

# Offences under the Protection from Eviction Act 1977 in England and Wales:

A report from

**Safer Renting**

Authors: Ben Reeve-Lewis, John-Luke Bolton and Julie Rugg



## About Safer Renting

Safer Renting is a service delivered by Cambridge House. Established in 1889 to tackle poverty, social inequity and injustice, Cambridge House is a social action charity working across London.

Our work is funded by both charitable foundations and through partnerships working with twelve London Boroughs, for whom we provide a Tenancy Relations service that includes protecting renters from harassment and illegal eviction, sustaining tenancies and preventing homelessness, as well as working with our clients to navigate the legal system to secure justice and redress.

The Safer Renting model is unique among front line housing services in its partnership approach with local authorities. Working across so many districts allows us to monitor landlord and agent activities to help partner councils improve their intelligence building and combine approaches to target and deal with the worst offenders.

Our 2020 report “Journeys in the Shadow Private Rented Sector” was based on two and a half years of research; interviewing renters, enforcement officers, solicitors, MPs and front-line housing providers. This project set out some of the very worst practises in the ‘shadow’ rented sector where landlords were using fear and intimidation as part of their letting strategy and experience of illegal eviction was commonplace. This report is a consequence of the one question that was invariably asked in response to the Shadows report: just how often does illegal eviction take place?

## Acknowledgements

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# Offences and prosecutions under the Protection from Eviction Act 1977 in England: establishing an annual count

## 1. Rationale for a count

There are four main reasons why establishing an annual indicator of harassment and unlawful eviction is both necessary and timely. Firstly, there is no existing routine form of data collection on the issue. The private rented sector has long been associated with a range of difficulties including inflated rents, poor property condition and lax management standards. A number of statutory datasets are available that measure the incidence of particular issues. For example, the English Housing Survey (EHS) includes assessment of material property conditions against the Decent Homes Standard, creating longitudinal data that is used to inform and monitor policy interventions.

The EHS often collects data on other aspects of private tenants' rental experience, but not every year, and not using the same question format. No data is routinely collected on the incidence of harassment or unlawful eviction, and evidence of the problem is patchy. In 2019/20, tenants were asked why they left their last tenancy, and the vast majority indicated that their tenancy had ended because they themselves had wanted to move (77.7 per cent) or that their tenancy term had been fixed in some way from the outset (9.7 per cent). A very small proportion indicated that they had had a poor relationship with their landlord (1.7 per cent) or had been asked to leave (8.3 per cent) although there is no indication in these cases that the means by which the tenancy had ended were illegal. In 2019/20, the EHS asked tenants if they were satisfied with the service of their landlord and 6.5 per cent indicated some degree of dissatisfaction. The survey did not collect data on why the tenant might be dissatisfied.<sup>1</sup>

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<sup>1</sup> English Housing Survey 2019/20: private rented sector. <https://www.gov.uk/government/statistics/english-housing-survey-2019-to-2020-private-rented-sector>. Annex tables 3.7 and 3.11.

Secondly, H-CLIC data indicates that the incidence of harassment and unlawful eviction has increased as a reason for loss of last settled accommodation (Table 1). Some reasons for this increase are suggested by earlier research. The last relatively comprehensive review of harassment and unlawful eviction, as it related to the operation of the Prevention from Eviction Act (PFEA), was funded by the Department for Environment and Transport in 2000. This report concluded that definition of the offence was problematic and so made no attempt at quantification. However, the report did contain a number of important observations. The report included data drawn from expert stakeholder interviews and interviews with landlords and tenants, and this information allowed the authors to list a number of circumstances in which these offences were likely to take place. All the factors that were felt to contribute to the likelihood of harassment and unlawful eviction in 2000 have become more prominent in the PRS since that time:

- There has been an increase in the number of tenants with vulnerabilities who are unable to secure access to a more limited social housing stock;
- An uptick in the number of economic migrants and asylum seekers has created a growing pool of tenants with limited knowledge of their housing rights;
- There is a higher proportion of tenants reliant on welfare payments to cover some or all of their rental costs; and heightened complexities around Universal Credit that landlords are less willing, or able to accept.

Thirdly, the Government has expressed a commitment to changes to the structure of assured shorthold tenancies. A 'benchmark' figure is necessary since the Renters Reform Bill is likely to amend or remove s21 of the Housing Act 1998. Housing activists have argued that s21 reflects and promotes tenure insecurity. S21 permits landlords to serve two months' notice on tenants without having to specify a reason for terminating the tenancy. A number of conditions have since been attached to the service a s21 notice<sup>2</sup>, reducing the ability of landlords to serve the notice when specific conditions apply. Serving a s21 notice is regarded by landlords as preferable to alternatives that require the production of incontestable evidence that a tenancy agreement has been breached.

It is particularly important to establish a mechanism for measuring the incidence of harassment and unlawful eviction in advance of any change that might come with new legislation. It is difficult to anticipate the impact of legislation on a sector where unintended consequences have proliferated. The removal of easier options for tenancy termination is

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<sup>2</sup> These include, inter alia, the landlord having given the tenant, at the start of the tenancy, a 'How to Rent' guide and current gas safety and electrical safety certificates, and the s21 has not been served within six months of the local housing authority serving an improvement notice or emergency remedial action notice.

interpreted by landlords as an increase in the risk of letting property. Landlords are apprehensive about delays in being able to terminate tenancies where tenants are inconsistent in rent payments or whose ASB causes difficulties for neighbours. As a consequence, landlords are less likely to let to tenants on lower incomes.<sup>3</sup> Furthermore, there is evidence that a 'shadow' private rented sector is in operation, catering for unmet needs at the very bottom of the market. This is the market in which unlawful eviction and harassment of tenants is a rather more commonplace occurrence.<sup>4</sup>

Fourthly, the strongest rationale for establishing a count to monitor the incidence of offences under the PfEA is that these actions are arguably the very worst practises a tenant can experience. Loss of home in any circumstances constitutes a substantial injury to emotional and psychological wellbeing. A very sudden loss of home or a forced move following a prolonged campaign of intimidation visits unmeasurable harm on the victim's mental health, and in Spencer *et al.* was likened to trauma (see Box 1).

**Box 1. Wilma, who was illegally evicted by her landlord**

"I couldn't cry, I was just numb thinking about the loss that I had. . I couldn't get anything back I was devastated. It was so much hardship I have to go through with my daughter. I wish my daughter didn't have to go through all this [..] It was a trauma I experienced [...] seeing all my daughter's and my belonging was thrown outside the house and I was living in fear that every day we could be thrown out at any time. I did ask for the council for help but they reject on the basis of NRPF, I still didn't get any support since then. I had to go through so much [...] I can't imagine how the landlord could get away with this and not be penalised for such an act."

R. Spencer, B. Reeve-Lewis, J. Rugg & E. Barata (2020) 'Journeys in the Shadow Private Rented Sector', Cambridge House/Centre for Housing Policy, 47.

A failure even to attempt to count the incidence of such egregious behaviour is a strong signal that harassment and unlawful eviction are in some way insignificant. This clearly cannot be the case.

**Use made of the Prevention from Eviction Act**

Despite the very serious nature of harassment and unlawful eviction, local authorities make little use of their powers under the PfEA. In part, the ability to pursue action reflects a

<sup>3</sup> J. Rugg and A. Wallace (2021) Property Supply to the Lower End of the English Private Rented Sector, Centre for Housing Policy.

<sup>4</sup> R. Spencer, B. Reeve-Lewis, J. Rugg & E. Barata (2020) Journeys in the Shadow Private Rented Sector, Cambridge House/Centre for Housing Policy.

reduction in staffing resource as a consequence of austerity measures.<sup>5</sup> In addition, local authority regulatory attention has been directed elsewhere.

A number of new measures have come into force that increase local authorities' abilities to penalise aspects of poor landlordism and offer some level of remuneration to the local authority to offset the cost of action. There has been an expansion in the range and severity of civil penalties that might be served by a local authority where landlords are in breach of their responsibilities under the Housing and Planning Act 2016. A maximum penalty of £30,000 applies where landlords are in breach, and the penalty is retained by the local authority as a contribution to its regulatory work.<sup>6</sup>

Local authorities receive no similar incentive to pursue convictions for offences under the Protection from Eviction Act 1977. This Act is the main body of legislation available to local authorities to investigate and prosecute allegations of harassment and unlawful eviction of renters. This is the only legislation that construes a particular landlord action as a criminal offence, and where a conviction in either the Magistrate or Crown Court could lead to imprisonment. All residential occupiers are protected from harassment and most residential occupiers cannot be evicted without a landlord following due process and seeking an order of the court.<sup>7</sup>

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<sup>5</sup> J. Stewart & R. Moffatt (2022) *Regulating the Privately Rented Sector: Evidence into Practice*, Routledge.

<sup>6</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/697644/Civil\\_penalty\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf)

<sup>7</sup> Exceptions include tenants living with landlords in the landlord's property.

The legislation is now somewhat outdated. The PFEA was passed in the context of widespread concern relating to the activities of landlords such as Peter Rachman, although it has been argued that the Act, in its earliest years, was more often deployed to regulate disputes between resident landlords and their lodger/tenants.<sup>8</sup> From the outset it has been acknowledged that there are substantial problems with the operation of the Act. The Act is permissive. Local authorities can prosecute landlords under s6 of the PFEA, but are not required to prosecute or to investigate any allegation of contravention of the Act. Furthermore, a substantial decline in the number of local authorities employing Tenancy Relations Officers has reduced local authority confidence to pursue legal measures using the PFEA. It is by no means the case that every local authority has officers with this specialism.<sup>9</sup>

## **Box 2. Protection from Eviction Act 1977, Part 1**

### **PART I UNLAWFUL EVICTION AND HARASSMENT**

1 Unlawful eviction and harassment of occupier.

(1) In this section “residential occupier”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence, unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3) If any person with intent to cause the residential occupier of any premises—

(a) to give up the occupation of the premises or any part thereof; or

(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

<sup>8</sup> Nelkin, D. (1983) *The Limits of the Legal Process: A Study of Landlords, Law and Crime*, Edinburgh: Academic Press.

<sup>9</sup> [https://www.nhas.org.uk/assets/docs/Tenancy\\_relations\\_-\\_what\\_it\\_means\\_now\\_-\\_Gerry\\_Glyde\\_-\\_Housing\\_Matters\\_October\\_2016.pdf](https://www.nhas.org.uk/assets/docs/Tenancy_relations_-_what_it_means_now_-_Gerry_Glyde_-_Housing_Matters_October_2016.pdf)

(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,  
and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

(3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

(3C) In subsection (3A) above "landlord", in relation to a residential occupier of any premises, means the person who, but for—

(a) the residential occupier's right to remain in occupation of the premises, or

(b) a restriction on the person's right to recover possession of the premises,

would be entitled to occupation of the premises and any superior landlord under whom that person derives title.

(4) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the prescribed sum] or to imprisonment for a term not exceeding 6 months or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.

(5) Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.

(6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Note textual amendments at:

<https://www.legislation.gov.uk/ukpga/1977/43#commentary-c907907>

This short paper does not address the failings of the Act, although change is clearly required. Rather, this report will use advice activity focussed on and around offences under the PFEA to consider the feasibility of establishing an annual count. This count has two elements: the incidence of prosecutions under the Act, and evidence of offences committed under the Act. The two elements are deemed essential in order to highlight the disparity between convictions under the Act and a measure of problems that tenants are encountering.



## 2. Problems with counting

### Defining offences under the Act

There is a lack of clear understanding of how exactly harassment is understood. There are actually two tests of harassment in the PFEA. Harassment by landlord or agent includes acts that are 'likely' to cause a residential occupier to give up their accommodation. However, harassment by 'any other person' must be shown to have been done with the 'intent' of causing a residential occupier to give up their accommodation.

Notwithstanding the niceties of wording, Marsh *et al.* established that tenants, landlords, local authorities, police and solicitors had different views about what actions might be construed as harassment, and different levels of tolerance of particular actions depending on their circumstances. However, it was generally agreed that harassment included any action that led a tenant to feel uncomfortable in their tenancy and – ultimately – to want to move, which was the core intention of the landlord's harassment.<sup>10</sup>

### Verification and underestimation

Numerical evidence of tenant experience of offences under the Act is rather more difficult to establish. Shelter has undertaken research on YouGov survey results, this research has aimed to establish an approximation on the number of homes affected by a range of poor management practices.<sup>11</sup> However, this information is self-reported and tenants may not always be in the best position to judge the legality of particular actions.

A study by the Legal Education Foundation found that 47 per cent of respondents to the English and Welsh Civil and Social Justice Survey Panel (2010 and 2012 waves) did not consider that their housing problems were legal issues.<sup>12</sup>

The proposed count takes an alternative approach and aims to quantify the number of tenants who make a complaint in a context where their circumstances are assessed by a housing or advice professional who then logs the complaint as an offence under the PFEA. As will be seen, the method draws on data collection across a number of agencies since there is no single data collection point.

The resultant count will be a substantial under-estimate. As the Legal Education Foundation study found, not all housing problems will be construed as legal problems where advice

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<sup>10</sup> Marsh, A., Forrest, R., Kennett, P., Niner, P. & Cowan, D. (2000) Harassment and Unlawful Eviction of Private Rented Sector Tenants and Park Home Residents, DETR.

<sup>11</sup> C. Sagoe, R. Ehrlich, L. Reynolds & H. Rich (2020) Time for Change: Making Renting Fairer for Private Landlords, Shelter.

<sup>12</sup> The Legal Education Foundation (2015) The Legal Problems of Renters Summary, LEF,

[https://www.thelegaleducationfoundation.org/wp-content/uploads/2015/12/ULPR\\_summary.pdf](https://www.thelegaleducationfoundation.org/wp-content/uploads/2015/12/ULPR_summary.pdf)

might provide a solution. In the view of this report, 'demand for services, is therefore, not a good proxy for the prevalence of legal problems'.<sup>13</sup> In addition, there will be many circumstances in which a single complaint might well reflect the experience of more than one household. For example, where landlords seek to 'disestablish' an illegal house in multiple occupation. Nevertheless, the exercise still has value. The rough sleeper count is an appropriate analogy. The annual rough sleeper count was launched in 1996 with the intention of the data contributing to decision-making around the Housing Investment Programme. Guidance was provided on the counting process, depending on how local authorities judged the severity of the problem in their area. Over time, changes to the guidance and nature of the count has improved its robustness but it remains the case that local authorities do not apply exactly the same counting method. As a consequence, the rough sleeper count does not meet the 'National Statistics' standard.<sup>14</sup>

As a snapshot figure, the number is generally regarded as a substantial underestimate. Similarly, any attempt to measure harassment or unlawful eviction will also be unable to capture the degree to which such actions take place. However, the fact that an annual count is undertaken means that the issue is revisited annually and the overall trends are analysed particularly where trajectories indicate a worsening problem.

Returning every year to a standardised count is a first step in acknowledging the importance of a problem and signals ongoing commitment to continued scrutiny.

### **Interpreting a count**

There are problems with interpreting any count number since the figure can reflect other factors that do not necessarily pertain to the incidence of harassment or unlawful eviction.

For example:

- an increase or decrease in the number of complaints could reflect growth or decrease in the size of the PRS;
- more effective regulation of harassment and unlawful eviction might be taking place through other means: a decrease in prosecutions under the PFEA does not preclude the successful prosecution and sentencing of landlords who are likely to be perpetrating PFEA-related offences, but who can be more readily pursued for other property-related offences under the various Housing Acts; and
- a fall or increase in staffing amongst participating agencies affects the ability to meet advice demand.

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<sup>13</sup> See note 14.

<sup>14</sup> Ibid.

This type of critique is attached to any attempt to arrive at quantitative measures of any societal problem, and here, are simply listed to signal that interpretation needs to be cautious.

### **3. Establishing a replicable counting method**

The rough sleeper count is a strong indication that there needs to be clarity around what exactly is being counted. 'Rough sleeping' has no clear definition and a count of people who are sleeping on the street perforce excludes all individuals whose homelessness is invisible. Similarly, any count of unlawful eviction or harassment cannot encompass all the times tenants have been induced to leave a tenancy unwillingly or been subject to practices 'calculated to interfere with the peace or comfort of the residential occupier'. The count will include two figures: the number of times individuals approached an advice/housing-related agency for assistance with problems they were having with their landlord, and where the agency logged that problem as harassment or unlawful eviction; and prosecutions under the PFEA as logged by the Ministry of Justice under crime code 87 (Protection from Eviction Act 1977).

#### **Individuals approaching advice agencies**

The first stage of this work included ascertaining which organisations were recording data on the incidence of harassment and unlawful eviction, and what kinds of information were being collected. This part of the project included extended discussion with:

- local authority officers including Tenancy Relations Officers (TROs), Environmental Health Officers (EHOs) and Homelessness Officers;
- Law centres and private solicitors;
- Third sector housing advice agencies;
- Members of Parliament.

This process indicated that although individuals or agencies might well routinely encounter cases of harassment or unlawful eviction, it was not necessarily the case that a formalised count was being made. For example, MPs might regularly take meetings with constituents who have problems with their landlord, but even where an MP's office might log problems, there is no method of centralised collection.

Discussions indicated that a replicable measure should rest on the incidence of individuals seeking advice from agencies that had the capacity to judge whether or not the tenant had been subject to, or threatened with, offences under the PFEA. Specifically, attention would be paid to descriptions of activities under Section 1(2) and Section 1 (3):

“Section 1(2):

If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

Section 1(3):

(3) If any person with intent to cause the residential occupier of any premises—

(a) to give up the occupation of the premises or any part thereof; or

(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.”

### **Data and agencies included in the count**

Taken together, this report will refer to ‘offences under the Protection from Eviction Act 1977’ as reported in five contexts:

- Logged as part of local authority H-CLIC returns on people presenting to the local authority as either homeless or threatened with homelessness;
- Centralised data collection by Citizens Advice caseworkers logging complaints made by individuals;
- Centralised data collection by Shelter caseworkers logging complaints made by individuals;
- Cases dealt with by the Legal Aid Agency; and
- Safer Renting Caseload Data.

A brief summary of each data collection mode follows.

### **H-CLIC Data**

#### **Nature of the data**

Since 1996, each local authority has been obliged to submit a quarterly summary of homelessness activity in order to log the incidence of homelessness and local authorities’ response to acute housing need. These data – the ‘P1E’ returns – were submitted by all local authorities, and this information provides essential longitudinal data on homelessness trends. The P1E system was revised with the introduction of the Homelessness Reduction Act in 2018. This process introduced the Homeless Case Level Information Collection (H-CLIC). The new system aimed to collect more data on why households become homeless.

The value of the system rests in the fact that local authorities will be seeking information to justify their accepting a homelessness prevention or relief duty. The local authority officer

will therefore need to be satisfied that an illegal eviction is being threatened or has actually taken place. To log a case under this heading, local authorities have to agree that “The applicant was evicted by their landlord or agent without due legal process when they had the right to continue to occupy.”<sup>15</sup>

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<sup>15</sup> [https://gss.civilservice.gov.uk/wp-content/uploads/2018/05/H\\_CLIC\\_v1.4.1\\_guidance.pdf](https://gss.civilservice.gov.uk/wp-content/uploads/2018/05/H_CLIC_v1.4.1_guidance.pdf)

Notwithstanding their limitations, the H-CLIC returns contribute valuable time-series data and are collected quarterly in a uniform way from each local authority. Even a limited time-series indicates that incidence may be increasing. Table 1 shows that the number of households owed a prevention or relief duty by either threat or actual loss of home due to illegal eviction has decreased over time. However, the incidence of the problem has increased as a proportion of households presenting as homeless as a consequence of loss of AST. Similarly, Table 2 indicates that the proportion of households threatened with homelessness as a consequence of illegal eviction is small, but the proportion of households presenting with that problem is increasing.

**Table 1. Number of households owed a relief duty by reason of loss of last settled home England, 2018 Q2 to 2021 Q3**

Year	Total number of households losing last accommodation as a consequence of end of Assured Shorthold Tenancy	Number of households losing accommodation due to illegal eviction	Proportion of households homeless as a consequence of end of AST where an illegal eviction took place (%)
2018/19	13,570	520	3.83
2019/20	14,560	720	4.95
2020/21	9,520	690	7.25

Source: <https://www.gov.uk/government/statistical-data-sets/live-tables-on-homelessness>, Table A2.

**Table 2. Number of households owed a relief duty by reason of threat of loss of last settled home England, 2018 Q2 to 2021 Q3**

Total number of households threatened with loss of accommodation as a consequence of end of Assured Shorthold Tenancy	Number of households losing accommodation due to illegal eviction	Proportion of households homeless as a consequence of end of AST where an illegal eviction took place (%)
45,090	310	0.69
43,410	340	0.78
24,750	340	1.37

Source: <https://www.gov.uk/government/statistical-data-sets/live-tables-on-homelessness>, Table A2.

Arguably, the data in Tables 1 and 2 may well reflect atypical trends since 2020 Q2 as a consequence of restrictions in eviction proceedings under the Covid lockdown. However, the data does signal a cause for concern if future regulation restricts landlord options for legal eviction.

## **Citizens Advice Data**

### **Nature of the data**

Citizens Advice (CA) is a third sector agency delivering advice through 265 independent local charities spread throughout England and Wales.<sup>16</sup> Arguably, CA is the most visible and well-known of all national advice agencies, and as a consequence its services are in heavy demand. The annual report indicates that the CA website was visited by 6.1m people seeking advice on housing. The 2020/21 annual report indicates that a total of 265,000 people were given advice on issues related to housing. Clients seeking one-to-one advice are able to contact CA via a range of methods including in person, on-line and by telephone. CA clients are given a unique identifying number: there is, therefore, no risk of double-counting within the CA data.

The complaint type is logged by the trained professionals and volunteers working for CA after advice is given to the client. CA records three separate measures that are relevant to this project:

**Harassment and illegal eviction (threatened homelessness):** recorded when an individual seeking advice has informed CA that they have been the victim of harassing behaviour and/or the client has informed CA that the landlord has used the threat of illegal eviction as a harassing tool;

**Harassment and illegal eviction (actual homelessness):** recorded when a client has informed CA that they have been illegally evicted and when a client has informed CA of harassment pre- or post-eviction; and

**Illegal eviction:** logged where an individual seeking advice has told CA that they have been illegally evicted.

All three of these measures are relevant to the aim of this project. The measure 'Harassment and illegal eviction (threatened homelessness)' refers complaints of harassment of the occupant by the landlord, including using the threat of eviction as a harassing tool. Here harassment is not clearly defined, therefore there is potential for cases to be recorded as

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[https://assets.ctfassets.net/mfz4nbgura3g/3lpSJOvGvM7psV02BYGqSU/8717ac2738259318ce1d5a1d32127fa/CA\\_annual\\_report\\_2020-21.pdf](https://assets.ctfassets.net/mfz4nbgura3g/3lpSJOvGvM7psV02BYGqSU/8717ac2738259318ce1d5a1d32127fa/CA_annual_report_2020-21.pdf)

harassment, that might not strictly speaking constitute an offence under the Act. Limited information is available on what conditions would constitute a case to be recorded under this measure. However, the advice is being given by trained housing law advisors, and this provides some reassurance that the figures recorded under this measure reflect the legal definitions of the Act.

'Harassment and Illegal Eviction (Actual Homelessness)' refers to breaches of both Section 1(2) and Section 1(3) as it encompasses people who have reported harassment to CA and where an illegal eviction has actually taken place. There is greater confidence that this measure accurately reflects a breach of the Act since it only includes cases where an illegal eviction has occurred.

The measure 'Illegal Eviction' refers to a complaint of illegal eviction, which is a clear breach of section 1(2) of the Protection from Eviction Act 1977.

### **Shelter data**

Shelter offers specialist housing advice, support and legal services. According to its annual report, in the financial year 2020/21, Shelter handled a total of 39,943 telephone calls to its help line<sup>17</sup>.

#### **Nature of the data**

Shelter data counts 'cases'. This unit does not specify whether each case dealt with an individual, household or property. The figure is collected annually rather than quarterly. Shelter logs each of its cases against a pre-set list of problems. Two categories under this listing have relevance to an annual count. Advisors are able to log instances of harassment and/or illegal eviction, and in some cases a follow-up investigation might ensue although this is not always the case.

A second measure is reports of illegal eviction or harassment by people who have no tenure and/or limited rights. This data has been excluded as it is likely that these individuals would fall outside the protections of the Act.

### **Legal Aid Agency (LAA) Data**

The Ministry of Justice operates the Legal Aid Agency which provides a network of legal aid centres throughout the country. The LAA provides services for people who would otherwise

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[https://assets.ctfassets.net/6sxvmndn0s/5uHMRgbRLOZhyCGhd0ZuCz/4013b7ae381ae8c967da449d37f786b3/202021\\_Annual\\_Report\\_-\\_FINAL\\_.pdf](https://assets.ctfassets.net/6sxvmndn0s/5uHMRgbRLOZhyCGhd0ZuCz/4013b7ae381ae8c967da449d37f786b3/202021_Annual_Report_-_FINAL_.pdf)



be unable to secure legal advice, and deals with both civil and criminal matters. Legal Aid is available for housing matters including unlawful eviction and harassment injunctions.

### **Nature of the data**

The unit being measured in the data provided by LAA is cases dealt with by the LAA. The 'case' may comprise an individual, a household or a whole property. The LAA logs cases against pre-determined criteria, and three are relevant to this count.

**Harassment – injunction:** cases where representation was funded by the LAA and the intended action in the case was for an injunction under section 3 of The Protection from Harassment Act 1977. Section 1(1) of said Act states, 'A person must not pursue a course of conduct – (a) Which amounts to harassment of another and (b) which he knows or ought to know amounts to harassment'. The legal aid data on injunctions pursued for harassment subdivides and here the count only includes the numbers of injunctions that have been pursued in relation to housing.

**Harassment/wrongful eviction:** cases in which representation was funded by the LAA and the intended action was for harassment and or wrongful breach of quiet enjoyment and or trespass and or assault and or eviction against the opponent.

**Harassment/unlawful eviction:** cases assisted via the Legal Help (Advice Service) for harassment and or wrongful breach of quiet enjoyment and or trespass and or assault and or eviction against the opponent. This measure does not refer to cases in which representation was funded, but where expert advice was given over the phone.

All three of these measures are valid indicators of offences committed under the Protection from Eviction Act 1977. The cases are recorded by legally trained solicitors, who are capable of assessing the legal circumstances of a cases. The assessment is for civil redress rather than a criminal prosecution. However, the grounds of civil action overlap with those of a criminal prosecution.

### **Safer Renting Caseload Data**

Safer Renting is a charitable agency that employs seven caseworkers to provide a specialist tenancy relations service to 11 Boroughs across London. Safer Renting receives referrals from partner boroughs on issues relating to landlord tenant law. Clients are assisted on a range of issues including but not limited to disrepair, harassment, illegal eviction and defending possession proceedings.

### **Nature of the Data**

The unit of measurement for the data provided by Safer Renting is the 'case'. This does not differentiate between individual, household or property, and cases range across all types. It is not possible to differentiate due to the nature of the recording system. There is no risk of double counting within the data, as each case is assigned a unique code.

Caseworkers use a system called AdvicePro to manage and record their caseload.

AdvicePro's functionality allows caseworkers to record details that describe the nature of the case, this includes the strategies the caseworker intends to pursue and details about what has occurred to date. The AdvicePro system is able to produce a report summarising all cases with a particular strategy or a particular detail recorded. For the purpose of this research, a report was produced for all cases that were open on the AdvicePro database in the year 2021 with case strategies or details that indicated an offence under the PfEA was likely to have taken place. All of these cases were then sent to the relevant caseworker, who was able to confirm whether or not an offence under the PfEA had been committed.

In line with the purpose of this report, cases were assessed by caseworkers through reference to the offences under the PfEA and were recorded if the caseworker believed that the actions of the landlord in that case were likely to merit an offence under section 1(2) or section 1(3) of the act. Caseworkers are well positioned to make this assessment, as they are required to have an in-depth understanding of both the legislation and the facts of each of their own cases.

### **Limitations of the data**

This report measures the number of times that advice was given to an individual whose problems were classified as offences under the PfEA. As indicated above, the count under-

estimates the scale of the problem. Agencies included in this count have far more requests for advice than they are able to handle, and provision can be patchy. For example, cuts to legal aid have radically reduced the number of provider offices, from 755 in 2011/12 to 322 in 2020-21.<sup>18</sup> It was found that in February 2021 almost 40 per cent of the population of England and Wales did not have a housing legal aid provider in their local authority area.<sup>19</sup>

Further, the count only measures the number of people who were both willing *and able* to access advice and support. One of the measures only counts cases where the applicant has the right to access advice. H-CLIC data is collected by local authorities from households who are eligible for assistance and does not include applicants whose immigration status excludes them from homelessness by virtue of s185 of the Housing Act 1996.

Tenants who may have the right to seek assistance sometimes do not do so out of fear of the consequences, or because they know that the local authority would be unable to offer better accommodation. Indeed, they may have been placed in that accommodation by the local authority itself.<sup>20</sup> Tenants are perhaps tending to see little point in complaining since their housing situation is unlikely to improve as a consequence.

Both Safer Renting and Citizens Advice logs their assistance using a unique reference number which prevents double-counting where an individual might approach the agency twice or more with the same problem. Other agencies included in the count do not follow this protocol. However, it is not unreasonable to presume that incidence of double-counting will be substantially outweighed by the under-estimation of the count.

Cases are recorded against pre-set categories, with no explicit expectation that the cases should meet the strict legal definition of offences under the PFEA as required by this measurement exercise. Nevertheless, in all cases advice is being given by a trained housing advice provider and it is reasonable to presume that use of the classification is informed by legal definitions of the Act.

### **Prosecutions under the Act**

Counting the incidence of prosecutions under the PFEA is not necessarily straightforward. One possible source of data is the national rogue landlord database. The Housing and Planning Act 2016 requires local housing authorities to enter an individual's details if they receive a banning order or have in the past twelve months received a banning order or been convicted of two or more civil penalties. An entry would also be made with regard to landlords or letting agents convicted under the PFEA. This database is only available to local

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<sup>18</sup> The Law Society (2021) Civil legal aid: A review of its sustainability and the challenges to its viability, 17.

<sup>19</sup> <https://www.lawsociety.org.uk/campaigns/legal-aid-deserts/housing>, accessed 11 Apr 2022.

<sup>20</sup> As indicated in Spencer et al., note 5.

authorities and data is not available in a format conducive to isolating or counting the incidence of specific offences. Furthermore, EHOs do not always enter the relevant data: reporting is patchy.

A more robust count is undertaken by the Ministry of Justice, which collates annual data on crime under specific codes. Code '087' relates to offences under the PfEA. In 2020, 23 landlords were proceeded against, and twelve were convicted (Table 1) of offences under the Act.

<b>Table 3. Offences under the Protection from Eviction Act 1977</b>								
Year	2013	2014	2015	2016	2017	2018	2019	2020
Proceeded Against	43	35	38	60	34	47	54	23
Convicted	16	18	17	34	20	16	21	12
Sentenced	16	18	17	33	20	16	21	11
Source : MOJ, <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987731/HO-code-tool-principal-offence-2020.xlsx">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987731/HO-code-tool-principal-offence-2020.xlsx</a>								

Arguably, the number of prosecutions under the Act is less an indicator of the scale of offences, and more an indicator of local authority willingness to take action. In response to a written Parliament question asked in March 2021, data was presented indicating that around half the prosecutions in England under the PfEA were being undertaken in just two police force areas (South Yorkshire and Metropolitan Police) of the 41 English areas listed.<sup>21</sup>

## 4. The 2020/21 Count

This short report presents an early, replicable, baseline measure. The count will continue as an annual measure. At this stage, it is not possible to create a fully aligned and complete count since not all data are available. However, the count demonstrates that in England in 2020, where it was likely that there were well over 7,000 offences under the Prevention from Eviction Act reported to the named advice agencies, a total of 12 landlords were prosecuted and convicted under this legislation (Table 4).

The data collection method includes individuals who were willing and able to approach an advice agency and so constitutes a substantial under-estimate of the incidence of this kind of crime. No similar caveat as to under-reporting can be given for the landlord prosecution data.

<sup>21</sup> <https://questions-statements.parliament.uk/written-questions/detail/2021-03-08/HL13982>, accessed 24 March 2022.

**Table 4. Reported offences under the Prevention from Eviction Act, by selected agencies, 2021<sup>1</sup>**

Year	2020	2021
Shelter	not available	797
Citizens Advice	4,505	5,475
Legal Aid Agency	1,355	(up to September 2021) 588
HClic	1,070	830
Safer Renting	not available	88
<b>Total</b>	<b>6,930</b>	<b>7,778</b>
<b>Prosecutions under the Eviction Act 1977, as reported by the Ministry of Justice<sup>2</sup></b>		
Proceeded against	23	not yet available
Convicted	12	not yet available

<sup>1</sup> As collated in this report; <sup>2</sup> MoJ: <https://www.theyworkforyou.com/wrans/?id=2021-10-26.63835.h&s=illegal+eviction#g63835.q0>

Safer Renting supports the victims of this crime, the impact of which is often overlooked. It is hard to overstate the trauma of harassment and illegal eviction. Moving home is often said to be one of life's most stressful events. The loss of home with minimal notice and with possessions stolen or left out on the street is a dreadful violation, often taking place after weeks of harassment which might include the loss of water, heating and electricity and personal threats. Some clients cannot secure statutory assistance: they lose everything and often become street homeless. Even where clients are rehoused, it may be difficult for them to feel safe again. Prosecution figures indicate that the severity of this crime has not been recognised by the Criminal Justice System, and raises questions as to the adequacy of the PfEA as a protective measure.