right of exclusion) to the relational (drawing out a rich understanding of societal obligations and the complex notions of boundary and space).<sup>36</sup> Property ultimately, as Davies tells us, concerns both individuals and communities and the relations between the two.<sup>37</sup>

Fundamentally, the main source of vulnerability in the PRS is the dependency relation between landlord and tenant. However, the threat (or risk) of adverse outcomes more generally gives rise to multiple sites of vulnerability, many of which are state created.<sup>38</sup> Tenants are rightly concerned to retain their home, while landlords are keen to maximise their property interest and, if necessary,

<sup>32</sup>Ministry of Housing, Communities and Local Government *A New Deal for Renting: Resetting the Balance of Rights and Responsibilities between Landlords and Tenants* (21 July 2019).

<sup>33</sup>Shelter Briefing: *Backbench Business Debate on A fairer private rented sector White Paper* (November 2022) [https://assets.ctfassets.net/6sxvmndn0s/7C58oi3KVoqrsi21YK9GYY/416e74781f32a62ad52afc4d9ff51fb7/MP\\_briefing\\_-\\_Backbench\\_Business\\_Debate\\_on\\_RRB\\_-\\_Nov\\_2022.pdf](https://assets.ctfassets.net/6sxvmndn0s/7C58oi3KVoqrsi21YK9GYY/416e74781f32a62ad52afc4d9ff51fb7/MP_briefing_-_Backbench_Business_Debate_on_RRB_-_Nov_2022.pdf).

<sup>34</sup>LGA *Response to General debate on the Government’s White Paper A Fairer Private Rented Sector, House of Commons* (3 November 2022) <https://www.local.gov.uk/parliament/briefings-and-responses/general-debate-governments-white-paper-fairer-private-rented>.

<sup>35</sup>Whether this is attributable to the prospect of enhanced regulation or rises in interest rates remains debateable: see PropertyMark ‘A shrinking private rented sector’ (5 June 2022), <https://www.propertymark.co.uk/resource/a-shrinking-private-renter-sector.html>; ‘Selling up and raising rents: how landlords are cashing in and exacerbating the cost of living crisis’ (*The Guardian*, 31 August 2022) <https://www.theguardian.com/commentisfree/2022/aug/31/britain-tenants-renters-landlords-profit>; ‘Why I am one of the many landlords thinking of leaving the business’ (*Sky News*, 2 December 2022) <https://news.sky.com/story/why-i-am-one-of-the-many-landlords-thinking-of-leaving-the-business-12759653>.

<sup>36</sup>A useful excursus can be found in H Dagan’s *A Liberal Theory of Property* (Cambridge: Cambridge University Press, 2021).

<sup>37</sup>M Davies *Property; Meanings, Histories, Theories* (Abingdon: Routledge, 2007) p 2.

<sup>38</sup>*Ibid.*



recover the property they own. The pursuit of substantive equality through a manipulation of property rules becomes impossible, not least because of the status inequalities of the parties but also the role of Government. It is known that a range of multi-dimensional factors exist within the PRS that contribute to tenant vulnerability. Price, quality and indeed availability are but some of the factors. The ongoing decline in the provision of 'affordable housing' gives rise to competition for accommodation and enhances landlords' capacities for selectivity in choosing tenants.<sup>39</sup> More generally, the regulatory constellation of the actors in the PRS has been underpinned by an anachronistic vision of the relation between tenants and landlords in misalignment with the context of a wider demand for provision. Improving housing condition in the sector is a continuing ambition, yet outcomes remain consistently low.<sup>40</sup> Successive governments' strategy has been to reconstruct the landlord, defining the ambit of their activities and punishing deviance, while at the same time enabling them to recover their properties with relative ease based on 'no fault' eviction.<sup>41</sup> The result has not improved the quality of housing stock nor kept pace with tenant demand, and in turn vulnerability is amplified for the smaller and compliant landlord and tenant groupings without fostering a wider resilience. The pervasive risk relates to adverse consequences deriving from the architecture of the sector and the effects of the regulatory norms created by the Government generally. Successive governments' (increasing) dependency upon the PRS gives rise to the possibility of significant and adverse consequences in the event of landlord exit, at a time when there is an over-reliance on the sector. Law is used to draw the general landscape – setting the requirements as to property condition and tenant behaviour. Until now, landlord behaviour has been subjected to marginal control, limited to behaviours inconsistent with the Government's wider policy ambition (as with the right to rent and the control of migration) or in terms of egregious behaviour towards renters. This will change if the Renters' Reform Bill and the White Paper proposals are enacted. These proposals attempt to reform the legal relation between landlord and tenant, strengthening the latter's security and making landlords more accountable and responsible for their actions.<sup>42</sup> This premise gives reasons for hopefulness but does not necessarily acknowledge the structure of the sector or the global nature of vulnerability.

### ***Making sense of property theory: vulnerability and resilience***

Notions of vulnerability and resilience draw on the broadly psychological, philosophical and sociological literatures to amplify and indeed transcend the human rights discourse. The idea of vulnerability challenges the thesis of the autonomous self-reliant individual paradigm pervasive in both legal and liberal thought. Instead, emphasis is given to the greater (or lesser) degree of resilience that humans have. Vulnerability is seen through the lens of inequalities in resilience, which in turn derive from the configuration of society's institutions. The risks presented by human existence and through the course of a lifetime may vary according to the challenges – external threats or those inherent to the human condition – at any given time. The fostering of resilience, however, presents opportunities to overcome our vulnerability through the creation of institutional structures that facilitate and create interdependencies to challenge our inherent frailties, and so reducing risks. Primarily developed by Martha Fineman, the endeavour has sought to justify a more cohesive approach to analysing and addressing inequalities within society and provide a valuable lens for identifying failures in governmental programmes, whilst simultaneously emphasising the interdependence between state, subject and society, suggesting in turn, state and the individual connections deriving primarily from the relations that

<sup>39</sup>Homes and Communities Agency *Homes and Communities Agency Housing Statistics 1 April 2015–31 March 2016* (28 June 2016) Figs 1a and b of the housing statistics for new build: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/532220/Housing\\_Statistics\\_June\\_2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/532220/Housing_Statistics_June_2016.pdf).

<sup>40</sup>This may change with the Government's proposals for a fairer private rented sector. See n 5 above.

<sup>41</sup>Housing Act 1988, s 21 and the creation of the assured shorthold tenancy, enabling landlords to expedite recovery of their property on serving appropriate notice.

<sup>42</sup>The 12-point plan of action in the White Paper, above n 5, pp 7–8.

humans have with one another.<sup>43</sup> This, as Kuo and Means posit, provides a ‘more complex subject around which to theorize social policy and law’.<sup>44</sup> The thesis sees the ‘human’ and our interactions in society and community as a way of both suggesting the vulnerability of the individual (posing challenges to conventional understandings of the self-reliant or self-regarding ‘autonomous’ liberal subject) and offering the prospect of ‘redemption’ or constructive resolution through the idea of resilience. Law becomes one of the key sites to apply the theory because it is at heart relational – facilitating ‘hopeful’ structures supporting relations and institutions that can make (or break) resilience, in this case that of landlord and tenant and its impacts on the cohesiveness of wider society. Law informs also how property ownership and, in particular, land is perceived. By acknowledging the vulnerability of each of us, as an inherent part of the human condition – and this may be episodic or perpetual, as Fineman’s identifies, we become forced to look at not only the relations of individuals between themselves but at the interactions with state actors and the different branches of government.

Like Roark and Fox, I see vulnerability as an institutional condition.<sup>45</sup> It is not necessarily a sign of weakness or fragility of the individual or indeed sections of society, but a key indicator of risk, whether existing or emergent. Resilience can be seen as the prophylaxis, promoting equity and justice for *all* and not the selected few. It can be fostered by the responsive state and its institutions (including its norms and structures).<sup>46</sup> The recognised interdependence of state and society is the basis for fostering resilience to the ‘harm’ of the human condition. The challenge is for states and their institutions to transcend self-interest and generate instead a resilience (by acknowledging the pervasiveness of vulnerability) to overcome the limitations of the neoliberal condition and its associated notions of autonomy that perpetuate structural inequalities.

Resilience has been defined as:

a constitutive process through which people reintegrate and actively construct their new normal through language, interaction, networks, and attention to their identities and identifications.<sup>47</sup>

Being reflexive, resilience invites consideration of the obstacles to ‘becoming’, as well as the fulfilling of potential enabling all in society to participate. It is inherently linked to risk and those associated protective responses overcoming it. Although the idea has been questioned, especially in a social science context, I use it to highlight the possibility of generating more robust institutional responses that enable the pursuit of equity by acknowledging existing structural imbalances and the capacities (or otherwise) of those institutions and agents who may be drivers of positive change.<sup>48</sup> In this sense, resilience is not about fostering strength per se, but instead enabling collective benefit.

Fineman’s theory has gained considerable traction in the context of critiquing successive governments’ welfare reforms.<sup>49</sup> It offers the prospect of recognising the commonality of vulnerability to foster collective forms of state responsibility. The universality of vulnerability (traditionally ignored – conveniently or otherwise – by government and state), common to all humans, is brought to the fore. This gives purchase for considering institutional redress in terms of building equity and ethicality

<sup>43</sup>M Fineman and A Grear (eds) *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Farnham: Ashgate, 2013); M Fineman ‘The vulnerable subject and the responsive state’ (2010) 60(2) *Emory Law Journal* 2516; H Carr ‘Housing the vulnerable subject: the English context.’ in Fineman and Grear, *ibid*.

<sup>44</sup>SS Kuo and B Means ‘After the storm: the vulnerability and resilience of locally owned business’ in Fineman and Grear, above n 43, Ch 6.

<sup>45</sup>Roark and Fox O’Mahoney, above n 21.

<sup>46</sup>*Ibid*.

<sup>47</sup>PM Buzzanell ‘Communication theory of resilience in everyday talk, interactions, and network structures’ in SR Wilson and SW Smith (eds) *Reflections on Interpersonal Communication Research* (Solana Beach, CA: Cognella, 2019) p 65 at p 68.

<sup>48</sup>Often embedding existing power imbalances and neoliberal ideals: see BP Davis and E Aldieri ‘Precarity and resistance: a critique of Martha Fineman’s vulnerability theory’ (2021) 36(2) *Hypatia* 321; C Kuhlicke ‘Resilience: a capacity and a myth: findings from an in-depth case study in disaster management research’ (2013) 67(1) *Natural Hazards* 61; H Mahdiani and M Ungar ‘The dark side of resilience’ (2021) 2 *Adversity and Resilience Science* 147.

<sup>49</sup>NE Dowd ‘The “P” factor: Fineman as method and substance’ (2010) *Emory Law Journal* 1191.



into the law and policy processes in a hopeful manner – we can and should do better. Thus, vulnerability theory offers transformative possibilities. But it may, as Kohn points out, have limits in terms of generating systemic change.<sup>50</sup>

The onset of the pandemic not only amplified the inherent vulnerability of all. It also highlighted further how dependent we are upon one another. Recognising this aspect of vulnerability has particular purchase in the PRS context by referencing the commonality of concern with how the sector is regulated and its consequent impact upon housing provision more generally. However, application of the idea has been partial, as opposed to universal, in the sense of being agnostic (at best) to the capacities and capabilities of all populating the sector, including the landlord. Institutional structures can enhance resilience for all, but it is questionable whether the strategies deployed to date have this effect. The financial and social context gives clues as to why this may be. Of relevance here is the configuration of the sector. It feeds into the question of the extent to which legal structures and policy proposals have enlarged and amplified vulnerability generally and, in turn, societal risk – as will be shown in the next section.

### Generating vulnerability and resilience: the landlord and tenant relation and the configuration of the PRS

Property rights to land in their institutional form (for the current purposes, those laws recognising rights and interests, their creation and disposition and the consequences flowing from this for owners and third parties) can exacerbate vulnerability. The shared human condition posits that attention should be paid to all in society (the level of individual vulnerability experienced, however will vary according to the circumstances). Property has long been an indicator of status, with its institutional configuration (viz the norms created) being a source and perpetuation of existing and novel vulnerabilities.<sup>51</sup> This is reflected in the landlord and tenant relationship, with state intervention having the capacity to do both good and ill.<sup>52</sup> In England, one of the most powerful social dichotomies relates to the availability and provision of housing through its manifestation of the landlord and tenant relationship. Prospective tenants chase the scarce resource of housing. The provision of shelter is one of the most basic ‘wants’ of all human beings but accessibility to a home is neither a legal nor a social given. In the PRS tenants experience significant challenges in finding safe, secure, and decent homes at affordable prices. Many are at the mercy of a market that presents barriers to entry, informational asymmetries and, paradoxically, even from a neoliberal perspective, one that fails to achieve a sensible equilibrium in terms of supply and demand. All would agree that whilst for prudential reasons the safety and security of a community depend, at least in part, upon satisfying as far as possible basic human needs, structural inequalities between landlords and tenants continue. This, of itself, is a source of vulnerability and it could plausibly be argued that housing is a site of general societal vulnerability, which paradoxically focuses on property condition rather than subjective identity. The extent to which the Renters’ Reform Bill and the White Paper truly address this is debateable. Tenants will continue to depend upon the ‘propertied’ (whether public or private) to secure housing, just as landlords see tenants as a means of wealth creation.<sup>53</sup> Power (economic and social) is primarily concentrated in the hands of the landlord. Law mirrors, and to an extent, (re)affirms this dependency relation between the parties.

The landlord-tenant relation at the intersection of both land law and contract is grounded in a social and political context that impinges upon autonomy, equality and indeed how the person and

<sup>50</sup>NA Kohn ‘Vulnerability theory and the role of government’ (2014) 26 *Yale Journal of Law & Feminism* 1.

<sup>51</sup>JW Singer et al *Property Law: Rules, Policies and Practices* (New York: Wolters Kluwer, 7th edn, 2017) p 87, referencing M Cohen ‘Property and sovereignty’ (1927) 13 *Cornell Law Review* 8.

<sup>52</sup>Drawing parallels with the discussion of L Fuller’s *The Morality of Law* (New Haven, CT: Yale University Press, 1965), capturing the debate and subsequently the analysis of made by Hart and Raz, on the rule of law, and more importantly Proudhon’s juxtaposition of property as both ‘right’ and occupation.

<sup>53</sup>See the burgeoning financialisation literature, where property and the ‘buy-to-let’ syndrome has become a source of pension enhancement

their ‘home’ come to be constructed in law. As Proudhon suggested, the tension between property as ‘right’ and property as occupation becomes amplified.<sup>54</sup> Here, landowners (whether freeholders or those holding a superior lease) having an interest in land grant occupation rights to others. This relation can be seen as one of dependency on the part of the tenant (especially in the domestic context) where ‘rights’ to occupy are determined externally, often with successive governments being reticent to use law (replicating many other public policy concerns) to encroach too far on private rights and interests. The ‘weighting’ of rights to use and access property, where there are notionally – if not in reality – relatively few restrictions on the capacities of the landlord to exercise their rights over their land, highlights continuing levels of tenant dependency far removed from an enlightened approach to the basic need. The basic inequalities in bargaining power are amplified in the landlord and tenant relation. The interdependency highlighted indicates, however, not only tenant vulnerability but that of the Government, the private sector and ultimately society. Government needs to fulfil its obligations to wider society, including securing housing provision directly for those in need, or by enabling others to do so. For those landlords in the PRS, the expectation that they will compensate for deficits in provision in both the social and public sectors brings with it inherent risks, where landlords can both create opportunities but also exacerbate societal risk. Government’s binary distinction of the ‘good’ or ‘rogue’ landlord or tenant is one indicator of this. The White Paper did not interrogate the complexity of landlord or tenant identities. Also present are more systemic concerns, eg the need for the PRS to compensate for deficiencies in other sectors, pressures as to the affordability of ownership and indeed rents arising from the financialisation of the sector.<sup>55</sup> Others arise by reason of the configuration of the regulatory regime, which can, depending upon how it is structured, amplify or limit relational risks. And each will illuminate vulnerability. A brief overview of the structure of the sector shows why this is so.

Community cohesion can generate resilience, through the common bond of vulnerability to which institutions of the state respond. Housing is a prime candidate. However, in the PRS the regulatory stance of successive governments seems to fail to recognise the extent of vulnerability in the given context and so the inadequacy of the response. Headline statistics of the Office of National Statistics show that the number of households in the PRS in the UK increased from 2.8 million in 2007 to 4.5 million in 2017, an increase of 1.7 million (63%) households, with the proportion renting in England having doubled since 1997.<sup>56</sup> The tenure itself ranks second only to owner-occupation and currently houses 19% of households.<sup>57</sup> There is a growing dependency on the PRS to satisfy housing demand. This has resulted in pathological outcomes compounding existing vulnerabilities for all, rather than supporting or sustaining resilience.<sup>58</sup> The consequent inequities impact not only on those most heavily reliant upon housing (the tenant) but extend also to the vulnerability of the Government (with its overarching objective of avoiding the ‘housing crisis’) and indeed the private sector landlord within the domain. This more general vulnerability is amplified by the ‘right to rent’ provisions (created under the Immigration Act 2014 (as amended)) which have the stated aim of promoting and protecting ‘legitimate’ citizens’ claims to housing in the PRS in the jurisdiction, so that those not having a lawful immigration status are to be deprived of any right to housing.<sup>59</sup> However, those laws have arguably exacerbated rather than attenuated landlord vulnerability because they also place additional burdens upon them. The Government’s response to the pandemic further illustrates structural deficiencies in the sector in ‘glorious technicolour’. Tenants, like other economic actors, remain at risk, in the extreme, of losing their homes; and landlords too, given policy and economic uncertainties that

<sup>54</sup>PJ Proudhon *What is Property?: An Inquiry into the Principle of Right and of Government* (Auckland: Floating Press, 1840).

<sup>55</sup>M Aalbers *The Financialization of Housing: A Political Economy Approach* (Routledge: Abingdon, 2016).

<sup>56</sup>ONS‘UK private rented sector 2018’ section 3 <https://www.ons.gov.uk/economy/inflationandpriceindices/articles/uk-private-rented-sector/2018>.

<sup>57</sup>Referenced at CP 693, above n 5, para 1.1.

<sup>58</sup>See Carr, above n 43.

<sup>59</sup>Home Office *Right to Rent Code of Practice Scheme for Landlords and Their Agents* (applicable as at 1 February 2016) 1.1.

demand a more cautious approach, could find, in the extreme, future provision being limited. The result could be to fragment community and wider society with counterproductive effects.

House price inflation and extensive austerity measures place severe constraints upon public service delivery. Neither show signs of abating. The pressure for housing particularly in the sector is steadily increasing. The much-vaunted housing ‘crisis’, a phenomenon discussed both locally and globally, has hit home in the jurisdiction and in excess of one in five households in England (and one in four in London) rely upon the PRS for accommodation.<sup>60</sup> As the sector has grown, owner-occupation has declined, leading some to conclude that there has been a structural shift in the housing sector overall in favour of renting.<sup>61</sup> Although historically a tenure for young people, more and more families reside in the PRS and the sector also accommodates those of retirement age. In its 2006 Report, the Joseph Rowntree Foundation indicated that in 2001 11% households were renting privately.<sup>62</sup> Between 2000 and 2014 the number of units rented privately in the UK rose by 125%.<sup>63</sup> Despite much rhetoric on the part of both the current Government and those in opposition, the emphasis for the former at least seems to be firmly placed upon building homes for sale.<sup>64</sup> The *English Housing Survey Report 2014/15* noted significant changes in the last decade, such that the PRS has undergone significant growth and has overtaken the social housing sector in terms of provision.<sup>65</sup> However, perhaps worryingly, growth in the sector is showing signs of slowing in recent years.<sup>66</sup> While the PRS itself continues to house a greater number of younger (in the age range of 25–34) rather than ‘older’ renters, increasingly more over the age of 35 are relying upon it, and between 2007 and 2017 the proportion of household reference persons aged 45–54 increased from 11% to 16%.<sup>67</sup> Currently, Government data indicates that by 2020–21, those aged 16–34 accounted for 43.5% of private renters in England, with 25–34-year-olds being the most common age group of private renters at 31%. Adults of retirement age comprise 8.6% of renters in the PRS (382,000 people, a 38% increase over the last decade (since 2010–11)) and households with dependent children account for 30% of the sector – over 500,000 more than in 2005.<sup>68</sup> It is the most diverse sector in the UK in terms of ethnicity and nationality. Private renters remain on average in their property for a shorter period than those in the social sector or owner-occupiers (remaining in their property for under three years, in contrast to the majority of owner-occupiers and social renters remaining for between 10 and 19 years).<sup>69</sup> One-person households remained the most prevalent.<sup>70</sup>

It is estimated that there are more than 1.5 million landlords in England.<sup>71</sup> A 2010 government survey showed that 89% of landlords in England were private individuals and 98% of these owned

<sup>60</sup>*English Housing Survey 2016–17: Headline Report* (2018).

<sup>61</sup>House of Commons Communities and Local Government Committee *The Private Rented Sector* First Report of Session 2013–14, HC 50, 8 July 2013 (The Stationary Office, 2013), para 2 <https://publications.parliament.uk/pa/cm201314/cmselect/cmcomloc/50/5002.htm>.

<sup>62</sup>D Rhodes for the Joseph Rowntree Foundation ‘Characteristics and functions of the private rented sector’ (23 October 2006) [https://www.jrf.org.uk/report/characteristics-and-functions-private-rented-sector#jl\\_summary\\_0](https://www.jrf.org.uk/report/characteristics-and-functions-private-rented-sector#jl_summary_0).

<sup>63</sup>K Scanlon and C Whitehead *The Profile of UK Private Landlords* (Council of Mortgage Lenders, December 2016) <https://www.lse.ac.uk/business/consulting/assets/documents/The-Profile-of-UK-Private-Landlords.pdf>.

<sup>64</sup>For example, the Secretary of State refused planning permission to build a new, ‘garden village’ in Surrey where 50% of the provision would have been for that of social housing (*The Planner* 29 May 2018), and p 8 of the White Paper, n 4 above.

<sup>65</sup>See *English Housing Survey: Private Rented Sector Report 2014/15* [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/570848/Private\\_Rented\\_Sector\\_Full\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/570848/Private_Rented_Sector_Full_Report.pdf); see also para 1:10 *English Housing Survey 2021 to 2022* Figure 1.3 and Annex Table 1.2 *English Housing Survey 2021 to 2022: headline report* [www.gov.uk](http://www.gov.uk). where in London the PRS is the most prevalent tenure.

<sup>66</sup>See above n 25.

<sup>67</sup>*Ibid.*

<sup>68</sup>Government analysis of the *English Housing Survey 2020–21* as stated in *A Fairer Private Rented Sector*, above n 5.

<sup>69</sup>*Ibid.*, Figure 28.

<sup>70</sup>At 25%. Ministry of Housing Communities and Local Government *English Housing Survey 2017–18*, para 1.7 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/817630/EHS\\_2017-18\\_PRS\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817630/EHS_2017-18_PRS_Report.pdf). Contrast this with the Frank Knight research, which indicates that circa 17% of accommodation is rented by one person: *Multihousing 2019* <https://content.knightfrank.com/research/707/documents/en/the-uk-tenant-survey-2019-6118.pdf>.

<sup>71</sup>NAO, above n 26, para 3.8.

fewer than 10 properties and 70% of all dwellings.<sup>72</sup> More recently, research indicates that 45% of private landlords own one property (representing 21% of tenancies), with fewer landlords owning substantial stock.<sup>73</sup> A further 38% owned between two and four rental properties, representing 31% of tenancies. The remaining 17% of landlords owned five or more properties, amounting to half (48%) of tenancies.<sup>74</sup> One in 10 adults in the UK own multiple homes with (as recently identified by the Resolution Foundation) the number of people with at least two properties having jumped 30% to 5.2 million between 2000–02 and 2012–14.<sup>75</sup> This is not only the age of ‘generation rent’ but also that of ‘generation landlord’.<sup>76</sup> As a less than homogeneous sector, landlords display multiple and diverse motivations aside from being driven purely by profit. Some are accidental landlords (having inherited property) or hold it ‘in trust’ for older relations. Others are hobby landlords, while others conform to the stereotypical profit-motivated landowner who simply sees property as a vehicle for profit (although fiscal changes have made this a less attractive proposition). Many are the ‘baby boomers’ born between 1946 and 1965.<sup>77</sup> Intergenerational disparity, (particularly inequality in purchasing power) is not the only source for concern. Much of the wealth accumulated from property is located within the Southeast and between the years 1999–2001 and 2013–16, it would appear that the percentage of adults receiving income from property as landlords (whether commercial or residential) has doubled from 1.7 to 3.4%. This, coupled with the ongoing decline in providing ‘affordable housing’, has amplified the disparity between the ‘haves’ and the ‘have nots’ and with it the commodification of the home.<sup>78</sup> The aspirational and resource-led inequity between the ‘baby boomers’ and younger generations is painfully acute. This has resulted in successive and current Government policy reforms, the most recent being under the umbrella of its ‘Levelling up’ agenda.<sup>79</sup>

The degree of heterogeneity within the PRS confounds the clichéd binary designating all landlords as ‘rogue’ and exploiters of decent people, with credulous tenants being at the mercy of their exploiters. Although many reasons exist for entering the sector, the most prevalent were a preference for investing in property rather than other investments (46%) and as a pension contribution (44%).<sup>80</sup> Around a third (34%) said they wanted to supplement earnings or income; 4% let property as a full-time business.<sup>81</sup> Private surveys (still based upon extrapolating from a sample, to provide a more generalised picture) seem to highlight similar trends, although indicating a rise in the number of landlords owning two to three properties but with the focus being on holding property as an investment as opposed to deriving an income.<sup>82</sup> It is hardly surprising, therefore, that a more nuanced vision of the landlord and their capacities may be called for when both considering the sector’s configuration and the way in which it is regulated.

As Bright et al identify, not all landlords are motivated purely by profit; some may adopt stances that are less than economically rational (eg they may have an emotional attachment to property by reason of family circumstances including inheritance or otherwise; they may be a ‘custodian’ for another member of the family because the latter has gone into care) or they may see it as the ‘right thing to do’ to enhance provision, generally.<sup>83</sup> The category of the ‘accidental landlord’ (who acquires

<sup>72</sup>Department for Communities and Local Government *Private Landlords Survey 2010*.

<sup>73</sup>Ministry of Housing Communities and Local Government *English Private Landlord Survey (2019)* Fig 1.2.

<sup>74</sup>*Ibid.*

<sup>75</sup>Resolution Foundation *Homes Sweet Homes – The Rise of Multiple Property Ownership in Britain* (19 August 2017) <https://www.resolutionfoundation.org/publications/the-generation-of-wealth-asset-accumulation-across-and-within-cohorts/>.

<sup>76</sup>R Ronald and J Kadi ‘The revival of private landlords in Britain’s post-homeownership society’ (2018) 23(6) *New Political Economy* 786.

<sup>77</sup>*Ibid.*

<sup>78</sup>See above n 39.

<sup>79</sup>Above n 5.

<sup>80</sup>Ministry of Housing Communities and Local Government *English Private Landlord Survey (2018)* January 2019 paras 1.15, 1.16 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/775002/EPLS\\_main\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775002/EPLS_main_report.pdf).

<sup>81</sup>*Ibid.*

<sup>82</sup>HomeLet *Landlord Survey 2017* [https://images.homelet.co.uk/Landlord\\_Survey\\_2017.pdf](https://images.homelet.co.uk/Landlord_Survey_2017.pdf).

<sup>83</sup>S Bright (ed) *Landlord and Tenant Law: Past, Present, and Future* (Oxford: Hart Publishing, 2006).

property through inheritance or a change in marital status) is now an emerging trend.<sup>84</sup> This is a sector, as identified by the Government in 2010, ‘characterised by its diversity and choice’, encompassing a wide range of views and expertise of those providing rented property.<sup>85</sup> Building on Crook’s taxonomy of the landlord, deployed by Partington et al [well intentioned and well-informed; well-intentioned and ill-informed; ill-informed and ill-intentioned and problematic], it is possible to identify a far richer configuration of the sector, which in line with the current recession may not have hitherto been present.<sup>86</sup>

Dependency on the PRS gives rise to a possibility of exploitation at the hands of the ‘rogue landlord’ and impacts upon the physical and mental wellbeing of tenants (and now prospective tenants denied the right to rent under the legislation).<sup>87</sup> The dominant narrative from the late twentieth century, in line with the Housing Green Paper, offered the binary of the ‘many good and well-intentioned landlords’ and ‘a small minority of private landlords [who] set out to exploit their tenants and the community at large in flagrant disregard of the law’.<sup>88</sup> The power imbalance (between those having property rights and those with contractual occupation rights) exposes the tenants’ vulnerability. Historically derived from the perpetuated inequality in bargaining power between the parties, this has only been improved by incremental and statutory regulation attempting to address security of tenure and housing condition standards in minimal fashion.<sup>89</sup> This will change if the White Paper proposals are enacted, with the Government promising to halve the number of non-decent homes in the sector by 2030 and make all homes in the sector subject to the Decent Homes Standard.

Some eight million people in England live in unfit accommodation.<sup>90</sup> Of these some 1.6 million live in the private sector.<sup>91</sup> In 2015 28% of privately rented accommodation failed to meet the Decent Homes Standard.<sup>92</sup> The costs of this extend not only to those who inhabit such properties (who unfortunately account for 1 in 5 excess deaths per annum) but also to wider society. It is estimated that one million rental properties remain in a ‘non-decent’ condition.<sup>93</sup> Further, estimates of the economic costs of poor housing to the NHS, in both the public and private sectors, equate to approximately £1.4bn.<sup>94</sup> These figures are significant but do not directly signal the role of the landlord as a resource, whose activities are integral to society as a whole and impact upon the wellbeing of all in some sense.

<sup>84</sup>C Lord et al *Understanding Landlords. A Study of Private Landlords in the UK using the Wealth and Assets Survey* (London: Strategic Society Centre, 2013).

<sup>85</sup>HM Government *Laying the Foundations: A Housing Strategy for England* (December 2011).

<sup>86</sup>See ADH Crook et al *Repair and Maintenance by Private Landlords* (Department for the Environment Transport and the Regions London, 2000) Tables 1, 12 and 13; M Partington et al *Ensuring Compliance: The Case of the Private Rented Sector* Working Paper (06/148, March 2006), Centre for Market and Public Organisation (CMPO), Bristol University Fig 1.

<sup>87</sup>Note for example Part 2 of the Housing and Planning Act 2016.

<sup>88</sup>DETR/DSS *Quality and Choice: A Decent Home for All* The Housing Green Paper (April 2000) para 5.4.

<sup>89</sup>See the Housing Act 1988 provisions relating to assured shorthold tenancies and the Protection from Eviction Act 1977. As to housing condition see the Homes (Fitness for Human Habitation) Act 2018, which consolidates the existing law. See also the House of Commons, Housing Communities and Local Government Committee, *Private Rented Sector* Fourth Report of Session 2017–19, HC 440 (19 April 2018) <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/440/440.pdf>.

<sup>90</sup>Research undertaken by the Institute for Social Policy, Housing, Equalities Research (I-SPHERE) Heriot-Watt University for the National Housing Federation, <https://www.housing.org.uk/globalassets/files/resource-files/what-you-need-to-know.pdf>.

<sup>91</sup>CP 693, above n 5.

<sup>92</sup>Department for Communities and Local Government *English Housing Survey Private Rented Sector Report 2015–16* [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627686/Private\\_rented\\_sector\\_report\\_2015-16.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627686/Private_rented_sector_report_2015-16.pdf); a Chartered Institute of Environmental Health press release of 2022 put the average at 22.8%: <https://www.cieh.org/ehn/housing-and-community/2022/september/yorkshire-s-private-rental-sector-is-worst-in-country/>.

<sup>93</sup>*English Housing Survey 2020–21*, above n 25.

<sup>94</sup>BRE Report *The Cost of Poor Housing in England* (2021); ‘Man with breathing difficulties living in squalid housing as Hancock slams “horrific conditions”’ (ITV News, 22 July 2021) <https://www.itv.com/news/2021-05-19/disabled-man-left-to-live-in-squalid-housing-as-health-secretary-condemns-horrific-conditions-exposed-by-itv-news>. NHS blog ‘Serving up healthy housing’ (23 October 2018) <https://www.england.nhs.uk/blog/serving-up-healthy-housing/> (spending for 2020/21 on primary care was £13.9bn – BMA figures NHS funding data analysis).



Policies that included the possible demonisation of better landlords and increasing their tax burden by limiting their rights to offset expenses, have made accessing the sector more difficult and at the same time (and perhaps less apparent) those defined as landlords within the sector more vulnerable, which in turn raises the spectre of reducing housing availability thus potentially exacerbating the crisis.<sup>95</sup>

### Regulatory strategies

In late modernity, the ‘withering’ of the state and the rise of new public management strategies, emphasising contractualisation and marketisation, have resulted in a shrinking public sector that oversees the provision of services by other actors rather than state provision itself.<sup>96</sup> Unlike the ‘glory days’ of municipalism with strong local government and the post-World War II strategies securing council housing on a massive scale, the shift from public to market welfare resulted in declining provision. Despite the extant need for housing, it is the private sector landlord that has filled the deficits in public provision.<sup>97</sup>

It is known that, in terms of regulatory design, conventional command and control is of marginal effect when seeking to modify behaviour. Notions of effective regulation have moved on from a reliance upon Austinian ‘command’ backed by state enforcement.<sup>98</sup> Instead, more compliance-based approaches that harness the capacities of those within the regulatory space – including those being regulated, together with third parties – have been shown empirically to result in far better outcomes.<sup>99</sup> Within the housing domain, regulating the PRS has focused on property condition – the safety of the inhabited space rather than the capacities (or otherwise) of landlords.

The configuration of the sector, particularly housing condition informs both the regulatory strategies deployed and this in turn has an impact on housing provision generally. The sector can be viewed as, ‘... a divided set of regulatory communities’ with ‘permeable boundaries, neo-liberal strategies of self-regulation’ ‘mixed with more authoritarian forms of control’.<sup>100</sup> Historically much of the regulatory discourse (such as it is) has focused – and rightly so – on the inadequacy of the landlord to protect the physical space inhabited by the tenant or lessee and thus the tenant’s safety. The statutory form of regulation tends to focus less on the subject and instead on the property. This can be seen in the legislation covering gas and electrical safety, requiring landlords to ensure that safety checks are undertaken by those qualified to do so.<sup>101</sup> More generally, statutory obligations are imposed regarding the fitness of accommodation for habitation, with positive duties being imposed upon landlords in the event of disrepair.<sup>102</sup> Latterly, with the amplified profile of the PRS correlating to the greater dependency of the Government upon the sector to fulfil the deficits in public provision, it becomes possible to see changes in regulatory approach, with duties being imposed upon landlords in relation to tenants’ deposits. This is apparent also with the ‘right to rent’ legislation. The

<sup>95</sup>In a District Councils’ Network survey of December 2021, 76% of England’s district councils reported a rise in landlords selling properties in 2021 resulting in a rise in housing waiting lists: reported in (2022) March *The Planner*.

<sup>96</sup>F Hayek *The Road to Serfdom* (London: Routledge, 1944); B Edgworth *Law, Modernity, Postmodernity: Legal Change in the Contracting State* (Aldershot: Ashgate, 2019).

<sup>97</sup>Partington et al, above n 86, and at pp 6–18, A Marsh ‘Private renting: the regulatory challenge’ in M Partington et al *Ensuring Compliance: the Case of the Private Rented Sector* (CMPO Working Paper Series No 06/148) <http://www.bristol.ac.uk/media-library/sites/cmppo/migrated/documents/wp148.pdf>. The Right to Buy entitlement undoubtedly contributed to the deficit.

<sup>98</sup>J Austin *Lectures on Jurisprudence* (R Campbell (ed), London: John Murray, 1885) (1st edn 1832).

<sup>99</sup>BM Hutter *Compliance: Regulation and Environment* (Oxford: Oxford University Press, 1997).

<sup>100</sup>See above n 43, p 50.

<sup>101</sup>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 require that landlords have property electricians checked at least every five years by a properly qualified person. See also the Gas Safety (Installation and Use) Regulations 1998.

<sup>102</sup>Landlord and Tenant Act 1985, s 11, and the Homes (Fitness for Human Habitation) Act 2018, amending the 1985 Act to introduce a new housing fitness standard.



Immigration Act 2014, Part 3, effectively criminalises landlords (or their agents) who let out properties to those without the appropriate migration status. The consequences of this, however, impact upon both housing provision and ultimately tenants' access to housing, potentially engendering further risks and vulnerabilities in a sector that fulfils, for the time being at least, a considerable need for society as a whole.

In terms of risk, the loss of control derives from successive governments' dependency upon other (private sector) actors. This, in turn, feeds into a more generalised societal vulnerability which could offer the hope of resilience. Arguably, rather than enhancing opportunities for tenants to access the housing market, a series of factors combine to augment imbalances perhaps not seen in over a century. The Citizens' Advice Bureau has identified that despite a raft of existing and new regulation (eg the Housing Health and Safety Rating System (HHSRS) introduced by the Housing Act 2004, in force since April 2006 as the main system for assessing and enforcing housing standards in England and Wales, the Tenant Fees Act 2019, the Homes (Fitness for Human Habitation) Act 2018 and the provisions potentially banning the 'rogue' landlord (under the Housing and Planning Act 2016)), the regulatory landscape remains confusing and, despite increasing the penalties imposed upon deviant landlords for non-compliance, largely unenforceable.<sup>103</sup> The regime in fact remains largely one of 'command and control', heavily reliant on enforcement by local authorities, which have very limited resources.

Identity matters, and the Government, in constructing the 'good' (in the sense of being responsible) landlord, views this as one who acts in a responsible manner, complying with the duties imposed upon them through law and by the state. However, the regulatory style remains one of enforcement. This creates multiple sites of vulnerability (or vulnerabilities). Uncertainties in the enforcement of the provisions generate both vulnerability and risk. The National Audit Office in its 2021 Report identified that local authority funding constraint:

[limits] their ability to check properties proactively for non-compliance and therefore places greater reliance on tenants being aware of their rights and reporting problems.<sup>104</sup>

It is acknowledged further that deficits in intelligence are generated by both a lack of data and insight into effective regulatory approaches.<sup>105</sup> Tenants, landlords and their agents find it hard to gauge when, and if, enforcement will arise, given the drafting of legislation together with the uncertainties arising in language use itself. This in turn leads to raised levels of non-compliance, commonly noted when deploying strategies of this type. Some of the problems in regulatory design existed previously but are now amplified not by institutional form itself, but rather by the risks created by the state, often unwittingly.<sup>106</sup> The provisions highlight a continuing shift from property-condition focused regulation to subjective identities and a more relational approach. This trajectory has continued with the advent of Covid-19, but where the regulatory style deploys a more compliance-based relational ideal.

### In Covid times ...

Regulating the PRS effectively became critical to managing the pandemic overall. The risks of homelessness on a massive scale contributing to additional claims on an already stretched welfare system were unthinkable, as would be the detrimental impact on the nation's public health. For this reason, in March 2020 the Coronavirus Act 2020 was enacted and the Ministry of Housing, Communities and Local Government issued guidance, the first iteration of which came into force on 26 March 2020

<sup>103</sup>Citizens Advice *Getting the House in Order: How to Improve Standards in the Private Rented Sector* (26 June 2019) <https://www.citizensadvice.org.uk/about-us/our-work/policy/policy-research-topics/housing-policy-research/getting-the-house-in-order-how-to-improve-standards-in-the-private-rented-sector/>.

<sup>104</sup>NAO, above n 26, Summary p 6.

<sup>105</sup>Ibid, Part 3 paras 3.6–3.7, pp 32–33; see also the Landlord Segmentation Analysis 2020 of the Department of Levelling Up, Housing and Communities referred to at p 37.

<sup>106</sup>Roark and Fox O'Mahoney, above n 21.

(revised on 26 February 2021). The Act, which received Royal Assent on 25 March 2020, provided for a moratorium in the bringing of possession proceedings by delaying when landlords could evict tenants.<sup>107</sup> That moratorium ended on 20 September 2020. However, the Act's provisions increased the required notice period landlords must provide to tenants when seeking possession of a residential property. Originally a stay of all current proceedings applied from 27 March 2020 until 30 October 2020 (unless the Secretary of State provided otherwise), with notice requirements initiating recovery – ie the notice to quit – becoming effective only after giving three months' notice. The provisions did not appear to apply to licences, where the four weeks' notice requirement was still applicable under the Protection from Eviction Act 1977, section 5. The provisions applied to all assured short-hold tenancies (those commonly found in instances of renting in the sector).

From 29 August 2020, with the exception of the most serious cases (defined to include serious cases relating to anti-social behaviour (including rioting), where a tenant had accrued rent arrears to the value of over six months' rent, where a tenant has passed away and where a tenant had no right to rent under immigration legislation), where the notice period can vary from between two weeks and one month, landlords could not begin possession proceedings unless they had given their tenants six months' notice (subsequently reduced to four). The provisions applied until 31 May 2021. Legislation was also enacted to prevent bailiffs from exercising evictions. The restrictions on eviction were lifted on 1 June 2021 in England and 1 July of the same year in Wales. The Government did not envisage any lawful evictions taking place until mid-June in all but the most serious of cases, given the stay on evictions until 31 May 2021. The provisions applied to England and Wales only, with the Coronavirus Act 2020 Regulations relevant to protection from eviction applying only in England.<sup>108</sup>

At the same time, the Government issued guidance (in two separate documents) for private landlords and residential tenants in the PRS in England and Wales.<sup>109</sup> Advisory guidance was issued also on managing property maintenance issues, health and safety, and overcrowding as England moved towards an easing of lockdown measures. The guidance exhorted tenants to continue to pay their rent and adhere to their tenancy obligations and encouraged 'an early conversation' between the parties where tenants found themselves in financial difficulty such that they were unable to pay their rent. Guidance on the managing of rent arrears and avoiding possession claims was devised by the Government in collaboration with the National Residential Landlords' Association – a body representing many private sector landlords within the jurisdiction. An additional facility for buy-to-let landlords was the creation of a 'mortgage holiday' facility. Landlords were 'encouraged' not to start new proceedings, 'without a very good reason'. The gist of the guidance is to communicate and collaborate and, if necessary, deploy mediation rather than court proceedings.<sup>110</sup>

Arguably, the Government's intent was to foster co-operation and collaboration between the parties. Ostensibly this appears a rational approach better suited to the acknowledged more effective compliance-based strategies. However, although the regulatory style moves further towards a control of the subjects as opposed to the property (especially in relation to the landlord), it might be argued that this presented real risks for tenants. In advocating collaboration in a context of clear power inequalities, tenants could be significantly disadvantaged – especially where landlords resort to 'extra-

<sup>107</sup>See Sch 29 to the Act.

<sup>108</sup>Coronavirus Act 2020, s 81, applying Sch 29 to that Act; Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2020, SI 2020/914, regs 1(2), 3(2)(7)(a).

<sup>109</sup>Department for Levelling Up, Housing and Communities Guidance *Understanding the Possession Action Process: A Guide for Private Landlords in England and Wales* (updated 7 April 2021 and subsequently 13 February 2023) <https://www.gov.uk/government/publications/understanding-the-possession-action-process-guidance-for-landlords-and-tenants/understanding-the-possession-action-process-a-guide-for-private-landlords-in-england-and-wales>; *Understanding the Possession Action Process: A Guide for Private Residential Tenants in England and Wales*. See also Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities and Local Government *Guidance for Landlords and Tenants* [withdrawn] <https://www.gov.uk/government/publications/covid-19-and-renting-guidance-for-landlords-tenants-and-local-authorities/coronavirus-covid-19-guidance-for-landlords-and-tenants>.

<sup>110</sup>NRLA *Pre-Action Plan: Managing Arrears and Avoiding Possession Claims* <https://www.nrla.org.uk/resources/ending-your-tenancy/pre-action-plan-avoiding-possession-claims>.

judicial' evictions. The Independent newspaper in September 2020, warned of a 'massive increase in unlawful evictions' during the course of the pandemic.<sup>111</sup> Further, a survey undertaken of around 10,000 households by YouGov for the Joseph Rowntree Foundation (a leading independent organisation working to effect social change to eliminate UK poverty) estimated that 450,000 households were in arrears at the time the eviction moratorium was lifted and almost a fifth of this group (18%) had been in arrears for more than four months. It was estimated that by 31 May 2021 5% of renters (amounting to some 400,000 households) had received either a notice of eviction or a notice indicating the landlord's intention to recover the property.<sup>112</sup> The same study showed that 11% of all renters, some one million households – 50% of these being families with children – feared being evicted in the following three months. In times of financial constraint landlords may avoid compliance with repairing obligations on the grounds of risk to health (and this is without considering the problems for those diagnosed with Covid symptoms – especially tenants and the consequent implications; anecdotal evidence suggests that landlords struggle to look favourably on tenants with Long Covid symptoms). It is possible that deficiencies in control – deriving especially from the lack of resources for local authority enforcers where the burden of regulatory enforcement in the PRS falls, could result in the worst of worlds for tenants, landlords and society overall with lowering of standards and trust deficits between individual tenants and landlords. The publication of the policy paper *A Fairer Private Rented Sector*, offering a 'new deal' to those living in the PRS may yet leave renters in precarious positions.<sup>113</sup>

### Government's 'Levelling up' programme: a source of hopefulness?

As stated above, the Government's stated objective is to improve the quality of housing stock while empowering tenants to make informed choices about renting in the sector, bringing greater security to tenants and satisfaction with their homes by 2030. Significantly, the Government proposes to repeal the right of landlords to evict tenants under section 21 of the Housing Act 1988 by replacing the assured shorthold tenancy with a fixed-term tenancy. The latter proposal has been mooted for many years (and was even put forward in a Private Members' Bill). The initial consultation of July 2019 shows the distinctive and often opposing views of those landlords and tenants who responded.<sup>114</sup> This, coupled with limited appreciation of the structure of the sector (a fact acknowledged in the National Audit Office Report), which is necessary to effective regulation in any domain, will be problematic. The policy ambition of 'retrofitting' the relation between landlords and tenants, giving greater emphasis to relational aspects, while offering hope to tenants especially is laudable. None would seriously challenge the idea that tenants demand better protection from unscrupulous landlords. The question remains as to how these are identified. Concerns of lobbying groups such as Shelter, that the proposals will not be enacted in a timely manner, are perhaps only the initial concern.

For landlords, the intersection of an existing regulatory burden in combination with the consequences of the pandemic and economic downturn, has some interesting outcomes. Those with multiple properties may find that any disruption to funding streams gives rise to additional costs. While these may be offset by other economies of scale, exit might be one rational, if not drastic, option. Those

<sup>111</sup>'Illegal evictions up 50 per cent since the pandemic began as housing experts warn of a massive increase in coming months' (*The Independent*, 20 September 2020) <https://www.independent.co.uk/business/illegal-eviction-coronavirus-pandemic-housing-tenants-b487020.html>.

<sup>112</sup>JRF 'Joseph Rowntree Foundation warns the UK risks a "two tier" recovery' (31 May 2021) <https://www.jrf.org.uk/press/400000-renters-face-eviction-jrf-warns-uk-risks-%E2%80%98two-tier-recovery%E2%80%99>.

<sup>113</sup>Above n 17.

<sup>114</sup>See Annex C summary of Responses Qn 1 where 97% of tenants responding agreed with the proposal to abolish the Housing Act 1988, s 21 compared with 14% of landlords. And 58% of landlords and 6% of tenants were in favour of minimum term tenancies: Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities and Local Government *Consultation Outcome: A New Deal for Renting* (16 June 2022) <https://www.gov.uk/government/consultations/a-new-deal-for-renting-resetting-the-balance-of-rights-and-responsibilities-between-landlords-and-tenants/outcome/a-new-deal-for-renting-government-response>.

owning only a single property (who comprise a significant number) may find uncertainty particularly onerous. The pathology of the pandemic, in combination with policy changes, could give rise to counterproductive effects including the convergence of risk with vulnerability in such a way as to inhibit rather than generate resilience, leading to deficits in overall welfare, in this instance housing availability. Some observers suggest that the number of properties available to rent through letting agents halved in the month of March between 2019 and 2022, which does not bode well.<sup>115</sup>

A measure of optimism comes from deploying the lens of hope. For our purposes the idea of hope adds value to the project of minimising risk and enhancing resilience because it gives purchase to the possibility of human, and indeed institutional, interaction, that can foster empathy by reason of shared experience (the pandemic being such an instance) and more positive outcomes.<sup>116</sup> The steps taken by the Government to instil co-operation and collaboration are suggestive of a more constructive approach, and one deployed effectively in domains such as financial and safety regulation. A more nuanced approach – one that focuses on safety, property condition, tenant protection and indeed landlord capacity and capability – deploying a mix of regulatory styles, should figure in any implementation of policy change. The structure of a sector populated by landlords of all kinds with different capacities, seems not to figure largely in the present proposals, and this is apparent from the content of the White Paper, which gives no clear recognition of landlord heterogeneity or the ‘value’ of those smaller landlords with limited portfolios to housing provision.<sup>117</sup> The Government’s focus is again on one very important part of the problem – that of the tenant, without recognising the potential counter-productivity of its regulatory ambition if landlords’ capacities seem not to be factored into the equation.

Important though it is as both a positive and normative frame, vulnerability theory has the danger of the ‘so what’ response (yes we’re all vulnerable...). It runs the risk of creating conditions of stasis that, without more, have limited purchase. It is a good starting point, but more is needed to give the theory the traction it deserves. An appeal to risk (which some might infer requires acknowledging clearly the self-interested facet of the human condition) or a climate generating empathy arguably give the theory more explanatory ‘power’. One way of looking at this is through the lens of hope. The pandemic, for all its seismic effects, has shown perhaps how government, if it has the will, might reconfigure the rights and expectations of all present in the sector. It is already apparent that through guidance landlords can be ‘encouraged’ to reach consensus with their tenants to maximise efficient outcomes for all. This may be a reason for optimism, given the historical reluctance to impose legal duties upon landlords to act with sensitivity and compassion towards their tenants. However, it is yet to be seen whether policy statements and guidance will be translated into legislation. Such a shift would arguably truly mark a turning point in the regulation of the sector, giving hope to those currently most in need and setting clear parameters for all concerned.

<sup>115</sup>Propertymark ‘White paper claims a fairer deal for the PRS (16 June 2022) <https://www.propertymark.co.uk/resource/white-paper-claims-a-fairer-deal-for-the-prs.html> (see also *The New Statesman* 17 June 2022 suggesting a convergence with a more European model of renting).

<sup>116</sup>R Rorty, for example, gives hope centrality in the hermeneutic approach to political philosophy in *Philosophy and the Mirror of Nature* (Oxford: Blackwell, 1980) p 153. See also Rorty’s discussion of ‘selfish hopes’ in *Contingency, Irony and Solidarity* (Cambridge: Cambridge University Press, 1989) p 93.

<sup>117</sup>Above n 5, Ch 1 pp 18–19. Some may draw the inference that the smaller landlord has no place in the sector despite being a significant contributor to housing provision (above n 75).