



# **Response to 'Fixing the broken housing market': Housing White Paper, DCLG**

**Garden Court Chambers Housing Team**

**2 May 2017**

## Who we are

1. The Housing Team at Garden Court Chambers is one of the largest specialist housing law teams in the country (26 barristers) and has a reputation for excellence in this area. We cover all aspects of housing law including security of tenure, unlawful eviction, homelessness, allocation of social housing, disrepair and housing benefit. We are particularly committed to representing tenants, other occupiers and homeless people. We regularly appear in all levels of courts, from the County Court to the Supreme Court.
2. Our work isn't confined to the courtroom. We also spend time training, advising and writing on housing issues. We were the first chambers to serve as a Legal Services Commission Specialist Support Service provider in housing law, and from 2004-2008 we offered specialist support and training under contract direct from the LSC. We write, or co-write, a number of the leading practitioner textbooks on housing law.
3. More information can be found about Garden Court Chambers and all of our barristers at [www.gardencourtchambers.co.uk](http://www.gardencourtchambers.co.uk).

## Summary of response

4. We agree that the housing market is “broken” and that government intervention is required. We see the consequences of the failure of successive governments to encourage sufficient house-building in our daily work, advising and representing people who need homelessness assistance or are applying for social housing. We note that applications for homelessness assistance to local housing authorities have doubled since 2010 and that government statistics show that around 4,000 people sleep rough on the streets of England each night.
5. The bulk of the paper and all of the questions save Question 31 deal with proposals to change the planning system. We do not propose to respond to those questions. However, we do feel the need to observe that the 10% minimum affordable home ownership product per site (paragraph A130 White Paper) is weak and does not go far enough to improve the supply of the type of accommodation which is most needed ie affordable homes. We would also urge the government to review the circumstances in which a commuted sum in lieu of onsite provision may be acceptable, given the urgent need to tackle the shortage.
6. We welcome the commitment to increase the scale of house-building to around 275,000 per year. We question whether this can be achieved without funding local housing authorities to build new social housing. We also welcome the proposals to ban letting agents' fees from being charged to tenants and the banning orders and fines against “rogue landlords”.
7. The experience of the last thirty or more years suggests to us that leaving housing

provision largely to the market is not a reliable way of ensuring an adequate supply of affordable housing accommodation. In our view it is not sufficient for the government merely to “expect developers to build more homes” (White Paper page 16). We believe that the best way of ensuring an adequate supply of affordable homes for those who need them is to fund local housing authorities to build new social housing.

### Omissions

8. We believe that the proposals in the White Paper are insufficient to meet demand for long-term, affordable housing. The government has missed the opportunity genuinely to reform the housing market.
9. We believe that existing council housing should be retained. The provisions of the Housing and Planning Act 2016 whereby periodic secure tenancies will be phased out, and all new secure tenancies granted by local housing authorities will be for fixed periods, should not be implemented. Council tenants should be able to retain their homes, subject to paying their rent, not breaching the terms of their tenancies and to any other of the grounds for possession under Housing Act 1985, Schedule 2, for as long as they wish. We also believe that the requirement on local housing authorities to sell empty “higher value” council homes should not be implemented.
10. The government should urgently consider abolition of the right to buy. Right to buy was abolished in Scotland in 2016 and the Welsh government is consulting on proposals to abolish it. England should follow their example.
11. Local housing authorities and housing associations should be properly financed so that there can be a large-scale programme of social housing building, so as to start to house the 1.6 million households currently on local housing authority waiting lists. Councils can borrow money on the security of their existing assets and have an interest in housing people, rather than retaining land in the hope that house prices increase (land banking).
12. We also believe that the government should consider increased security for the private rented sector. We welcome the intention to require family-friendly tenancies of three or more years, but believe that this should not be confined to new built private rented schemes. There should be legislation providing that all private tenancies are let for a minimum of three or five years, so that all private rented tenants can feel secure and know that their home is available for that period (subject to compliance with tenancy conditions).
13. The government should also have considered abolishing the bedroom tax, the benefit cap (which is implemented through housing benefit) and the local housing allowance cap. The cost of housing benefit could be controlled by keeping rents low, rather than cutting welfare assistance to poor tenants. If councils are able to build more social houses, available at low rents, there will be less demand for private rented tenancies and so private rents are likely to become more affordable.

### Question 31

14. We agree with Shelter that an “affordable” rent should be no more than 35% of a household’s income. The White Paper proposes a definition of 80% of of local market rent. Rent at 80% of market rent means that accommodation remains unaffordable for a very significant proportion of our population. In our experience, the shortage of accommodation which is truly affordable is having an acute impact. We regularly represent clients who simply cannot find affordable accommodation in their local areas, or even elsewhere. We would contrast the 80% definition with the maximum level of housing benefit payable for those in private rented accommodation: limited to the local housing allowance (“LHA”) figure set locally by Rent Officers. The maximum for the LHA figure is the 30<sup>th</sup> percentile level of locally available market rents. For the significant proportion of our population who rely on housing benefit, and for others on modest incomes, 80% market rent cannot be described as affordable. The well-publicised cases of London local authorities having to house people away from their areas is a direct result of the large gap between so-called “affordable” housing and maximum housing benefit levels.
  
15. Whilst we understand that “affordable” cannot be defined by reference to individual circumstances, it should be pegged at an amount that would mean that the average household would spend no more than 35% of its income on rent.

Garden Court Chambers Housing Team

Contact: Liz Davies, barrister

[lizd@gclaw.co.uk](mailto:lizd@gclaw.co.uk)

0207 993 7600

2 May 2017

Garden Court Chambers

57 – 60 Lincoln’s Inn Fields

London WC2A 3LJ

[www.gardencourtchambers.co.uk](http://www.gardencourtchambers.co.uk)