

UNIVERSITY OF SOUTHAMPTON

Faculty of Business, Law and Art

Law

Using the Social Security System to Deliver Housing Policy

by

Louise Gee Wing Cheung

Thesis for the degree of Doctor of Philosophy

September 2016

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UNIVERSITY OF SOUTHAMPTON

ABSTRACT

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Thesis for the degree of Doctor of Philosophy

USING THE SOCIAL SECURITY SYSTEM TO DELIVER HOUSING POLICY

By Louise Gee Wing Cheung

This thesis examines the interaction between housing policy and the social security benefits that support housing costs. Analysis concerns the extent and type of State intervention in housing, thus explaining the dynamic between State and individual responsibility in housing policy. This thesis involves an exploration of the different treatment of the owner-occupied and the rented housing sectors, with reference to the social security benefits which fund ongoing housing costs. This thesis seeks to trace how the State financing of the home can be linked to the popularly researched notion of the 'home' in English housing law. The research questions whether the use of the home as an investment is an appropriate starting point for analysis, particularly when public funds are involved.

Central to this thesis is the identification of the individualisation of responsibility of housing provision, primarily through the promotion of homeownership and the contraction of social housing. The development is seen as a consistent objective since at least the mid-20th Century through diminishing State expenditure to support ongoing housing costs in both tenures through social security payments, primarily in the form of Housing Benefit and Support for Mortgage Interest to support. The conclusion however questions the effectiveness of this strategy. It is argued in this thesis that there is a mismatch between the macro housing policy which encourages homeownership and the social security benefits that support ongoing housing costs.

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Academic Thesis: Declaration Of Authorship

I, LOUISE GEE WING CHEUNG declare that this thesis and the work presented in it are my own and has been generated by me as the result of my own original research.

USING THE SOCIAL SECURITY SYSTEM TO DELIVER HOUSING POLICY

I confirm that:

1. This work was done wholly or mainly while in candidature for a research degree at this University;
2. Where any part of this thesis has previously been submitted for a degree or any other qualification at this University or any other institution, this has been clearly stated;
3. Where I have consulted the published work of others, this is always clearly attributed;
4. Where I have quoted from the work of others, the source is always given. With the exception of such quotations, this thesis is entirely my own work;
5. I have acknowledged all main sources of help;
6. Where the thesis is based on work done by myself jointly with others, I have made clear exactly what was done by others and what I have contributed myself;
7. None of this work has been published before submission.

Signed:

Date: 22.06.2017

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Definitions and Abbreviations

CBL	Choice Based Lettings
CIH	Chartered Institute of Housing
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HB	Housing Benefit
ICESCR	The International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ISA	Individual Savings Account
NGO	Non-Governmental Organisation
NHF	National Housing Federation
NHS	National Health Service
LCHO	Low Cost Homeownership
LSVT	Large Scale Voluntary Transfer
PRS	Private Rented Sector
RTB	Right to Buy
SMI	Support for Mortgage Interest
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commission For Refugees
WWI / WWII	World War One /World War Two

Chapter 1: Introduction

1.1 Introduction

This thesis examines the interaction between macro housing policy and the social security benefits that support ongoing housing costs for eligible households. This introductory chapter identifies the thesis question, the motivation for the study, the contribution which this thesis hopes to make and the framework of analysis.

The key macro housing policy objectives discussed are (1) the provision of adequate housing and (2) the encouragement of homeownership. Since the 1950s, the consistent government policy has been to encourage homeownership, irrespective of the party in government, which has led to homeownership being the most popular tenure with 64% of UK households living in owner-occupied properties today¹. Although homeownership figures have dipped from a highpoint of 71%², the government remains committed to the policy of encouraging homeownership.³

1.2 Thesis Question

The aim of this thesis is to evaluate interaction between the government's macro housing policy and the social security benefits which support ongoing housing costs for eligible

1 Office of National Statistics, A Century of Home Ownership and Renting in England and Wales, 19 April 2013 <http://www.ons.gov.uk/ons/rel/census/2011-census-analysis/a-century-of-home-ownership-and-renting-in-england-and-wales/short-story-on-housing.html> (accessed 7 May 2016)

2 In 2005-06 home ownership peaked at 71% of dwellings. It declined to 65% in 2011-2012. Patrick Collinson, UK housing market: the key statistics (The Guardian, 17 August 2013). <http://www.theguardian.com/money/2013/aug/17/statistics-behind-uk-housing-market> (accessed 7 May 2016)

3 Conservative Party Election Manifesto 2015, 'Strong Leadership – A Clear Economic Plan: A Brighter, more secure future', p. 51 Helping you buy a home of your own "Conservatives believe passionately in home ownership" provides details as to the Government manifesto policies regarding encouragement of homeownership

households. Namely, **Housing Benefit (HB)** for renters and **Support for Mortgage Interest (SMI)** for owner-occupiers.

This thesis explores the dynamic between State and individual responsibility for ongoing housing costs. This thesis evaluates the extent of State intervention in ongoing housing costs and given the continuing focus of homeownership as a policy goal, the thesis questions whether the current framework of State support through social security benefits (HB and SMI) is appropriate. It is argued that the eroding State financing of on-going housing costs for the home perpetuates the individualisation of housing, as this responsibility shifts further to individuals. UK State policy has favoured homeownership as the ultimate expression of the individualisation of responsibility for housing.

The interaction between the notion of home, the ideology of homeownership and the State's support for the different types of ongoing housing costs for both tenures acting as the government safety net will be the key themes which this thesis explores and draws together to answer this thesis question.

1.3 Motivation and original contribution of this thesis

The motivation behind this research is to complement and enhance the discourse around the evolving dynamic between State and individual responsibility for housing costs, the most appropriate level of State intervention and the effective use of tax payer funds.

This thesis argues that the assumption of State responsibility has arisen out of a political ideology rather than a legal basis. This assumed State responsibility has diminished due to continual Government budgetary constraints. This thesis evaluates the extent to which the State and the individual are responsible for their ongoing housing costs, and how this fits with the role of government macro housing policy objectives. An assumed State responsibility created through political ideology for welfare and housing has resulted in the current social security system to support eligible households. This has developed from supply to demand-side subsidies and ultimately a policy individualising housing costs.

This research is inspired by the existing body of work concerning the developing legal concept of the home⁴. This research hopes to add to this emerging field with reference to social security welfare benefits which fund ongoing housing costs. The financial and non-financial benefits of the home have already been thoroughly investigated in academic research. Property law research has already debated the competing paradigms of the 'home'; this includes the notion of 'home' as an investment, as simply a place to live, and the concept of 'home' which has evolved in case law through Article 8 of the European Convention on Human Rights. Legal scholars have already observed the interplay between owner-occupation and the 'home', thus evaluating the significance of tenure.⁵

In light of the existing and developing legal scholarship regarding the idea of 'home' in law, this thesis explores the macro housing policy objective to support homeownership and whether there is any connection to the ongoing development of social security policy. This thesis explores on the one hand, the normative right to housing provided in the legal benchmarks discussed in chapters 2, 3 and 4 of the State responsibility for housing per se, for example, in the case of homelessness and on the other, the idea of a right to a home with the further connotations to which a 'home' imbues in chapters 6, 7 and 8.

This research draws together several key themes; the State responsibility for individual households' housing costs, home values, the ideology of home ownership and the framework of social security welfare benefits for housing costs for the rented and owner-occupied home.

The individualisation of housing costs feeds into the ideology of homeownership as the fundamental macro housing policy aim. Homeownership is endorsed by the State as encapsulating 'home' values, so the encouragement of homeownership is perpetuated. This

4 There is a growing field of housing research concerning the conceptualisation of home in law pioneered by Lorna For O'Mahony; see for example Fox, L 'Conceptualising Home: Theories, Laws and Policies' (Hart, 2006)

5 Examples of this field of scholarship include literature such as; Saunders, P 'A Nation of Homeowners' (Unwin Hyman, London, 1990); Fox, L 'Conceptualising Home: Theories, Laws and Policies' (Hart, 2006).

thesis argues that the State's encouragement of homeownership aims to individualise the responsibility of housing, but that this macro housing aim is not mirrored in social security benefits for ongoing housing costs. Accordingly, there is incoherence between the macro housing policy and welfare provision.

The novelty of this research means that it will straddle analysis of social security benefits, the rented home and the ideology of home ownership. With the advent of Universal Credit and other significant reforms to social security welfare benefits; it is sensible and timely to review the significance of State intervention into social security benefits which fund ongoing housing costs. Campbell Robb, Chief Executive of Shelter has said "there needs to be much more alignment between housing and welfare"⁶. The implication being that policy supporting welfare benefits and housing requires greater coordination. Accordingly, research which evaluates the connection between housing and welfare is sensible to make prudent, logical and well-reasoned conclusions on the ideological appropriateness and economic effectiveness of housing and social security policy reforms. The research argues that there is a lack of effectiveness with current Government policy, and suggests that practical changes are required for a fully integrated and cost-effective solution for the State responsibility for housing and welfare.

The next section details the framework of analysis which this thesis will follow, in order to answer the thesis question. The relevant themes and concepts are summarised.

1.4 Framework of Analysis

The thesis addresses the extent of State intervention, thus the dynamic between State and individual responsibility within the State's delivery and design of social security welfare benefits to support on-going housing costs, and asks whether this level of State support provided is appropriate, in light of a continuing focus on home ownership as a policy goal.

⁶ BBC, Housing: David Cameron vows to 'get Britain building' , 21 November 2011

<<http://www.bbc.co.uk/news/uk-politics-15810966>> accessed 17 April 2013

Below is a chapter guide of the main aims and arguments of each chapter used to build the overarching arguments fundamental to this thesis:

Chapter 2 investigates the origins of a legally imposed right to Social Security and housing through international human right conventions.

Chapter 3 investigates the assumed nature of the State responsibility for welfare and housing with reference to party political and philosophical views. The implication of the State responsibility being assumed is that the responsibility can be eroded and lead to further individualisation of responsibility without legal underpinning, depending on the party political view at the time. The chapter evaluates the justificatory theories behind policies which acknowledge a State responsibility for welfare and housing. Social contract theory dominates in policy to explain the continued Welfare State commitment.

Chapter 4 examines the dynamic between State and individual responsibility for ongoing housing costs, and reviews the State's intervention in housing policy through time. The chapter aims to give a broad overview to demonstrate how policy has developed to its current state. The State responsibility for welfare and housing developed in the UK, to a greater extent, over the 20th century and has since eroded since the 1980s, with greater emphasis on the individualisation of responsibility. The extent of State responsibility in housing policy has moved from high level intervention to providing only safety net assistance. This analysis charts the success of housing policy objectives. The key legislation and party manifestos which reinforce the individualisation of responsibility are identified. This chapter concludes by explaining how the current position of housing policy is legacy of its historical context.

Chapter 5 examines the extent to which current government schemes such as low cost home ownership schemes have provided effective assistance so that households meet their aspirations of homeownership, and reinforce the individualisation of responsibility for housing costs. The government agenda surrounding asset based welfare is also evaluated as a further example of the 'individualisation of responsibility' through equity release of the owner-occupied home to pay for welfare costs in later life. A theme discussed in this chapter and further in chapter 8 is that the *quid pro quo* for 'individualising' the

responsibility through the promotion of ownership is that the State has a later responsibility to go further to assist when marginal owners encounter financial difficulties

Chapter 6 explores 'x-factor home values' (the intangible values attached to the physical house to make it a 'home') and identifies the housing policy which perpetuates the promotion of the ideology of homeownership present in political culture. This chapter aims to demonstrate the conceptual distinction between a right to housing and right to a home. This chapter analyses how home values relate to the individualisation of households' responsibility through housing policy. This thesis argues that the promotion of homeownership may not be the most appropriate starting point for housing policy, given the consequence of mortgage arrears being repossession and that tax-payers' money may be funding unsustainable investment into homeownership.

Chapter 7 examines specifically how public funds via social security benefits are deployed to assist with housing costs for owner-occupiers and renters in the private and social rented sector. This evaluation of the operation of the social security benefits which fund ongoing housing costs then examines the extent of State intervention and individual responsibility following from the policies which support ongoing housing costs. This chapter evaluates how the operation and technical rules of HB and SMI implement the twin aims of housing policy (1) the provision of adequate housing for low-income households who pose a particular set of challenges relating to affordability hence the State involvement for ongoing housing costs, and (2) the ideology of homeownership. Accordingly discussion of the regulation of HB and SMI investigates whether the implementation through legal provisions matches the policy aspirations. The chapter will assess whether the difference in the State's treatment of the tenures in the State financing of housing demonstrates an encouragement of homeownership in policy. The thesis questions whether the deployment of social security benefits for housing costs delivers overarching housing policy. This thesis argues that this macro housing aim individualising responsibility is not genuinely mirrored in the framework of welfare benefits for ongoing housing costs (HB and SMI) thus demonstrating disjointedness in the policies set out by government.

Chapter 8 examines how HB and SMI interact with x-factor home values. The chapter investigates how x-factor home values are reflected only to a limited extent in the eligibility and entitlement relevant to HB and SMI. This chapter argues that the current framework of State support through social security benefits (HB and SMI) is inappropriate given the State encouragement of homeownership. The State's encouragement of homeownership aims to individualise the responsibility of housing but that macro housing aim is not mirrored in the social security benefits for ongoing housing costs. This thesis argues that SMI and HB do not reinforce macro housing policy objectives of individualisation of responsibility and promotion of homeownership, demonstrating disjointedness in policy. The State should provide further support using HB and SMI to complete these aims of individualisation.

Chapter 9 delivers the concluding thoughts of this research. This final chapter aims to draw the links between State responsibility, social security welfare benefits, tenure, home values and the ideology of homeownership to answer the thesis question. Given the continuing focus on homeownership as a macro housing policy objective, the thesis argues that the current framework of State support through social security benefits (in the shape of HB and SMI) is inadequate to achieve this goal.

This thesis argues that the policy eroding the State responsibility for housing and welfare is manifested in the changing delivery of HB and SMI affecting the entitlement and eligibility of these welfare benefits. Continual changes to entitlement and eligibility has cut the assistance provided to claimants. On the other hand, the continued existence of the welfare benefit SMI for homeowners does demonstrate that the State provides assistance to homeowners facing arrears and eventual repossession. SMI exemplifies that the encouragement of homeownership continues to be a policy aim as part of the individualisation of housing and welfare responsibility. It is argued that the State, paradoxically, concedes that in order to claim homeownership as a macro policy aim, financial safety net assistance is required to mitigate against unsustainable homeownership when marginal households become homeowners without sufficient precautionary measures in the case of a risk factor, such as loss of employment appears leading to arrears and possible repossession. This thesis contends that the reasoning behind the pendulum swing

in responsibility is due to the State's individualisation of housing and welfare responsibility, exemplified by the macro housing policy of encouraging homeownership.

This thesis concludes that there is a lack of coherence with the macro housing policy to encourage homeownership and the erosion of State responsibility, whereby the State merely pushes the responsibility to later safety net assistance. The support for ongoing housing costs is wholly unsatisfactory in representing the macro housing policy aims with a mismatch between the operation of HB and SMI and the overarching housing policy.

Chapter 2: A legal State responsibility for social security and housing emanating from international human rights treaties

2.1 Aim

This chapter aims to explore whether an imposed 'legal' State responsibility for social security and housing by virtue of international law exists. It will be argued that there is only a limited legal State responsibility for social security and housing truly emanating from international human rights treaties, due to the lack of enforcement mechanisms. This chapter firstly focuses on recognition of rights to social security in international treaties, and then in the later sections recognition of housing rights in international treaties. Chapter 3 shall go on to develop this argument that international law forms the necessary backdrop for an *assumed* State responsibility to flourish. Chapter 3 develops the argument by drawing upon political theories of State responsibility which influences Nation States political policy.

The starting point is that there is an obvious symbiosis between the legal and political origins of the State responsibility for housing and welfare due to the interdependency of law and policy. It is clear that law and politics influence each other and do not exist in a vacuum. Accordingly, the State responsibility for housing and welfare emanates from both political ideology and international law, which drive change. However, to better understand these drivers, analysis of relevant international human rights law and political theory provides clarity for the nature of State responsibility.

2.1.1 Defining the Nature of Responsibility

Chapters 2 and 3 of this thesis consider the nature of State responsibility. As a starting point, 'Responsibility' is given the natural meaning of the word; encompassing the *duty to deal with or control* and *be accountable for* something. As will be discussed in this thesis, this responsibility takes many forms; from the State financing of housing through welfare benefits and subsidies for homeownership to legislation and procedural mechanisms

intervening into the private relationship between lenders and households as an expression of the State responsibility for the wider market and households to prevent repossession. The different demonstrations of State responsibility apparent in law and policy are discussed in further detail in subsequent chapter of this thesis.

2.2 Key Concepts

The types of human rights discussed in this chapter are so-called socio-economic rights as compared to civil-political rights. Socio-economic rights developed in the early 20th century as an emerging and global norm to improve living standards focussing on State support primarily on labour, housing and other social goods. . A rights-based understanding of the State responsibility, developed with “civil rights in the eighteenth [century], political in the nineteenth, and social in the twentieth”⁷. The adequate living standards protected in social and economic rights provide the necessary background conditions for exercising civil and political rights.⁸ The international human rights treaties have a normative influence on national constitutions, and many exist as aspirational statements as Nation States develop.⁹

The International Labour Organisation (ILO)¹⁰ defines social security as being “a set of institutions, measures, rights, obligations and transfers whose primary goal is to guarantee access to health and social services; and to provide income security to help to cope with important risks of life and prevent or alleviate poverty”¹¹. Social security involves actions by

7 Marshall, T H. *Citizenship and Social Class: And Other Essays*. (Cambridge University Press, 1950)

8 Ganson R, On the relationship between Civil and Political rights and Social and Economic Rights in J M Coicaud, J Waldron ‘Liberal Rights’ in J Waldron (ed.) *Liberal Rights* (CUP, Cambridge, 1993) p. 20

9 International Institute for Democracy and Electoral Assistance, *Social and Economic Rights*, August 2014 http://www.constitutionnet.org/files/social_and_economic_rights_0.pdf p.2

10 ILO (International Labour Organisation) has the explicit mission of establishing international labour standards including social security. Covenant no. 102 – Minimum Standards of Social Security of the International Labour Organisation 1952, Geneva

11 Roberto Bissio, *Social Watch International Secretariat, Towards a new global social contract* p. 16; Danny Pieters, *Social Security: An Introduction to Basic Principles* (Kluwer Law International 2006, The Netherlands)

the State intended to promote the welfare of the population through subsidies and resource allocation. Social security welfare benefits can be provided in various ways, for example, the provision of goods or services without charge or at a subsidised rate, an entitlement of cash into a bank account, or coupons redeemable from a vendor of services or goods. As will be explained below, social security forms solidarity and equality amongst individuals facing a lack of earnings, or particular costs due to the occurrence of certain risk factors *inter alia*, disability, sickness, old age or unemployment.

Social security can consist of social insurance programmes which involve employment contributions by employer and employee, described as ‘contributory’, and also social assistance programmes, described as ‘non-contributory’. Non-contributory based social assistance can be described as a ‘unilateral exchange relationship’, fundamentally a gift sometimes contingent upon the hope of future ability to earn thus contribute, as opposed to social insurance which is understood to be an earned right, based on the recipient having made contributions at an earlier stage¹². Social security can involve both means-tested and non-means tested benefits. Social security is a part of the overarching Welfare State.

A Welfare State aims to secure basic needs for citizens who are *inter alia*, disabled, sick, elderly, or unemployed through financial or material support such as housing. It reflects a societal and individual concern for the wellbeing and flourishing of individuals.¹³ Welfare exists for the basic means of a decent existence and human dignity. State involvement ranges along a continuum, from being very active and generous in terms of provision and funding to ensuring the minimal subsistence safety net is in place. This thesis does not use the terms social security and Welfare interchangeably, but acknowledges that social security is part of the more expansive concept of welfare.

12 I Laedemel and H Trickey ‘A new contract for social assistance’ in I Laedemel and H Trickey (eds..) *An offer you can’t refuse: Workforce in International Perspective* (Policy Press: London 2004); Spicker, P ‘An Introduction to Social Policy’ <http://www.spicker.uk/social-policy/socialsecurity.htm> (accessed 11 February 2014)

13 P King, *Housing subsidies and Welfare* 2012 Elsevier; John Hills, *The Future of Welfare: A guide to the debate* Revised edition (Joseph Rowntree Foundation, York UK 1997)

2.3 Recognition of welfare rights in international treaties: Is there a *human right to social security*?

Whether a human right to social security exists is crucial to understanding the origins of the State responsibility for welfare for housing. International treaties have reflected and informed the guiding principles of the idea of the Welfare State and aimed to create a universal non-discriminatory right to social security, as part of a right to an adequate standard of living

This chapter explores the distinction between legal and political constitutionalism, the extent to which the UK has legally enforceable constitutional rights and how they are embedded within State actions; in legislation and policy. The legal protection for people's Constitutional civil rights and liberties emanates from a combination of treaties; some codified in Acts of Parliament, and also exists in an abstract sense uncoded in practices and customs. These rights are then embedded within the State's actions through policy.

Human rights and citizenship rights are two ways of thinking about basic entitlements, usually referred to as economic, social and cultural rights.¹⁴ Human rights are accepted as universal and unconditional, whereas citizenship rights concern membership of a particular community.¹⁵ Realisation of social and economic rights requires equality, social inclusion and responsibility in welfare to be considerations in governmental decisions. State parties are required to take progressive action towards fulfilment of economic social and cultural rights, even if immediate fulfilment is not possible due to economic circumstances. The text of international treaties will be discussed, alongside the limited analysis available of how these treaties have been interpreted by Nation State governments to respect, protect and enforce this human right.

14 Universal Declaration of Human Rights and the International Convention on Economic, Social and Cultural Rights. The ICESCR and UDHR are both part of the International Bill of Human Rights, along with International Covenant on Civil and Political Rights (ICCPR)

15 Griggs, J and Bennett, F. SSAC Occasional Paper No. 6 Rights and Responsibilities in the Social Security System, University of Oxford, July 2009; Weissbrody, D. S, de la Vega, C, International Human Rights Law : An Introduction (University of Pennsylvania Press, 2007)

It has been argued that the universalistic approach to a human right to social security and housing aims to forge genuine inroads worldwide towards the reduction of poverty

“Working people responded to extreme individual need by combining collective interest to contribute creatively to economic development and the alleviation of the poverty of others in their midst, and contributory social insurance and group benefit schemes turned out to be favoured instruments.”¹⁶

As will be further explored in this chapter, international human rights treaties were a response to the division of World War II. A driving force at the time was for a new world powered by democracy underwritten by instruments and institutions enforcing human rights aiming for stability and peace.¹⁷ Moreover, “it is found that social security systems help coalitions to be built between groups in society of a more varied kind, say, than those representing familiar ethnic or religious divisions.”¹⁸ The main elements of this universalistic rights-based approach to social security have been previously identified as; (1) comprehensiveness (2) universality (3) adequacy and appropriateness (4) respect for equality (5) respect for procedural rights (6) an interdependence of rights.¹⁹

16 Townsend, P (2007) “The right to social security and national development Lessons from OECD experience for low-income countries.” Issues in Social Protection, Discussion Paper 18, January, Geneva: ILO, vii http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---secsoc/documents/publication/wcms_207741.pdf (accessed 7 May 2016)

17 Craven, M History, ‘Pre-history and the right to housing in international law’ in Scott Leckie (ed.) National Perspectives on Housing Rights (Martinus Nijhoff Publishers, 2003, The Hague) p. 43; Moskowitz M International Concern with Human Rights (1970) pp. 1-12; Allott, P Eunomia: New World Order for a New World (1990) p. 287

18 Saloman, M, Social Justice and Human Rights in Walker et al. (eds.) The Peter Townsend Reader, The Policy Press p.573

19 University of Minnesota, Human Rights Resources Centre, Circle of Rights; Economic, Cultural and Social Rights A Training Resource <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module11b.htm> (accessed 18 January 2014)

2.3.1 The European Convention on Human Rights (ECHR)

The ECHR, originally drafted by the Council of Europe in 1950, was a response to the atrocities of World War II to protect human rights and fundamental freedoms in Europe.²⁰ The current Conservative government is looking to reform the incorporation of human rights into domestic law, which is currently through the Human Rights Act 1998 (HRA 1998), citing examples where the ECHR has undermined understanding of human rights and the supremacy of UK courts.²¹ Nevertheless, the ECHR currently continues to be the clearest example of where a human rights Treaty is directly justiciable in domestic courts, through the HRA 1998, and where the supranational European Court of Human Rights can have the final enforceable decision on cases where an appeal is taken against a Member State.

A right to social security is not found directly in the ECHR, but Article 1 Protocol 1 has been used by social security recipients to support benefit claim appeals in litigation with respect to social security benefits if interpreted as 'possessions' and usually in conjunction with Article 14 ECHR (prohibition of discrimination)²²

Article 1 Protocol 1 (1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law

(2) The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

20 Bernadette Rainey, Elizabeth Wicks, Clare Ovey, Jacobs, White and Ovey: The European Convention on Human Rights, (6th edn, Oxford University Press 2014) 3

21 Conservative Manifesto for a new Bill of Rights

https://www.conservatives.com/~media/files/downloadable%20Files/human_rights.pdf (accessed 31 August 2016)

22 Heredero, A.G 'Social Security as a Human Right' 2007 Council of Europe, Human Rights Files, No.

The second paragraph provides the wide caveat for A1P1 use. *Stec and Others v. the United Kingdom*²³ found that non-contributory social security benefits can be considered possessions under A1P1. But under the particular facts of the case, when the proportionality test was used to consider whether the withdrawal of these possessions constitutes a breach of the A1P1 human right based on Article 14 regarding the prohibition of discrimination, in this case sexual discrimination; it was ultimately not a breach of A1P1 and that the particular withdrawal benefits in this case pursued a legitimate aim and were reasonably and objectively justified. The proportionality test submits that interferences with Convention rights are permissible where prescribed or in accordance with law and necessary in a democratic society to achieve legitimate aims. The doctrine of proportionality is central to the ECtHR's investigation into reasonableness of any interference with convention rights²⁴.

However, the European Court of Human Rights (ECtHR) in *Stec* did find that:

The Court's approach to Article 1 of Protocol No. 1 should reflect the reality of the way in which welfare provision is currently organised within the member States of the Council of Europe ... Benefits are funded in a large variety of ways: some are paid for by contributions to a specific fund; some depend on a claimant's contribution record; many are paid for out of general taxation on the basis of a statutorily defined status [...] Given the variety of funding methods, and the interlocking nature of benefits under most welfare systems, it appears increasingly artificial to hold that only benefits financed by contributions to a specific fund fall within the scope of Article 1 of Protocol No. 1. Moreover, to exclude benefits paid for out of general taxation would be to disregard the fact that many claimants under this latter type of system also contribute to its financing, through the payment of tax.²⁵

23 [2006] ECHR 393, 65731/01 and 65900/01

24 Council of Europe, Judicial Professions the Lisbon Network, http://www.coe.int/t/dghl/cooperation/lisbonnetwork/Themis/ECHR/Paper2_en.asp (accessed 18 January 2014); proportionality discussed in further detail with reference to Article 8 right

25 *Stec and Others v UK*, ECHR Application nos. 65731/01 and 65900/01 [para. 50]

Many attempts to use A1P1 have ultimately been unsuccessful by claimants with reference to their welfare benefits receipt due the proportionality test.²⁶ The proportionality test features a wide margin of appreciation²⁷ which the ECtHR accords Member States where socioeconomic policies are concerned. To realise a universal uniform standard of human rights, protection via the ECHR is gradual and clearly reliant on the consent of the Member States. The wide margin of appreciation allows for balance between the sovereignty of Member States and ECtHR²⁸. Moreover, the principle of subsidiarity allows the Member State to decide democratically what it's appropriate for itself.²⁹ Accordingly, Member States have the main responsibility to protect Convention rights, and the ECtHR only acts in a limited role as an arbiter when Member States may have acted out of their remit³⁰.

With reference to cases concerning A1P1, it is noteworthy that distinctions have been made between non-contributory and contributory benefit schemes; with contributory benefits creating entitlement to a benefit gives rise to a property right³¹. *Stec* has opened the interpretation of non-contributory benefits to be considered as property with contingent peaceful enjoyment as a human right, and there is potential for a claim to be successful

26 Examples of inadmissible uses of A1P1 regarding social benefits; *Federspev v. Italy*, 22867/93 129, 6 September 1995; *Larioshina v. Russia*, 56869/00 , 23 April 2002

27 The doctrine of the margin of appreciation developed in *Handyside v UK* (Application no. 5493/72) 7 December 1976

28 Helen Fenwick, *Civil Liberties and Human Rights*, Cavendish Publishing Limited, London, 2005, p.34-37.

29 R. Clayton, H. Tomlinson, *The Law of Human Rights*, Oxford, 2000, p. 285

30 Jeroen Schokkenbroek, *The Basis, Nature and Application of the Margin of Appreciation Doctrine in the Case: Law of the European Court of Human Rights*, (1998) 19 *Human Rights Law Journal* 30, 31

31 Example of non-contributory welfare claims using A1P1 which were deemed non admissible as not possessions at the European Court of Human Right: No. 2374/64 v. Norway and Denmark (sickness) 15 December 1967; No. 2380/64 v. Federal Republic of Germany (old age) 7 February 1967. Examples of contributory welfare claims using A1P1 which were deemed State violations as benefits deemed possessions at the European Court of Human Rights: *Wessels-Bergervoet v. the Netherlands* (pension) (34462/97) [2002] ECHR 731, 4 June 2002, *Stec & Others v UK*, [2006] ECHR 393 application number 65731/01 and 65900/01

demonstrating that through A1P1, a human right to social security benefits as a ‘possession’ even when the welfare benefit is non-contributory. The ‘evolutive’ approach in *Stec* which removed the distinction between contributory and non-contributory benefits to give rise to a proprietary interest has since been followed by the national courts³².

The fact that some social security payments are recognised as property for the purposes of A1P1 add to the argument that human right conventions provide a route to ensure that the State holds responsibility for providing welfare benefits via a human rights route, albeit limited.

2.3.2 The EU Charter of Fundamental Rights

The Charter of Fundamental Rights of the EU became legally binding on the EU through the Treaty of Lisbon, in December 2009. Specific mention is also made to the right of social security and social assistance in this document.

Article 34 (1) The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.

(2) Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.

(3) In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

³² Significant cases in the higher courts following *Stec* jurisprudence on the integration of contributory and non-contributory for A1P1 ECHR: *R (RJM) v Secretary of State for Work and Pensions* [2008] UKHL 63, *AM v Secretary of State for Work and Pensions* [2015] UKSC 47

This Article does present the importance of social security and welfare as a common freedom across EU states.³³ The significance of the EU Charter being that it represents primary law justiciable the European Court of Justice (ECJ) and developing consistent strategies across the EU institutions and throughout member states. With the UK set to leave the EU, it is unclear the significance that this particular obligation will have.

2.3.3 The Universal Declaration of Human Rights (UDHR)

The UDHR represented the first global expression of human rights after WWII. The rights enshrined in the UDHR apply 'every individual and organ of society'³⁴ in the whole world, in every jurisdiction and not just treaty parties³⁵. The UDHR represents customary law and serves as an inspiration for subsequent binding treaty texts.³⁶ With reference to the enforcement mechanisms applicable; acculturation³⁷ and internalisation of norms into State actors are the key methods by which the rights are applied³⁸. The rule of law is also embedded into the UDHR indicating that it requires enforcement and application through domestic law.³⁹

33 Francesca Ferraro and Jesús Carmona, Fundamental Rights in the European Union: The Role of the Charter after the Lisbon Treaty, European Parliamentary Research Service, March 2015

34 Declaration adopted by the United Nations General Assembly on 10 December 1948 at the Palais de Chaillot, Paris. <http://www.un.org/en/documents/udhr/> (accessed 19 February 2016)

35 A Eide and G Alfredson, Introduction in A Eide et al (eds.) UDHR: a Commentary (Drammen, Scandinavia University Press, 1992) 7.

36 O de Schutter, International Human Rights Law: Cases, Materials and Commentary (Cambridge, CUP, 1992) 7

37 This is a process of cultural modification and adopting new rights and legal customs through national law and policy

38 Alston, P and Goodman, R International Human Rights (Oxford University Press, Oxford, 2012), 1267

39 Glendon M. A, The Rule of Law in the Universal Declaration of Human Rights, (2004) 2 Northwestern Journal of International Human Rights. 1

The UDHR provides two important articles for the purpose of this thesis regarding the State responsibility for welfare and housing; one refers to a right to social security⁴⁰ and the other to the right to an adequate standard of living⁴¹.

Article 22: Everyone as a member of society has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each state, or the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 25 (1) Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control

The inclusion of the ‘adequate standard of living’ right reflects the recognition that the fulfilment of basic material needs is a precondition of dignity and freedom. However, the UDHR does not contain enforceable rights or specific binding obligations on State parties. The principles of these rights can be embedded into national constitutions, legal and political structures thus enforced as such, to provide last resort individual justiciability. National laws and practices ensure decency or adequacy do not override the right, since a ‘decent existence’ is ostensibly a circular definition of ‘minimum living standards’. The UDHR delivers a ‘soft law’ approach, where various national enforcement mechanisms enforce application of its basic principle. The international community has failed to entrench securely social rights in an act of institutional normalisation.⁴² The scope of social security has been drawn quite widely, depending on the interpretation of these rights by the

40 Article 22 UDHR; Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR)

41 Article 25 UDHR

42 Janelle, M Diller, *Securing Dignity and Freedom through Human Rights: Article 22 Universal Declaration of Human Rights*, Martinus Nijhoff Publishers, Leiden/Boston 2012, P.199

individual Nation State and the relative funds available. The lack of legal instrument to impose obligations negatively affects genuine development of welfare rights.

2.3.4 The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR Article 9 obliges State parties to provide and facilitate welfare benefit assistance which is adequate and accessible to the entire population without discrimination⁴³.

Article 9 The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 9 encompasses contributory and non-contributory schemes, as well as, community-based and mutual schemes. However, the Committee on Economic, Social and Cultural Rights has encountered difficulty with the implementation of this right, with very low levels of access⁴⁴. A very large majority (about 80%) of the global population currently lack access to formal social security. Among this 80%, 20% live in extreme poverty.⁴⁵ Moreover, some State parties enforce reservations, which set residence requirements in order to qualify for social benefits provided they are proportionate and reasonable⁴⁶.

Article 9 does have greater scope for justiciable claims, because it provides an unequivocal declaratory statement. Interpretative tools and secondary legal sources of the UN Committee on Economic, Social and Cultural rights have developed normative definitions, as

43 The International Covenant on Civil and Political Rights; Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49. Article 26; General comments No. 19 (E/C.12/GC/19) (right to social security) para. 29

44 Committee on Economic, Social and Cultural Rights, General Comment 19, The right to social security (art. 9) (Thirty-ninth session, 2007), U.N. Doc. E/C.12/GC/19 (2008). 7.

45 Michael Cichon and Krzysztof Hagemeyer, "Social Security for All: Investing in Global and Economic Development. A Consultation", Issues in Social Protection Series, Discussion Paper 16, ILO Social Security Department, Geneva, 2006; Scott Leckie; Anne Gallagher 'Economic, social and cultural rights: a legal resource guide (University of Pennsylvania 2006)

46 ICESCR Draft General Comment 19, paragraph 37.

well as, monitor the violation of the right to social security. General comment no. 19 (2007) provides further explanation of the scope and content to the Right to Social Security⁴⁷.

Nevertheless, as discussed, international human rights treaties generally have limited effectiveness. International Organisations cannot compel individual nations to positively act to enforce these articles except through the transnational legal process, as will be explained further below; human rights reform can only develop progressively.

The next section explains to what extent there is a universalistic right exists which informs the State responsibility to provide housing in the UK, and as a generic State responsibility affecting treaty signatories and all nations. This will form the necessary context for the further analysis later in chapter 5 about the Government's twin aims in the development of housing policy (1) the provision of reasonable and affordable housing for low-income households who demonstrate a need for it and (2) the promotion of homeownership. . It will be argued in the next section that despite the right to housing not being generally enforceable by individuals, international treaties can act as a political backdrop to what the State then does at a domestic level.

2.4 Recognition of housing rights in international human rights treaties

Recognition of housing rights exist in both the UDHR and ICESCR, and was mentioned in the precursor Atlantic charter⁴⁸. It was in the immediate aftermath of WWII that the issue of housing became of acute importance due to the mass migration and displacement of refugees, thus leading to its inclusion in the UDHR.

It is of fundamental relevance to this thesis to understand the nature of the State responsibility for housing. To what extent is there a right to be housed? An increasing significance given to housing in international treaties will affect the nature of the State responsibility for housing, and what is included in this responsibility

47 Committee on Economic, Social and Cultural Rights, General Comment 19, The right to social security (art. 9) (Thirty-ninth session, 2007), U.N. Doc. E/C.12/GC/19 (2008) 2

48 Craven, M History, 'Pre-history and the right to housing in international law' in Scott Leckie (ed) National Perspectives on Housing Rights (Martinus Nijhoff Publishers, 2003, The Hague) p. 49

The issue of the lack enforcement again is present, and that such treaties have insufficient bite to deliver an enforceable right to housing. Housing is viewed expansively whereby developing Nation States must create better conditions for the enjoyment of housing rights, and cannot allow retrogressive measures unless a series of compensatory measures are taken or if it is justified by reference to the sum of rights provided for in the covenant and in the context of the full utilisation of a State's available resources⁴⁹. A housing right is not fundamentally a right which the government give; a sense of responsibility upon the individual is attached to the provision of housing, whilst the State has a responsibility not to take the right away from individuals, for example, through forced eviction or disproportionate expropriation.

As will be discussed below, the right to housing in international treaties has been interpreted in a dynamic way; mechanisms for implementation rather than dispute resolution have formed. The right to housing is regarded as an open-ended commitment whose meaning has developed and is determined over time.⁵⁰ Housing has also been identified as a freedom right fundamental to human flourishing, rather than a social and economic right.⁵¹ Housing *per se* is a general term and not restricted to a particular tenure. As we will see, the current form and meaning of the right to housing is of limited utility, but it is open to development to become an instrumental asset in the application of State responsibility for housing. Currently, protection afforded to a right to housing is not necessarily entitlement to housing, nor possession of a proprietary interest in a home, nor right to be accommodated if homeless. As the State responsibility for housing in the UK diminishes through policy, the fact that an international human right to housing right has developed may mean a change of stance in the future. It could be argued that an overarching right dominates how the individual government in power may use policy to cut at the programmes, which provide housing for those on low income. Accordingly,

49 Ibid.

50 Craven, M 'History, Pre-history and the right to housing in international law' in Leckie, S (ed) National Perspectives on Housing Rights (International Studies in Human Rights, Martinus Nijhoff Publishers, Kluwer Law International, The Netherlands 2003) p.61

51 King, P 'Housing as a Freedom Right' (2003) Housing Studies 18(5) 661-672

international treaties recognising housing rights provide the political backdrop to encourage Nation States to act to protect and enforce housing rights. A distinction should be made to the idea of a right to housing and a right to a home, and the connotations relevant to 'home' are discussed further in chapter 6 and the implications of this with reference to housing policy encouraging homeownership.

2.4.1 The European Convention on Human Rights (ECHR)

The ECHR contains an open-ended right to respect for the home:

Article 8 Right to respect for private and family life: (1) Everyone has the right to respect for his private and family life, **his home [emphasis added]** and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

With respect to understanding the nature and scope of this right, in *Gillow v. the UK*⁵², it was determined that 'sufficient continuing links with the property' was enough to be deemed a home, and so owning but not living in a property for 19 years could still fall under the definition of home under Article 8. Equally, tenants have also successfully used Article 8 human rights arguments to avoid eviction⁵³.

Claimants in the domestic courts have argued article 8 as a negative right. It was held in *Harrow LBC v Qazi*⁵⁴ that a local authority house could constitute the applicant's home for

52 [1986] ECHR 14, para. 46

53 *Southend-On-Sea Borough Council v Armour* [2014] EWCA Civ 231

54 [2004] 1 AC 983

the purposes of Article 8, but that repossession was justified as the local authority in this case had an unqualified right to possession following lawful termination of a tenancy⁵⁵.

The requirement for a “proportionality balance between the respect due to an occupier’s home and the wider public interest in achieving an effective and efficient housing policy”⁵⁶ has affected the successful use of Article 8 rights to prevent an interference with the right to a home. Further cases have provided details on the interpretation of the proportionality tests in cases relating to the use of Article 8 as a defence for tenants avoiding eviction from local authority housing.⁵⁷ Even when an eviction is in accordance with the law and serves a legitimate aim, ECtHR has emphasised the requirement to assess whether the lawful interference is necessary in a democratic society with reference to the Article 8 right.⁵⁸ The proportionality argument imbues a managerial approach to the use of Article 8, where the use of the right as a defence only encroaches on public authority decision making (the allocation and withdrawal of housing to a council housing tenant) in exceptional circumstances.⁵⁹ Effectively the approach of the courts with respect to Article 8 as a defence in housing cases are only concerned with the practical impact on public authorities who need to distribute the scarce resource of housing.⁶⁰

Article 8 does not impose any de facto obligation upon the State to provide housing or develop accommodation for those who do not have accommodation, albeit this has been

55 [2004] 1 AC 983 [para. 78]

56 Nield, S. ‘Clash of the titans: Article 8, occupiers and their home’ in Bright, S (eds.) *Modern Studies in Property Law* Volume 6 (Hart Publishing, Oxford 2011)

57 Examples: *Manchester City Council v Pinnock* [2010] UKSC 45 and *Hounslow v Powell*; *Leeds v Hall*; *Birmingham v Frisby* [2011] UKSC 8; *McCann v UK* [2008] 2 FLR 899; *Doherty v Birmingham CC* [2008] UKHL 57 ; *McDonald v McDonald* [2016] UKSC 28

58 Alexandra Fairclough, *Human rights: the constitution in the balance*, IHBC, (June 2000) http://ihbc.org.uk/context_archive/66/human/rights.html (accessed 12 June 2015)

59 Managerial approach termed by Alex Latham, ‘Talking without speaking, hearing without listening? Evictions, the Law Lords and the European Court of Human Rights’ (2011) PL 730

60 *Manchester City Council v Pinnock* [2010] UKSC 45

claimed in homelessness cases concerning Gypsies and travellers⁶¹. Article 8 does not vest any contractual or proprietary right⁶². Article 8 merely provides the potential of a defence for individuals where there is a possible unlawful interference with the home, albeit Article 8 has not been used successfully to avoid eviction/demotion of tenancy by individuals in the majority of cases demonstrating a lack of procedural safeguard which engages in a rights' based analysis.⁶³ Nevertheless, there is obvious openness to a subjective value judgement on the part of the courts to take into account the entire context thus the individual circumstances of the tenant and the risks related to eviction and subsequent good behaviour, which has been used successfully to assist tenants to avoid eviction, although the Supreme Court has not yet had the opportunity to review the case law succeeding *Pinnock*⁶⁴ so there is no definitive ruling on this interpretation⁶⁵.

61 *Codona v Mid-Bedfordshire DC* [2004] EWCA Civ 925; The substantive claim in this case being that Article 8 imposes a positive obligation on national governments to facilitate the gypsy way of life, because their position as a minority group in society requires special consideration to be given to their needs and their different lifestyle: *Connors v United Kingdom* [2004] H.L.R. 52. In *Kay v Lambeth LBC* [2004] EWCA Civ 926; the Court of Appeal considered that the decision in *Connors* was confined to the special position of gypsies. The substantive response in this case that provided that the local authority had made careful enquiries to find a gypsy site, the offer of short term accommodation at a bed and breakfast meant it had discharged its statutory homelessness duty. Under the Housing Act 1996, local authorities do have a duty to provide accommodation to people who are judged to be (1) 'homeless' and (2) have a 'priority need' for accommodation. The local authority can avoid its duty to provide accommodation if the applicant has a 'local connection' with another local authority's area, or the applicant is 'intentionally homeless' <http://www.yourrights.org.uk/yourrights/rights-of-gypsies-and-travellers/homelessness/> (accessed 30 August 2016)

62 *Hounslow LBC v Qazi* [2004] 1 AC 983, para 144

63 Rachel Walsh, 'Stability and predictability in English property law – the impact of article 8 of the European Convention on Human Rights reassessed,' (2015) LQR 131, 585

64 *Manchester City Council v Pinnock* [2010] UKSC 45

65 *Southend-on-sea BC v Armour* [2014] EWCA Civ 231; Adam Ramshaw, 'Southend-on-Sea v Armour: Proportionality revisited' (2014) JHL 15(5) 98

ECtHR jurisprudence provides further context with reference to the interpretation of Article 8 violations and how they are dealt with. Limitations to the use of article 8 exist with respect to its use in the private sector has been demonstrated in *McDonald v McDonald*⁶⁶ confirming that the Court is not required to consider the proportionality of evicting a residential tenant in the PRS in circumstances where the landlord seeks to rely upon a s.21 Housing Act 1988.

2.4.2 The Universal Declaration of Human Rights (UDHR)

The UDHR's right to an adequate standard of living refers specifically to adequate housing.

Article 25 (1) Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, **housing [emphasis added]** and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Eide theorises that the UDHR envisaged the right to housing as one element of a more holistic right to an adequate standard of living. 'Adequacy' although not defined for the purposes of the UDHR should be interpreted in light of the provision's purpose which is the health and wellbeing of the individual and family⁶⁷.

However, again as mentioned with reference to an international human right to social security, the lack of enforcement mechanisms means that international convention rights do not necessarily form a legal State responsibility for housing. However, as argued in this chapter international treaties can provide the necessary context to the politically assumed responsibility, as part of the transnational legal process to enforce housing as a human right and incorporate human rights into the domestic legal system.

66 [2016] UKSC 28

67 A Eide, *Adequate Standard of Living* in Moecklim S Shah and Sivakumura (eds.) *International Human Rights Law* (New York, OUP 2010) 234.

2.4.3 The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR's right to an adequate standard of living refers specifically to adequate housing.

Article 11 (1) The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the **continuous improvement of living conditions [emphasis added]**. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

General comment no. 4⁶⁸ defines 'adequacy' by giving the factors to be considered in determining whether particular forms of shelter can be considered to constitute adequate housing for the purposes of the ICESCR⁶⁹. Different factors relevant to the right to housing include that State parties must ensure; *inter alia* security of tenure, access is free of discrimination,⁷⁰ progressive works to eliminate homelessness, and forced evictions are found to be a prima facie violation of the right to housing.

General comment no. 4 notes that the "norm should be seen as the right to live somewhere in security, peace and dignity".⁷¹ General comment 4 does not equate this Article 11 right with an obligation upon the State to provide accommodation to any citizen asking for it on

68 Office of the High Commissioner for Human Rights, The right to adequate housing (Art.11 (1)) 12/13/1991. CESCR General comment 4. (General Comments); can be found at http://www.hrea.org/index.php?base_id=149 (accessed 19 April 2016)

69 The important factors identified with reference to adequacy are: Legal security of tenure; Availability of services, materials, facilities and infrastructure; Affordability; Habitability; Accessibility; Location; Cultural adequacy

70 Free of discrimination regarding where and how to live, e.g. the rights of gypsies and travellers

71 Office of the High Commissioner for Human Rights, The right to adequate housing (Art.11 (1)) 12/13/1991 CESCR General comment 4. (General Comments); can be found at http://www.hrea.org/index.php?base_id=149 Para 7 (accessed 11 June 2015)

demand⁷². Housing is allied with private property interests and rights in general, thus is commonly understood as having explicit economic value rather than as part of a social good. However, Human Rights *per se* recognise not only the physical structure of a home, but more significantly embraces the procedural, remedial, security and non-material aspects of a housing right, which is more encompassing than simply the demands of better housing supply.⁷³ Nation States under international law have procedural duties to ensure the presence of effective remedies in the event of violations and to sufficiently prioritise the protection of human rights within policy and law-making, other than just ensuring housing availability.⁷⁴ General Comment no.7 provides details about forced evictions.⁷⁵ Nation States must refrain from forced eviction and enforce this law against those agents or third parties which carry out forced evictions.⁷⁶

General comments no. 4 and 8 are non-binding. However, these general comments are highly influential in creating an international consensus on the content of the right to housing.⁷⁷ General comment no. 4 is the most widely cited statement of the content of the right, from which other interpretations flow in regional, subject specific international documents and national human right cases⁷⁸. The interpretation of the right to housing

72 Leckie, S 'Housing Rights at the National Level' in Scott Leckie (ed.) National Perspectives on Housing Rights (Martinus Nijhoff Publishers, 2003, The Hague) p. 13

73 Ibid.

74 Ibid.

75 General Comment No.7 (1997) The Right to Adequate Housing (Article 11(1) of the Covenant): Forced Evictions (UN Doc. E/C.12/1997/4), adopted by the UN Committee on Economic, Social and cultural Rights on 16 May 1997

76 Article 17(1) of the International Covenant on Civil and Political rights; (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

77 Hohmann, J The Right to Housing – law, concepts and possibilities (Hart Publishing Oxford and Portland, Oregon, 2013) p. 20

78 COHRE Sources 4: International and National Standards 2nd edition (COHRE, Geneva 2000) 73.

envisages and encourages a leading role from the State in enforcement of human rights⁷⁹. This is particularly the case where a complex policy-oriented direction can only be realised by the State. The Committee on Economic, Social and Cultural rights has an adjudicative and monitoring role for the protection and realisation of the right to housing. This is completed through a report procedure and creation of optional protocols to provide review and oversight⁸⁰.

General comment no. 3 refers to the nature of the right to housing; “The committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party [...] a State party in which significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or the most basic forms of education is *prima facie* failing to discharge its obligations under the covenant”.⁸¹ This acknowledges that enforcement of a minimum core obligation for the development of the right to housing.

The word and intent of the international documents analysed above recognise the push for an internationally recognised State responsibility for social security welfare and housing. However, as discussed in the next section below the difficulty with the enforcement mechanisms of socioeconomic rights presents a relative weakness in providing a legal benchmark for such enforceable rights.

79 Hohmann, J *The Right to Housing – law, concepts and possibilities* (Hart Publishing Oxford and Portland, Oregon, 2013) P. 31

80 Arambulo, K *Drafting an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: Can an Ideal Become Reality?* 1996 2 U.C. Davis J. Int'l L. & Pol'y 111
<http://www.escr-net.org/docs/i/431300> (accessed 18 June 2014)

81 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), 14 December 1990, E/1991/23 Para. 10 If the covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*.

2.4.4 Enforcement mechanisms of International Human Rights Treaties

There are limited enforcement mechanisms for international human rights treaties. International human rights laws are often not complied with by Nation States in the conventional sense, with no practicable judicial or appeal process. The International Court of Justice (ICJ) can settle legal disputes between States and provide advisory opinions on human rights questions submitted by UN bodies⁸². However, the court has limited jurisdiction to hear contentious cases and its complicated procedures mean that the ICJ has so far played a limited role in developing and applying human rights law⁸³. Koh argues that the 'transnational legal process' is the enforcement mechanism of international human rights, but concedes that it does not always work well.⁸⁴ The transnational legal process is made of three stages: (1) institutional interaction where global norms of international human rights law are debated, (2) interpreted, and (3) internalized by domestic legal systems.⁸⁵ This transnational legal process aims to promote national obedience to international human rights law, but does not universally work.

There are other factors which lead to compliance by Nation States including, "power, self-interest, liberal theories, communitarian theories, and legal process"⁸⁶. The nature of international treaties mean they can only provide universal rights through the consent of Nation States, which develops over time progressively and as Nation States internalise rights into their domestic legal systems. Accordingly, this thesis argues that a State responsibility for welfare (generally) and social security (specifically) is assumed through the political context provided in part by rights to social security emanating from international treaties, but the State responsibility does not originate from a directly enforceable legal responsibility.

82 Cook, J R (2004) 'The International Court of Justice and Human Rights', *Northwestern Journal of International Human Rights*, Vol. 1(1)(2) p. 2

83 Ibid.

84 Koh, H (1998) 'How is International Human Rights Law Enforced?', *Indiana Law Journal*, Vol. 74 (3), pp. 1397-1417.

85 Ibid. p.1399

86 Ibid. p. 1406

For treaties to have enforcement, Nation States must recognise the right by including it within the national, political and legal system, such as through the implementation of legislation and adoption of national strategy for social security. Nation States have duties to abolish and prevent laws, policies and practices which affect equal enjoyment of the right, as well as obligations to allocate resources and make legislative decisions in compliance with the right. There is a minimum core obligation on State parties to ensure satisfaction of the essential levels of the ICESCR rights⁸⁷. Governments must ensure that social security is accessible, as social security is a positive right necessary for a person to enjoy participation in society⁸⁸. However, the level and extent of entitlement is not set or enforced.

The relevance of understanding that this right to social security is not enforceable in international law means that the State responsibility is unlikely to be imposed by international law. Accordingly, this understanding about the nature of State responsibility affects to what extent this responsibility is enshrined in policy and suggests that the responsibility can be eroded by political predilections of any given government in power. It is more likely that this enshrined right in international law attempts to reflect the right already in existence in some States, and UDHR and ICESCR rights act as a guiding principle to inform the creation of Welfare States in underdeveloped States.

Evidently, developing nations cannot guarantee such rights for their population. Nevertheless, State responsibility should be greater in developing nations with demands to improve sanitation, food supply and education. Effective and equitable social security is difficult to develop in undemocratic and corrupt nations. Public protest and democratic participation in policy can progress reform.⁸⁹ The determination of which rights are

87 United Nations Human Rights Office of the High Commissioner, What are the obligations of States on economic, social and cultural rights?

<http://www.ohchr.org/EN/Issues/ESCR/Pages/WhataretheobligationsofStatesonESCR.aspx> (accessed 31 August 2016)

88 Committee on Economic, Social and Cultural Rights, General Comment 19, The right to social security (Art. 9) (Thirty-ninth session, 2007), U.N. Doc. E/C.12/GC/19 (2008) 2

89 Michael Von Hauff, The Relevance of the Right to Social Security for Economic Development <http://library.fes.de/pdf-files/iez/01443002.pdf> (accessed 20 March 2014)

guaranteed and to what extent requires a major debate in society; to determine which risks becomes a collective responsibility and which public goods the state is responsible for, independently of their provision by public or private institution.⁹⁰

International human rights instruments do provide a legal framework for strategies to reduce poverty through the creation of social security and welfare policies;

“A rights-based approach allows links to be made between otherwise disparate issues and gives legal weight and content to many of the concepts that are traditionally seen and analysed in terms of development, management and welfare. It thus moves away from the instrumentalist and utilitarian language of development economists to that of the entitlements and obligations enshrined within the formal legal system, while retaining the moral authority which other approaches lack”⁹¹

There is great disparity between the social security provision available within developed and developing countries⁹². Welfare is dependent on resources. Accordingly, a universalistic rights-based approach is not wholly successful at creating common and equal treatment or comprehensive productive results.⁹³

The main difficulty with a so-called universalistic approach of international law is that States are selective with economic social and cultural rights which are enforced through a legal mechanism. It has been argued that the improved enforcement of economic social and cultural rights could be made through States *juridifying*⁹⁴ the right with a programmatic approach⁹⁵, by the State employing strategic practical actions to increase formality of these

90 Roberto Bissio, Social Watch International Secretariat, Towards a new global social contract p. 17

91 Chinkin C. 2002, "The United Nation Decade for the Elimination of Poverty: What Role for International Law?" Current Legal Problems 2001, Oxford, Oxford University Press, p. 564.

92 Ibid.

93 Ibid.

94 Transform into a custom

95 McKeever, Grainne and Ni Aolain, Fionnuala (2004) Thinking Globally, Acting Locally: Enforcing Socio-Economic Rights in Northern Ireland. European Human Rights Law Review, 2 (2). pp. 158-180.at p 165

rights through a combination of codification and ‘mainstreaming’ to successfully embed social and economic right protections⁹⁶.

Currently, there is an ‘à la carte’ approach found where Member States are allowed to choose which obligations to undertake and be bound by, through the use of reservations, which contrasts with the universal and inalienable nature of civil and political rights.⁹⁷ Although the UK has signed and ratified documents providing such rights, it has only incorporated limited civil and political rights into domestic law, and has not given full treatment to social, economic and cultural rights. There is evident limited utility of international human rights documents providing for social and economic rights, such as the right to social security and housing. “The convention rights that were incorporated into British law by the Human Rights Act are over 50 years old and were never designed to provide social and economic rights for the citizen”⁹⁸ Nevertheless, in terms of constitutionalising such social and economic rights, Fabre writes “it is legitimate to constrain democratic majorities by way of the constitution, to respect and promote those fundamental rights of ours that protect the secure existence of autonomy and enable us to achieve wellbeing in so far as by virtue of social rights are fundamental. It follows that they should be constitutionalised”.⁹⁹ Calls have been to specifically enshrine socioeconomic rights in law¹⁰⁰.

96 Ibid. p. 158

97 Irish Human Rights Commission, ESCR Discussion Document 1995, p.5

<http://www.ihrc.ie/download/pdf/escrdiscussiondocument.pdf> (accessed 18 January 2014)

98 Johnson, N. The Human Rights Act 1998: A bridge between citizenship and justice? (2004) *Social Policy and Society* 3(2) 113-21; The Human Rights Act 1998 currently under consultation for reform for a British Bill of Rights

<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06825> (accessed 17 February 2014)

99 Fabre, Cecile, Chapter 3. Constitutional Social Rights, *Social Rights Under the Constitution: Government and the Decent Life*, (Oxford University Press, 2000) 67-110; Fabre, Cecile, Constitutionalising Social Rights, (1998) 6(3) *The Journal of Political Philosophy* 263-284

100 James Burton, It’s time to enshrine socio-economic rights in Law, *The Guardian*, Friday 28 October 2011

It has been argued that the existence of this universal right aims to evolve to a universal form of social security on the same scale as the globalised economy¹⁰¹. The precursor to the UDHR, the Atlantic Charter¹⁰², was ratified at a time when improvements to international trade were at the forefront. Universal labour development was linked to social security rights. The United States understood that US businesses would only be willing to pay taxes to secure social security if its international partners were faced with the same financial burden too.¹⁰³ This made viable the same universal rights to social security, incentivising the creation of insurance schemes where contributions from both employers and employees went towards pensions, as well as, incentivising partnerships in trade for the globalisation of products and resources. “The role of the State is to implement the right to social security at national level, and also maintain low pay and taxes so that global trade can make profits for some, rationalised by a trickle down model of economic development benefitting all.”¹⁰⁴ The Soviet Union also assured the right to work and the right to social protection to all workers. It considered all citizens to be workers, and would later use their more interventionist social protection policy as propaganda in the Cold War.¹⁰⁵

Human rights to social security and housing are described as social economic cultural rights rather than civil rights. This social economic cultural characterisation may devalue the significance of such rights on the international stage, or at the very least, they are treated differently¹⁰⁶. Certain characteristics of social and economic rights such as; the vagueness of

<https://www.theguardian.com/commentisfree/libertycentral/2011/oct/28/socioeconomic-rights-law>

101 Langendock, J V The Meaning of the right to social security

<http://www.kvab.be/downloads/lezingen/TheRightToSocialSecurity2.pdf> (accessed 13 March 2015)

102 The Atlantic Charter between Churchill and Roosevelt 14 January 1941; A statement issued for the goals post-WW2; Clause 5 (Message to congress, Jan 11th 1944, Congressional records vol .90, pt. 1 Cong. 2, Sess, p. 57)

103 Langendonck, J V (ed.) The Right to Social Security (Intersentia, Antwerpen-Oxford 2007) p. 69

104 Ibid.

105 Ibid.

106 Waldron, J, ‘Introduction’ in Waldron, J (ed.) Theories of Rights (OUP, Oxford, 1984) 1, 11

said rights, the financial burden of applicability and universality are pragmatic difficulties in the ability to honour such rights as positive rights internationally.

2.4.5 To what extent is there a right to be housed emanating from international human rights treaties?

As discussed earlier in this chapter, the lack of enforcement mechanisms mean that rights emanating from international treaties do not provide a directly enforceable legal State responsibility. However, it is argued in this section, international treaties can provide the necessary context to create a politically assumed State responsibility for housing through the process of transnational legal process.

The right to housing in international human rights treaties mirrors that of the right to social security whereby it involves an understanding for progressive realisation, termed 'continuous improvement of living condition'¹⁰⁷. The universal enjoyment of housing rights remains a long term goal and a legal responsibility requiring further refinement.¹⁰⁸

Justice Rajindar Sachar, former UN Special Rapporteur on Housing Rights provides a useful framework of understanding what housing rights should be taken to imply.¹⁰⁹ The framework of obligations for respecting, protecting, promoting and fulfilling housing rights detail the meaning of the right to housing. This acts as a practical way of defining the substance and core content of the more general right to housing.¹¹⁰

107 ICESCR, Article 11, from the text regarding the Right to an Adequate Standard of Living

108 Langendonck, J V (ed.) *The right to Social Security* (Intersentia, Antwerpen-Oxford 2007) p. 4

109 United Nations Economic and Social Council, E/CN.4/Sub.2/1995/12 Final report submitted by the Special Rapporteur on the Right to Adequate Housing, 12 July 1995 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G95/129/50/PDF/G9512950.pdf?OpenElement> (accessed 9 June 2015)

110 Please refer to Appendix 1: Housing Rights obligations in international law terms, p. 202 which provides the responsibilities of States for the full and progressive realization of the human right to adequate housing and possible actions at the national and local levels found in this decisive legal text. Reproduced from UN Housing Rights Programme (joint programme between UN Habitat Programme and UN High Office of the High Commissioner for Human Right. UN Doc HS/C/17/INF 6

It would be unrealistic to believe any State could provide adequate housing for an entire population, and no UN institution or government could support such an approach to implement housing rights. By the year 2020, the global population will be approximately 8 billion people, whom will all enjoy legally recognised but unenforceable housing rights.¹¹¹ Nevertheless, international law's right to housing suggests that a collective effort by all makes possible the enjoyment of persons to an adequate home¹¹². Housing law remains 'the bastion of the rights of the freeholders'¹¹³ although recent ECtHR jurisprudence demonstrates some inroads to focus on individuals' rights and an opportunity for human rights arguments in ECtHR to take precedence.

With reference to the origins of the right to housing as part of international law, detailed consideration and deliberation of the right to adequate housing has been unfortunately lacking¹¹⁴. Housing rights can be additionally protected through rights to privacy and property. Typically housing rights do not explicitly draw out how to deal with homelessness. It has been argued that the right to housing drives a *remoralisation* of the debate on homelessness, which weakens arguments about State resources and priorities thus emphasising the political and moral significance of housing¹¹⁵. The UK and USA both at times argued that the concept was implicit in other rights, thus the separate article was

111 Leckie, S 'Where it Matters Most: Making International Housing Rights Meaningful at the National Level' in Leckie, S (ed.) National Perspectives on Housing Rights (International Studies in Human Rights, Martinus Nijhoff Publishers, Kluwer Law International, The Netherlands 2003) p.41

112 Ibid. p. 3

113 D Hughes and M Davis, Human Rights and the triumph of property: the marginalisation of the European Convention on Human Rights in Housing Law (2006) Conv 526

114 The declaration was completed by the Commission in May 1948. Adopted after a thorough review by the General Assembly's third committee on 10th December 1948 (General Assembly Resolution 217 A (iii) December 10th 1948).

115 King, P 'Housing as a Freedom Right' (2003) Housing Studies 18(5) 661-672; King, P Housing, individuals and the state: The morality of government intervention (Routledge, London 1998); Equality and Human Rights Commission, Socio-economic rights in the UK, April 2016 https://www.equalityhumanrights.com/sites/default/files/icescr_submission_-_april_2016.pdf

unnecessary¹¹⁶. Moreover, the US has attempted to undermine the significance and effect of the right through several arguments.¹¹⁷ It could be argued that housing has not been sufficiently identified for its value in a pragmatic and symbolic nature as necessary for private space, freedom of expression, and human dignity which represent the x-factor notions of a home¹¹⁸.

State responsibility for housing has been addressed by the former UN's Special Rapporteur on adequate housing report¹¹⁹ which criticised the availability, affordability and access to adequate housing in the UK¹²⁰. The report is an indictment on the housing system; issues were raised about the social sector under-occupancy penalty¹²¹ which she reports should be immediately suspended and re-evaluated, as well as indicating the longer-term challenges which the UK housing and welfare system faces. Rolnick noted that the system has been weakened by a series of measures over the years, notably by having privileged homeownership over other forms of tenure. Several reforms to the welfare system along

116 i.e. rights relating to conditions of work, standard of living and standards of health. Amend E/CN L83; Hoare (UK) E/CN 4 ISR 294. The UK was forced to withdraw its amendment over a question of procedure and the article was retained by popular consent; The US position has been appraised by Frank I Michelman (1970) The advent of a right to housing: A current appraisal Harvard Civil Rights – Civil Liberties Law Review, 207

117 Examples in Scott Leckie (ed.) National Perspectives on Housing Rights (Martinus Nijhoff Publishers, 2003, The Hague) P.3 ; Eide, A. Adequate Standard of Living in Moecklim S Shah and Sivakumura (eds.) International Human Rights Law (New York, OUP 2010) p.235

118 Described in further detail in the following chapter; these values encompass shelter, warmth, seclusion, community ties

119 United Nations General Assembly, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnick. Human Rights Council, Twenty Fifth session, Agenda item 3. 30 December 2013

120 Grainia Long, UN Report on the UK Housing crisis is a wakeup call for us all, Guardian Professional, 7 February 2014 <https://www.theguardian.com/housing-network/2014/feb/07/un-report-housing-crisis-raquel-rolnick> (accessed 30 August 2016)

121 Detailed further below in chapter 7

with cuts in housing grants appear to compromise the realisation of the right to adequate housing and other related human rights.¹²² This UN report demonstrates the overarching monitoring role that the international community has to protect human rights via the medium of criticising the State's policy on housing.

Rolnick does commend the UK for its history of ensuring that low and middle-income households have access to adequate housing and have been protected from insecure tenure forms and poor housing conditions, which has inspired the world. Some policies and practices which have resulted in the progressive realisation of the right to adequate housing are being downscaled, and the structural shape of the housing sector has changed to the detriment of the most vulnerable.¹²³ However, Rolnick's report has been discredited and overlooked by the UK Government as biased.¹²⁴

A report by the current UN Special Rapporteur on adequate housing, Leilani Farha¹²⁵, considers how homelessness is a global human rights crisis associated with the increased inequality of wealth and property. In particular, homeless people face stigmatisation,

122 UN News Centre, Recent measures in the United Kingdom are eroding right to affordable housing – UN expert 11 September 2013;

<http://www.un.org/apps/news/story.asp?NewsID=45826&Cr=United+Kingdom&Cr1=#.UzxqDPldWY8> (accessed 30 August 2016)

123 United Nations General Assembly, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnick. Human Rights Council, Twenty Fifth session, Agenda item 3. 30 December 2013 p. 20

124 Pete Apps, UN housing expert's report calling to end bedroom tax slammed (Inside Housing) 4 February 2014; <http://www.insidehousing.co.uk/un-housing-experts-report-calling-to-end-bedroom-tax-slammed/7001958.article> (accessed 5 February 2014)

125 United Nations General Assembly, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and as the right to non-discrimination in this context, Leilani Farha, Human Rights Council, Thirty-first session, Agenda Item 3, 30 December 2015.

criminalisation and discrimination and seen as undeserving¹²⁶, but should be treated with rights. This culture of rendering the homeless as undeserving reflects the 19th Century conception of Poor Laws, whereby society treated the poor as undeserving, which is described in more detail in chapter 5. Farha considers homelessness to be understood as a failure of States to implement the right to adequate housing, and helping the invisible to be seen as rights holders.¹²⁷

It has been mooted that the so-called 'right to housing' in the UK has an identity crisis in the public consciousness, as housing has not been considered part of national infrastructure strategy¹²⁸. There is limited nationwide oversight of housing need, or even a coherent overarching plan for new development and construction of housing. It had been argued that if the Treasury considered housing as infrastructure, it would attract greater financial backing from the private sector¹²⁹. The National Infrastructure Delivery Plan 2016-2021 attempts to redress this, where the Infrastructure and Project Authority puts forward specific measures including, *inter alia*, public sector land release sites for development, a dispute resolution process for negotiations with developers on the spend for local infrastructure to prevent delay in developing, the development of infrastructure to support housing as well as direct commissioning of the building of homes.¹³⁰ These policy points outlined in one policy document do pay lip service to an overarching plan for housing.

126 Quoting from Leilani Farha, We can't talk about inequality without talking about homelessness (The Guardian, Thursday 3rd March 2016) <http://www.theguardian.com/housing-network/2016/mar/03/inequality-homelessness-personal-failing-political-problem>; <http://www.theguardian.com/housing-network/2015/dec/21/homeless-people-not-vermin-cockroaches-human-rights> (accessed 4 March 2016)

127 Ibid.

128 Hannah Fearn, If housing were seen as infrastructure there would be a lot more of it, Friday 31 January 2014 <http://www.theguardian.com/housing-network/editors-blog/2014/jan/31/affordable-housing-infrastructure-investment> (accessed 3 January 2014)

129 Ibid.

130 Infrastructure and Projects Authority, National Infrastructure Delivery Plan 2016-2021, March 2016

Nevertheless, the viability for development depends more on the perception of significant returns on investment in the private sector, and thus an asset such as housing being deemed 'infrastructure' would have a positive effect on the perception of its viability as an investment. It would force the treasury to consider the economic implications of proactive housing and planning policy, and allow social landlords and local authorities to retain oversight of housing needs. However, it could be argued counterintuitively to consider housing as infrastructure, because housing is fundamental to our quality of life, yet it would be managed by financiers, rather than those who consider dwellings as homes, which is an idea further developed in chapter 6.

As discussed in this chapter, International Human Rights treaties lack the essential enforcement mechanisms to be directly enforceable rights. The right to housing has been described as attenuated; "both necessary and insufficient, both fundamental yet insignificant"¹³¹ thus lacking in instrumental benefit to the predicaments of those who require enforcement of it. There is no adequate enforcement mechanism, appeal structure and since the international treaties cover many different nations, it will be difficult to protect such a universal positive 'right' in a uniform way based on these international treaties. International treaties prove unenforceable when international bodies such as the UN Special Rapporteur on Housing's report is undermined by the government. Accordingly, it is difficult to argue the true existence of a State responsibility emanating from a legal responsibility from international human rights treaties. The diverse differences in the competency of the courts as well as the separation of powers provide further obstacles in the universal protection of these rights in a common way. The interpretative tools, sparse case law and the secondary legal sources are unhelpful, it would seem that the continual repetition of such a 'right' almost aims to disguise the fact that such rights are difficult to protect from an individual State's point of view or through enforcement from a UN institution or an NGO. "The right to social security is an abstraction, 'like liberty'. The right is

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/520086/2904569_nidp_deliveryplan.pdf

131 Craven, M History, 'Pre-history and the right to housing in international law' in Scott Leckie (ed.) National Perspectives on Housing Rights (Martinus Nijhoff Publishers, 2003, The Hague) p. 45

meaningful only if laws exist to enforce the offer and the claim”¹³² Nevertheless, the UDHR states that all States are bound to respect internationally recognised human rights, and the UDHR merely clarifies the meaning of these universal duties to human rights, whether the State has ratified the relevant treaty or not.¹³³ International treaties can provide the necessary context to create a politically assumed State responsibility for housing through the process of transnational legal process.

2.5 Conclusion: The nature of the State Responsibility for social security and housing through a Human Rights based framework

As discussed in this chapter, Human Rights treaties are lists of open-ended commitments to which meaning develops over time, seemingly enforced by dedicated courts, monitoring institutions¹³⁴ and with active participation from Nation States and NGOs. However, equally Human Rights treaties has been criticised as weak enforcement of vague commitments. The very fact that the UDHR (for example) does not offer legally binding commitments is significant to how international human rights law has developed.¹³⁵ The long recognition of international human rights law has yet to sufficiently influence national policy, law and practice on housing and welfare rights. The lack of enforcement mechanism means the recognition of housing rights in international treaties are not directly justiciable. It is therefore argued that a State responsibility thus emanates through the political context provided in international human rights treaties.

An enforceable public law ‘right’ or legitimate expectation to welfare support is difficult to find through international treaties. Housing and welfare related rights have been often denied application when used in court. It is evident that international documents purporting

132 Wilson, J V. Some Social Policy Implications of a Right to Social Security in J Van Langendonck (ed.), *The Right to Social Security*, Intersentia, Antwerp, pp 57-83.

133 De Schutter, *International Human Rights Law: Cases, Materials and Commentary*, (CUP 2009)

134 Capabilities to enforce, observe and monitor the right.

135 H Lauterpacht, *International Law and Human Rights* (Stevens and Sons Ltd, London, 1950)

to enforce a State responsibility to the universalistic nature of a right to social security are of limited utility due to their lack of enforcement mechanism, use of reservations by Nation States and disparity in interpretation by different State parties. Even where a Convention right is directly justiciable in domestic courts and where a supranational court exists to hear appeals, such as with the ECHR and the ECtHR, the right enshrined in A1P1 has minimal practical effect in enforcing a right to social security, although it does show recognition that a right exists and the deprivation or withdrawal of such a right must pass a proportionality test. However, it is consequential that tenants with no property ownership rights have been able to use Article 8 home rights, demonstrating that the Article 8 conception of a right to a home is distinct from property owning rights, which perhaps differs from the political ideologies about responsibility and home discussed further in chapter 6. 'Freedom from want' is only mentioned once in the UDHR, indicating social security was of lesser importance compared to the other universal rights, demonstrating a paradoxical and ambivalent attitude towards economic and social rights.

A right to housing is predicated upon continual strengthening of housing rights standards, educating citizens how to claim and assert their legitimate rights, and contributing to improving housing conditions. Despite this necessity for constant progressive development of the right to housing, there has seemingly been a decline in the State responsibility for housing in the UK. The *per se* right to housing is distinct from the right to assistance of the homeless (safety net mechanism), albeit the two are connected. The substance of the distinction between the rights being the right to housing is negative whilst the right to assistance in homelessness is a positive statutory duty. Some may argue that the diminishing State responsibility for housing is 'progressive' because it shows that individuals are becoming more self-responsible for their housing needs, and in the case of owners, obtaining an asset which links back to asset based welfare key to the social citizenship.

The right to housing is contingent upon demographic pressures and availability of resources. The responsibility to provide adequate housing is wide, with a fundamental legal

responsibility on local authorities to provide adequate housing to certain homeless people¹³⁶ (domestic law), as well as an emerging right for housing restitution for displaced individuals¹³⁷ (international law). Economic and social rights depend greatly upon the social or economic development of a Nation State in question, for example, demographic pressures and the availability of resources.

Accordingly, the lack of enforcement mechanism of the recognition of rights to social security and housing in international treaties means that they are of limited relevance to the State responsibility for welfare and housing. Nevertheless, despite not being generally enforceable by individuals, international treaties can act as a political backdrop to what a State then does at a domestic level through the transnational legal process. International law provides the legal benchmarks for the State in determining whether there is a duty owed to its citizens to provide housing. The socio economic nature of these rights, as distinct from civil political rights, affects the nature of the State's enforceability of these rights and how they are interpreted in National law.

The next chapter explores the existence of an assumed State responsibility and the political theories which explain the basis of this assumption of State responsibility for welfare, encompassing social security and housing. It will be argued in the next chapter that thus far the State responsibility has been assumed and based on the prevailing party political view of the time

136 UNHCR, The Pinheiro Principles, United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons , Economic and Social Council Distr. GENERAL E/CN.4/Sub.2/2005/17 28 June 2005

137 Centre on Housing Rights and Eviction, Restitution and return <http://www.cohre.org/topics/restitution-and-return> (accessed 9 March 2015); forced eviction, compulsory purchase

Chapter 3: An assumed State responsibility for welfare and housing from political theory

3.1 Aim

This chapter aims to define the nature of State responsibility for housing and welfare, as contextual background for the following chapters. The previous chapter argued that international conventions provide a political context to what Nation States do to protect and enforce rights to welfare and housing. Following on from that analysis, this chapter explores the assumed State responsibility for welfare in the UK as presented in political literature. This chapter analyses the past and continuing nature of the State responsibility for the Welfare State, which encompasses social security and housing provision.

This chapter's analysis feeds neatly into the examination in the following chapter of the dynamic between State and individual responsibility in the historical context of housing policy, thus explores in greater detail the developing manifestation of State responsibility in UK welfare and housing policy through time.

3.2 State responsibility for welfare

3.2.1 Models of welfare

As previously mentioned the generic goals of the Welfare State are to alleviate poverty, promote equality and facilitate the redistribution of income wealth between different individuals over their lifetimes¹³⁸. Common concerns with welfare provision include; the unintended ramifications of any significant State intervention into the market process, the creation of the culture of welfare dependency¹³⁹, and basic administrative issues with

138 Spicker, P Social Policy Theory and Practice Policy Press, (Policy Press, Bristol, 2014); RH Tawney, The Strategy of Equality, (Unwin Books 1931)

139 These two aspects are discussed in greater detail below and in the following chapters of this thesis

identifying and quantifying basic needs¹⁴⁰. The extent of responsibility for social security welfare differs dependant on the type of nation and Welfare State operating within it. Moreover, the Welfare State has been termed an ambiguous concept in itself with different implications in different societies¹⁴¹. Accordingly, governments are not necessarily just concerned with providing a safety net or dealing with emergencies, but can seek to offer security for all. The concept of welfare encapsulates the household's own resources, the government and the voluntary sector.

Across the world, Welfare States differ with reference to the extent of assistance provided, and the interpretation of this right to social security. Titmuss¹⁴² theorised the residual, industrial-achievement and institutional Welfare States. A residual Welfare State acts as a last resort to intervene when family relations or the market fails, thus limiting intervention to marginal deserving categories. An institutional Welfare State is universalistic and extends responsibilities and commitments to all citizens; it intervenes in a greater number of social welfare areas. Provision of relief and the granting of benefits develop with time, societal issues and attitudes towards the poor. An industrial achievement Welfare State assists the economy through the preparation and servicing of the capacity of the workforce. The industrial achievement Welfare State is seen as an economic regulator, stimulating demand when production is low.¹⁴³

140 Harris N Complexity in the Law and Structure of Welfare (Hart Publishing Oxford 2013)

141 Hay JR The origins of the liberal welfare reform, the Economic History Society (Macmillan Press, Basingstoke, 1975) 11

142 Titmuss, Richard, M. (1974) 'What is social policy?' in Brian Abel-Smith and Kay Titmuss (eds.) Social Policy: An introduction Chapter 2, New York Pantheon Books, 23-32 reproduced in Welfare States: Construction, Deconstruction and Reconstruction (Edward Elgar Publishing, 2000) 138

143 Waglé, U. R, The Heterogeneity Link of the Welfare State and Redistribution: Ethnic Heterogeneity, Welfare State Policies, Poverty and Inequality in High Income Countries, Springer, 2013 P.51, Spicker, P, Social Policy Theory and Practice, (Policy Press, Bristol 2015)

Later Esping-Andersen's the Three Worlds of Welfare Capitalism¹⁴⁴ conceptualised the three main types of Welfare States in the modern developed capitalist nations; liberal (for example the UK), corporatist-statist (for example Germany) and social democratic (for example Sweden). In liberal Welfare States means-tested benefits alongside social insurance and some universal provision deliver welfare. The Beveridge model¹⁴⁵ introduced this liberal Welfare State where all contributions and benefits were awarded at a flat rate. The implications usually being low-income dependants becoming reliant upon benefits, the middle classes benefit from social insurance, and the upper classes derive welfare from the market. In corporatist-statist Welfare States, a social insurance model prevails where personal contributions later supply welfare. The Bismarck Model introduced corporatist-statist welfare which relies upon contributions; so that the benefits received vary according to the income of the individual. In social democratic Welfare States, a universal insurance system incorporates all social services and benefits delivered by the State, with the State having a direct responsibility for the care of the elderly and children.¹⁴⁶

The above explanation of key theoretical models for social security in the Western democracy/European context indicate that the origins of a State responsibility are political in nature, and dependant on the particular political and economic circumstances of any given nation. This individualisation of responsibility for welfare is also consistent with the persistent hollowing out of the State; involving a shift of responsibilities to supranational institutional competencies (such as the EU, pre-UK voting to leave the EU), but also an equal shift downwards centralising decision to local or regional level (localism).

As will be discussed further in chapter 4, the manifestation of State responsibility for welfare has changed over time in terms of how assistance is provided. This change in the

144 Esping-Andersen, Gøsta, *The Three Worlds of Welfare Capitalism*, Princeton University Press, 1990

145 Explained in further detail below, and also a fuller explanation in Chapter 4 on housing policy

146 James Bartholomew, 'The Welfare We're In' Website for the Book, Blog post on Esping Andersen: <http://www.thewelfarestatewerein.com/general/2011/10/esping-andersen-and-his-three-worlds-of-welfare-capitalism.php> (accessed 20 March 2014)

expression of State responsibility reflects the changing philosophy of welfare; the level of assistance has changed with mere 'survival' moving towards adequate 'subsistence' as the objective, and means-testing becoming the norm. It has been argued that ultimately the Welfare State is necessary to cope with high unemployment and poverty which can threaten to destabilise the market and create civil unrest¹⁴⁷.

The political origins of the Welfare State, thus the State responsibility for welfare are apparent. From the perspective of political theory; various academics purport to rationalise where the State responsibility for welfare comes. Certain values run throughout the existence of the Welfare State based on a policy which is supported by multiple political theories, albeit there is no clear enduring explanation for the origins of State responsibility. This next section attempts to explain why the State has developed a responsibility for social security and housing rooted in political theories. This analysis is significant to this thesis because it identifies the nature of the political ideology which has led to the State responsibility for welfare and housing costs.

3.2.2 Why does the State have responsibility for welfare?

This section assesses why a political ideologically assumed State responsibility exists by examining theories explaining why the State has a responsibility for welfare. This thesis argues that political theories form the basis of the ideologies which have so far driven the State responsibility for welfare, and the creation of the Welfare State in the UK and in other western democracies. There is no singular origin of this State responsibility.

The extent of how the State responsibility for welfare manifests depends upon the party political view and context. The scope of this Welfare State increases and reduces dependant on the particular circumstances at the time. There are many influences on the development

147 University of Minnesota, Human Rights Resources Centre, Circle of Rights; Economic, Cultural and Social Rights A Training Resource Section 5 – Understanding Specific ESC rights module 11 Social Security as a Human Right

<https://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module11.htm> (accessed 18 January 2014)

of welfare policies and it is important to understand these motivations to locate the assumed nature of the State responsibility for housing, and how this responsibility is likely to erode with the State's forward strategy to individualise housing costs. It is not a legal certainty that the State will maintain this responsibility. It is State policy which drives the extent of State intervention to deliver welfare and housing. As already detailed in the earlier chapter, the political backdrop of international human rights treaties provides a reasoning for the development of socio-economic rights relating to welfare and housing since the early 20th century. However, the State responsibility for welfare and housing predates these international law documents (further discussed in chapter 4 are the ways in which the responsibility manifested from the 15th Century, if not earlier). Accordingly, it is understood that the assumed State responsibility for housing and welfare emanates from the circumstances at the time leading to its development. This assumed nature means that the extent of responsibility can grow and shrink dependant on political predilections of the party in the power, and often by their manifesto promises before being voted into office which seem favourable to the electorate with respect the amount of assistance which can be provided by the State, or level of State intervention into housing and welfare matters¹⁴⁸.

Since the 19th Century, industrialisation and urbanisation dramatically changed community and family structures, thus upset the conventional forms of protection for vulnerable individuals; leading to inequality and social struggle. Industrialisation meant workers were wholly dependent upon a regular payment of wages. Consequently, a key theory to explain welfare is that it is a product of the industrial revolution where the traditional safety nets of family ties and kinship disbanded. The Welfare State was seen as the answer to growing needs and demands for socioeconomic equality. This growth of industry was in the context of increasing division of labour, expansion of markets, loss of security functions by families¹⁴⁹. Personal effort and family interdependence was insufficient protection in the age of capitalism. Ancient systems of law and morality leaned upon obligations of sons to support parents, philanthropy and religious ascent, but the experience of industrialism

148 Further discussed in chapter 4

149 Harris, B The origins of the British Welfare State – Social Welfare in England and Wales, 1800 – 1945, (Palgrave Macmillan Basingstoke 2004) quoting Flora and Heidenheimer 1981, p. 18

found that these were inadequate.¹⁵⁰ The Welfare State substituted for the loss of the traditional forms of support.

War has also driven policy changes in society to reward those who suffer during conflict. Consequently, a popular theory is that Welfare is a corollary to conflict. War has accelerated and distorted the development of State responsibility for welfare especially at the turn of the 20th Century with the creation of the Welfare State. Andrzejewski argues a military participation ratio. When a State has a high proportion of military employees due to conflict, the State pursues greater egalitarian social policies to reduce inequalities. Welfare became a reward to those who suffered during conflict. Andrzejewski finds that:

“Success in war, more than any other human activity, depends on coordination of individual actions, and the larger the group the more necessary is the coordination, and the larger the hierarchy required... [but] the intensification of warfare may make it necessary to enlist the support of the masses by granting them various privileges, in which case a substantial levelling may take place.”¹⁵¹

This correlates with the promise of welfare reform after World War II and David Lloyd George’s ‘homes fit for heroes’ campaign after World War I. Offe argues that the Welfare State has a role in the ‘peace formula’ of the advanced capitalist democracies following WWII.¹⁵²

Also at around the turn of the Century, an interesting argument developed that the Welfare State was created through pressure from the working class or alternatively as a form of State social control. This argument is two side of the same coin; it can be argued a political democracy demands social liberal State assistance for the working class and at least minimal

150 Kidd, A State Society and the Poor in the nineteenth century (Macmillan Basingstoke 1999)

151 Andrzejewski, S Military Organisation and Society (London 1954); Field, GG. Blood, Sweat and Toil: Remaking the British Working Class 1939-45 (OUP, Oxford 2011)

152 Offe, C ‘Some Contradictions of the Modern Welfare State’ in Pierson, C and Cashles, FG (eds.) The Welfare State Reader (Polity Press, Cambridge 2000) 67

assistance for the most vulnerable in society.¹⁵³ Alternatively, the welfare state is a form of social control to avoid anarchy; this has been termed class abatement.

‘Class abatement’ aims to uphold law through non-coercive means¹⁵⁴. Politicians can propose social reform to appease the working classes, and to attract political popularity or prevent workers turning to extreme socialist or syndicate solutions¹⁵⁵. Webb articulated that:

“if you allow the tramway conductor to vote he will not forever be satisfied with exercising that vote over such matters as the appointment of the Ambassador to Paris... but he will seek to obtain some kind of control as a voter over the conditions under which he lives.”¹⁵⁶

The idea of class abatement has been discussed by many academics. Foucault argued that the growing institutionalism by the State in social reform is a subtle attack on marginal behaviour as a strategy of domination. Social control and class repression have been reinterpreted in social security.¹⁵⁷ State welfare can improve the quality of the workforce and preserve political stability¹⁵⁸. The ruling class maintain its power in capitalist societies partly by its control of the state apparatus. The creation of the Welfare State is an attempt

153 Marshall, T H, ‘Citizenship and the Social Class’ in Marshall T H Sociology at the Crossroads and other essays (Heinneman, London 1963) pp67-127

154 von Hayek, F ‘The Meaning of the Welfare State’ in Pierson C and Cashles, F G (eds.) The Welfare State Reader (Polity Press, Cambridge 2000) 90

155 Ibid.

156 Quoted in B, Gilbert The Evolution of National Insurance in Great Britain: the origins of the Welfare State (Michael Joseph, London, 1966) 25-6

157 Foucault, M The order of things: an archaeology of the human sciences (Tavistock, London 1970); Foucault M Madness and civilisation: a history of insanity in the Age of Reason (Tavistock, London 1967)

158 J Saville, The Welfare State: an historical approach’ New Reasoner 3(1957) 5-27, at 5-6 in Harris, B The origins of the British Welfare State – Social Welfare in England and Wales 1800-1945 (Palgrave Macmillan Basingstoke 2004) 1.1

to restore the authority of the ruling elite¹⁵⁹. Foucault and Gramsci's sentiments reflect Marxist understanding of the capitalist system where workers were commodified thus stripped of their humanity and dignity¹⁶⁰. Welfare rights can 'decommodify' the worker. Social security systems can attempt to humanize and reduce the inequalities of the capitalist system. However, Marxists argue that market relationships are incompatible with notions of 'just distribution' and should be replaced by another economic system, which enables resources to move from each according to his ability to each according to his need.¹⁶¹ Accordingly, Marxists argue against the expansion of state welfare which is not a means of redressing the imbalances created by a free market capitalist society, but is a means of reinforcing the inequalities associated with that society.¹⁶² Accordingly, there is an inherent contradiction in Marxist support for welfare reform as a means of improving working-class living standards, if welfare reforms only reinforces social control and undermine the proletariat by the bourgeoisie.

Lloyd George and Churchill understood the strategic importance of welfare measures which would act as an antidote to socialism and hinder polarisation of the electorate between Labour and Conservatives in Britain and contribute to the efficiency of the British economy by preventing the physical and mental deterioration of the workers and provide a measure of social justice which would help to attract working class voters without alienating the middle classes.¹⁶³ Demand for socialist reform after WWII called for a better vision of the future.

159 A Gramsci, *Selections from the Prison Notebooks*, (Lawrence and Wishart, London 1973) p.210

160 Marx, K, *Das Kapital A Critique of Political Economy* 1867

161 Marx, K 'Criticism and the Gotha Programme' in Feuer (ed.) *Marx and Engels: Basic Writings on Politics and Philosophy* (1969) p.160.

162 Marx, K *Capital a critique of political economy*. Vol 1 Harmondsworth: Penguin 1976 (First edition, 1867) pp. 340-416 in Harris, B *The origins of the British Welfare State – Social Welfare in England and Wales 1800-1945* (Palgrave Macmillan Basingstoke 2004) 1.1

163 Hay JR *The origins of the liberal welfare reform*, the Economic History Society (Macmillan Press, Basingstoke, 1975)

It is equally argued that pressure from the working classes has led to socialist reform of the welfare state. The moral and ethical reallocation of wealth for a balanced and equitable society is mobilised by pressure groups and campaigns. Keane urged modern socialists to abandon conventional commitment to State-led initiatives in favour of a new strategy based on “innovation from below through radical social initiatives which expand and equalise civil liberties”.¹⁶⁴

In summary, there is a theoretical argument that the creation of the Welfare State and a responsibility for social security is asserted as a responsibility upon society, based on the perceived neutralisation of the lower classes through the redistribution of wealth to satisfy current needs and prevent revolt of the capitalist system. There is also an argument that it is through lobbying from the lower classes that reform for the improvement of the Welfare state develops.

A more overarching theory is that State intervention is necessary whenever the market fails to meet the needs of individuals to advance the overall development of society. The enduring State responsibility for welfare may lie in necessary intervention when the free market fails to provide suitable employment. The State has to be seen to tackle the problem of poverty and its connection to inequality, crime and other social ills. Poverty and crime impact society overall and make it a less attractive place to live and work. Welfare is not merely a matter for individuals. The failure to flourish or maintain oneself adequately has wider societal effects on the economy.¹⁶⁵ Social security steps in when markets fail to deliver equality of treatment. A simplified view of how different academic disciplines view the role of social security in the quote

“Economics sees social security as a neutral instrument for bringing welfare to the masses; public administration sees social security as an expression of underlying values within the community; the law see social security as a public interest and

164 J Keane, ‘The limits of State action’ in J Keane Democracy and Civil Society: on the predicaments of European socialism, the prospects of democracy, and the problem of controlling social and political power, London: Verso 1988, pp. 1- 30, at p. 27

165 P King, Housing Subsidies and Welfare, 2012, International Encyclopaedia of Housing and Home Oxford, Elsevier

responsibility of the State and Philosophers see social security as an expression of justice.”¹⁶⁶

highlights the typical viewpoints of the purpose of social security. However, this thesis aims to draw a more holistic view of social security, and the ways in which social security changes in time due to politics but retain a central plank of State responsibility. The State responsibility for welfare extends to ad hoc risk factors faced and different planned life changes, such as, child birth for the benefit of all.

As will be discussed further in chapter 4, poverty historically was punished as a crime and viewed as a result of personal failings. The poor were blamed for their own position and some characterised as deserving of the situation. A generous system of welfare may encourage idleness. Seeking relief was deterred and associated with punitive orders. Chapter 4 will discuss how the role of welfare developed to become all-encompassing, comprehensive and less stigmatised, but has since become more individualised as the pendulum swings from State to individual responsibility and greater emphasis on families for welfare care in times of difficulty and old age.

The Welfare State has grown due to people’s need to protect themselves against the external effects of other’s misfortune¹⁶⁷. Elias’ ‘civilising process’ explains that development of the Welfare State is contingent upon the growth of Nation States. The growing complexity of modern societies has led to the transformation of local and voluntary relief schemes into the centralised Welfare State¹⁶⁸. Collective welfare provision from the rich began as recognition of an obligation for the less advantaged, and also to protect the wealthy against exploitation so that the burden was carried equally. Collective arrangements evolved between communities, so that no individual community became a

166 Vonk, Gijsbert, Tollenaar, Albertajan (eds) *Social Security as a public interest: a multidisciplinary inquiry into the foundations of the regulatory Welfare State* (Intersentia, Oxford-Antwerp-Portland, 2010)

167 Tim Buthe, *The State as Facilitator of Collective Action: A Review of Abram de Swaan's In Care of the State* Columbia University 1998

168 Harris, B *The origins of the British Welfare State – Social Welfare in England and Wales, 1800 – 1945*, Palgrave Macmillan 2004

magnet for disadvantaged people from a wider area leading to the ‘ghettoization’ of an area. Ultimately it becomes necessary for a national authority to assume responsibility for welfare provision.

The view that the responsibility for social security is merely prevention of the impact of poverty on the rest of society stigmatises the poor and marginalises the role of social welfare. Veit-Wilson speculates that:

“if the persistence of poverty leads to social evils (social disorder, crime, loss of working power) which costs the rest of society. It is arguable that citizens have the right to expect the government to abolish the poverty experienced by some which demonstrably gives rise to social costs borne by all citizens (whether directly or equally). Justified by a collectivist view of the role of the State or by a broader interpretation of individual contractarian views”¹⁶⁹

This presents philosophical arguments about rights and justice into the concept of income maintenance measures to support individuals with a negative impact on society through poverty. Gilbert hypothesised that national efficiency and welfare were complementary¹⁷⁰. Welfare was created to prevent waste.

On the other hand, there remains a ‘personal responsibility’ to welfare¹⁷¹. Society has a justifiable duty towards welfare of the vulnerable notwithstanding an individual’s possible failure to take responsibility for their own life choices. Individual rights and responsibilities have been increasingly linked in the UK social security system.¹⁷² Welfare to work programmes locate the State’s duty towards individuals as dependent upon the fulfilment of

169 John Veit-Wilson, No Rights Without Remedies: Necessary Conditions For Abolishing Child Poverty, *European Journal of Social Security*, 8/3, September 2006, 317, p. 321;

170 The Evolution of National Insurance in Great Britain: the origins of the Welfare State 1966 quoted in Titmuss, R ‘Universalism versus Selection’ in Pierson, C and Cashles, FG (eds.) *The Welfare State Reader* (Polity Press, Cambridge 2000) 43

171 Paz Fuchs, Amir ‘Welfare to work: conditional rights in social policy’ (OUP, Oxford 2000) 10

172 Griggs, J and Bennett, F. SSAC Occasional Paper No. 6 Rights and Responsibilities in the Social Security System, University of Oxford, July 2009

certain personal obligations towards society in the case of voluntary and charitable work or skills training to fill the roles available to the unemployed. Current policy emphasises that under-25s past school age should only have the option between ‘earning or learning’, and that claiming working-age benefits should not pose a viable option in an effort to reduce long-term worklessness¹⁷³.

Thatcher famously believed that ‘society’ did not exist, thus had a limited view as to the State’s responsibility to the vulnerable.¹⁷⁴ The State’s supposed responsibility to provide assistance is thus attached to the vulnerable recipient’s obligation to do all in their power to improve their own situation first. This challenges ‘social security’¹⁷⁵ which in itself is a responsibility of society towards society. Social security is funded by tax-payers and is distributed by the treasury in a fashion deemed reasonable to those identified as vulnerable and needy, due to their personal circumstances.¹⁷⁶

Following on from this idea of State intervention in times of market failure, there is a theory that the paternalistic nature of the State deems that it has a morally superior role and knows best how to create a contingency if a risk factor manifests. The Paternalism theory argued that most individuals do not have the necessary information to make rational decisions about saving before a risk factor appears which affects the income possible through private means. There is a lack of trust in the private market to enable individuals to provide for themselves if they were expected or encouraged to do so. A paternalistic policy assumes that the State knows better than the individual what is good for them¹⁷⁷. The growth of social security can be attributed to the perceived greater knowledge possessed by

173 BBC, David Cameron suggests cutting benefits for under-25s, 2 October 2013, 6
www.bbc.co.uk/news/uk-politics-24369514 (accessed 3 October 2013) Cameron Speech promised to “nag and push and guide” young people away from a life on the dole.

174 Margaret Thatcher (1925–2013), U.K. prime minister 1979–1990, talking to *Woman’s Own* magazine, 31 October 1987

175 Stephan Leibfried and Steffen Mau, *Introduction to Welfare States: Construction, Deconstruction, Reconstruction*, (Edward Elgar Publishing Limited, Cheltenham 2008) xii

176 Wikeley, Orgus & Barendt’s *The Law of Social Security* (Butterworths, London 2002) 1

177 Ibid.p. 10; quoting Sugden, *Who Cares?* IEA Occasional Paper 67 (1983)

the State on the risks to an individual's livelihood. The overarching objective being that the State acts where the market fails and ensures the just distribution and reallocation of wealth through taxes for the greater good of its citizens. A free market model of welfare is unlikely to work due to limitations on individuals to make their own rational decisions to create a contingency, and have all possible information about future welfare.¹⁷⁸ In some social-democratic Welfare States, pressure from the workers to mobilise political power established broad systems of social assistance from the State's general revenue rather than from individual contributions.¹⁷⁹

Both Lloyd George and Churchill had forecast the creation of a society in which the worst ravages of poverty would be eliminated. It has been argued that social security is one of the greatest achievements of modern times in true progression of human society.¹⁸⁰ According to Bradshaw, if the State bears the burden resulting from different eventualities and provides a contingency, true freedom and solidarity amongst the community without excessive fear of the future can result. Human beings become equal in the face of disease and death with the existence of social security¹⁸¹.

As will be clarified in chapter 4, before the modern conception of the Welfare State, morally directed philanthropy was a major part of the assistance available for 'paupers' as opposed to the draconian workhouse method of dealing with the poor. The Webbs¹⁸² were strongly

178 P King, *Housing Subsidies and Welfare*, 2012, International Encyclopaedia of Housing and Home Oxford, Elsevier

179 Example Scandinavian countries in University of Minnesota, Human Rights Resources Centre, Circle of Rights; Economic, Cultural and Social Rights A Training Resource Section 5 – Understanding Specific ESC rights module 11 Social Security as a Human Right <https://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module11.htm> (accessed 18 January 2014)

180 Langendonck, J V (ed) *The right to Social Security* (Intersentia, Antwerpen-Oxford 2007) vi

181 Bradshaw, J (ed) *Social Security, happiness and wellbeing* (Intersentia Oxford-Antwerp-Portland 2008)

182 S Webb and B Webb *English Poor Laws History Part II The Last hundred years* (originally 1929 first edition, reproduced by Frank Cass, London 1966)

critical of poor law policy of deterrence, and believed in the moral superiority of State intervention. The Webbs argued for the State to play a more active role in the prevention and treatment of poverty and destitution¹⁸³. Slater further argues that the existence of poverty [was] a symptom of the State's failure to achieve the 'good life' for the community which it serve[d]¹⁸⁴. The State can fulfil a protective role to ease class struggle. The Welfare State was created due to the inevitable consequence of long term growth in State intervention, and an institutional expression of public benevolence¹⁸⁵. The capacity of the State to intervene in welfare depends upon financial resources reliant on taxation and State income generation.¹⁸⁶

The early State responsibility in creating the Welfare State demonstrates the paternalistic nature of the State in the reallocation of wealth:

“the Welfare State acquired an ideological life of its own, in which ‘Britain’s Welfare State became infused with a series of vague but deeply and widely held beliefs: as part of common society, we do have shared needs; people are entitled to a decent life; privilege and greed must not be allowed to emasculate citizens; social rights; government can be a force for good in securing these ends”¹⁸⁷.

This ideological basis expanded substantially throughout the first half of the 20th Century. Governments in the second half of the century have reformed by cutting spend on welfare and incentivising work, adopting a less explicit paternalistic approach.

183 Through minimum standard of wages, a maximum working day, access to medical services, the right to a healthy environment, and educational opportunities to all citizens

184 Slater, G, Poverty and the State (Constable & Co., London 1930) p.1, 4

185 Harris, B The origins of the British Welfare State – Social Welfare in England and Wales, 1800 – 1945, Palgrave Macmillan 2004, p.1 ,

186 Daunt, M Wealth and Welfare: An Economic and Social History of Britain 1851-1951 (Economic & Social History of Britain, OUP 2007)

187 Heclo, H 'Welfare: progress and stagnation' in W. Gwyn and R Rose (eds.) Britain: Progress and Decline, (Macmillan, London and Basingstoke, 1980), pp. 39-59, 36

It has also been argued that women's participation in the political process has had a significant effect upon the development of welfare measures, which has been termed 'Maternalism'. Women's organisations have also led to growth of the Welfare State. Koven and Michel defined this as "we apply the term [maternalism] to ideologies that exalted women's capacity to mother and extended to society as a whole the values of care, nurturance and morality."¹⁸⁸ 'Maternalism' in contrast to Paternalism represents a notion that welfare is provided from a moral perspective reducing inequality, rather than a morally superior perspective that the State has a role in individual's lives because the individual lacks the capacity to support themselves. "The protection of the weak and the vulnerable, the old, the very young and pregnant women, has been an ethical (and frequently religious) mandate in all human societies throughout history"¹⁸⁹.

More recently 'social contract'¹⁹⁰ theory has dominated social theory to explain welfare. Welfare is a step towards social equality and citizenship through the global 'social contract' theory. The social contract has emerged as a popular conceptual mechanism employed by several State welfare systems to create social policies which legitimise fundamental justice in society, where there is a balance of the responsibility/obligations of the State and the provision of means to human dignity. In terms of literature establishing international norms

188 Koven, S and Michel, S Womanly Duties: Maternalist Politics and the Origins of Welfare States in France, Germany, Great Britain, and the United States, 1880-1920 (1990) *The American Historical Review* Vol. 95, No. 4 pp. 1076-1108

189 Ibid.

190 Referred to in Hobbes, T *Leviathan* (first published 1651, Penguin 1985), Locke, J 'The Second Treatise' in *Two Treatises of Government* (CUP, Cambridge, 2000), Rousseau, JJ *The Social Contract*, (Wordsworth: Ware Hertfordshire, 1998), Simmons, A J *The Lockean Theory of Rights* (Princeton University Press, 1992), Rawls, A *Theory of Justice* 1971 (Revised in 1999, Harvard University Press, Cambridge, MA 1999), Dworkin, R 'The Original Position' (1973) 40 *U of Chi L Rev* 500, D'Agostino, F *The promise of Social Welfare: New Foundations for the social Contract* (2007)

for social security, scholarship on a global social contract¹⁹¹ provides some explanation and justification for each Nation State to intervene to provide assistance for the poor.

The seminal modern work on the Social Contract is found in Rawls' Theory of Justice; 'Justice in Fairness'. Rawls argued that if individuals were prevented by a veil of ignorance from knowing their station in society, they would agree that social and economic inequalities are justified only if they improve the position of everyone, especially the least advantaged.¹⁹² Rawls used social contract theory to explain the construction of rights and responsibilities in the modern welfare state.¹⁹³

Marshall first coined the term social citizenship, arguing that the ideal citizenship experience meant access to political, civil and social rights. Social citizenship involved:

“the whole range [of rights], from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in society¹⁹⁴”.

Marshall treated rights as the counterpart of duties and obligations, which could be tested legally, depending on whether they were statutory or 'social and moral'.¹⁹⁵

191 Danny Pieters, *Social Security: An Introduction to Basic Principles* (Kluwer Law International 2006, The Netherlands); Roberto Bissio, *Social Watch International Secretariat, Towards a new global social contract*

192 J Rawls, *A Theory of Justice* (Revised Edition, Harvard University Press, Cambridge MA 1999); J Rawls *Justice as Fairness: A Restatement* 2001

193 Amir Paz-Fuchs, *The Social Contract Revisited: The Modern Welfare State Overview and Critical Report*, The Foundation for Law, Justice and Society, 2011, <http://www.fljs.org/files/publications/Paz-Fuchs-SummaryReport.pdf> (accessed 30 August 2016) p. 4

194 T H Marshall, *Citizenship and social class* in J Manza and M Saunder (eds.) *Inequality, and Society* (New York, WW Norton and Co. 2009) Cit Beckett, Angharad E. (2006). *Citizenship and Vulnerability: Disability and Issues of Social and Political Engagement*. Houndmills, Basingstoke, Hampshire: Palgrave Macmillan. J Waldron, *The Right to Private Property* (Clarendon 1988)

195 T H Marshall, *The Right to Welfare* (1965) *Sociological Review* 13(3) 261-272 discussed in further detail in chapter 4

D'Agostino further explains the modern understanding of State actions through the Social Contract; "No contract legitimises unless it delivers... This means that it is the responsibility of the state to ensure that those social circumstances are progressively realized in which all those capacities which are directly involved in public reasoning about the terms of a just social arrangement are themselves progressively delivered to its citizens."¹⁹⁶ This conception of State responsibility asserts that the State and individual have both responsibilities and obligations. According to D'Agostino's interpretation the achievement of these responsibilities will deliver benefits for both the individual and society generally, which improves with the just reallocation of wealth. The reallocation of wealth through tax structuring leads to improved equality and provision of resources. Superficially, social security benefits are merely transfer payments from one group to another, and indeed the cumulative wealth of society is not affected¹⁹⁷, and in terms of utility, redistribution from the rich to the poor makes society on aggregate wealthier since £1 in the hands of the poor transferees is worth more to them than it was in the hands of richer transferors.¹⁹⁸

The social contract demonstrates the reciprocal nature of the rights and responsibilities of social security claimants.¹⁹⁹ Rights and responsibilities go hand in hand, with rights being earned, or balanced against the fulfilment of duties.²⁰⁰ Workfare programmes have included the compulsion on working age claimants to participate in voluntary or community work for their benefits or complete training towards formal qualifications. Commitments to the OECD²⁰¹ and EU have impacted social security schemes, with the development of workfare

196 D'Agostino, F 'The Promise of Social Welfare: New Foundations for the Social Contract' 11;

D'Agostino, Contemporary Approaches to the Social Contract, Stanford Encyclopedia of Philosophy

First published Sun Mar 3, 1996; substantive revision Tue Dec 20, 2011

<http://plato.stanford.edu/entries/contractarianism-contemporary/> (accessed 9 June 2015)

197 McClements, The Economics of Social Security (1987) Ch. 7

198 Wikeley, Orgus & Barendt's The Law of Social Security (Butterworths, London 2002) 13

199 I Lademel and H Trickey 'A new contract for social assistance' in I Laedemel and H Trickey (eds.)

An offer you can't refuse: Workforce in International Perspective (Policy Press: London 2004). P.207

200 Griggs, J and Bennett, F. SSAC Occasional Paper No. 6 Rights and Responsibilities in the Social Security System, University of Oxford, July 2009

201 Organisation for Economic Co-operation and Development

and activation programmes which incentivise work, validating the dominance of social contract theory in the development of Welfare States²⁰². It has been argued State financial support being means-tested can lead to work disincentives, which can lead to economic dependency and long-term worklessness for some²⁰³. Various governments have sought to design welfare systems which incentivise certain types of behaviour, and ensure fairness and efficiency in the social security system.

Langan has written about the connection between the downscaling of State responsibility in recent welfare policies to the social contract theory:

“the welfare policy of the Labour Party, transformed into New Labour under the leadership of Tony Blair after 1994, was the clearest indication of a new welfare consensus. The elevation of responsibilities over rights, of individualism over collectivism, and of community over class, arguably revealed the abandonment of the traditions embodied in the post-war Welfare State. The emphasis on the more authoritarian policies associated with workfare rather than the supportive, if paternalistic, traditions of welfarism reflected the degree of Labour’s change.”²⁰⁴

As will be explained further in Chapter 4, the UK has witnessed a pendulum swing away from unconditional entitlement to social assistance, towards greater emphasis on obligations and conditions tied to the receipt of financial aid. Through administrative reforms, conditions of entitlement and eligibility have been cut. Compulsory ‘voluntary’ work for recipients has meant that the ‘social’ contract between the state and uninsured

202 Bieback, K-J “Social assistance in Germany, France and the United Kingdom: from the “poor poor” to the “eligible poor”; from welfare to workfare (2009) JSSL 207, 208

203 Huffington Post, Frank Field: Universal Credit Benefit System A ‘Disaster’, 11/09/2012
http://www.huffingtonpost.co.uk/2012/09/11/frank-field-universal-credit-benefit-system-a-disaster-_n_1873212.html (accessed 8 June 2016)

204 Langan M ‘The Contested concept of Need’ in Langan M Welfare: Need, Risks and Rights (Routledge, London 1998) 27-28

unemployed people has evolved²⁰⁵. Workfare programmes influence the balance between rights and obligations or the ‘carrots and sticks’ impacting long-term unemployed working-age people.²⁰⁶

The New Labour model of welfare hoped to develop “an enabling state founded on the liberation of individual potential” in which a “bigger role for the voluntary sector in framing and delivering local services is central to our vision”²⁰⁷ which has continued as a central aim for welfare through subsequent administrations. There is an obvious and direct link between increased levels of personal taxation and the improvement of public welfare provision, demonstrating the social contract context of the welfare system. In the interest of tax reductions, in recent years, welfare benefit eligibility and entitlement have been continually cut through bright line rules in legislation²⁰⁸. Bright line rules being clearly defined rules or standards, which are composed of objective factors which leave little or no discretion for varying interpretation. The purpose of a bright-line rule is to produce and apply predictable and consistent results.

The social contract theory continues to dominate literature and policy. As will be discussed further in chapter 4 with reference to housing and social security policy, since the 1980s, there has been a particular emphasis in policy on self-provision and responsibilities of the individual. This thesis argues that the shift to individualisation of responsibility has helped to develop relevant fundamental rights and responsibilities in the modern welfare system, which determines the division of funds from social cooperation to be distributed amongst

205 Press Association ‘New Help to Work programme comes into force for long-term unemployed’. The Guardian Monday 28 April 2014 <http://www.theguardian.com/society/2014/apr/28/help-to-work-programme-long-term-unemployed> (accessed 29 April 2014)

206 I Lademel and H Trickey ‘A new contract for social assistance’ in I Lademel and H Trickey (eds.) *An offer you can’t refuse: Workforce in International Perspective* (Policy Press: London 2004).

207 Tony Blair, *My vision for Britain*: by Tony Blair, The Guardian, 10 November 2002 <http://www.theguardian.com/politics/2002/nov/10/queensspeech2002.tonyblair> (accessed 10 June 2016)

208 Explained further in Chapter 6 & 7; Laurie, E. *Judicial Responses to Bright Line Rules in Social Security: In Search of Principle*, (2009)

the vulnerable. The social contract theory explains most acutely this policy trend.²⁰⁹ The social contract theory explains the continued Welfare State commitment. It locates the State's responsibility within a State-individual relationship on a continuum as policy develops. Of the different origins discussed above, the social contract model is the most relevant aspect to today's State responsibility for the Welfare State since it has clearly informed social security policy development from at least the New Labour government onwards.

The social contract is also mirrored in policy which seeks to encourage homeownership. The State incentivises the expansion of asset holdings amongst low-income households by assisting (financially or through regulatory policy change) with the purchase of owner-occupier homes²¹⁰. This is further explained in chapter 4, exploring housing policy through time. Expanding the number owner-occupier homes is seen as a means of reducing wealth inequalities and promoting wealth creating behaviour among citizens. Housing asset based welfare has been a consistent British policy as an additional pillar of the Welfare State.²¹¹ As will be discussed in the next chapter, in return for state support for homeownership, individuals draw on wealth to fund their later needs (retirement social care). Increasingly the responsibility to fund certain aspects of welfare has shifted to the individual and is linked to releasing the financial value in the owner-occupied house.

To conclude, the social political background of the last 100 years is the context of the State responsibility for welfare. Different drivers have led to a varying extent of State responsibility manifesting in policy, dependant on the social political circumstances of the time, demonstrating that the origins of this responsibility is found in political theory. As will

209 Amir Paz-Fuchs, *The Social Contract Revisited: The Modern Welfare State Overview and Critical Report*, The Foundation for Law, Justice and Society, 2011, <http://www.fljs.org/files/publications/Paz-Fuchs-SummaryReport.pdf> (accessed 30 August 2016)

210 For example the Right to Buy policy which enables council house tenants to purchase their home with a discount.

211 Doling, J and Ronald, R *Home ownership and asset-based welfare* (2009) J Hous and the Built Environ, Printed by SpringerLink

be further explored in chapter 4 of this thesis on the historical context of housing policy, the extent of State responsibility is a democratic expression dependant on the party political objectives of the party in power at any given time.

3.3 Conclusion: An assumed State responsibility – how does this affect the future Welfare State

The development of a State responsibility has arisen through political ideology. An assumption of responsibility for social security and housing is found in the political origins at any given time, dependant on the political objectives of the party in power. This is compared to imposed, i.e. obligations made through law. As previously discussed in chapter 2, there is a lack of genuine *per se* legal responsibility emanating from international law upon the State for welfare and housing. Albeit, that international treaties can provide the backdrop for the development of actions by Nation States to protect and enforce social economic cultural rights. International law in itself is a product of political ideology, but the distinction is the status of responsibility emanating from law or that just emanating from politics. Law can have a legitimising force compared to political power and the advantage of a recognised enforcement mechanism. Legislation is used to enforce the political inclinations with respect to the policies made, but international law is not the guiding power for the policies at a micro level.

Explanation of the international instruments is part of the narrative of State responsibility for housing, however, it is noted that the majority of the international human rights conventions lack enforcement mechanisms thus are not directly justiciable rights in domestic law. It has been argued in this thesis that the practical division between State and individual responsibility is a matter of domestic political ideology, and that this dynamic has changed over time.

The prevailing Welfare Model of the State²¹² explains the overarching underpinning of the Welfare State. In the UK, the continued State responsibility arises from the sustained reliance upon the population for this assistance, to an extent the adherence of norms and

212 Discussed in detail earlier in this chapter in 3.2.1

the guiding principles that the Welfare State supports the continual development of society. It is incumbent upon the State to continue with making available some form of a safety net since due to its previous and ongoing maintenance of welfare assistance, which is relied upon by its citizens.

In the UK, the State's recognition of the responsibility for providing social security developed the Welfare State for today's societal needs. However, this State responsibility for financial assistance for housing costs in recent years has reduced, demonstrated in the cutting benefit entitlement, described in further detail in chapter 7. The relevance of understanding the nature of this State responsibility to this thesis is that it provides an indication as to how this responsibility will develop or decline dependant on whether it is seen as obligatory or assumed by the Government. The State provision for welfare is subject to political motivations, rather than internationally legally imposed obligations. The implication of this assumed nature of this State responsibility is that it has developed then downscaled over time, thus is subject to further erosion dependant on the political inclinations of any future ruling government.

In Chapters 7 and 8, this evaluation of the changing State responsibility will prove useful when analysis focuses on whether the ways in which housing benefit is structured and recent reforms that have reduced the amount of benefit that is payable to eligible claimants are appropriate. The *quid pro quo* for individualising the responsibility for housing (through ownership) is that the State has a responsibility to go further when marginal owners encounter financial difficulties. Paradoxically, therefore, individualising housing can inadvertently lead to an assumption of greater responsibility on the State in terms of social security safety net measures. The existence of safety net measures recognise that individualisation of responsibility has its limits or may need temporary support to be sustained.

Where responsibility is assumed, there is a duty to follow this through as expressed in the current welfare system. Responsibility can be expressed as a moral obligation necessary to give effect for some level of housing. This chapter has analysed the foundations of this responsibility as assumed by the State due to party political views rather than imposed by

international law demonstrates. Accordingly, the *assumed* nature of State responsibility means that it can potentially be further diminished over time, dependant on political views of subsequent governments. International conventions have not been successful in creating a right to social security or housing which goes any further and is any more encompassing than the existing assumed State responsibility in the UK. The lack of enforcement demonstrates the difficulty of imposing a universal right to housing or social security.

The next chapter builds upon this argument regarding the nature of State responsibility for welfare and housing by exploring in detail the expression of State responsibility for housing costs through time, to provide the necessary historical context for the current manifestation of State responsibility in housing policy.

Chapter 4: Historical Context of Housing Policy

4.1 Aim

This chapter shall present how housing policy has developed into its current state where owner-occupation is favoured by examining the historical context of the State's intervention in the financing of housing costs against the shifts in tenure. This chapter builds upon the previous chapters' exploration about the assumed nature of the State responsibility for welfare encompassing housing and housing related social security welfare benefits. It is argued in this thesis that evaluation of the historical context is useful to understand the development and eventual erosion of State responsibility.

This chapter is divided into key time periods (Pre-20th Century, Early 20th Century, Post WWII, 1980s onwards). The purpose of the chapter is to explain housing policy (and where relevant welfare policy) through the lens of individual versus State responsibility, in order to evaluate the drivers for the development of housing policy. This chapter explores the historical application of the State versus individual responsibility dynamic for housing costs. This chapter hopes to draw together the relevant points of historical policy and summarise how historical policy has impacted the current position in policy. This chapter places the various State interventions into housing and relevant wider welfare policy on a State-Individual responsibility continuum. Recurrent themes run throughout past and current policy expressing the dynamic between State versus individual responsibility for ongoing housing costs.

4.2 Pre-20th Century

As will be analysed in this section, Pre-20th Century housing policy is dominated by the creation of the Poor Laws and the Workhouse as the explicit recognition for State responsibility for housing and welfare for the poor. As demonstrated below, pre-20th century policy shows a clear link between the provision of welfare and housing by the State.

The Poor Laws first developed in the 15th then codified in the 16th century²¹³. The Poor Laws remained throughout the Victorian period until the creation of the modern Welfare State in the aftermath of WWII. The Workhouse was an institution where vulnerable individuals and families unable to support themselves could receive accommodation and employment²¹⁴. The Workhouse represented the State's acknowledgement that poverty was an issue to be tackled, to which entire institutions and governing infrastructure were built. Nevertheless, the attitude towards the poor in such establishments was one of neglect and abuse. Poverty was seen as a personal failing typically associated with criminal activity, and not as a result of market forces²¹⁵. Those who needed assistance from society fell into two groups; the 'impotent' and the 'idle able-bodied' poor²¹⁶. The State's attitude and the extent to which the State assumed responsibility for the care and housing given to the inmates of workhouses developed over time. The State's early role providing housing for the poor created a relationship of subservience to the State and the gentry.²¹⁷ Wealthy landowners, Poor Law Commissioners and the Poor Law Union Board of Guardians provided the finance and governing management²¹⁸.

In terms of the State involvement continuum, the extent of State involvement and intervention in housing was based on investment in building workhouses and governing infrastructure, thus the State provided a 'correction' to deal with the poor. This was a significant shift in the previously laissez-faire attitude. The 'correction' attitude was borne from the practicalities of creating a motivated workforce and dealing with the sickness and malnutrition of the poor,²¹⁹ rather than arguably a charitable intent.

213 Englander, D, Poverty and Poor Law Reform in Nineteenth-Century Britain, 1834-1914: From Chadwick to Booth (Routledge, 1998) p.1

214 Ibid.

215 E Philip Davis and Miguel Sanchez Martinez, Discussion Paper No. 435, A review of the economic theories of poverty, National Institute of Economic and Social Research (20 August 2014) p.21

216 Longmate, N. The Workhouse (Pimlico Random house, London, 2003)p. 14

217 Ibid.

218 Ibid.

219 Folwer, S Workhouse: The people, the places the life behind doors (National Archives, 2007)

The highly moralistic nature of the Poor Laws and division between ‘deserving’ and ‘undeserving’ poor reflects the current allocation of housing for homelessness applicants, but less so with HB²²⁰. This attitude underpins modern day homelessness provisions²²¹. The ‘type’ of poor to which any given pauper was labelled is reflected in today’s more sophisticated and detailed homelessness entitlement criteria²²². A systematic prejudicial and discriminatory attitude towards those who receive welfare benefits by wealthy corporate bodies is present today²²³, which mirrors negative attitude to the poor by the wealthy landowners in the 17th Century. This displays the interventionist way in which the State judge individuals and only assists accordingly.

The Act of Settlement established in the Poor Relief Act 1662²²⁴ forced any newcomer to a town to demonstrate their means by renting a property and live unchallenged for 40 days before they were able to settle in a new town or village. The right of settlement allowed the settlor the right to poor relief and immunity from being sent away. The purpose was to establish which parish was responsible for the individual’s Poor Relief and could charge rates. It was recognised as the responsibility for the rich to support the poor, and the

220 Discussed further in Chapter 5

221 Statutory homelessness duty; The Housing Act 1977, Housing Act 1996, and the Homelessness Act 2002, place statutory duties on local housing authorities to ensure advice and assistance is given to those who are homeless or threatened with homelessness

222 Discussed in detail in Cowan, D Homelessness: The (In-appropriate) Applicant (Ashgate, Aldershot, 1997) p. 1; Cranston, R Legal Foundations of the Welfare State (Weidenfeld & Nicholson, London 1985) p. 34

223 Giles Peaker, Foxtons declare war on the homeless, Nearly Legal 14/04/2016

<http://nearlylegal.co.uk/2016/04/foxtons-declare-war>

homeless/?utm_source=wysija&utm_medium=email&utm_campaign=mail+updates (accessed 15 April 2016) ; Randeep Ramesh, 'Scrounger' stigma puts poor people off applying for essential benefits, The Guardian, 20/11/2012 <http://www.theguardian.com/society/2012/nov/20/scrounger-stigma-poor-people-benefits> (accessed 19 May 2016) Tabloid newspapers project a ‘scrounger’ mentality on welfare benefit recipients.

224 The Poor Relief Act 1662

corollary of the Act of Settlement was the workhouse which acted as a central institution to accommodate and provide work for the poor.²²⁵ The Act of Settlement affected the behaviour of large estate owners who controlled housing. Landowners would demolish empty housing to prevent people settling in their parish and force them to return to their original parish²²⁶. Labourers from neighbouring parishes were employed due to the ease in dismissing them after a short term of work, since there was a lack of Parish responsibility for their employment or welfare.²²⁷ Magistrates were tasked with granting orders for poor relief, they were also often landowners thus reluctant to grant relief orders which would increase the poor rates.²²⁸

The Act of Settlement demonstrates the early use of eligibility criteria, and mirrors the allocation of modern welfare and housing provision as part of the State responsibility to ensure that tax payers' money is used responsibly. The Act of Settlement is also reflected in some Local Authority housing allocation processes.²²⁹ A recent council tax minimum residence requirement excluding outsiders can also be likened to the Act of Settlement.²³⁰ In this recent case, a Local Authority had set an arbitrary 2 year minimum residence requirement because it was concerned that there would be an influx of outsiders moving to the area to benefit from cheap housing. The Local Authority's minimum residence requirement in this instance was deemed discriminatory. This demonstrates that outdated

225 Longmate, N. *The Workhouse* (Pimlico Random house, London, 2003) P.22

226 Ibid.

227 Hindle, S, *On the Parish?: The Micro-Politics of Poor Relief in Rural England C.1550-1750* (Clarendon Press, Oxford 2004)

228 Ibid.

229 'Local Connection' characteristics are given priority in some housing allocation policies which has the potential to discriminate against those from other areas. Rutter, J and Latore, M, 'Research Report 4: Social housing allocation and immigrant communities' Equality and Rights Commission 2009

230 *R (Winder) v Sandwell* (EHRC intervening) (2014) EWHC 2617

welfare principles can be reflected in recent policy, if not monitored with checks and balances, which form part of the State responsibility to deliver accountable housing policy.

The 1795 Speenhamland system introduced out-relief, which was a means-tested sliding-scale of wage supplements where families were paid extra to top up wages to a set level according to the number of children and the price of bread. The system led to employers paying wages below subsistence so that workers were forced to claim relief to subsidise their wage²³¹. Out-relief thus left workers' low-income unchanged, and in fact further exacerbated poverty figures. Even in its inception, welfare provision led to welfare fraud. The Speenhamland system prevented chronic poverty and malnutrition, thus avoiding decline in workforce productivity. Responsibility fell on landowners to pay the poor rate. The Workhouse gained in popularity from landowners compared to out-relief, since they did not wish to have the monetary responsibility to assist the poor. The Poor Law Commissioners' Report in 1834 criticised the out-relief system and aimed to disparage the Poor Laws to help create new ones.²³²

Between 1832 and 1834, during the industrial revolution, the Poor Law Commission emphasised two principles; (1) the position of the pauper must be 'less eligible' than that of the independent labourer (2) no relief outside the workhouse. The 'workhouse' test encouraged the Poor to seek employment or charity instead. This workhouse test is an explicit recognition of the co-dependence of welfare and housing provision from the State.

The Poor Laws led political economic reformists to develop theories about how population size of the poor affects society. Malthus believed that the Poor Laws encouraged early marriage and illegitimacy. He saw the Poor Laws as "direct, constant and systematic

231 The Reading Mercury, May 11, 1795; in J. F. C. Harrison, ed., *Society and Politics in England, 1780-1960*, New York: Harper & Row, 1965, pp. 43-44

232 Mark Blaug, *The Myth of the Old Poor Law and the Making of the New*, (1963) *The Journal of Economic History* Vol. 23, No. 2 pp. 151-184

encouragement to marriage by removing from each individual that heavy responsibility which he would incur by laws of nature for bringing human beings into the world which he could not support²³³. Ricardo wrote that the poor law undermined the wages of independent workers²³⁴. Bentham argued that people only did what was pleasant, thus it had to be unpleasant to discourage people from claiming relief²³⁵. This was the core of the argument for “stigmatising” relief by making it “an object of wholesome horror”.²³⁶ The goal at the time was for the State to be responsible for the bare minimum of subsistence. The rhetoric of some of these views mirrors that of current criticism of the welfare system²³⁷.

By the late 19th Century, the State identified connections between poor health and housing. Work productivity led to further developments in public health and housing legislation.²³⁸ The Housing of the Working Classes Act 1890 allowed Local Authorities to build housing; however, the majority ignored this opportunity.²³⁹ Lack of investment in private landlordism meant that housing subsidies were essential to ensure that there was sufficient

233 T R Malthus, *An Essay on the Principle of Population*, 1798, Chapter V, p 39–45 as quoted in James P Huzel, *Malthus, The Poor Law and the Population in early Nineteenth Century England*, *The Economic History Review*, New Series, Vol 22, Issue 3, (Dec 1969) 430-452, 430

234 Ricardo, D *Principles of Political Economy and Taxation* 1817

235 Spicker, P, *An introduction to Social Policy: Theory and Practice* (Third edition, Policy Press, Bristol 2015)

236 J Poynter, *Society and Pauperism*, (Routledge and Kegan Paul, 1960)

237 Spicker, P, *Poverty and the Welfare state: Dispelling the myths*, A Catalyst Working Paper, September 2002

238 *Labouring Classes Lodging Houses Act* and *Common Lodging Houses Act 1851*, *Artisans’ and Labourers’ Dwellings Act 1868* and *Artisans’ and Labourers’ Dwellings Improvement Act 1875*, *Public Health Acts (1875 and 1890)*, *Public Health Act 1848*, *Housing of the Working Classes Act 1885* and 1900

239 Martin Gorsky, Karen Lock, and Sue Hogarth, *Public health and English local government: historical perspectives on the impact of ‘returning home’*, *J Public Health* first published online January 27, 2014 doi:10.1093/pubmed/fdt131

<http://jpubhealth.oxfordjournals.org/content/early/2014/03/14/pubmed.fdt131.full>

accommodation. Local authority housing was a key step towards enlightened and humane social policy driven by the State's awareness of terrible housing conditions, thus recognising the need for adequate and affordable housing for the poor. Local authorities already had the burden of responsibility for public health and building regulations, thus were in the position to become providers of housing too.²⁴⁰

Housing Associations are rooted in the philanthropy of the 1840s following famine in Great Britain and Ireland, although the term did not come into common usage until the 1930s²⁴¹. Population increase from 1811 to 1911 due to the industrial revolution posed a serious problem for housing, and led to the Victorian origins of Housing Associations. Pity for the poor led to the rich attempting to remedy the situation.²⁴² Investment into model dwelling companies was seen as benevolent compared to slum property. There were also industrial bodies building homes for their employees and co-partnership societies for subscribing members.²⁴³ By the 1860s, the charitable and semi-charitable model dwelling companies of the Peabody Trust and the Improved Industrial Dwellings Company had demonstrably improved housing conditions. A Central Public Utility Council; was set up to provide support and supervision of the development of model dwelling companies, which is similar to the current role of the Homes and Communities Agency for Housing Associations. Loans were

240 Ibid.

241 The Operations of Housing Associations, report by the housing management and Housing Associations sub-committee of the central housing advisory committee, Ministry of Health, 1939, p. 4; P Garside, Central government, Local Authorities and the voluntary housing sector 1919-1939 in A O'Day (ed.) Government and Institutions in the post-1982 UK Mellon Press, 1995; The Smith Institute, Rebuilding the Relationship between Affordable Housing and Philanthropy, September 2013, http://www.socialfinance.org.uk/wp-content/uploads/2014/03/philanthropy_and_affordable_housing_final.pdf

242 Engels' The Condition of the Working Class in England in 1844 led to greater concern for the welfare of the working classes, which led to action by the rich.

243 Peter Malpass, The Missing Years, in Goodwin, J and Grant, C (eds.) Built to Last? Reflections on British Housing Policy ROOF magazine, London 1997 p. 125

made to public utility societies from the Public Works Loans Board for new house building.²⁴⁴ The Artisans and Labourers' Dwellings Improvement Act 1875 also gave urban councils the power to clear 'unhealthy areas' by compulsorily buying the houses, evicting tenants, demolishing buildings, clearing the site and laying out sewers and streets.²⁴⁵

Model dwelling companies reflected class dichotomies.²⁴⁶ Social imperialism prevented the poorest from obtaining a home, since they would only take men in regular employment.²⁴⁷ Punctual payment of rent was strictly regulated, and instead of reforming difficult tenants, the model dwelling companies would just evict them. Model dwelling companies further developed later to the Housing Associations we recognise today²⁴⁸.

There are seemingly parallels between our contemporary housing 'crisis' and that of the 19th century, perhaps could be described as history repeating itself. Philanthropists and social reformers during the 19th century recognised that State intervention was the only actor capable of easing the problems of slum housing, discrepancy between housing supply and need, and high prices at the turn of the 20th century. Similarly commentators have

244 Peter Malpass Continuity and Change in Philanthropic Housing Organisations: the Octavia Hill Housing Trust and the Guinness Trust, (1999) *The London Journal*, 24:1, 38-57, p. 39;

245 Houses of Parliament, Living Heritage Improving Towns <http://www.parliament.uk/about/living-heritage/transformingsociety/towncountry/towns/keydates/> (accessed 17 June 2015)

246 Anthony S. Wohl, *The Eternal Slum: Housing and Social Policy in Victorian London*, Transaction Publishers, 2001

247 Malpass, P, *The Missing Years*, in Goodwin, J and Grant, C (eds.) *Built to Last? Reflections on British Housing Policy* ROOF magazine, London 1997 p. 125

248 Malpass, P, *The Discontinuous History of Housing associations* (2000) 15(2) *Housing Studies* 195, discussed in more detail later in this chapter

argued that the current situation demands government action and a coordinated effort on infrastructure to relieve housing need.²⁴⁹

The Poor Laws were a rudimentary form of public responsibility which involved personal humiliation, loss of civil rights and internment in a workhouse. Later housing legislation for public health and housing, as well as subsidies for housing association provided welfare and housing for the poor without stigmatisation and underlying punishment for being poor. This analysis has demonstrated the changing shape of State responsibility for housing and welfare, as the type of assistance has changed.

4.3 Early 20th Century

The early 20th Century was dominated by rent control as a protective measure by the State from exploitative landlords, as well as greater State involvement in housebuilding due to the circumstances of war and scarcity of housing. The abolition of the workhouse is representative of the social welfare reform of the early 20th century.

As the populations in the workhouse became the very elderly destitute and disabled, the Local Government Act 1929 finally allowed Local Authorities to replace the Poor Law Guardian, and convert workhouses into municipal hospitals.²⁵⁰ Workhouses informally continued until the enactment of the National Assistance Act 1948 which replaced the Poor

249 Nigel Keohane and Nida Broughton, *The Politics of Housing*, National Housing Federation & Social Market Foundation <http://www.smf.co.uk/wp-content/uploads/2013/11/Publication-The-Politics-of-Housing.pdf> (accessed 31 August 2016)

250 Crowther, M.A. (1999) From workhouse to NHS hospital in Britain, 1929-1948. In: Hillam, C. and Bon, J.M. (eds.) *The Poor Law and After: Workhouse Hospitals and Public Welfare*. Liverpool Medical History Society: Liverpool, pp. 38-49.

Laws.²⁵¹ The government found that it had a role as a powerful State actor when market and charitable organisations cannot cope with housing and welfare needs.

The conditions of poverty and squalor included high levels of overcrowding and disease.²⁵² Most private landlords were 'small capitalists' who merely wanted a secure investment in their property, since other types of investment did not secure substantial enough return on capital.²⁵³ Landlords would increase rents when interest rates increased in order to preserve profitability, market rents were dependent upon supply and demand. Landlords were required to raise two-thirds of the value of a property for a mortgage.²⁵⁴ Prior to 1914, 90% of housing was provided by private landlords²⁵⁵. Minimum building standards and public health concerns led to better quality new construction, but raised costs and rents.

Rent controls placed on pre-1919 dwellings meant that investing money into private lets became unattractive to private landlords. New house building became more expensive at the end of the war and then, as expected, prices fell thus investing in rental property would lead to a capital loss when house prices fell for private landlords²⁵⁶. Accordingly State

251 Ibid.

252 As described in literature such as Kellow Chesney, *The Victorian Underworld* (Pelican, 1972); Gertrude Himmelfarb, *The idea of poverty: England in the early industrial age*, (London: Faber, 1984); Paul Spicker, *Victorian Values* in Goodwin, J and Grant, C (eds.) *Built to Last? Reflections on British Housing Policy* ROOF magazine, London 1997 p. 17; M Daunton, *House and Home in the Victorian City*, E Arnold 1983

253 Kemp, P. A. *Private renting in transition*, Housing Policy and Practice Series, Chartered Institute of Housing, Coventry. (2004) p.21

254 Ibid. p.21

255 Kemp, P 'The Origins of Council housing' in Goodwin, J and Grant C, *Built to last? Reflections on British Housing Policy* Roof 1997, p. 49

256 House of Commons Library, Sarah Heath, Social Policy Section, Standard Note SN/SP/6747 *The historical context of rent control in the private sector* 22 October 2013, p.2; Kemp, P *Private Renting in Transition*, Chartered Institute of Housing 2004, p. 21.

intervention in this respect thwarted the private sector's ability to be relied upon to meet the housing shortage. Housing subsidies thus has a significant effect, as this was the most immediate way in which the State could tackle the housing shortage.

Central government started building homes for munitions workers during WWI, and Local Authorities later were assigned the role during the inter-war years to build homes fit for heroes.²⁵⁷ The manifesto of Lloyd George and Bonar Law validated the assumed State responsibility for housing for those who served in the war using idealistic language.²⁵⁸ David Lloyd George's promise of 'homes fit for heroes' in 1918 was a key manifesto point. This policy choice from the Conservative Party in 1918 mirrors the political theory discussed in chapter 3 presenting welfare as a corollary to conflict. Subsidised housing could be considered an antidote to revolution. The government rhetoric promised housebuilding as a direct consequence of war

"It will be the duty of public authorities and, if necessary, of the State itself to acquire land on a simple and economic basis for men who have served in the war, either for cottages with gardens, allotments or small holdings as the applicants may desire and be suited for".²⁵⁹

Lloyd George's coalition government would go on to build 170,000 Local Authority homes and support homes built by private enterprise with government subsidies under the Housing and Town Planning Act 1919²⁶⁰. The 1919 Act gave Local Authorities the responsibility to review housing needs and quantify shortage, in addition to providing a

257 Kemp, P 'The Origins of Council housing' in Goodwin, J and Grant C, *Built to last? Reflections on British Housing Policy* Roof 1997

258 1918 Conservative Party General Election Manifesto, the Manifesto of Lloyd George and Bonar Law <http://www.conservativemanifesto.com/1918/1918-conservative-manifesto.shtml> (accessed 18 July 2015)

259 Ibid.

260 Taylor, W. D. *Mastering Economic and Social History*, (Palgrave Macmillan 1988)

budget to supply the needs of working class households²⁶¹. The State thus assumed responsibility for both the physical production of housing and the subsidy. Rents in State housing were lower compared to the private sector. Housing subsidies were further developed by the Housing Act 1923²⁶², by creating a fixed annual exchequer payment to go towards bricks and mortar subsidies for house building, which was increased by the Housing (Financial Provisions) Act 1924²⁶³. It was no longer necessary for Local Authorities to demonstrate that the market could not meet local needs in order to build public housing for working class households²⁶⁴. These Acts meant greater long-term subsidy to build council housing, reflecting the demise of private rental building. Council housing and (owner-occupation) became substantial competitors to private landlords.

The State responsibility for housing extended to assisting households with ongoing housing costs. Rents for these Local Authority properties were to be 'appropriate normal rents' so equivalent to controlled rents in the Private Rented Sector (PRS).²⁶⁵ Rent control was a significant housing policy as it demonstrated how housing formed part of a social service. The Rent Acts ²⁶⁶ were a pragmatic response to public demands, and formed a key shift in the relationship between State and PRS housing; with the creation of rent control and social

261 Living Heritage, Improving Towns; Housing and Town Planning Act 1919 often referred to as the 'Addison Act' <http://www.parliament.uk/about/living-heritage/transformingsociety/towncountry/towns/overview/councilhousing/> (accessed 19 July 2015)

262 National Archives, Cabinet Papers 1915 – 1988, Wartime housing, <http://www.nationalarchives.gov.uk/cabinetpapers/themes/wartime-housing.html> (accessed 20 February 2016); Housing Act 1923 often referred to as the Chamberlain Act

263 Ibid. Housing (Financial Provisions) Act 1924 often referred to as the Wheatley Act

264 Balchin, P and Rhoden, M (eds.) *Housing: the Essential Foundations* (Routledge, London 1998) p. 7

265 Sarah Heath, Social Policy Section SN/SP/6760 Standard Note, Rent Control in the Private Rented Sector (England) 11 July 2014, p.2

266 The first major example of rent control being the Increase of Rent and Mortgage Interest (War Restrictions) Act 1915

housing provision so the State assumed a crucial responsibility to financially assist and accommodate low-income households.

Rent control continued after WWI, which exacerbated the discouragement of investment in private rented property²⁶⁷. The PRS was made up of mostly independent private landlords with small portfolios so rent controls could prevent their investment. A large proportion of the population lived in rented accommodation.²⁶⁸ This reluctance of private enterprise to provide for housing needs obviously caused housing shortage, and it was assumed by policymakers that immediate decontrol would cause hardship. The Rent and Mortgage Interest Restrictions Act 1923 allowed for decontrolled rents in some properties.²⁶⁹ Decontrolled rents were allowed if the landlord gained possession of it, sitting tenants accepted a lease of 2 and more years, or if a lease was granted fulfilling certain criteria.

The Housing Act 1930 granted subsidies for urban slum clearance and for re-housing of the families into flats within inner urban areas.²⁷⁰ Rents were based on controlled rents, but were differentiated dependant on the means of the tenants, and rent rebates were introduced.²⁷¹ The legacy of house building subsidies continued, but was confined to new

267 Heath, S, 'The historical context of rent control in the private rented sector' SN/SP/6747, 22 October 2013, Social Policy Section, referencing Kemp P, *Private Renting in Transition*, 2004, Chartered Institute of Housing.

268 Ibid.

269 s.8 (1) Rent and Mortgage Interest Restrictions Act 1923 following proposals in the 1923 Onslow Report.

270 University of the West of England, the History of Council Housing http://fet.uwe.ac.uk/conweb/house_ages/council_housing/print.htm (accessed 9 June 2015); Balchin, P and Rhoden, M (eds.) *Housing: the Essential Foundations* (Routledge, London 1998) p. 7

271 Living Heritage, Improving Towns; <http://www.parliament.uk/about/living-heritage/transformingsociety/towncountry/towns/overview/councilhousing/> (accessed 19 July 2015)

building of Local Authority housing for the needs of those who became homeless following slum clearance, rather than for general working class household needs.²⁷²

The Rent and Mortgage Restrictions (Amendments) Act 1933 allowed further gradual decontrol of rents of more properties to encourage further investment in private rented property to feed the supply needed for working class households. From 1933 to the start of WWII, the emphasis in housing law and policy was placed on reducing overcrowding and slum clearance, rather than meeting general housing needs. By the end of the 1930s, state provision was through social insurance covering income loss at a flat rate subsistence level for survival, and also means-tested residual assistance.²⁷³ Accordingly, there was shift from housing provision to social security welfare provision.

At the beginning of the 20th century, with the development of Local Authority housing and rent control; owner-occupation was not seen as an 'ideal' or 'natural' form of tenure as it is today²⁷⁴. The homes built under the Chamberlain's Housing Act 1923 were in "every sense the ideal being better produced at a high standard for the better off members of the working class"²⁷⁵. The State gradually assumed further responsibility through the house

272 Kemp P, Private Renting in Transition, 2004, Chartered Institute of Housing; Ball, J, Property, altruism and welfare: how national legal conceptions affect allocation of social housing to the disadvantaged in Scanlon, K and Whitehead (eds.), C Social Housing in Europe II: A review of policies and outcomes, LSE London (2008) p. 64

http://www.lse.ac.uk/geographyAndEnvironment/research/london/pdf/Social%20Housing%20II/Social_Housing_in_Europe_II_A_review_of_policies_and_outcomes.pdf (accessed 19 August 2016)

273 Balchin, P and Rhoden, M (eds.) Housing: the Essential Foundations (Routledge, London 1998)

274 Balchin, Housing Policy: An Introduction (Routledge, London 1995) p. 194

275 Clarke, S and Ginsburg, N 'The political economy of housing' in Political economy and the housing question political economy of housing workshop, London, 1975 referenced in Balchin, P and Rhoden, M (eds.) Housing: the Essential Foundations (Routledge, London 1998) p. 7

building policy.²⁷⁶ In tandem, a gradual expansion of owner-occupation can be seen from the 1940s, alongside private renting becoming less popular with the expansion of Local Authority housing.²⁷⁷

The development of mutual Building societies can explain the expansion of homeownership, through the development of financing the owner-occupied homes.²⁷⁸ *Formed in the mid-nineteenth century, building societies grew rapidly from localised 'self-help' organisations to become the dominant player in the house mortgage market by the inter-war period.*²⁷⁹ The development of building societies demonstrate how a localised private sector method to assist working class households with aspirations of homeownership, in effect akin to the modern idea of crowd funding²⁸⁰. The early mutual building societies involved members providing monthly subscription to a central pool which was used to finance the construction homes for members, and acted as collateral to attract further investment into the society²⁸¹. These original mutual building societies dissolved when all members owned a home, later in the 1830-40s, permanent building societies became more widespread. As will be discussed later in the 1990s, the government changed banking laws to allow building societies to demutualise and become limited companies and able to diversify services to provide other conventional consumer banking facilities.²⁸²

276 Marshall, J. L. (1969), The pattern of housebuilding in the inter-war period in England and Wales. *Scottish Journal of Political Economy*, 16: 184–205.

277 George Speight, *Who Bought the Inter-War Semi? : The Socio Economic Characteristics of New House Buyers in the 1930s* (Oxford: University of Oxford, 2000)

278 Samy, L. University of Oxford Discussion Papers in Economic and Social History THE BUILDING SOCIETY PROMISE: BUILDING SOCIETIES AND HOME OWNERSHIP, C.1880–1913, Number 72, October 2008

279 Ibid.

280 Simeon Gavalyugov, The original crowdfunding idea – a quick history of Building Societies, 16 May 2017 <https://blog.abundanceinvestment.com/2013/05/history-of-building-societies/>

281 Cleary, E. J. (1965). *The Building Society Movement*. London: Elek Books. pp. 11–12

282 Samy, L. University of Oxford Discussion Papers in Economic and Social History THE BUILDING SOCIETY PROMISE: BUILDING SOCIETIES AND HOME OWNERSHIP, C.1880–1913, Number 72, October 2008

4.4 Post WWII

Post WWII housing policy is dominated by a significant expression of State responsibility in both tenures; through significant house building, continued rent control and tax incentives for buying property.

Between 1945 and 1951, there was a significant shift in tenure due to the clearance of slum dwellings and expansion of Local Authority housing.²⁸³ The 1945 general election was significant for housing policy.²⁸⁴ The origins of the expression of this responsibility is found in the political decisions made after World War II confirming that State responsibility is politically assumed in nature. After the destruction and serious damage of hundreds of thousands homes, and practically no house construction during WWII, the government's housing policy was key to votes. The population had grown by one million, the economy was hit with growing inflation and the house building industry was not able to meet demands due to lack of skilled workforce and materials²⁸⁵ and restricted building licences prevented large scale private sector building.

The Labour party 1945 manifesto put housing at the forefront, "housing will be one of the greatest and one of the earliest tests of a Government's real determination to put the nation first"²⁸⁶. This was a costly policy choice but led to a better quality of life and wellbeing. Reforms took place throughout Western democracies, especially in Europe

283 University of the West of England, 'The History of Council Housing, Meeting the Post-war Housing shortage' <http://fet.uwe.ac.uk/conweb/house_ages/council_housing/print.htm> (accessed 9 June 2015)

284 Ibid.

285 Ibid.

286 Labour manifesto 1945 under sub-heading 'houses and the building programme' <http://www.labour-party.org.uk/manifestos/1945/1945-labour-manifesto.shtml> (accessed 15 August 2016)

demonstrating the welfare rights social movement at the time.²⁸⁷ Labour ultimately succeeded with its implementation of Keynesian economic policies, the Beveridge report, and the NHS.

The Beveridge report²⁸⁸ established the notion of a comprehensive Welfare State in the UK. This State responsibility was presented as a matter of political choice in the Beveridge report rather than an imposed legally-binding responsibility. The Beveridge report was an acknowledgement of the greater responsibility held by the State for the care of the population and marked a development of the widespread provision of social security assistance. The Daily Mail at the time reported that “the great day has arrived; you wanted the State to assume greater responsibility for individual citizens. You wanted social security, from today you have it!”²⁸⁹ The government made a policy choice to take further assumed responsibility for the public’s welfare through the implementation of the Beveridge Report by the National Assistance Act 1948, and the abolition of the existing draconian Poor Laws. Inspiration in 1942 was taken from the German ‘Bismarkian’ social security legislation²⁹⁰, which was guided by the principle that “the healing of social wrongs must be sought not solely through the repression of social democratic excesses but just as much by positively advancing the wellbeing of the workers”.²⁹¹ Claimants were protected from destitution by a

287 Harold Carter, From slums to slums in three generations; housing policy and the political economy of the welfare state, 1945 -2005 University of Oxford, Discussion Papers in Economic and Social History Number 98, May 2012 p.6

288 Report of in the Interdepartmental Committee on Social Insurance and Allied Services by Sir William Beveridge, 1942, CM6494

289 5 July 1948, Daily Mail, quoted from Fraser, D The Evolution of the British Welfare State (Palgrave Macmillan, 2003, Basingstoke, 3rd ed.)

290 Early examples; Health Insurance for Workers (Gesetz betreffend die Krankenversicherung der Arbeiter) 1883, Health Insurance Act (Krankenversicherungshesetz) 1892; Accident Insurance Act (Unfallsversicherungsgesetz) 1884; Law on Invalidity and Old Age Insurance for Workers, Journeymen and Apprentices (Gesetz über /Invaliditäts – und Alterssicherung für Arbeiter, Gehilfen und Lehrlinge) 1889

291 Imperial Message of November 17, 1881 to the Reichstag (National Parliament)

system of guaranteed benefits related to the individuals' monthly social insurance contributions. The Welfare State is the product of a historical progress developing alongside societal and political change.

The Beveridge Report identified the five evils in society to be targeted by social policies; 'squalor, ignorance, want, idleness and disease'. The Beveridge Report not only led to the creation of the Welfare State, but also expanded the NHS. Improvements to public health, living conditions and environmental planning were also tackled by Statute. The focus of intervention was thus evolving, and the aims sought in the level of intervention changed. The reconstruction of a new social order was a key motivation for the creation of the Welfare State.²⁹² The obligation to contribute 'national insurance' payments was also inherent in its design.²⁹³ Government goals were to guarantee a universal minimum income and also encourage employment for a sense of social inclusion within society. The Welfare State was a politically charged and State motivated undertaking following the economic circumstances of WWII. The Welfare State promised change and ambition in the allied forces reconstruction after WWII. Demand for socialist reform after WWII compelled a better vision of the future.²⁹⁴ The primary aim was that benefits were provided when necessary in return for contributions, rather than a free allowance from the State. Welfare benefits aimed not to undermine individual responsibility or autonomy.²⁹⁵

Conversely, it has been argued that "Adolf Hitler proved a more decisive influence than William Beveridge in shaping the housing requirements of post-war Britain"²⁹⁶. Since the

292 Wikeley, Orgus & Barendt's The Law of Social Security (Butterworths, London 2002

293 Griggs, J and Bennett, F SSAC Occasional Paper No. 6 Rights and Responsibilities in the Social Security System, University of Oxford, July 2009

294 Pierson, C Beyond the Welfare State: the new political economy of welfare (Polity Press, Cambridge, 2006, 3rd edn.) p. 105

295 Sir William Beveridge, Report of the Interdepartmental Committee on Social Insurance and Allied Services, 1942, Cm 6494, p. 6 & 7

296 Cole I and Furbey, R The Eclipse of Council Housing (Routledge, London 1994)p. 60

destruction of homes led to action required as a matter of course by the government for the building of new housing to accommodate the expanding post-war population. This again reflects the notion that war drives the creation of welfare provision by creating it as a political necessity.

WWII was a significant trigger to the mobilisation of the public sector to improve housing. Housing has been seen as intrinsic to welfare, health and social care from the time of Minister of Health Aneurin Bevan and his role in both the creation of the NHS and his focus on housing.²⁹⁷ As mentioned, several Acts expanded the Local Authority's responsibility to provide housing and to eventually become the main landlord of 'general needs' housing²⁹⁸. The Housing (Financial Provisions) Act 1946 increased subsidies to build better quality dwellings. The Housing Act 1949 encouraged higher standards with floor space standards for public sector housing. When housing associations had cleared slums they would sell the sites to a developer to build housing for the working classes. This role of developer was adopted by Housing Associations as part-charitable and part-commercial.²⁹⁹

297 University of the West of England, 'The History of Council Housing, Meeting the Post-war Housing shortage' <http://fet.uwe.ac.uk/conweb/house_ages/council_housing/print.htm> (accessed 9 June 2015); Crowther, M.A. (1999) From workhouse to NHS hospital in Britain, 1929-1948. In: Hillam, C. and Bon, J.M. (eds.) *The Poor Law and After: Workhouse Hospitals and Public Welfare*. Liverpool Medical History Society: Liverpool, pp. 38-49; Ed Wallis (ed) *From the Workhouse to Welfare What Beatrice Webb's 1909 Minority Report can teach us today*, Pamphlet, Fabian Society, 2009

298 Key acts: Housing and Town Planning Act 1919, Rent and Mortgage Interest Restrictions Act 1923, Rent and Mortgage Restrictions (Amendments) Act 1933, Housing and Town Planning Act 1919 ('Addison Act'), Housing Act 1923 ('The Chamberlain Act'), Housing Act 1924 ('Wheatley Act') and the Housing Act 1930; New Towns Act 1946, Town and Country Planning Act 1947,

299 David Mullins, Housing Associations, Third Sector Research Centre Working Paper 16, August 2010 <http://www.birmingham.ac.uk/generic/tsrc/documents/tsrc/working-papers/working-paper-16.pdf>

The political rhetoric at the time promoting Local Authority housing fuelled its development. Labour's 1945 election win pushed forward public sector ideologies, but also social-mixing and rejection of one-class council estates, which mirrors current political rhetoric in mixed sustainable communities³⁰⁰. Concurrently, Labour recognised owner-occupation as the 'normal' tenure but saw Local Authority housing as essential for short term needs, as industrial house building was required to meet demand.³⁰¹

Between 1950 and 1979, there was agreement across the political parties that Local Authority housing should be expanded. This period has been termed the 'uneasy consensus'³⁰². Although the same objective was sought by the parties, different levels of subsidy and forms of rent control were favoured. As discussed in chapter 3, a clear influence on housing policy has been party politics reflecting the assumed nature of the State responsibility. Political party ideologies dictated the changing policy stance in aspects of major housing policy such as the large scale creation of Local Authority housing. Rules had originally restricted local authorities from building social new housing using the capital receipts of the sale of local authority housing.³⁰³

During this period, house building and repairs increased, Housing Associations were granted tax relief, exemptions and cash subsidies. Rent control fixed rents³⁰⁴. Slum clearance restarted in 1954, and new council housing was used as replacement housing.³⁰⁵ During the 1960s, a significant number of Housing Associations were founded³⁰⁶. Local Authorities also

300 English, J Building for the Masses in Goodwin, J and Grant, C (eds.) Built to Last? Reflections on British Housing Policy ROOF magazine, London 1997 P. 92

301 Burnett, J 'A Social History of Housing 1815 – 1985' (1986) London Meuthen p. 236

302 Balchin, P and Rhoden, M (eds.) Housing: the Essential Foundations (Routledge, London 1998) p. 104

303 Local Government and Housing Act 1989, s.59; Wendy Wilson, RESEARCH PAPER 99/36 The Right to Buy, 30 March 1999

304 Ibid.

305 Ibid. p. 94

306 For example; Ealing Family Housing Association (now Catalyst Housing Group),

provided loans to Housing Associations for the purchase and renovation of older properties. The value of the properties would increase; making these loans secured against properties a valuable source of income for the development of Housing Associations.³⁰⁷ The Housing Subsidies Act 1967 provided improvement grants and subsidies to cover a proportion of the loan charges incurred by Housing Associations to purchase properties for improvements, which were extended by the Housing Act 1969.³⁰⁸ In the early 1960s, public sector housebuilding amounted to around 40% of total housebuilding. By the late 1960s, for a brief period, public sector house building was in the majority. Between 1951 – 4 and 1964 – 70, there were large house building projects. During this period the number of completions peaked, but later from 1970s house building declined with cuts in public expenditure.³⁰⁹

Housing Associations further put into practice the State policy of the creation of publicly funded housing for the working classes. Housing Associations became key providers outside private small capitalist development. Housing Association homes were seen to benefit the middle classes too as they provided social benefits, crime and security prevention, as well as improving working class housing conditions.³¹⁰ Housing reform was part of encompassing development in prevention of crime, infectious disease and political unrest. Small capitalist landlords had a reputation for owning slum housing, whilst Housing Associations were seen as developing respectable working class housing. The State responsibility manifested by apprehending the slum landlords, and assisting the development of Housing Associations

307 Hansard, HC Deb 06 February 1969 vol 777 cc597-717, Home Ownership and Land Commission, 696, 8.59pm (Mr John Fraser, Norwood)

308 The National Archives, The Cabinet Papers 1915 – 1988, Conservative and Labour Legislation, <http://www.nationalarchives.gov.uk/cabinetpapers/themes/conservative-labour-legislation.htm> (accessed 18 June 2015)

309 University of the West of England, the History of Council Housing http://fet.uwe.ac.uk/conweb/house_ages/council_housing/print.htm (accessed 9 June 2015)

310 David Mullins, Housing Associations, Third Sector Research Centre Working Paper 16, August 2010 <http://www.birmingham.ac.uk/generic/tsrc/documents/tsrc/working-papers/working-paper-16.pdf> (accessed 9 August 2016) mapping the Social Return on Investment (SROI) impacting wider society

building through legislation.³¹¹ The State changed focus by intervening in the market by funding subsidies when not directly involved in the risk and responsibility of property development, as a result of democratic choice in favour of such policies. The State provided loans to Housing Associations, which carried the commercial burden of property development and social rewards of accommodating households not met by the wider market. There was greater emphasis on the market of semi-philanthropic organisations in creating 'social' housing, thus an example of the modern expression of State responsibility for housing where subsidies to the commercial sector for building housing transfers associated risk.³¹²

Most modern Housing Associations continue to exist as an entity between a charitable and commercial status reflecting their philanthropic origins, and to be benefit from tax advantages through a charitable status³¹³ Although most Housing Associations have charitable status, the social values intrinsic to their inception are not always considered when Housing Associations raise rents to the maximum allowed by regulators.³¹⁴ The nature of Housing Associations have been recently questioned in the decision of one housing

311 Balchin, P and Rhoden, M (eds.) *Housing: the Essential Foundations* (Routledge, London 1998)

312 Ibid.

313 Calum Mercer, *The Guardian*, Housing association commercialism has cost the UK 18,500 new social homes, 26 August 2014, <http://www.theguardian.com/housing-network/2014/aug/26/housing-association-commercialism-social-homes-profits> (accessed 27 August 2014); Bruce Moore, *Why housing associations should build commercial property*, 28 August 2012 <http://www.theguardian.com/housing-network/2012/aug/28/social-housing-associations-commercial-property> (accessed 27 August 2014)

314 Luke Cross, *HAs ordered to cut social housing rents by 1% per year for four years*, 8 July 2015 <http://www.socialhousing.co.uk/has-ordered-to-cut-social-housing-rents-by-1-per-year-for-four-years/7010692.article>; Calum Mercer, *Housing association commercialism has cost the UK 18,500 new social homes*, *The Guardian*, 26 August 2014, <https://www.theguardian.com/housing-network/2014/aug/26/housing-association-commercialism-social-homes-profits>

association to no longer supply social housing³¹⁵ due to financial pressures and the lack of certainty in the market, thus demonstrating that the commercial purpose can supersede the social purpose of Housing Associations where they become no longer sustainable. Thereby calling into question whether the purpose Housing Associations truly serve is commercial or philanthropic.

This approach in the 1950s and 60s exhibited greater State responsibility to ensure an affordable supply of housing through different channels of direct investment in house building, as well as, assistance to private enterprise and housing associations to explicitly encourage development of affordable housing. The market forces were inhibited through rent control, which led to the private sector being hindered from investing in this sector. Emphasis being placed on social housing serving a particular purpose for those with specific needs, not for general low-income household needs³¹⁶. In tandem, greater promotion of homeownership placed greater responsibility upon the individual for housing costs.

The Housing Finance Act 1972 led to a new subsidy system for Local Authorities and Housing Associations based on fair rents, and also tax relief on mortgage interest. There were previously fewer subsidies available for Housing Associations, and an inability to raise rents to make up the budget shortfall. The Housing Act 1974 introduced one-off grants for Housing Associations to buy stock and fund necessary repairs. Further state support was available through the regulatory and funding body of Housing Associations, the Housing

315 Tom Murtha, The housing association that will no longer build homes for the poor, The Guardian, 7 August 2015 http://www.theguardian.com/housing-network/2015/aug/07/housing-association-no-longer-build-homes-poor-genesis?CMP=new_1194&CMP= (accessed 8 August 2015)
Nicola Slawson, Profit or purpose? The fight over the future of social housing in Britain 14 August 2015, the Guardian, http://www.theguardian.com/housing-network/2015/aug/14/social-housing-britain-future-profit-purpose-genesis?CMP=new_1194&CMP= (accessed 15 August 2015)
Genesis Housing Associations announced it would no longer build social housing. It will now only build homes for sale, for rent at full market rates or for shared ownership

316 Ibid.

Corporation for repairs and development. Different voluntary housing organisations were created for different purposes, demonstrating a diversity of purposes for housing associations. Housing Associations provided social housing for specialist groups such as the elderly or single parent families. Some Housing Associations concentrated on housing rehabilitation, whilst others had a more explicitly commercial purpose and others dealt with new house building development exclusively. The Housing Act 1974 provided the impetus for greater homogeneity of Housing Associations, and the greater financial assistance improved development plans, albeit at the expense of a loss of autonomy.³¹⁷ The State's approach legislating to promote the development of Housing Associations exhibited a positive use of State responsibility to manage the improvement and sustainable development of affordable housing.

Edgar et al identify that there has been a shift in the State involvement in the provision of housing to a more regulatory role of the market, and so a private contract between parties.³¹⁸

“Since the hey-day of State involvement in provision of housing in the 1960s, the role of the State has shifted from a concern with redistribution of resources to a focus on regulation and risk management. The regulatory role of the State has been shaped principally to accommodate the market and to facilitate an increasing reliance on private finance in the delivery of public services”.³¹⁹

317 Peter Malpass. The missing years in Goodwin, J and Grant, C (eds.) *Built to Last? Reflections on British Housing Policy* ROOF magazine, London 1997 p. 133

318 Edgar, B Doherty, J and Meert, H *Access to Housing: Homelessness and Vulnerability in Europe* (Policy Press, Bristol, 2002)

319 Ibid. p. 51

Rent regulation between the early-1960s and 70s consolidated in the form of the Rent Acts 1968 and 1977³²⁰, later largely repealed by Housing Act 1988. The Rent Acts provided rent control and security of tenure in the form of 'protected' or 'regulated' tenancies. Rent Acts also empowered rent officers to objectively assess and review rents taking in to account all circumstances, other than personal circumstances. Rent control is an interventionist means of applying State responsibility for housing costs. The fair rent system was to create equilibrium in supply and demand in any given area.³²¹ However, controlled rents disadvantaged landlords where fair rents were assessed below market level. Landlords were disincentivised from investing in PRS property, ultimately harming the PRS market.³²² Consequently, later Rent Acts throughout the 1970s decontrolled and deregulated the PRS, as well as, established rent allowances for PRS tenants to claim from their Local Authorities.³²³

Rent control was a key expression of State intervention in housing costs. The State regulation has been softer since the reduction in rent control alongside the weakening security of tenure as an expression of the individualisation of housing costs. However, there have been calls for the reintroduction of rent control³²⁴. The call for rent controls from academics and government opposition parties is thus significant for a return to greater State

320 Andrew Arden QC, All is forgiven: Bring back the Fair Rent (and slash the social security bill, why don't you?)! LAG Housing Law, May 10, 2013 <https://laghousinglaw.com/2013/05/10/all-is-forgiven-bring-back-the-fair-rent-and-slash-the-social-security-bill-why-dont-you/> (accessed 11 June 2014)

321 Ibid.

322 Lm Clements & PB Fairest, Housing Law: Text, Cases and Materials, (Routledge-Cavendish,1996) p. 140

323 Standard Note: SN/SP/6747, Sarah Heath, The historical context of rent control in the private rented sector 22 October 2013, Social Policy Section p.5

324 Kemp, P 7 Kofnerb, S, Contrasting Varieties of Private Renting: England and Germany (2010) 10 (4) International Journal of Housing Policy, 379, Sarah Heath Social Policy Section SN/SP/6760 Standard Note: Rent control in the private rented sector (England) 11 July 2014, p.1; <http://www.theguardian.com/politics/reality-check/2015/apr/26/labour-rent-control-plans-explained-ed-miliband>; <http://www.theguardian.com/housing-network/2011/nov/14/private-rented-sector-control> (accessed 12 July 2015)

intervention; in particular, there have been welcome returns to rent control in other Western nations where rent has risen at a similar rate to the UK.³²⁵ Calls for the reintroduction of rent controls suggests a failure of individualisation or at least a shift away from it.

4.4.1 Homeownership promotion

Other than State intervention in the rental market, the State had utilised tax breaks to assist households with paying for homeownership in the 1970s demonstrating a policy to promote homeownership and individualisation of responsibility for housing costs. Mortgage Interest Tax Relief (MITR) was a State subsidy to encourage homeownership, with Mortgage Interest Relief at Source (MIRAS) being its forerunner. Borrowers paid a reduced amount of interest, reflecting the gross interest that they were liable to pay less the tax relief due, and lenders recovered the tax relief from the Inland Revenue.³²⁶ Before 1975, relief was given for the interest on the full amount of a loan of any size, but was later capped at different loan amounts, being both increased and decreased at different points.³²⁷ House prices doubled over the decade, and laid the foundations for unsustainable levels of homeownership. The mortgage interest relief policy has been described as a regressive middle class perk, which did not assist low income households struggling with homeownership³²⁸. Almost half of the MITR subsidy assisted high-income households with the largest mortgages, therefore

325 House of Commons Library, Sarah Heath, Social Policy Section, Standard Note SN/SP/6747 The historical context of rent control in the private sector 22 October 2013,

326 HMR, MIRAS withdrawal Regulatory Impact Assessment February 2000
<http://www.hmrc.gov.uk/ria/miraswithdrawal.pdf> p.1(accessed 18 May 2014)

327 HMRC Mortgage interest relief - introductory note
<http://webarchive.nationalarchives.gov.uk/+/http://www.hmrc.gov.uk/statistics/mortgage.htm>
(accessed 18 May 2014)

328 Scottish property buyers and sellers rush to beat new tax deadline, March 30th, 2015 <http://behomegroup.co.uk/property-news/scottish-property-buyers-and-sellers-rush-to-beat-new-tax-deadline/> (accessed 2 April 2015)

subsidising the increasing inequality and polarisation between high-income and low-income homeowners. Social housing completions collapsed by 75% over the same period and there were just 23,000 in 1990³²⁹, which highlights against the regression of State intervention at the same time, and further emphasis on individualisation of responsibility for housing costs.

MITR was a State policy taking responsibility for housing costs by subsidising homeownership, but also a policy promoting long-term eventual individual responsibility for housing costs. MITR and MIRAS were formally removed in April 2000. It was hoped that the withdrawal would enable the long-term stability of the economy and to help improve the functioning of the housing market without State intervention.³³⁰

This section has demonstrated that housing policy during this period exhibited greater reliance on the State for housing due to the increased local authority house building, but in tandem there are examples of the State promoting individualisation of housing costs through promoting owner-occupation through tax relief of mortgage costs, albeit subsidised through the tax system.

4.5 1980s onwards

The demutualisations of building societies was enabled by the Building Societies Act 1986 leading to the growth of building societies assisting with the financing of homeownership through mortgages and further the deregulation of the banking sector. The 1980s marked a time period where the Conservative government became less interventionist to expand the market through deregulation and privatisation. The intention of the State in deregulation was to imbue competition and investment, which would have a positive effect on the

329 Kevin Gulliver, Thatcher's legacy: her role in today's housing crisis: Margaret Thatcher made a huge impact on the housing sector during her time office, and we can still feel the effects today, 17 April 2013, Guardian Professional

330 HMR, MIRAS withdrawal Regulatory Impact Assessment February 2000
<http://www.hmrc.gov.uk/ria/miraswithdrawal.pdf> , p.6 (accessed 18 May 2014)

market leading to prosperity, and perhaps more being able to afford homeownership. However, as will be discussed in later chapter 5, deregulation of the market was part of the factors leading towards the 2008 recession and credit crunch affecting the credit available to aspiring homeowners.

The main government policy of the 1980s to assist aspirational households to become homeowners was the Right to Buy policy (referred to as RTB). In a stark contrast to the non-interventionist approach of the State into the markets prevalent in the 1980s, RTB is a State discount to renters in RTB gives existing council tenants the right to purchase their current home at a discounted price. RTB was introduced as a legally enforceable right in 1980 following the Conservative win in the 1979 general election, implemented through the Housing Act 1980. The RTB has proved a popular and successful policy, with approximately 2 million homes sold through the RTB since its introduction³³¹. It conferred a financial inducement to households to fulfil their aspirations of homeownership, moreover allowed council house tenants to become homeowners without even moving house.

The 1979 general election was significant; Thatcher's Conservative '5 task manifesto'³³² reemphasised Conservative values of working towards a property-owning democracy³³³ and the importance of individual liberties. Under the heading 'Homes of our Own', the rhetoric

331 Dawn Foster, Right to buy: a history of Margaret Thatcher's controversial policy, *The Guardian*, 7 December 2015 <https://www.theguardian.com/housing-network/2015/dec/07/housing-right-to-buy-margaret-thatcher-data> (accessed 2 January 2016) ;

http://england.shelter.org.uk/campaigns/why_we_campaign/housing_facts_and_figures/subsection/?section=housing_supply (accessed 3 May 2016) Source: DCLG Social Housing Sales Live Tables, Table 671, www.gov.uk

332 Thatcher, Margaret 1979 Conservative Party General Election Manifesto <http://www.margaretthatcher.org/document/110858> (accessed 9 May 2015)

333 Leader's speech, Blackpool 1975, Margaret Thatcher (Conservative) <http://www.britishpoliticalspeech.org/speech-archive.htm?speech=121> (accessed 9 May 2015)

of homeownership is apparent. Shared ownership schemes, tax cuts³³⁴ and lowering interest rates were proposed policies to support homeownership. These initiatives were promoted as being both economically effective and assisting the electorate with their aspirations, as “to most people ownership means first and foremost a home of their own”³³⁵.

The RTB has specific criteria³³⁶. The level of discount is based on the prior occupation of the Local Authority property. Before the RTB was introduced as a legal right, it had been possible for individual Local Authorities to allow discretionary sales. However, the number of sales changed dependant on the political party in power. The level of discount has varied; the most generous at 70% dependant on the number of years lived in the property³³⁷, this discount being funded by the taxpayer. The RTB allows the homeowner to later choose to sell the house on the open market for profit. However, pursuant to Housing Act 1985, s.156A³³⁸ if the homeowner sells the property within 10 years of exercising the RTB, the property must be offered to the registered social landlord at market price³³⁹. Moreover, if the homeowner sold the property within 5 years of exercising their RTB, some of the discount had to be repaid dependant on the year the homeowner sells the property.³⁴⁰ Generally, the State’s investment may not be recoverable over time through the RTB. The

334 Mortgage Interest Relief at Source/Mortgage Interest Tax Relief provided financial assistance to homeowners

335 Thatcher, Margaret 1979 Conservative Party General Election Manifesto
<http://www.margaretthatcher.org/document/110858> (accessed 9 May 2015)

336 Housing Act 1980 now repealed, Housing Act 1985, s.119 Qualifying Period, s. 120 Exceptions, s. 121 Circumstances in which the right to buy cannot be exercised.

337 Currently discount up to a maximum of £103,900 in London and £77,900 in the rest of England, increasingly annually with inflation. <https://righttobuy.communities.gov.uk/help/questions-and-answers/> (accessed 8 June 2016)

338 Amended by Housing Act 2004. Acts which tightened the rules and led to discounts rising: Housing and Building Control Act 1984; Housing Act 1985; Housing and Planning act 1986; Housing Act 1988; Leasehold Reform, Housing and Urban Development Act 1993

339 ‘pre-emption’

340 Year 1 – 100% of the discount must be repaid dependant on the sale price. Year 2 – 80%. Year 3 – 60%. Year 4 – 40%; Housing Act 1985, s. 155(3A)

RTB has two features: (1) an initial cash transfer from the state (subsidised purchase price) and (2) longer-term investment in terms of making the household independent of the State as far as housing provision is concerned.

The sale of Local Authority housing is an example of the State's role in increasing owner-occupation, thus individualising housing costs, and simultaneously decreasing social housing so the State's responsibility and capital investment for low-income renters. However, it can be argued that there is an inherent paradox to the idea that RTB individualises costs when this is at truly the expense of State discount of local authority built homes paid by tax-payers funds. RTB is in effect individualisation of responsibility at the State's cost. The notion of the paradox of privatisation is exhibited in detailed provisions of the Housing Act 1980 which give central government powers to intervene to force sales through the RTB if Local Authorities are found to be selling too slowly³⁴¹.

Council housing had developed a negative reputation, and it has been argued by commentators that the creation of local authority built housing has created a modern problem of the stigmatisation of undesirable council housing estates³⁴². Local authority housing was not always seen as a problem or undesirable but due to disinvestment and marginalisation of social housing, a negative reputation has built around council housing. Commentators have suggested a return to class war conservatism through the stigmatisation of social housing, and further to this the expansion of insecure, unaffordable housing, overcrowding, and rogue landlordism.³⁴³

However, government policy has aimed to change this reputation through changing the tenure of the homes to individualise the responsibility of the housing in the hope of creating

341 Housing Act 1985, s.164 Secretary of State's general power to intervene.

342 Ibid.

343 Hodgkinson, S and Robbins, G 'The return of class war conservatism? Housing under the UK Coalition Government' (2013) 33(1) Critical Social Policy 57, 72

mixed sustainable communities where households showed care and responsibility for their homes.³⁴⁴

The RTB had a significant effect on tenure trends³⁴⁵. Local Authority responsibility was confined to a strategic or enabling role, rather than large scale provider.³⁴⁶ With reference to the State versus individual responsibility paradigm, this is clearly State action to imbue a sense of personal responsibility to create a property-owning democracy. The RTB has been described as a 'democratisation' project where mixed sustainable communities in former purely council estates developed. Carr identified that a key achievement of the RTB was to challenge inequalities using property ownership as a tool.³⁴⁷ When some council houses became owner-occupied; this can be aspirational for neighbouring tenants.

However, Carr also identifies that RTB leaseholders and their successors are vulnerable in ex-authority homes. The problems of flat management are indeed common to all types of flats, and not symptomatic of RTB, nevertheless, many RTB leaseholders had potentially imagined ownership as greater control but deceived into this form of ownership by virtue of

344 Graham Martin and Judi Watkinson, *Rebalancing communities by mixing tenures on social housing estates*, 30 April 2003, Joseph Rowntree Foundation, <https://www.jrf.org.uk/report/rebalancing-communities-mixing-tenures-social-housing-estates> (accessed 18 June 2016)

345 RTB caused the distribution of tenure to change radically. In 1981 57.6% of all dwellings were owner-occupied; by 2003 this had risen to 72.3%. Van Ham, M et al 'Right to Buy Time to Move? Investigating the effect of the Right to Buy on Moving Behaviour in the UK' (2010) Discussion Paper No. 5115, IZA (Institute of the Study of Labour) Bonn, Germany p. 3

346 English, J *Building for the Masses* in Goodwin, J and Grant, C (eds.) *Built to Last? Reflections on British Housing Policy* ROOF magazine, London 1997 P. 97; H Pawson and D Mullins, *After Council Housing: Britain's New Social Landlord* (Palgrave Macmillan, 2010)

347 Carr, H 'The Right to Buy, the Leaseholder and the Impoverishment of Ownership' (2011) 38, 4 *Journal of Law and Society* 519; Cole I and Robinson D, 'Owners yet tenants: The position of leaseholders in flats in England and Wales' (2000) Vol 15, No. 4 *Housing Studies* 595

living in a council flat home and being offered the opportunity of ownership of a leasehold flat. RTB leaseholders have limited autonomy in relation to consultation for capital works, maintenance and cannot control timing or budgets for works of repair upon communal parts, as compared to freeholders. Moreover, she recognises that the RTB 'stretches' homeownership which involves co-dependency, in multi-occupancy blocks of flats³⁴⁸. Her point encapsulated is that the "consequence [of the] purchase of a leasehold from a local authority landlord has the potential to impoverish, rather than enrich, the lessees as the proportion of the expenditure of capital value of the asset is not a concern of the freeholder"³⁴⁹. This is a common problem of leasehold multi-unit ownership in commonhold, but is brought to the fore in RTB, where this is now how RTB leaseholders envisaged ownership, but this is the typical ownership open to them by virtue of RTB acquisition of their council flat.

Moreover, in recent times with the redevelopment of flats for leasehold rather than rental, the traditional residential investment company have become speculative companies who have more akin to asset strippers than residential freehold property owners³⁵⁰. Accordingly, the dynamics of the relationship between an individual and an outside body do not meet the expectations of aspirational homeowners. Leaseholders invariably 'buy into' ownership but are actually in a subservient position. Individual responsibility thus again does not mirror the aspirations of homeownership in the context of leasehold property. RTB altered the balance between State and Individual responsibility within the specific context of flat homeownership which is where many RTB house owners reside. The lack of viable alternative tenure highlights the actual nature of any perceived 'autonomy'. It casts doubt upon whether individual autonomy is present at all.

RTB was presented as a solution to the bureaucracy and dependency culture created by the welfare state. For example, the RTB encapsulated Thatcher's aim to pare down the welfare

348 Ibid. 539-540

349 Ibid.

350 Stewart, A, Rethinking Housing Law (Sweet & Maxwell, 1996) 14, Robinson, D, Cultural Expectations of Homeownership: Explaining changing Legal Definitions of Flat Ownership in Britain (2006) 21(1) Housing Studies 35, 43

state, whilst designed also to normalise homeownership as an expectation of good citizenship. This was Thatcher's attempt of a property owning democracy, returning to civic republican values. Locating citizenship at odds with the social provision of the welfare state also ensured a new division between citizens and anti-citizens drawn on tenure grounds.³⁵¹

4.5.1 Large Scale Voluntary Transfer (LSVT)

Large scale voluntary transfer (LSVT) also took Local Authority housing out of local government's control. LSVT involved Local Authorities transferring social housing stock to Housing Associations, with the agreement of the existing tenants. This strategy was to improve housing quality standards without need for further borrowing to raise the funds for investment. LSVT transferred responsibility and acted as a means of privatisation of social housing, as well as, assisting to reach decent homes targets.³⁵² However, commentators have also accused LSVT of being unaccountable thus lacking democratic legitimacy.³⁵³ Furthermore, the RTB and large scale voluntary transfer are examples of the eclipse of Council Housing³⁵⁴.

The RTB led to a strong shift towards individualising responsibility albeit that initial State-funded discounts are necessary to assist households to become RTB homeowners. This individualisation of housing became a theme of housing and social security policy. The individualisation of responsibility is also present in the rented sector, where the PRS has grown in recent years, as well as the method of receiving and using HB has been individualised (as further explained in chapter 6). The RTB was promoted as a way to give tenants greater autonomy. However, homeownership through RTB actually lacks the

351 Flint, J Urban Governance and ASB: Perspectives, Policy and Practice (Policy Press, 2006)

352 Peter Hetherington, Voluntary transfer for social housing celebrates 10 years , The Guardian, 10 December 2008 <http://www.theguardian.com/society/2008/dec/10/housing-voluntary-transfer> (accessed 18 June 2015)

353 Stewart Smyth, The privatization of council housing: Stock transfer and the struggle for accountable housing (2013) Critical Social Policy 33 (1) :37

354 Cole I and Furbey R, The Eclipse of Council Housing (Routledge, London 1994)

autonomy and investment rewards often associated with homeownership. The RTB led some households into leasehold homeownership of low quality flats which have not provided the financial benefits once hoped. A fate also shared with other private sector flat owners who are subject to expensive property management fees and lack of freedom to use the property as they would wish. Nevertheless, the situation for RTB leaseholders is particularly acute because social tenants were encouraged into a form of owner-occupation through State policy which they had perhaps not envisaged. However, the level of protection of tenure for RTB leaseholders is better compared to renters in the PRS along the continuum of security of tenure, with short term tenancies. However, those who bought houses through RTB have probably secured better resale values and profit, particularly given the discount and could expand and develop their homes as investment due to the autonomy of being a freeholder.

Leaseholders are required to pay high service charges to the Housing Associations which took over from Local Authorities. Ex-Local Authority controlled homes have not reached the house price values associated with the rest of the housing sector.³⁵⁵ Moreover, the large discounts made available to RTB purchasers demonstrate an obvious exception to neo-liberal responsibilisation and free market ideology.³⁵⁶

Concerns have been raised that the current serious housing need has resulted with the selling of council housing, resulting in the 'eclipse of council housing'³⁵⁷. The original conception of a 'cradle to grave' welfare state has diminished with the depletion of social

355 Nigel Keohane and Nida Broughton, *The Politics of Housing*, National Housing Federation & Social Market Foundation <http://www.smf.co.uk/wp-content/uploads/2013/11/Publication-The-Politics-of-Housing.pdf> (accessed 18 August 2016)

356 Ray Forrest and Alan Murie, 'Marginalization and subsidized individualism: the sale of council houses in the restructuring of the British welfare state', *International Journal of Urban and Regional Research*, Volume 10, Issue 1, pages 46–66, March 1986

357 Cole, I and Furbey, R *The Eclipse of Housing* (Routledge, London 1994)

housing.³⁵⁸ Critics of the RTB have found that it has contributed to the continual marginalisation and eventual residualisation of social housing³⁵⁹. Approximately £60 billion worth of Local Authority homes were sold and not replaced³⁶⁰. The better properties were sold using the RTB, which has left properties of a lower quality and specification to represent the majority of Local Authority housing and at the same time there has been a significant decrease in the rate of Local Authority house building. House building rates have fallen significantly since 1979 due to the RTB policy and Local Authorities being prohibited from replacing council housing, due to ring-fenced capped Housing Revenue Accounts, limited building industry resources available and planning restriction.³⁶¹ The private sector and Housing Associations have not been able to replace the social housing sold due to the need to ensure best consideration thus have waited before building but accumulate vast landholdings through land banking without development and planning restrictions.³⁶²

The RTB has revealed the inherent risk of owner-occupation to marginal leasehold owners compared to social tenancy. As explained above, some RTB owners bought good quality

358 Ibid.

359 Ibid.

360 Peter Apps, Fact Check: Right to Buy, Inside Housing, <http://m.insidehousing.co.uk/fact-check-right-to-buy-stats/7010488.article> (accessed 27 June 2015) During Labour leadership, the ratio of homes replaced was at 1:174, since 2012 1:5.8 homes have been replaced, 26 June 2015; Shelter, Right to Buy replacement – four steps to good news 24 Mar 2016

<http://blog.shelter.org.uk/2016/03/right-to-buy-replacement-four-steps-to-good-news> (accessed 18 August 2016), DCLG, Right to Buy Sales: October to December 2015, England, Housing Statistical Release, 24 March 2016

361 Kate Barker, Housing: Where's the plan? Kate Barker. London Publishing Partnership. 2014, Kate Barker, Review of Housing Supply Final Report – Recommendations, Delivering Stability: Securing our Future Housing Needs, HM Treasury, March 2004, Tom de Castella, Why can't the UK build 240,000 houses a year? BBC 13 January 2015 <http://www.bbc.co.uk/news/magazine-30776306> (accessed 15 January 2016)

362 Nigel Keohane and Nida Broughton, The Politics of Housing, National Housing Federation & Social Market Foundation <http://www.smf.co.uk/wp-content/uploads/2013/11/Publication-The-Politics-of-Housing.pdf> (accessed 31 August 2016)

housing stock with maximum discounts that have profited from RTB, but some leasehold owners who bought with reduced discounts have not benefited in the same way and become comparatively marginal owners. The long-term financial investment made in the property, as well as the danger of mortgage default is far riskier compared to the relative safety net of a social tenancy. As will be discussed in the next chapter; subsequent government policy has aimed to protect owner-occupiers from the risk of eviction for mortgage arrears, and demonstrates the political ideology promoting the sustainability of homeownership³⁶³.

The purpose and focus of housing policy had changed inexorably from the previous few decades dominated by increasing Local Authority housing sector, whilst the subsequent objective has been to reduce it. The dynamic between State and individual responsibility changed at the introduction of the RTB. Through the RTB, the State demonstrated a change in priority in housing policy. The corollary to this was to make households more reliant upon their own investment in their housing choice to become homeowners, leading to greater financial independence of individual households.

There has since been a resurgence of the RTB, starting with the reinvigoration of the RTB where the coalition government increased the discount cap to incentivise uptake of the scheme³⁶⁴, and reduced the qualifying years from 5 to 3 years for RTB applicants³⁶⁵. Simplification of the application process has aimed to prevent applicants being deterred from administrative burdens. An impact assessment for the reinvigorated RTB, suggested around 300,000 households might be in a position to take advantage of the new

363 Sarah Blandy and Caroline Hunter, 'The Right to Buy: Examination of an exercise in allocating, shifting and re-branding risks' (2012) *Critical Social Policy* 33(1): 17 p.32

364 The maximum discount in London increased to £100,000, and £75,000 elsewhere in England in March 2013; Housing (Right to Buy) (Limit on Discount) Order 2013 (S.I 2013/677) These discounts will increase annually with the consumer price index rate of inflation.

365 HM Treasury, Budget 2013, HC 1033, March 2013. The Deregulation Act 2015, s. 28 is the provision for the reduction in qualification period

discounts.³⁶⁶ Recent figures show impressive growth in the social housing sales; through the reinvigorated RTB scheme.³⁶⁷ Concerns have been raised in the past that the RTB is exploited for profit by both individuals and companies, which could lead to restrictions, especially on the maximum discounts available³⁶⁸. There is evidence that a great proportion of former ex-council houses sold via RTB are now rented out in the PRS with more expensive rents.³⁶⁹ The RTB has extended to housing association tenants³⁷⁰, although strongly opposed

366 Alex Wellman, Cameron launches reinvigorated Right to Buy, Inside Housing, 3 April 2012

[http://www.insidehousing.co.uk/tenancies/cameron-launches-reinvigorated-Right to](http://www.insidehousing.co.uk/tenancies/cameron-launches-reinvigorated-Right-to-Buy/6521263.article)

[Buy/6521263.article](http://www.insidehousing.co.uk/tenancies/cameron-launches-reinvigorated-Right-to-Buy/6521263.article) (accessed 4 May 2014); Gavriel Hollander, Tenants show appetite for Right to Buy, Inside Housing 4 May 2012 [http://www.insidehousing.co.uk/tenancies/tenants-show-appetite-for-Right to Buy/6521699.article](http://www.insidehousing.co.uk/tenancies/tenants-show-appetite-for-Right-to-Buy/6521699.article) (accessed 5 May 2014)

367 Total Right to Buy sales, England 1980-81 to 2012-13; Right to Buy sales declined sharply between 2007-08 and 2008-09 by 76%, and then a further fall of 20% in 2009-10 linked to the general fall in the housing market caused by the recession. A further decrease of 2% in 2009-10 but a rise of 16% in 2010-2011 and an increase of 15% in 2011-2012 and then an increase of 72% in 2012-2013; DCLG, 10 October 2013, Housing statistical release, Social Housing Sales (including Right to Buy and transfers) In the most recent statistical release, in 2014-15, 16,519 social housing sales were through the Right to Buy or Preserved Right to Buy schemes. This is 81 per cent of social housing sales in 2014-15, an increase of 5 percentage points compared to 2013-14. DCLG, National Statistics, 12 November 2015, Housing Statistical Release, Social Housing Sales 2014-15 England, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476118/151111_Social_Housing_Sales_2014-15.pdf

368 Office of the Deputy Prime Minister, The Exploitation of the Right to Buy Scheme by Companies, 14 March 2003 as quoted in Weaver, M Right to Buy Sales Riddled with Abuse, 14 Feb 2003, the Guardian [http://www.theguardian.com/money/2003/feb/14/property.housing](http://www.theguardian.com/money/2003/feb/14/property.housing;); 40% of ex-council houses now privately rented <http://www.socialhousing.co.uk/news/40-of-ex-council-flats-now-rented-privately-says-report/7011319.article> (accessed 5 May 2014)

369 House of Commons Communities and Local Government Committee, Housing Associations and the Right to Buy Second Report of session 2015-16, 40% of ex-council flats sold through the right to buy are being rented out more expensively by private landlords para 45 referring to article; Inside Housing, Revealed 40% of ex-council flats now rented privately 14 August 2015, HC370 10 Feb 2016

370 Housing and Planning Act 2016, s. 64

by academics and housing practitioners.³⁷¹ The RTB's extension to Housing Associations intervenes in the freedom of the assets of Housing Associations which are bodies which are run separate from the State, as well as intervening in the number of social or affordable housing available which already is in decreasingly supply.³⁷² This is an example of State policy intervening with the freedom of contract of a private body. Accordingly, the State responsibility for housing can transcend to another body outside of State. It has been argued that the increased discount on the RTB is an attack on social housing as many commentators speculate as to how this policy will be paid for. This State encouragement of tenants to shift from local authority controlled home to owner-occupied is ideological rather than cost-driven and is a symbolic gesture to prop up the fetishisation of home ownership without an evidence base.³⁷³ An important concern for Local Authorities that the RTB extension will threaten council house building plans, where the selling of Local Authority homes will fund an extension of the RTB to tenants of Housing Associations which manage most social homes³⁷⁴.

371 Criticised by Hilary Osborne due to further inability to replace council housing for those who need it most. <http://www.theguardian.com/money/2014/aug/21/right-to-buy-council-houses-record-high>; http://www.theguardian.com/housing-network/2015/jun/30/tories-wasteful-housing-policy-is-an-opportunity-for-labour?CMP=new_1194&CMP=, (accessed 8 May 2016) Criticised by John Healy as neither sound economics as long-term State investment in homes sold cheaply nor socially just for the Housing Associations involved or the low-income households who require social housing

372 House of Commons Communities and Local Government Committee, HC370, Housing associations and the Right to Buy Second Report of Session 2015–16, 10 February 2016 <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmcomloc/370/370.pdf> (accessed 8 May 2016)

373 Dawn Foster 'The Wheels are finally coming off this half-based ideological housing bill' 29 April 2016, www.theguardian.com/housing-network/2016/apr/29/ideological-housing-bill-public-accounts-committee

374 Right to Buy extension threatens home building plans – Local Government Chronicle. 11/06/15 First Edition 1855 p. 2 Potential of the Conservative policy derailing large scale council home building

The RTB is to be scrapped by the devolved Welsh government, to protect social housing provision in this area³⁷⁵, and has already been scrapped by the devolved Scottish government³⁷⁶ which also blames RTB for the acute shortage of social housing.

The policy consequences flowing from the RTB have obviously led to a shortage of council housing, longer waiting lists for social housing, in addition to greater numbers in the PRS and overall higher HB expenditure³⁷⁷. Furthermore, RTB has not always delivered on its objectives to fulfil the aspirations of homeowners. The State strategy through the RTB was to remove the repairing responsibilities of being a major landlord, provide households the means to fulfil their aspiration to become homeowners and release public sector housing on to the free market. The manifestation of State responsibility through the RTB demonstrates the positive intentions of policy can lead to unexpected ramifications decades on, and yet still remain a popular State policy. As will be discussed further in chapter 8, the Housing and Planning Act 2016 now reduces the typical length of tenancy for council housing tenants and phases out lifetime tenancies³⁷⁸ which have a further unintended effect on the reinvigorated RTB policy and the extent of 'home' values experienced by tenants-turn-aspiring homeowners.

375 Carl Sargeant, We're scrapping right to buy in Wales to protect vulnerable families, 6 July 2016 <https://www.theguardian.com/housing-network/2016/jul/06/wales-government-right-to-buy-policy-social-housing?CMP=ema-1703&CMP=> (accessed 8 July 2016)

376 Press Association, Right-to-buy policy is scrapped in Scotland, 31 July 2016 <https://www.theguardian.com/society/2016/jul/31/right-to-buy-policy-scrapped-scotland-social-housing> (accessed 1 August 2016)

377 Ray Forrest, Alan Murie 'The Big Sell Off' in Goodwin, J and Grant, C (eds.) *Built to Last? Reflections on British Housing Policy* ROOF magazine, London 1997 p. 161

378 Housing and Planning Act 2016; s. 118 secure tenancies: phasing out of tenancies for life http://www.publicatins.parliament.uk/pa/bills/cbill/2015-2016/0108/cbill_2015-20160108_en_5.htm#pt4-ch5-l1g89 (accessed 8 August 2016)

Some council tenants benefit from cash incentive schemes, which involve a grant to help tenants buy a home on the open market thus freeing up a social rented home for new tenants who need it³⁷⁹. This is currently a discretionary scheme, rather than a statutory right following the Regulation Reform Order³⁸⁰ allowing Local Authorities to set means-tested grants dependant on the housing market in the local area. There is no central funding, instead being funded wholly from Local Authority funds³⁸¹, accordingly this scheme is of limited significance to the development of moving households from renting to homeownership.

Housing Association tenants who live in homes subsidised by public subsidy since 1997 or were acquired through LSVT also have a statutory Right to Acquire³⁸² their home with a discount off market value. This discount is between £9,000 and £16,000³⁸³. Exempt properties include those in designated rural areas with small populations and supported

379 Shelter, Cash Incentive Schemes,

http://england.shelter.org.uk/get_advice/social_housing/buying_your_home/cash_incentive_schemes (accessed 11 February 2014)

380 Housing Act 1988, S. 129, the local authority requires the approval of the Secretary of State to run a cash incentive scheme; however the Regulatory Reform (Schemes under Section 129 of the Housing Act 1998) (England) Order 2003 amended s.129 and removed that requirement, with effect from 1st April 2003.

381 House of Commons Library, Extending Home Ownership – Government initiatives (SN/SP/3668) 8 April 2014, First Time Buyers and Affordability, p. 5

382 Housing Act 1996, The Housing (Right to Acquire) Regulations 1997

383 The Right to Acquire is the parallel scheme (but with a smaller discount) for assured tenants of Housing Associations in properties built with public subsidy after 1 April 1997 Dept for Communities and Local Government, Social housing sales to sitting tenants, England 2009-10 tabl. 2. P.9 www.communities.gov.uk/publications/corporate/statistics/socialhousingsales200910 (accessed 9 June 2015); Gov, Right to Acquire buying housing association home <https://www.gov.uk/right-to-acquire-buying-housing-association-home/overview> (accessed 19 August 2016)

housing for people with special needs³⁸⁴. The Right to Acquire is a further expression of the existing partnership between Housing Associations and the State to allow social housing tenants to individualise housing costs and assist tenants to become homeowners. This right is further developed in the current Conservative policy to extend the RTB for housing association tenants, as detailed above, which goes further in terms of discount resulting in negative consequences to the amount of social housing available affecting those already on the prospective tenant waiting list for social housing.

PRS tenants do not have the RTB (because they do not live in social housing) but also face the same problems as RTB owner-occupiers. Prospective first-time buyers are instead trapped in the costly PRS until early middle age.³⁸⁵ However, state intervention aims to tackle this issue through Low Cost Homeownership schemes which aim to assist a more extensive group of households with the acquisition costs towards homeownership, detailed further in the next chapter.³⁸⁶

The role of the State providing access to affordable housing has altered due to three central themes present in governance since the 1980s: (1) the decentralisation of responsibilities from central government (2) the move to non-governmental institutional structures to meet social housing objectives (3) decreasing political priority for social housing and a move

384 The Housing (Right to Acquire) Regulations 1997, Schedule 5, Exceptions to the Right to Acquire, Rural areas, 1A and Certain dwelling-houses for the disabled, 7.

385 Wilcox, S. 'Rebalancing the housing and mortgage markets – critical issues' IMLA (Intermediary Mortgage Lenders Association), 2013, p.7

386 Low Cost Homeownership Schemes are discussed in further detail in the next chapter to demonstrate how the government attempts to assist homeowners through financial subsidy for acquisition costs.

towards weakly regulated free market structures, as well as greater finance to meet social housing objectives, whilst encouraging greater promotion of homeownership.³⁸⁷

There has been a consistent decline in social housing, as well as policies which decontrol rents, deregulate the PRS, create market-orientated housing finance, reduce subsidy in favour of promoting homeownership and individualisation of housing costs. Such policies indicate a decentralisation of the responsibility from the State, with greater reliance upon private and voluntary sector housing providers.

4.6 Conclusion: the current position as a legacy of the historical context of housing policy

This chapter has provided an in-depth evaluation of the origins of the State responsibility for housing and welfare costs in the UK, and how the State responsibility has developed and subsequently eroded. As argued in Chapter 3, the finding that only an *assumed* State responsibility exists means that the responsibility can grow and erode dependant on the political predilections at any given time. The State responsibility for housing and welfare is a nuanced right which ranges along a continuum of State-Individual responsibility. The historical context is the legacy of current housing policy individualising costs. It is clear from the above analysis in this chapter that objectives of housing policy have been to provide adequate housing where there was insufficient and latterly to promote homeownership as an individualisation of responsibility for housing costs.

However, as will be further explained in the next chapter, it is contradictory that the individualisation of housing costs (through homeownership) is preceded by greater State

387 Edgar, B Doherty, J and Meert, H Access to Housing: Homelessness and Vulnerability in Europe (Policy Press, Bristol, 2002) p.53

responsibility to intervene in private relationships between individuals and housing associations. The next chapter reveals the shape of State responsibility for housing which has concentrated in recent years to promoting Low Cost Homeownership schemes, in the hope of assisting aspiring homeowners to achieve homeownership, but also to individualise future costs for housing. In chapter 7 it is further explained the paradoxical nature of an ongoing relationship between State and individual through SMI for ongoing housing costs, if the individual household is in arrears and faces repossession. Accordingly, it is argued in this thesis that homeownership does not always lead to true individualisation of responsibility for housing costs if subsidised by the State, either through financial assistance with the acquisition cost (Low Cost Homeownership) or financial subsidy for ongoing housing costs (SMI).

Chapter 5: The Current State of Housing Policy

5.1 Aim

This chapter analyses the State's responsibility and role intervening in the market to provide assistance for acquisition costs, which have latterly aimed to individualise housing costs. As detailed in the previous chapter, the individualisation of housing costs has become a theme of housing policy prevalent through promoting homeownership, preference towards demand-side subsidies used in the PRS, as well as the reduction of the social housing sector to a safety net.

The 2008 recession and the sudden reduction in the availability of credit from banks and building societies termed 'credit crunch' had a profound effect on homeownership, both in the short and mid-term. In the short-term, house building targets were not met³⁸⁸, although the government concedes there was already an existing prevailing insufficient supply of housing³⁸⁹. The issue of affordable housing has come to the fore in recent years, in part as a result of the 2008 recession; figures demonstrate that first time buyers continue to be squeezed out of the market³⁹⁰ due to lack of credit and increasing inaffordability of house prices compared to average incomes due to a combination of strangled investment in housebuilding and strategising by housebuilders to increase profits. Many measures discussed later in this chapter by the State providing regulatory assistance to homeowners in arrears are a direct result of the credit crunch. Accordingly, the current state of the housing market and continuing objective to promote homeownership can be explained by

388 CIH, Chartered Institute of Housing response to Communities and Local Government Committee Inquiry: Housing and the Credit Crunch, November 2008, p. 2

389 Since the 1970s, there has been an average 160,000 new homes each year in England. The consensus is that we need from 225,000 to 275,000 or more homes per year to keep up with population growth and start to tackle years of undersupply. DCLG, Fixing our broken housing market, February 2017 p.9

390 CIH, Chartered Institute of Housing response to Communities and Local Government Committee Inquiry: Housing and the Credit Crunch, November 2008, p. 4

Government intervention to help existing homeowners in arrears, and prospective homeowners with acquisition costs.

Most recently a government white paper³⁹¹ sets out a new emphasis on assistance to those who rent their homes, but the government have not totally given up on incentivising homeownership. The government assistance to renters is welcomed by the increased proportion of households in the PRS because of the inaffordability of homeownership. Policy recognising the requirement for State assistance to renters includes greater transparency of letting agent fees, and consulting on legislation to ban letting fees³⁹² and to drive up safety and standards in the PRS³⁹³, as well as, promoting longer tenancies on new build rental homes³⁹⁴. These policy objectives demonstrate a new era into the State's recognition that renters require assistance, where homeownership for younger households is becoming ever increasingly less likely due to inaffordability. The analysis in this chapter builds upon the previous chapter concerning the historical application of State responsibility for housing costs and welfare, by exploring the current application of State intervention for housing costs and welfare.

The analysis in this chapter provides the necessary background for chapter 7, where the discussion centres on the State's response to owner-occupiers' arrears having encouraged marginal owners to become owner-occupiers. The State's financial assistance (social security benefits HB and SMI) and legislative or 'soft law mechanisms' to assist those in arrears facing repossession will be examined in later chapters. The individualisation of housing costs manifesting in housing policy has reflected the State's ideology of homeownership, as well as, the individual's preference to homeownership due its prevailing association to 'home' further examined in chapter 6.

391 DCLG, Fixing our broken housing market, February 2017;

Analysis in Toby Helm, Theresa May to offer more security for renters, The Guardian, 4 February 2017 <https://www.theguardian.com/society/2017/feb/04/may-abandons-home-owning-democracy-thatcher-tories>; BBC, Affordable rent measures promised in housing White Papers, 5 February 2017 <http://www.bbc.co.uk/news/uk-politics-38873524>

392 Ibid. Para 4.32

393 Ibid. Para 4.33

394 Ibid. Para 4.35

5.2 Current State assistance for acquisition costs

Affordability of homeownership has become an increasing problem due to the disconnection between income levels and house prices; lenders tightening criteria for mortgage approvals and high deposits³⁹⁵. Many households find the deposit or monthly mortgage payments a significant barrier to homeownership due to their capital assets or revenue income shortfall.

There are several State interventionist actions which actively assist households with homeownership. It has long been part of Government rhetoric to improve the household's chances of becoming owner-occupiers. The State takes on the responsibility to do this through (1) promoting low cost homeownership (LCHO) schemes³⁹⁶, and (2) assisting low-income homeowners to remain in their homes when facing arrears through mechanisms used to prevent repossession. Accordingly, to provide context to Chapter 7 concerning the examination of the social security benefits HB and SMI and State non-financial mechanisms to prevent repossession, this Chapter provides details about the other side of the coin; State subsidy for acquisition costs.

Subsidy for acquisition costs is implemented through two methods: (1) The State may provide a grant or discount to claimants to assist purchase of a home. (2) State investment may be available for the public over a longer period of time through the building of housing which is leased and let on below-market rents. The extent of State intervention thus State responsibility differs dependant on the type of subsidy or investment made. LCHO involves subsidy from public bodies to assist households into homeownership. It may seem

395 House of Commons Library, Extending Homeownership – Government initiatives (SN/SP/3668) 8 April 2014, First time buyers and affordability p.2

396 Affordable' generally means 80% of market rent DCLG and HCA, 'Policy paper: 2010 to 2015 government policy: rented housing sector' Updated 8 May 2015

<https://www.gov.uk/government/publications/2010-to-2015-government-policy-rented-housing-sector/2010-to-2015-government-policy-rented-housing-sector>;

<http://www.theguardian.com/housing-network/2014/feb/03/affordable-housing-meaning-rent-social-housing> (accessed 8 June 2016)

contradictory, but this type of State assistance represents individuals taking greater responsibility of their long-term housing costs by becoming homeowners. LCHO sells the idea of ownership, but the inevitable corollary is the assumption of individual responsibility. Several LCHO schemes provide financial assistance in the acquisition stage towards homeownership³⁹⁷.

The main schemes discussed in the section are shared ownership, the Help to Buy Equity Loan³⁹⁸ and Mortgage Guarantee³⁹⁹, and the Help to Buy ISA⁴⁰⁰ providing a government bonus for savers. These LCHO schemes extend assistance to different sectors of the market dependant on income and to households who would not qualify for RTB. Other marginal schemes are not discussed where they have a limited impact on the majority of low income homeowners or have specific niche eligibility criteria, for example, only for those considered disabled.

LCHO is now statutorily defined as social housing⁴⁰¹. Government subsidy makes LCHO part of a social housing agenda as recognised in the Housing and Regeneration Act 2008, s. 68 definition of social owner-occupied housing.⁴⁰² The significance of LCHO acknowledged as

397 Gov, Affordable Home Ownership Schemes, <https://www.gov.uk/affordable-home-ownership-schemes/overview> (accessed 8 June 2016)

398 Gov, Help to Buy, <https://www.helptobuy.gov.uk/equity-loan/equity-loans/> (accessed 8 June 2016)

399 Gov, Help to Buy, <https://www.helptobuy.gov.uk/mortgage-guarantee/how-does-it-work/> (accessed 8 June 2016)

400 Gov, Help to Buy <https://www.helptobuy.gov.uk/help-to-buy-isa/how-does-it-work/> (accessed 8 June 2016)

401 Sections 68 and 80 of the Housing and Regeneration Act 2008; <https://www.gov.uk/definitions-of-general-housing-terms> (accessed 8 June 2016); DCLG, National Planning Policy Framework March 2012 p. 50; A Wallace, *Achieving Mobility in the Intermediate Housing Market: Moving up and Moving on?* (Joseph Rowntree Foundation, CIH, 2008)

402 Housing and Regeneration Act 2008 s. 68 Basic principle (1) In this Part “social housing” means— (a) low cost rental accommodation (defined by section 69), and (b) low cost homeownership accommodation (defined by section 70).

social housing being the implicit recognition of the State that it has a greater responsibility towards the individual to assist with homeownership, rather than it being a pure market arrangement. LCHO does fit within the mixed sustainable communities' agenda⁴⁰³, which again recognises it as a step towards the State's responsibility to meet another housing policy objective. LCHO had existed before action programmes for mixed sustainable communities, subsequently, subsumed within it, but the policy of LCHO continues to transcend it.

Most LCHO schemes lead to an ongoing relationship between the occupier and the housing association, whilst RTB (as previously discussed) typically leads to a cessation of relationship between tenant and Local Authority. However, if the RTB household purchases leasehold rather than a freehold, a continuing relationship between the freeholder and leasehold household exists⁴⁰⁴. This is a challenging dynamic with reference to the type and extent of intervention by the State. The State subsidises purchase in the hope of making households autonomous and more financially independent in the long-term. The households retain an investment home, which satisfies their aspirations of homeownership and independence from the State in the long-term. Around 95,000 people were assisted into homeownership under LCHO schemes between 1997 and 2008.⁴⁰⁵ The State has shown commitment to LCHO and creating economic and financial stability through keeping interest rates low and improving credit availability.⁴⁰⁶ In tandem, the coalition's 2011 strategy statement to 'get Britain building'⁴⁰⁷ demonstrate the State's attempt to assist households with achieving

403 Office of the Deputy Prime Minister, Sustainable Communities: Building for the Future (2003) www.communities.gov.uk/documents/communities/pdf/146289.pdf

404 Explored in King, P Housing Policy Transformed: the Right to Buy and the desire to own (2010) The Policy Press, Bristol. P.78

405 DCLG, Press Release, Budget with help first-time buyers with new home loans 12 March 2008

406 Grant Shapps, HC Debate 1 December 2010 c 848W and HC 1033 March 2013

407 Gov, Policy – increasing the number of available homes

<https://www.gov.uk/government/policies/increasing-the-number-of-available-homes/supporting-pages/get-britain-building> (accessed 8 June 2016); Laying the foundations: a housing strategy for England (2011)

homeownership through bricks and mortar subsidies, by directly investing in house building. This includes the Right to Build and Custom House Building Act 2015.⁴⁰⁸

Criticism of LCHO schemes include that it is a misuse of tax-payers money to assist marginal households become homeowners at the risk of default. Some have questioned whether LCHO schemes may unreasonably subsidise households⁴⁰⁹, when government assistance should be directed elsewhere. All LCHO schemes include eligibility criteria, as well as, affordability checks. In the past, eligibility had been based upon particular types of employment, for example, 'key workers'⁴¹⁰ in London and the South East were offered LCHO schemes⁴¹¹. The stipulation regularly is a maximum income or house price threshold.

The sub-sections below will explain, compare and contrast the various government subsidised ownership schemes, divided between the 'Help to Buy' and Shared Ownership. The extent of State and individual responsibility in LCHO schemes is addressed, and questions whether government intervention is entirely positive. The relevance of the analysis to the thesis question being how LCHO demonstrates the continuing focus of the State intervention in ongoing housing is towards homeownership as a policy goal. Furthermore, in relation to this policy goal, are marginal households drawn into arrears rather than sustainable homeownership through LCHO? Analysis concerns whether government intervention in the form of LCHO delivers the intended goals.

408 The Self-build and Custom Housebuilding Act 2015, Right to Build - House of Commons Library Briefing Paper 06784, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06998> (accessed 8 June 2016)

409 An example of a controversial use of the help to buy LCHO which were deemed generous by the popular press; <http://www.trendingcentral.com/fact-check-camerons-help-buy-photoshoot-complete-fraud/> ; Nicola Hughes & Daniel Lindsay , Policy: discussion paper The forgotten households Is intermediate housing meeting affordable housing needs?, Shelter July 2010

410 e.g. teachers, Police Officers, and NHS workers

411 Harriet Meyer, The key to affordable housing for essential workers? A £50,000 salary, The Guardian, Monday 14 April 2014 <https://www.theguardian.com/money/2014/apr/14/affordable-housing-key-workers-cost> (accessed 5 May 2016)

It is argued in this thesis that the consequent effect of the State assisting with acquisition costs being the further obligation to help with the resultant ongoing housing costs, resulting in no true individualisation of housing costs.

5.2.1 Help to Buy

The Help to Buy (mortgage guarantee) scheme provides State guarantees for first-time buyers and home movers on new-build and existing properties worth up to £600,000.⁴¹² The State objective is to assist a more varied cohort of households into homeownership, thus innovatively providing subsidy with no income cap. The Help to Buy scheme encourages high loan to value lending, but the State does not contribute to the deposit up front. The scheme increases the availability of mortgages for those with minimal deposits. The new build home must be from a registered Help to Buy builder, and the process is administrated by an Agent. Help to buy equity loans cannot be used to purchase a second home. An equity loan consists of a 5% deposit, with the government loaning the household up to 20% of the property price, and the remaining 75% being covered by a mortgage from a commercial lender. The loan is paid back after 25 years, or when the house is sold, whichever is earlier. The amount of the loan paid back depends on the market value of the property at the time⁴¹³. The Help to Buy Isa is a typical tax-free cash savings ISA open to first-time buyers, which the government will boost by 25%. The maximum government bonus is £3,000. This ISA encourages households to hit savings targets to become homeowners through the promise of a government bonus on savings.

The Help to Buy Isa is an example of providing subsidy to encourage individuals to independently save for the deposit to purchase a home, with the promise of boosting those savings to allow a household to reach their goals more quickly. The responsibility is thus shared 25:75 between the State and the individual household to reach that savings target,

412 HM Government, Help to Buy <https://www.helptobuy.gov.uk/> (accessed 8 June 2016)

413 HM Government, Help to Buy <http://www.helptobuy.org.uk/equity-loan/equity-loans> (accessed 8 June 2016)

and a maximum bonus from the government demonstrates clearly the extent of financial assistance to be provided for individual households. However, recent criticism of the Help to Buy includes that the Government bonus towards the deposit on first home is not actually deposited to the household until the property sale is completed. Accordingly, the government bonus money cannot be relied upon to subsidise the deposit, opening up the possibility that a short term bridging loan would be necessary until completion.⁴¹⁴ Moreover, with increasing house prices⁴¹⁵, finding a property within the limit of eligible purchase price using the Help to Buy Isa at £250,000 (and £450,000 in London) is unrealistic⁴¹⁶.

The mortgage indemnity or mortgage guarantee scheme is not a wholly new invention, its previous incarnation in the NewBuy guarantee scheme allowed applicant homeowners to purchase using a 5% deposit on new home, with the government and house builders providing security for that loan. The major issue is the need to encourage mortgage lenders to offer high loan to value mortgages.⁴¹⁷ The negative consequences of high loan to value mortgages have the potential to distort the housing market and inflate prices. High loan to value mortgages partially led to the financial crisis in the first place⁴¹⁸.

414 Chris Johnston, Help-to-buy Isa clause under attack for hampering first-time buyers, The Guardian, 20 August 2016 <https://www.theguardian.com/society/2016/aug/20/help-to-buy-isa-clause-attack-first-time-buyers> (accessed 21 August 2016); typically the short term bridging loan would be through a credit card

415 Julia Kollewe, UK house prices pick up pace with 10.1% annual increase, 7 April 2016, The Guardian, <https://www.theguardian.com/money/2016/apr/07/uk-house-prices-pick-up-pace-101-annual-increase-halifax-brexite> (accessed 8 August 2016)

416 Help to Buy, Who is Eligible? <https://www.helptobuy.gov.uk/help-to-buy-isa/who-is-eligible/> (accessed 8 June 2016)

417 HM Treasury, Budget 2013, [para. 148] referencing HM Treasury, Budget 2013, pp38-39, para 1.104, March 2013

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmtreasy/1063/106309.htm> (accessed 8 June 2016)

418 Demyanyk, Y and Van Hemert, O Understanding the Subprime Mortgage Crisis, *Rev. Financ. Stud.* (2011) 24 (6): 1848-1880.

The advantages of equity loan schemes are that they tackle supply side barriers, by supporting the housebuilding industry, as well as, dealing with the issue of raising a deposit. The scheme boosts the construction sector and is predicted that it will help a further 120,000 people buy a home by March 2020.⁴¹⁹ The Help to Buy equity loan scheme increases the overall supply of housing by investing in the construction sector and directly assists households to become homeowners through subsidy.

The Help to Buy schemes demonstrates the continued and enduring significance placed on homeownership. The previous Prime Minister, David Cameron had said that Help to Buy is “about moving on and moving up, having something to pass on to your children, independence and self-reliance”⁴²⁰. The political rhetoric of autonomy and individual responsibility continues to be associated with homeownership to perpetuate its ideology. In terms of the State and individual responsibility debate, the help to buy scheme has many critics⁴²¹ describing it as too interventionist, leading to further issues within the housing market, the subsidy being unfeasible to use and an unsustainable use of public subsidy. Critics warn that stimulating demand without increasing supply creates property price inflation⁴²². Economists, politicians and housing welfare campaign groups have criticised that

419 HM Treasury Budget 2014 1.140

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/293759/37630_Budget_2014_Web_Accessible.pdf (accessed 8 June 2016)

420 Matt Chorley, MailOnline Political Editor and James Chapman, Help to Buy Creates 75 Homeowners per Day, The Daily Mail, 11 November 2013 <http://www.dailymail.co.uk/news/article-2498691/Help-To-Buy-creates-75-homeowners-day-Cheap-mortgage-scheme-success-says-Prime-Minister.html> (accessed 8 June 2016)

421 BBC, Homes 'too expensive' for Help to Buy Isa scheme, 20 June 2016 <http://www.bbc.co.uk/news/uk-england-36424548>; 22 May 2013, Sarah O'Connor and Gill Plimmer IMF adds to growing criticism of 'Help to Buy' mortgage scheme, Financial Times <http://www.ft.com/cms/s/0/64bdf24-c309-11e2-9bcb-00144feab7de.html#axzz4DAmD1diL> (accessed 8 June 2016)

422 Emily Cadman and Chris Giles, Economists' forecasts: Policies will not stop house price rises, Financial Times <http://www.ft.com/cms/s/0/87652554-afa8-11e5-b955-1a1d298b6250.html#axzz4DAmD1diL> (accessed 8 June 2016)

such initiatives are uneconomic and add to the housing price bubble; 'the major problem locking people out of homeownership is high house prices, rather than fix the cause of the problem – and make the government liable for billions of pounds should house prices subsequently fall.'⁴²³ Critics have warned against the negative effects of distorting the market through such types of subsidy⁴²⁴.

Moreover, the use of public money to assist households to buy houses which can be described as 'luxury' at £600,000⁴²⁵ has been criticised. Issues have also been raised that the mortgage guarantee could be used as a second home subsidy rather than used for initial purpose of assisting first time buyers.⁴²⁶ The Treasury Select Committee's finding has been that the complexity with the scheme would mean exclusions for second homes would be difficult. Moreover, it is difficult to understand the rationale for the taxpayer to support loans for people wishing to own second homes, when the scheme is designed to help first-time buyers⁴²⁷. Schemes such as the Help to Buy mortgage guarantee for new or existing homes seem far removed from social housing. The key relationship in the Help to Buy is

423 Liam Kelly, 'Help to Buy scheme: homebuyer boost or house price bubble?' Friday 22 March 2013, Guardian <http://www.independent.co.uk/news/uk/politics/george-osborne-under-fire-labour-brands-budgets-home-ownership-boost-scheme-a-subsidised-mortgage-for-millionaires-8544228.html>(accessed 8 June 2016)

424 Balchin, *Housing: the essential foundations* (Routledge, London, 1998)

425 Andrew Grice, Help to Buy: More evidence of a property boom (and why it's a bad news story), 12 November 2013 <http://www.independent.co.uk/news/uk/politics/help-to-buy-more-evidence-of-a-property-boom-and-why-its-a-bad-news-story-8933659.html> (accessed 8 June 2016) Homebuyers would need to earn more than £100,000 to qualify for a £600,000 mortgage and that state help should be directed lower down the income scale. Average UK house price currently £250,000 <http://www.bbc.co.uk/news/business-26239609> (accessed 8 June 2016)

426 Chris Mason, Budget 2013: Row over 'second home subsidy' BBC 21 March 2013

427 Treasury Select Committee Ninth Report of 2012-13, Budget 2013, HC 1063 para. 180 General comment from the Treasury Select Committee being negative; Helen Lewis, Treasury Select Committee Deeply Unimpressed by Osbornes Help to Buy Scheme 20 April 2013, <http://www.newstatesman.com/politics/2013/04/treasury-select-committee-deeply-unimpressed-osbornes-help-buy-scheme> (accessed 8 June 2016)

from a wholly private entity which is a mortgage lender and the scheme is offered with no maximum income threshold.

5.2.2 Shared ownership

There are various forms of shared ownership⁴²⁸, for example, specialist schemes marketed for social tenants⁴²⁹. At a generic level, conventional shared ownership consists of an applicant buying a minimum 25% share of a leasehold property whilst paying rent on the remaining share which is owned by a housing association. Staircasing provisions in the shared ownership agreement allow the purchaser to buy additional shares (at a minimum 10% of the property value at a time) in the property when they can afford to do so. The scheme is now available to all first-time buyers with an income less than £60,000.⁴³⁰

Shared ownership works on the basis of an intermediary tenure⁴³¹, and ostensibly as a stepping stone towards full ownership (using staircasing provisions)⁴³². Model leases for shared ownership schemes usually have a right of pre-emption to housing associations

428 Homeownership for People with Long Term Disabilities (HOLD) and Older Persons Shared Ownership (OPSO), Rent to HomeBuy

429 Social HomeBuy

430 Christoph Sinn and Sarah Davis, Shared Ownership 2.0 Towards a fourth mainstream tenure Final Report, CIH and Orbit Group, 2014

<http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/Shared%20Ownership%202.0%20towards%20a%20fourth%20mainstream%20tenure.pdf> p.15 (accessed 8 June 2016)

431 Between renting and homeownership

432 Department of Environment, Shared Ownership: a Stepping Stone to Full Ownership (HMSO, 1982) p. 21; Homeownership Task Force, A Home of My Own, The Report of the Government's Low Cost Homeownership Task Force (Housing corporation, 2003) para. 6.1; G Bramley and S Dunmore, Shared Ownership: Expedient or Long Term Major Tenure? (1996) 11(1) Housing Studies 105; S Hills and A Lomax, Whose house is it anyway? Housing Associations and Homeownership (Housing Corporation 2007)

where on sale the property can be sold to other households in need.⁴³³ Shared ownership schemes predate the RTB⁴³⁴. However, the RTB has been more successful in terms of overall uptake.⁴³⁵ Shared ownership has reached buyers that were not previously reached by the RTB because it is available to more than just Local Authority tenants already living in social housing. Shared ownership provides market choice which RTB does not give, as shared ownership allows the individual household to buy a home that the household is not already living in.

However, concerns have been raised about the legal and financial position for shared owners when the household's investment into the property can be lost if rent arrears eventually lead to repossession, alongside high service charges and maintenance responsibilities⁴³⁶. Shared ownership schemes allow the State's investment to be recovered.

433 David Cowan, Lorna Fox O'Mahony and Neil Cobb , Great Debates: Property Law (Palgrave Macmillan 2012 London) p. 36

434 Shared ownership is the most established of the intermediate housing market products, it was introduced in 1979 and the social and economic policy objectives remain the same. Simon Graham, Blue Sky, The National Housing Federation, The role of shared ownership in the future housing market – a discussion paper, May 2010 P.8

435 Households in shared ownership accounted for about 178,000 home owners from 1979 to 2011; Office for National Statistics, A Century of Homeownership and Renting in England and Wales, Part of 2011 Census Analysis, A Century of Homeownership and Renting in England and Wales Release Released: 19 April 2013 Promoting shared ownership group of 21 Housing Associations, Shared ownership facts & figures, September 2010. Households who purchased their property through Right to Buy accounted for 1,812,833 homeowners from 1979 to 2011; DCLG, Right to Buy sales in England, Statistical Reports

436 Council of Mortgage Lenders, Assisting shared owners at risk of repossession: Flexible tenure, Questions and answers, March 2010, HB, SMI, Homeowners Mortgage Support and Flexible tenure were all suggestions of solutions for this issue during the economic downturn in 2010, <http://www.mortgagefinancegazette.com/features/shared-ownership-lease-problems/> (accessed 8 August 2016); Mortgage Protection Clauses can provide protection, Peaker, G 'The hidden dangers of shared ownership' The Guardian, 3 September 2013 <http://www.theguardian.com/housing-network/2013/sep/03/hidden-dangers-shared-ownership>, (accessed 8 August 2016) Fearn, H,

Shared ownership can meet housing need by freeing up social housing, where some shared owner applicants are currently occupying social housing or on the waiting list for social housing.⁴³⁷

*Richardson v Midland Heart*⁴³⁸ demonstrates the pitfalls of this 'intermediary' tenure. Although housing charities such as Shelter⁴³⁹ have lobbied for more widespread use of the schemes, it is clear that there are dangers of repossession associated with this tenure. Richardson bought a 50% stake in a property (£29, 500) using shared ownership but without a mortgage. For the non-owned 50% stake she used HB to pay rent. Rent arrears built up when Richardson had to move to a woman's refuge due to violent threats resulting from the imprisonment of her ex-partner, so no longer claimed HB to pay rent for her shared ownership property. At the time of the possession claim, the rent arrears were approximately £3,000. Richardson had attempted unsuccessfully to sell her property at the time worth £151,000. Midland Heart obtained possession on the mandatory ground of 2 months' rent arrears, ground 8.⁴⁴⁰

The case highlights the evident problems with the legal basis of shared ownership, for owners-occupiers vulnerable to rent arrears. The purpose of the scheme is to assist people to proceed to full ownership. However, it can lead to a shared owner-occupier losing their home on the basis of a mandatory ground for possession based on rent arrears (ground 8).

Shared ownership homes leave buyers frustrated and out of pocket, 3 July 2015

http://www.theguardian.com/housing-network/2015/jul/03/shared-ownership-buyers-frustrated-charges?CMP=new_1194&CMP= (accessed 8 August 2016)

437 ODPM, HomeBuy (1.4) Housing Corporation, Capital Funding Guide (Housing Corporation 2006) para. 2.1

438 [2008] L. & T.R. 31

439 'Shelter calls for a new generation of shared ownership for 'forgotten families'', 29 August 2013

http://england.shelter.org.uk/news/august_2013/shelter_calls_for_a_new_generation_of_shared_ownership_for_forgotten_families (accessed 8 August 2016)

440 Housing Act 1988 Schedule 2, ground 8; Housing Act 1996, s.101

Richardson lost her investment and her share of the increase in the value of the property.⁴⁴¹ Accordingly, shared ownership can fail in its objective of sustainable homeownership, a risk shared with any mortgage backed homeownership. However, the key point about the Richardson case is that the shared owners are in a less favourable position because they also lose their investment (or capital) in their home and that possession under ground 8 is mandatory, compared to the discretion the court has under Administration of Justice Act s. 36⁴⁴². Accordingly, the injustice of the situation derives from the failure of shared ownership to deliver its promise of ‘the normal rights and responsibilities of a full owner-occupier’.⁴⁴³ Shared ownership where placed against the ideological conceptualisation of homeownership falls short.

HHJ Gaunt QC’s analysis demonstrated the overarching difficulty with shared ownership,

“Miss Richardson has had a rough ride in life and has now lost what is probably her only capital asset. Moreover she lost in proceedings brought at a time when, to the knowledge of the housing association, she was actively seeking to sell the house to pay off her debts and the housing association was itself involved in the process.”⁴⁴⁴

There are clear concerns over the clarity of shared ownership tenure and fairness for consumers. Potential legal arguments to save shared owners from losing their home have been discussed in several academic papers.⁴⁴⁵ This mixed tenure system is far from the

441 S Bright and N Hopkins ‘Richardson v Midland Heart Ltd: Low Cost Homeownership – Legal Issues of the Shared Ownership lease’ [2009] Conveyancer and Property Lawyer 337 quoted in L Fox O’Mahony, Great Debate in Property Law, Shared Ownership, p. 162

442 Discussed in Chapter 7 as a legislative measure to ensure parity in repossession cases for households vulnerable and with arrears

443 S Bright, N Hopkins and N Macklam, ‘Owning Part but Losing All: Using Human Rights to Protect Homeownership’ N Hopkins (ed) in Modern Studies in Property Law Vol 7 Hart 2013 Oxford P. 38

444 Richardson v Midland Heart [2008] L. & T.R. 31[23]

445 S Bright and N Hopkins, Richardson v Midland Heart Ltd: Low Cost Homeownership – Legal Issues of the Shared Ownership Lease [2009] Conveyancer and Property Lawyer 337, constructive trusts, proprietary estoppels and; S Bright, N Hopkins and N Macklam, ‘Owning Part but Losing All: Using Human Rights to Protect Homeownership’ N Hopkins (ed) in Modern Studies in Property Law

conventional understanding of ‘ownership’ of a home. Shared ownership cannot satisfy the aspirations of a traditional conception of ownership. Research has shown that for those low-income households who were eligible for shared ownership schemes, the majority were not interested since they saw it as being the “worst of both worlds”⁴⁴⁶ offering neither the security of social renting nor the freedom and independence of owner-occupation”⁴⁴⁷. The property is not really “yours”⁴⁴⁸. The lack of security of tenure as demonstrated in the Richardson case reveals the unsustainability and the lack of safety net to assist for the household’s investment into their home, despite the ability of the low-income households to claim HB. The criteria for HB led to Richardson’s claim being cut once she had moved to the woman’s refuge, demonstrating the lack of reliability for benefits to cover housing costs. Richardson lost her capital investment, as losing the rented aspect of her home meant losing the entirety of the property held on a long lease (99 years) when Ground 8 was used to justify repossession of an assured tenancy. Unusually, Richardson had paid cash rather than using a mortgage to purchase her home, so in a conventional case of a mortgage, a mortgage company could have intervened to retain their interest meaning that losing ‘part’ would not mean losing ‘all’ (i.e. her capital investment).

The mandatory ground for possession, ground 8 has long been contentious⁴⁴⁹. Considerations for the court such as the arrears history, reasons for the arrears and

Vol 7 Hart 2013 Oxford; Article 8, Article 1 Protocol I ECHR proportionality human rights arguments; Fox, L, D Cowan, N Cobb (eds.) *Great Debates in Property Law*, Palgrave Macmillan, 2012 p. 162; possession is an interference disproportionate to the owner’s financial stake in the property akin to forfeiture without relief.

446 Department of the Environment, Kempson, E and Mackinnon, K ‘Housing Research Report: A Foot on the Ladder – a study of households on the margins of renting and owning a home’ (London: HMSO Policy Studies Institute, 1994) p. 58

447 Housing Corporation & Chartered Institute of Housing, *Housing Aspirations and Shared Ownership* 10 (2008)

448 Clarke et al, ‘Understanding demographics, spatial and economic impacts on future affordable housing demand’ – Paper 5 – Tenure Aspirations and shared Ownership (Cambridge Centre for Housing and Planning Research, January 2008). P. 17

449 Hansard, GROUND 8: HOUSING ACT 1988 (C. 50) HL Deb 20 October 2004 vol 665 cc905-18

difficulties with HB administration are not taken into account in a claim for possession on ground 8, as outright possession is mandatory and eviction usually follows promptly⁴⁵⁰. The mandatory ground prevents recourse to procedural mechanisms for mortgage default in conventional ownership representing the greater risk systemic to shared ownership.

Wallace's evaluation of the State's shared ownership scheme reveals that achieving the qualities of homeownership may be more problematic for a hybrid tenure such as shared ownership.⁴⁵¹ As demonstrated in the Richardson case, although subsidised homeownership is touted as satisfying the households' aspirations of homeownership, the extent of control and asset accumulation does not meet the household's expectation of homeownership. Wallace argues that with regards to the legal basis of ownership that

“the basic tenet of all subsidised access is the relinquishing of some aspect of the purchasers' use and occupation rights in exchange for lower entry costs to homeownership. The question is how satisfactory are these penalties and does the form of occupancy still constitutes 'ownership' in this UK context? Not only are purchasers conceding control of their assets and a share of their equity gains in favour of lower entry costs to ownership, their rights to influence and control the buildings they occupy are also compromised, which as the sector matures further may become more apparent.”⁴⁵²

Statistical research has identified there are limiting factors to shared owners staircasing to full ownership⁴⁵³. These limiting factors include high transaction costs, unavailability of

450 Housing Act 1988, Schedule 2, Ground 8

451 Wallace, A 'Shared Ownership: Satisfying Ambitions for Homeownership?' (2012) 12:2 IJHP 205, 222

452 Ibid. p. 218

453 In 2014-2015 only 3% of all shared owners managed to staircase to 100% Savills, Spotlight on Shared Ownership, Savills World Research April 2016 <http://pdf.euro.savills.co.uk/uk/residential---other/spotlight-shared-ownership-2016.pdf> (accessed 8 August 2016); The NHF has estimated that approx.. 170,000 homes have been provided for shared ownership since 1979, with only around 44,000 staircasing to full ownership. Heywood, A the end of the affair: implications of declining homeownership (The Smith Institute, June 2011) Shared ownership dreams shattered, June 2012

mortgage finance and incomes not in line with house prices.⁴⁵⁴ Shared owners take 100% responsibility for the repairs, maintenance and service charges despite owning only 25% of the property, however, shared owners do pay a sub-market rent of no more than 3% of the open market valuation of the housing association's share with strict control on rent increases.⁴⁵⁵ Shared ownership is not always affordable, as this is dictated by the market and can be unjustly called 'social' housing when in fact the mortgage repayments attached to the share of the property are not affordable based on the average wage in an area.⁴⁵⁶

In times of market uncertainty, it has been argued that government backed shared ownership schemes are a relatively safe bet for lenders as they are insured against default for most of the value of the loan under a mortgage protection term. Housing Associations have also urged a change in mortgage rules to encourage shared ownership schemes.⁴⁵⁷ Accordingly, for the foreseeable future it would seem that despite some market and consumer reservations, government policy will continue to promote shared ownership.

<http://www.independent.co.uk/property/house-and-home/property/shared-ownership-dreams-shattered-7878446.html> (accessed 8 August 2016) Nevertheless, this is improving as staircasing to 100% cent ownership has more than trebled from 2011 to 2014 Christoph Sinn and Sarah Davis, Shared Ownership 2.0 Towards a fourth mainstream tenure Final Report, CIH and Orbit Group, 2014 <http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/Shared%20Ownership%202.0%20towards%20a%20fourth%20mainstream%20tenure.pdf> (accessed 8 August 2016)

454 Anna Clarke and Andrew Heywood, Understanding the second hand market for shared ownership properties, Cambridge Centre for Housing and Planning Research May 2012,

455 HCA, CML, NHF Shared Ownership: Joint Guidance for England November 2012.

<https://www.cml.org.uk/policy/guidance/all/shared-ownership-joint-guidance-for-england/> (accessed 15 January 2013)

456 Hilary Osborne, 'Affordable' shared ownership flat in Hackney on the market for £1m. The Guardian, Monday 25 August 2015 <http://www.theguardian.com/money/2015/aug/24/affordable-shared-ownership-flat-hackney-1m> (accessed 8 August 2016)

457 House of Commons Libraries, Extending homeownership – Government Initiatives 8 April 2014

Shared owners who are at risk of repossession may also receive assistance through flexible tenure⁴⁵⁸ which allows shared owners to reduce the size of their owned share. There are also forbearance measures in place for households in shared ownership, as well as subsidies such as SMI and HB (discussed in chapter 6) which can also assist eligible low-income households. Accordingly, in the case of arrears, there are in principle more avenues of assistance for shared owners due to 'intermediary tenure' status between ownership and renting.

In terms of the State and individual responsibility debate, the same issues with regards to State interventionism and the effect on the market are applicable. The Public Accounts Committee have identified a potential impact of shared ownership being increased demand in particular local market 'property hotspots', thus affecting house prices in a localised way, thus strategic economic modelling is required to prevent undue State intervention in the market.⁴⁵⁹

The shift from State to individual responsibility is evidenced in the encouragement of homeownership including through the development of LCHO. State encouragement of homeownership may aim to promote a more inclusive society.⁴⁶⁰ However, it can be conversely argued that the acquisition of property rights of some can promote exclusion and barriers within society of the haves and have nots. There is a phenomenon of isolation in mixed tenure housing schemes of those in perceived affordable or social housing sections

458 Flexible tenure scheme could cut repossessions in some Housing Associations

<http://www.jrf.org.uk/media-centre/flexible-tenure-scheme-could-cut-repossessions-some-housing-associations> (accessed 8 June 2015); DCLG, 'Assisting shared owners at risk of repossession: Flexible tenure Questions and Answers', March 2010

459 Public Accounts Committee, A Foot on the Ladder HC 134 March 2007; DCLG, Treasury Minutes on the 13th to the 19th Reports from the Committee of Public Accounts 2006-07. CM 7077, May 2007, p.44

460 Williams, P, 'Home-ownership and changing housing and mortgage markets: the new economic realities' in Forrest, R and Lee, J (eds.) Housing and Social Change East-West Perspectives (Routledge, London 2003) p.173

compared to those who owner-occupy their properties usually under LCHO schemes.⁴⁶¹ Accordingly, the State employing measures to assist with homeownership can facilitate that exclusion which is ostensibly not the intended implication of such LCHO policies. To a limited extent, a market approach is identified in some forms of State assistance for acquisition cost. For example, the ongoing relationship is usually between a housing association and the owner-occupier, rather than a Local Authority. The accountability to and reliance upon the State is nuanced. The State does provide a significant level of financial support without which would prevent a household living as owner-occupiers regardless of the legal model or tenure type structure (e.g. non-traditional ownership such as shared ownership). The State's acquisition costs type assistance has a significant effect upon the mortgage market and availability of credit.

It is noted however, that this is in principle only a presumed 'individual' responsibility, since the household is significantly reliant upon the subsidy of the State and an alternative tenure structure liable to lead to repossession and loss of all investment resulting from rent arrears⁴⁶². Consequently, there is a mixed message whether shared ownership advocates an individualisation or a state assumption of responsibility for housing costs.

There are clear drawbacks to LCHO schemes. This use of public money ostensibly funds private investments and eventual profit for those homeowners, albeit that the State investment is usually eventually recaptured. The objective of sustainable homeownership may not be fulfilled, and there is a chance that irrevocable damage could be made to the market by the Government's use of finance leading to further unaffordability⁴⁶³. The ability for the State to recoup investment is key to emphasising that the overall objective of State assistance in acquisition housing costs is to promote the individualisation of responsibility for housing costs. The Chartered Institute of Housing (CIH) and the National Housing

461 The Guardian, 22 October 2013<https://www.theguardian.com/society/2013/oct/22/unsocial-housing-gates-within-gates> (accessed 19 August 2016)

462 As explained in the shared ownership case *Richardson v Midland Heart* [2008] L&TR 31, discussed earlier

463 Marianne Hood, Chair of the National Housing Forum, Extending Homeownership in England Capita Conference September 2005

Federation (NHF) have held some reservations against the influx of promotion and funding for LCHO schemes, arguing that it cannot be used as a substitute to delivering more homes through strategic investment in house building.⁴⁶⁴

The overarching State objective is not coherently articulated through the hotchpotch of LCHO schemes. The level of impact on the property market, an assurance of value for money to the tax payer and that LCHO schemes genuinely benefit those most in need are concerns⁴⁶⁵. Accordingly, the State responsibility for acquisition housing costs is only expressed to a limited extent through LCHO. Commentators have derided LCHO schemes as gimmicks which offer greater assistance to the construction industry compared to prospective homeowners.⁴⁶⁶

As discussed above with reference to the *Richardson v Midland Heart* case, the assumed State responsibility to promote homeownership using LCHO has led to unpredictable consequences. Policies which attempt to support the acquisition costs for homeownership, have on occasion caused unsustainable homeownership for some households. In light of this conclusion that LCHO can lead to unsustainable homeownership for marginal homeowners, we need to consider the appropriateness of state mechanisms to prevent repossession as a further manifestation of the State responsibility to allow owner-occupiers to retain their homes and investment in their property.

The next section explains the contemporary understanding of asset based welfare, as a measure of the further individualisation of housing costs for elderly social care needs. The long-term benefit resulting from the State providing LCHO property subsidy to individualise housing costs reflects the reasoning inherent to asset-based welfare. Asset based welfare

464 CIH Press Release, 25 May 2005; 'Building on Brown's cheap mortgages plan' Financial Times Money, 28 May 2005; CLG Press Release 24 March 2011 quoted in House of Commons Libraries, Extending homeownership – Government Initiatives 8 April 2014

465 Statement by the Chair of the Public Affairs Committee, Margret Hodget March 2014

466 The Telegraph, Home buying scheme dismissed as gimmick 12 March 2012, <http://www.telegraph.co.uk/finance/property/news/9137741/Home-buying-mortgage-scheme-dismissed-as-gimmick.html> (accessed 30 August 2016)

explains overarching policy for the State to promote homeownership to prevent individuals' later reliance on the State for social care costs in later life by using equity release of the individual's capital in the owner-occupied home.

5.3 Mixed economy of welfare including asset based welfare

As already discussed, welfare and State housing provision has adapted over time. A mixed holistic economy of welfare has developed, comprising of the State, voluntary sector, family and the market playing a role for the wellbeing of a household⁴⁶⁷. This approach to welfare and housing provision involves private responsibility, collective arrangements and a mixed governance approach leading to division of responsibility between the State and others⁴⁶⁸.

The concept of asset based welfare has developed through this mixed approach, which involves using asset release from housing to fund welfare in old age, but has been criticised.⁴⁶⁹ This developing notion of asset based welfare is premised on a relationship between social citizenship and property whereby individuals can use their housing, which acts as a home, accommodation and an investment asset, which can be released to fund

467 Lewis, J 'Voluntary and Informal welfare' in R.M. Page and R. Silburn (eds.) *British Social Welfare in the 20th Century* (Palgrave, Basingstoke, 1999) pp. 249-70, 249

468 Vonk, Gijsbert and Katrouglaos, George 'The Public interest and the Welfare State: A Legal Approach' in Vonk and Gijsbert *Social Security as a Public Interest* (Intersentia, Oxford-Antwerp-Portland, 2010) p. 67-90

469 Asset based welfare has been criticised as not actually providing for welfare or doing so unfairly; Johannie Mongtomerie, *Housing-based welfare strategies do not work and will not work*, LSE Blog <http://blogs.lse.ac.uk/politicsandpolicy/homeownership-and-the-failures-of-asset-based-welfare/> (accessed 18 May 2015) ; Emma Laurie and Nick Hopkins, *Using housing wealth to fund social care: why the Care Act 2014 is unfair* , LSE Blog http://blogs.lse.ac.uk/politicsandpolicy/using-housing-wealth-to-fund-social-care-why-the-care-act-2014-is-unfair/?relatedposts_hit=1&relatedposts_origin=46219&relatedposts_position=0 (accessed 18 May 2015)

welfare in later life through equity release.⁴⁷⁰ The demand for welfare services in older age has grown considerably with our ageing population.⁴⁷¹ Asset based welfare using homeownership aims to create comprehensive protection against risks.⁴⁷² Asset based welfare reveals the developing nature of the State responsibility and its shift towards individualisation⁴⁷³. As will be explained, using assets for welfare in later life can be problematic.⁴⁷⁴

Equity release can be through either lifetime mortgages or home reversion.⁴⁷⁵ A lifetime mortgage involves an individual household takes a mortgage out against their home to give

470 Hopkins, N and Laurie, E, Social Citizenship, Housing Wealth and the Cost of Social Care: Is the Care Act 2014 'Fair'? Volume 78, Issue 1 Modern Law Review, pages 112–139

471 Harris, B The origins of the British Welfare State – Social Welfare in England and Wales, 1800 – 1945, Palgrave Macmillan 2004

472 Richard Ronald, John Doling, Home ownership and asset-based welfare (2009) J Hous and the Built Environ <http://www.birmingham.ac.uk/Documents/college-social-sciences/social-policy/DEMHOW/B6.pdf> (accessed 18 May 2015)

473 Fox O'Mahony, L (2012). Home Equity and Ageing Owners: Between Risk and Regulation. Hart Publishing. Oxford

474 Fox O'Mahony, L and Overton, L, The future of the UK Equity Release Market: Consumer Insights and Stakeholder Perspectives' June 2015, University of Birmingham and the Leverhulme Trust. Fox O'Mahony, Lorna and Devenney, James (2009) 'The elderly, their homes and the unconscionable bargain doctrine', in Dixon, M (ed) Modern Studies in Property Law vol 5 (Hart Publishing, Oxford) pp. 265-288; Fox O'Mahony, Lorna and Overton, Louise (2015) 'Asset-Based Welfare, Equity Release and the Meaning of the Owned Home.' Housing Studies, 30 (3). pp. 392-41; Becky Tunstall, 'Rich as houses? The facts about asset-based wealth' The Guardian, 30 July 2012 <https://www.theguardian.com/housing-network/2012/jul/30/asset-based-wealth-home-ownership> (accessed 18 May 2015)

475 Council of Mortgage Lenders, Equity release and the impact on benefits and tax CML assisted by Ferret Information Systems Ltd, p.1 <https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0ahUKEwja7sud5MPOAhVBnywKHd6VBt8QFgg4MAM&url=https%3A%2F%2Fwww.cml.org.uk%2Fdocuments%2Fequity-release-and-the-impact-on-benefits-and-tax%2Fer-and-the-impact-on-benefits-and-tax-may-2016.pdf&usg=AFQjCNH10C46k3HmnydvfpP1wB4VBnW05Q&cad=rja> (accessed 10 August 2016)

them a lump sum or a regular income, the loan is then repaid to the lender when the property is sold and the household continues to own and occupy their home. A home reversion involves the owner selling their property or a proportion of it to a reversion company that allows the household to occupy their home for the rest of their lives, but on death of the households, the reversion company gains occupation. These equity release schemes thus allow the individual household the ability to recoup capital or income but remain in their home until death.

The release of housing wealth could be beneficial as an estimated £400 billion is tied up in properties owned by over 60s who are interested in downsizing⁴⁷⁶, and so releasing assets can continue to lower housing cost for those with spare funds for care costs or specialist housing in later life. Owner-occupiers in the over-60 bracket have been described as asset rich-cash poor⁴⁷⁷. It has been thus argued that it is reasonable to expect households to adapt and manage care needs from the generational windfall of asset wealth. The State cannot use funds to cover the care needs of an ageing population when individuals are able to use their assets for their care needs.

It has been argued that the expansion of asset holdings amongst low-income households is a means of reducing wealth inequalities and promoting wealth-creating behaviour amongst citizens. Housing asset based wealth has been a consistent British policy and a significant additional pillar of the Welfare State.⁴⁷⁸ Individuals are a party to the social contract in return for State support for homeownership; since individuals draw on wealth to fund their later needs, such as retirement, and social care. Social citizenship and the social contract anchor the bundle of rights provided by the Welfare State, which are said to be delivered in

476 Oto, Shiro, House of Commons Library Briefing Paper 07423, 9 December 2015, Housing an Ageing Population (England) p. 10 and p. 28

477 Escape routes for the asset rich, cash poor, 14 June 2003, The Telegraph <http://www.telegraph.co.uk/finance/personalfinance/borrowing/mortgages/2854896/Escape-routes-for-the-asset-rich-cash-poor.html> (accessed 18 May 2015)

478 Hopkins, N and Laurie, E. Research Seminar 'Using the owned home to fund social care: assessing the legitimacy of the Care Bill through the social contract' (University of Southampton, March 2014)

the UK through the social contract.⁴⁷⁹ Housing has an important significance to how the policy has been implemented in the UK, for example, housing asset based welfare may be part of the justification for the State providing social security benefits to help people keep their asset – there is a state interest in doing so that goes beyond keeping people in the home. Further individualisation of the responsibility has dominated welfare models in the later 21st century, so that the self-provision of welfare becomes key in the Welfare State.

Asset based welfare where individuals utilise the capital asset in their owner-occupied home for their own later expenses such as welfare in effect becomes privatisation of responsibility for care of the elderly. The asset is a 'home' which has special connotations described further in the next chapter. Asset based welfare where the 'home' remains in occupation by the owner, however the equity has been removed from this asset could conceivably affect this idea of owner-occupied home⁴⁸⁰. Asset based welfare is an example of where political ideology is moving away from the direct state subsidy towards the individual, akin to the gradual decline of social housing through the privatisation of housing through the RTB policy.

The recognition that asset based welfare is part of the current welfare system is significant to understand the nature of State responsibility for housing costs as assumed in nature rather than imposed, and the State responsibility is going through further diminution with the mixed economy of welfare. Accordingly, although the concept of asset based welfare is not yet fully formed in the public consciousness as a means of welfare in old age, this concept is developing. The changing expectations of responsibility incumbent upon the individual and the State are explained through the assumed nature of the State responsibility emerging from political ideology and emanating in theories discussed in chapter 3, central to the key concepts of this thesis of an assumption of responsibility and individualisation of housing costs. Asset based welfare has gone through significant reform through the implementation of deferred payment agreements through the Care Act 2014 in

479 Marshall, T H, 'Citizenship and the Social Class' in Marshall T H Sociology at the Crossroads and other essays (Heinneman, London 1963), the social contract discussed further in next section.

480 Fox O'Mahony, Lorna and Overton, Louise (2015) 'Asset-Based Welfare, Equity Release and the Meaning of the Owned Home.' Housing Studies, 30 (3). pp. 392-41

the UK context specifically, with the development of means tested support taking into account housing wealth is considered for social care funding in old age⁴⁸¹. The policy direction shown in the Care Act 2014 demonstrates the greater importance likely for asset based welfare as part of the welfare system, as a statement of intent for the future. Reform of asset based welfare is mirrored in the wider Western democracy context⁴⁸², albeit developing in different ways with respect to whether this wealth is preserved to be inherited.

5.4 Conclusion: State intervention into current housing policy

This chapter has explored the individualisation of housing costs through State subsidy for acquisition costs. Furthermore, the chapter evaluates the promotion of asset based welfare as another example of State intervention in housing policy to eventually individualise housing costs. This section reviews the outcomes from using housing policy as the lens to discuss State responsibility and individual responsibility. The development of housing policy represents the government's intervention as a hotchpotch of different schemes, where the overarching rationale is to individualise housing costs. The prevailing themes in recent years have been: (1) the expansion of opportunities to assist low-income households with homeownership and (2) decreasing the State's responsibility in supplying housing through 'bricks and mortar' subsidy. The State has instead transferred supply responsibilities to other actors in the housing market⁴⁸³. This chapter has demonstrated that individualisation

481 The implications of the Dilnot Report and the Care Act with respect to additional costs to the public purse are outlined in further detail in Hopkins, N and Laurie, E, Social Citizenship, Housing Wealth and the Cost of Social Care: Is the Care Act 2014 'Fair'? Volume 78, Issue 1 Modern Law Review.

482 Johnson, A. K. and Sherraden, M 'Asset-Based Social Welfare Policy: Homeownership for the Poor' 2015, Issue 3, Article 5, the Journal of Sociology & Social Welfare, West Michigan University. Moser, C and Dani, A. A. (eds.), Assets, Livelihoods, and Social Policy. 2008 World Bank Publications, Washington, DC.

483 Housing Associations, Mortgage Lenders, Private Rented Sector Landlords and Households

in the context of homeownership is further required due to asset based welfare as the main support mechanism for care costs in old age.

Individualisation in the content of private renting is exhibited by the minimal State intervention into the rental sector through the removal of rent caps in the PRS and the decrease of social housing. However, the recent white paper does recognise the State's appreciation of a broken housing market⁴⁸⁴, and the need for assistance to PRS renters who aspire to buy but will not be able due to the inaffordability of the homeownership market.

The role of State intervention in the building and investment costs of homes has evolved. As explained in chapter 4, in the immediate aftermath of WWII, the policy focus concentrated on creating longer-term security of tenure and affordable rents in the social housing sector; later evolving into LCHO schemes to assist households purchasing homes. This thesis argues that a real enduring commitment to owner-occupation would suggest that the State would provide a generous measure of financial support for those who buy, as well as assistance when homeowners get into arrears. The variety of LCHO schemes available demonstrates the Government policy aim to explicitly and positively assist households with their aspirations of homeownership. The assistance provided by the State is targeted and the policies discussed in this chapter reveal that much is political rhetoric rather than realistic measures in contrast to RTB.

This thesis argues that the State views homeownership as the ultimate representation of individualised responsibility for future housing costs. This chapter has explained this concept through the exploration of the State's LCHO policy. The analysis of State responsibility will be further developed with reference to the wider context of responsibility to marginal owners, through financial, as well as, more recently procedural and regulatory mechanisms to help prevent repossession, as will be outlined in chapter 7. Paradoxically, therefore, 'individualising' housing costs for marginal owners, leads to an assumption of greater responsibility on the State later down the line through social security assistance in the

484 DCLG, Fixing our broken housing market, February 2017

circumstances of default.⁴⁸⁵ Support in the event of default is a real inroad to individualisation, and the extent is an expression of socio political circumstances. The individualisation of housing has manifested in several different State policies. At the same time as promoting the ideology of homeownership, the State has made the rental sector more unattractive to tenants by removing rent controls which had previously discouraged PRS landlords, and has replaced this with subsidising rent with HB for those eligible. The rental sector has been presented as short-term, transitory and for the young and economically mobile. This transitory nature is reflected in law through the limited security of tenure provided in typical PRS tenancies.

It is also contradictory that the involvement of the government or Housing Associations through LCHO leads to the long-term 'individualising' of responsibility to household of housing costs.⁴⁸⁶ The current State responsibility for housing costs is expressed by investing into households through LCHO in the hope of making households eventually independent of the State for housing costs. This shift away from the State responsibility is also exemplified by the move away from the construction of council housing to the provision of financial support for rental costs for low-income households, as will be discussed in chapter 7. LCHO schemes may follow the asset based welfare agenda so an investment by the State in earlier adulthood aims to promote independence from the State in later life, so that individual households can rely upon the capital asset investment in their homes to fund later life welfare care, although no *prima facie* connection.

The next chapter evaluates the ideology of homeownership present in housing policy which embraces individual responsibility for the home. As will be further explained in the next chapter if there is a 'hierarchy of tenure'⁴⁸⁷, ownership would sit on the top, with renting

485 Example of the paradox of privatisation in the Thatcher era leading to greater governance structures; Sol Picciotto, *The Retreat of the State: Challenges to Law and Lawyers*, W. G. Hart legal workshop 2006, Institute of Advanced Legal Studies, University of London, June 2006

486 R Forest, A Murie, *Selling the Welfare State: The privatisation of Public Housing* (Routledge 1990) p. 174

487 R. Ronald, *The Ideology of Home Ownership: Homeowner Societies and the Role of Housing*, (Palgrave Macmillan, Basingstoke, 2008) p.10

further down towards the bottom as the citizens' preferred tenure to hold property. The central argument of this thesis is that the *quid pro quo* for 'individualising' the responsibility through the promotion of ownership is that the State has a later responsibility to go further to assist when marginal owners encounter financial difficulties. A household occupies the property which acts as both a home for current accommodation with the added x-factor benefits of home, but also as an investment asset for the future, with reference to asset based welfare including equity release for retirement or inheritance, discussed earlier in this chapter. As will be discussed further in chapter 6, the development of the ideology of homeownership is in part to do with 'home' values. However, unsustainable homeownership (due to mortgage arrears and eventual repossession) is the inverse of these ideals underpinning aspirations of homeownership, where instead of capital gains and the ability to control and move from your property, low-income homeowners can suffer devastating capital losses and be forced to stay in a deteriorating property.⁴⁸⁸

488 V Karn, J Kemeny and P Williams Homeownership in the inner city: salvation or despair? (Gower 1985) p. 106

Chapter 6: How the ideology of homeownership manifests through housing law and policy?

6.1 Aim

This chapter examines the socio-cultural basis of the idea of 'home' and how this feeds into the ideology of homeownership. This chapter evaluates the work of academics on the idea of 'home' in law, and draws connections from the literature to the central question of this thesis concerning the extent and nature of State responsibility for housing costs. The literature relating to home and homeownership is key to the objectives of this thesis, concerning the expression of the State's responsibility and intervention in housing policy which promotes homeownership.

This chapter analyses how the idea of 'home' in law fits into housing policy and creates the policy objective encouraging homeownership. It will be argued in this chapter that the key themes of (1) home and (2) ideology of homeownership are ultimately intertwined with the manifestation of State responsibility for home acquisition and on-going costs. The link between home and the rented property or social housing is weak in government rhetoric, and so home becomes confined to the owner-occupied home, with a distinction made between owners and renters. This thesis argues that the State's encouragement of homeownership is the ultimate illustration of the individualisation of responsibility for ongoing housing costs. Although costs are individualised through ownership, it is in fact heavily subsidised through the State and so individualisation is less than it might initially appear to be.

6.2 X-Factor Home Values

As already mentioned, a key theme throughout this thesis is the importance of 'home values'. Home values have already been discussed at great length in academic research but this thesis hopes to link this to the wider idea of macro housing policy, and in particular, the

social security welfare benefits for ongoing housing costs. First, it is key to understand what is meant by home values.

Fox's 'Conceptualising Home' discusses at length the legal and socio-cultural meaning of home. In this context, an x-factor value concerns the intangible meanings attached to the physical house to make it a 'home'. It has been said that housing is much more than just 'a roof over your head'. A decent home means having a safe secure place which is warm and dry that improves health in which the family can live together.⁴⁸⁹ Fox attempts to condense arguments about the x-factor meanings of home and finds that they include different things to different people, including; *inter alia* associations with family, personal status, stability, privacy and security⁴⁹⁰. Society, the media and government rhetoric⁴⁹¹ often apply home values to homeownership which has influenced households' tenure decisions. The financial and intangible 'x-factor' values of home include 'ontological security'⁴⁹² and autonomy has

489 Carl Sargeant, We're scrapping right to buy in Wales to protect vulnerable families, 6 July 2016 <https://www.theguardian.com/housing-network/2016/jul/06/wales-government-right-to-buy-policy-social-housing?CMP=ema-1703&CMP=> (accessed 8 August 2016)

490 Fox, L 'Conceptualising Home: Theories, Laws and Policies' (Hart, 2006); Examples of other literature: Fox, 'The Idea of Home in Law' (2005) Vol. 2 Iss. 1 Home Cultures p.25; Fox, L, 'The Meaning of Home: A Chimerical Concept or a Legal Challenge' (2002) 29(4) Journal of Law and Society p.583; Fox, L, 'Re-possessing "Home": A re-analysis of gender, homeownership and debtor default for feminist legal theory' (2008) 14 Wm & Mary J, Women & L p. 423; Fox O'Mahony, L and Sweeney, J. A (eds.) The Idea of Home in Law: Displacement and Dispossession (Ashgate, Farnham, 2011); Fox, L 'Creditors and the concept of 'family home': A functional analysis' (2005) 25 Legal Studies 201; Fox O'Mahony, L 'Eviction and Public Interest: The right to respect for home in English law' in Malloy, R. P & Diamond, M (eds.) The Public Nature of Private Property (Ashgate, 2011); Fox O'Mahony, L 'Homeownership, debt and default: the affective value of home and the challenge of affordability' in Affordable Housing and Public-Private partnerships (Ashgate, Farnham 2009)

491 Example of pro-homeownership rhetoric used in government communications about government assistance schemes with housing costs for aspirational homeowners <https://www.ownyourhome.gov.uk/why-buy/> (accessed 7 May 2016)

492 A phrase coined by Laing D and Giddens, A The Constitution of Society (Cambridge, Polity Press, 1984) p. 375

been attached to ownership to propel the popularity for the owner-occupation tenure in housing policy. Ontological security defined as a “stable mental state derived from a sense of continuity and order in events. A confidence of trust that the natural or social worlds as they appear to be, including the basic existential parameters of self and social identity”.⁴⁹³ Later in chapter 8, this thesis argues that given the State encouragement of homeownership, which is based around the promotion of x-factor home values, the current social security framework for housing costs is insufficient. This reoccurring theme of the popularity of owner-occupation is further explored in the following sections.

6.3 Contextual and Theoretical Discourse about the legal distinction between ‘owners’ and ‘renters’

Despite the legal distinction between owner-occupation and renting remaining elusive, as will be discussed in this chapter, research has shown that owner-occupation is the preferred type of tenure in the UK by the majority of households.⁴⁹⁴ 61.5% of households are in occupied homes. 72 % of people in Britain would like to own their own home within two years, and 80 % would like to do so in ten years’ time⁴⁹⁵. Although homeownership remains the preferred tenure, the rate of homeownership is actually in decline.⁴⁹⁶

493 Ibid.

494 King, P, *Understanding Housing Finance: Meeting Needs and Making Choices*, (Routledge, Abingdon, 2009) p.104;

495 Bob Parnell, *The Council of Mortgage Lenders’ Annual Survey on Tenure Choice and Aspirations*, 25 July 2016 <https://www.cml.org.uk/news/news-and-views/banishing-the-brexite-blues/> (accessed 8 August 2016); Wallace, A ‘Public Attitudes to Housing’ JRF Programme Paper Housing Market Taskforce September 2010, p. 10, *Survey of public attitudes to homeownership* <http://www.jrf.org.uk/system/files/housing-public-attitudes-full.pdf> (accessed 8 August 2016)

496 Hilary Osborne, *Home ownership in England at lowest level in 30 years as housing crisis grows*, *The Guardian*, 2 August 2016 https://www.theguardian.com/society/2016/aug/02/home-ownership-in-england-at-lowest-level-in-30-years-as-housing-crisis-grows?utm_source=esp&utm_medium=Email&utm_campaign=GU+Today+main+NEW+H+category

The financial stake in the investment of property may be one of the reasons which have led to this preference towards owner-occupation⁴⁹⁷. Moreover, it is clear that government policy has through the years perpetuated an 'ideology of homeownership' where policy and law come together to adopt a certain approach to housing which focuses on owner-occupation⁴⁹⁸.

Ideology is not a legal, but a socio-cultural term. It is conceded that 'ideology' can be a precarious term, since to characterise behaviour as 'ideological' can carry connotations to criticise it as an inauthentic or unnatural behaviour. The nature of this ideology of homeownership from its influence in political history, and its origins will be examined in this thesis with reference to the developing housing policy.

Traditionally although not invariably, property law analysis divides the subject into the two tenures; renting and ownership. In reality, the legal distinction is difficult to pinpoint. Analysis of the supposed 'tenure divide' is a pervasive theme of the thesis. A combination of ideological structures and political rhetoric has led to the tenures becoming polarised. There is an assortment of situations covered by the symbolic 'owner' status. Homeownership cannot be considered a single tenure since actual rights of the owner vary dependant on whether the ownership is outright or subject to a mortgage. For example, ownership can be freehold or leasehold, owned outright or subject to mortgage. As already discussed, government backed schemes such as shared ownership provide an additional 'intermediate' category by creating mixed tenure systems. The existence of the intermediate tenure demonstrates that the legal taxonomy of dwelling properties being either owned or rented, public or private does not conclusively categorise all housing. Cowan discusses this as tenure being problematized and that both academic literature and housing policy is moving away

es&utm_term=184211&subid=12212703&CMP=EMCNEWEML661912 (accessed 8 August 2016);

Pattison, B et al 'Tenure Trends in the UK housing system: Will the private rented sector continue to grow?' (Building and Social Housing Foundation 2010)

497 This argument is suggested in Bright, S. and Hopkins, N 'Home, meaning and identity: Learning from the English Model of Shared Ownership' (2011) *Housing Theory and Society* 377.

498 Ronald, R 'The Ideology of Home Ownership' (Palgrave Macmillan, Basingstoke, 2008)

from such tenure hierarchical distinctions⁴⁹⁹. The nature of the hybrid tenure shared ownership means it is lacking in the providing x-factor home values, offering neither the security of social renting nor the freedom and independence of owner-occupation.⁵⁰⁰

The legal rights and responsibilities of outright owners and those subject to a mortgage are different with different implications. An outright owner has limited risk of losing the property. Mortgages can impose specific rights and responsibilities on the owner e.g. an obligation to insure the property and restrictions on renting without the mortgagee's consent.

Rented properties are held on a lease by a tenant who has a landlord⁵⁰¹. Additionally, to add to this complexity, there are different types of tenancies; with varying security of tenure⁵⁰², and renting in the PRS or in the social sector (e.g. council or housing association accommodation), as already explored in Chapter 4.

6.4 The Demise of the Private Rented Sector

As discussed in chapter 4, the political rhetoric and goals dominating the mid-20th Century until 1980s concerned building sufficient homes and rent control. As explained in chapter 5, the second half of the 20th century saw the political rhetoric mirroring the aspirations of households to become homeowners. It is argued in this chapter that the erosion of the

499 Cowan D Housing Law and Policy (Cambridge University Press, 2011) p. 23; D Cowan and M McDermont Regulating Social Housing: Governing Decline (Routledge Glasshouse 2006) p. 163-168

500 Housing Corporation & Chartered Institute of Housing, Housing Aspirations and Shared Ownership 10 (2008)

501 For more on tenure; Ruonavaara, H (1993) Types and forms of housing tenure: towards sorting the comparison/translation problems, Scandinavian Housing and Planning Research 10(3), p 3-20; Hulse, L (2008) Shaky foundations: moving beyond 'housing tenure', Housing Theory and Society, 25(3), pp. 202-219

502 Examples: assured shorthold tenancies (ASTs); excluded tenancies or licences; assured tenancies; regulated tenancies

social rented sector and declining PRS contributed to the growing ideology of homeownership as the only alternative.

The PRS diminished from holding 90% of the market in 1913 to 13.4% in 1979, whilst simultaneously the owner-occupied market grew from 10% in 1913 to 54.4 % in 1979. Local authority housing amounted to 32.1% of the market by 1979.⁵⁰³ These tenure trends highlight the relationship with households' attitudes and behaviour towards tenure.⁵⁰⁴

The decline of the PRS was borne from a culmination of factors, *inter alia*, the potential for landlords to find other more profitable ways to invest, decreasing incentive to invest in rental accommodation with continued rent control. The improved economic climate following the post-war years meant that building societies had considerable capital to lend for ownership for the better off working class families, and the cost of mortgage became relatively cheaper.⁵⁰⁵ The role of social housing developed between the 1950s and 1980s⁵⁰⁶ but the tenure has since become residualised and marginalised. Even today, most authorities only expect to be able to replace half or fewer of the homes sold under RTB despite the dwindling social housing and ever increasing waiting list for social housing

503 Department of the Environment; Scottish Office; and Welsh Office, Housing and Construction Statistics (various editions) p. 22 of Balchin and Rhoden (eds.) 'Housing: the essential foundations' (Routledge, 1998, London) DCLG, National Statistics, English Housing Survey Headline Report 2012-13, p. 11; Office for National Statistics, A Century of Home Ownership and Renting in England and Wales (full story) Part of 2011 Census Analysis, A Century of Home Ownership and Renting in England and Wales Released, 19 April 2013 <http://www.ons.gov.uk/ons/rel/census/2011-census-analysis/a-century-of-home-ownership-and-renting-in-england-and-wales/short-story-on-housing.html> (accessed 8 August 2016)

504 Conway, J Housing Policy (Gildredge Social Policy, Eastbourne 2000) p. 24

505 M Ball, Housing Policy and Economic Power: The Political Economy of Owner-occupation (Methuen, 1983) p. 25; P Craig, The House that Jerry Built? Building Societies, the State and the Politics of owner-occupation (1986) 1(1) Housing Studies 87

506 In 2012-13, the social rented sector, at 3.7 million households (17%), was the smallest tenure, following a long period of decline. From the 1980s, RTB meant that the proportion of households in the social sector declined from 31% in 1980 to 19% in 2000; DCLG, National Statistics, English Housing Survey Headline Report 2012-13, p.11

allocation.⁵⁰⁷ The decline in both the PRS and Social Sector led to the increasing popularity in owner-occupation as the tenure of choice.

However, the recent revival of the PRS since the 2008 economic recession has somewhat diminished the supremacy of owner-occupation⁵⁰⁸. In 2012-13, PRS accounted for 4 million or 18% of households compared to 10% in the 1980s and 1990s.⁵⁰⁹ Currently the PRS is the UK's second largest tenure after owner-occupation.⁵¹⁰ The sector has undergone sharp growth. As described in chapter 4, this growth was driven by a number of factors; in the late 1990s rent controls were removed, and assured shorthold tenancies (ASTs) became the standard, giving greater ability to evict at will. There is ongoing tension with secure tenancies and AST. Lenders also introduced the buy-to-let mortgage at around the same time. Research has shown how a wider variety of people are now in the PRS for a longer time. It has evolved from a tenure populated by the young and mobile for a temporary means of living into a more permanent means of living, comprising of niche markets serving a variety of purposes.⁵¹¹ Over the last 10 years there has been an increase in households in

507 Local Government Association, Keeping pace – Replacing Right-to-buy sales, LGA media release 4 April 2015 http://www.local.gov.uk/media-releases/-/journal_content/56/10180/7167873/NEWS (accessed 8 August 2016)

508 DCLG, National Statistics, English Housing Survey Headline Report 2012-13, p. 11; In England the proportion of households in the PRS increased from 30% to 37% between 2001-05 and 2014-15. This equates to about 912,000 additional households with children in the PRS.

509 House of Commons Library, Standard Note, Comparing private rented sector policies in England, Scotland, Wales and Northern Ireland, Monday, June 27, 2016, p.1

<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7624> (accessed 8 August 2016)

510 Ibid.

511 Rugg, J. and Rhodes, D. (2008) *The Private Rented Sector: Its Contribution and Potential*, York: Centre for Housing Policy, University of York; Cowan, D and McDermont, M *Regulating Social Housing: Governing Decline* (Routledge Cavendish, Abingdon, 2006) p. 143; In the HB PRS market statistics (those receiving local housing allowance) show there is high percentage of lone parents, a high number of moves into the PRS due to relationship breakdown, and long term sick and disabled in this demographic.

the PRS with dependent children.⁵¹² The rise of the PRS has led to increased provision of tenants on HB in the PRS.⁵¹³ Nevertheless, as detailed further in this chapter owner-occupation remains the favoured tenure delivering x-factor home values which PRS cannot.

6.5 The Property Owning Democracy

The Conservatives in 1952 pledged their support to owner-occupation to create a property owning democracy⁵¹⁴. Thatcher reiterated this during her speech at the 1981 Conservative Party Conference, “Our concern to create a property-owning democracy is.... a very human concern. It is a natural desire for Conservatives that every family should have a stake in society and the privilege of a family home should not be restricted to the few”.⁵¹⁵ This notion of the equalising nature of ownership led to the development of RTB, discussed extensively in chapter 4. The State promotion of homeownership through policies such as the RTB is an example of the pendulum swing in favour of individual responsibility promoting homeownership. Such policies greatly altered the landscape of property ownership and have had far-reaching implications. Since homeownership remains the aspiration of many

512 House of Commons Library, Standard Note, Comparing private rented sector policies in England, Scotland, Wales and Northern Ireland, Monday, June 27, 2016, p.1

<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7624> (accessed 8 August 2016)

513 Research Report No 874, A report of research carried out by the Centre for Regional Economic and Social Research, Sheffield Hallam University, the Blavatnik School of Government, University of Oxford, the Institute for Fiscal Studies and Ipsos-Mori on behalf of the DWP, The impact of recent reforms to Local Housing Allowances: Summary of key findings, July 2014 P. 16

514 Phrase originally attributed to Anthony Eden, Secretary of State for Foreign Affairs, 1946 Speech, Also used by Noel Skelton in articles written for the Spectator concerning Conservative ideals called ‘Constructive Conservatism’ 28th April 1923
<http://archive.spectator.co.uk/article/28th-april-1923/6/constructive-conservatism> (accessed 8 August 2016)

515 The Times (17 October 1981, p.4)

(yet numbers are decreasing), it would seem that State support and intervention to increase access for marginal borrowers is a positive move.⁵¹⁶

However, there is an unrealistic mismatch of expectations of homeownership with the realities. As discussed in this thesis, homeownership can be an inappropriate choice leading to instability and repossession. The UK's 'obsession' or 'fetish'⁵¹⁷ with homeownership has been examined by CIH:

“Whilst it is important that we help people to fulfil their aspiration for homeownership, the evidence clearly shown us that the state, lenders and individuals must take a responsible stance and make sure they take the right housing choice for them. We need to support people to make the best – not the worst choice. If you are one of the 45,000 people that get their first home repossessed this year, then owner-occupation won't have proved to be the route to personal wealth”.⁵¹⁸

The construction of the ideology of homeownership where owner-occupation provides a tangible investment asset is further boosted by the fact that the UK economy is geared around the property market.⁵¹⁹ As will be discussed, successive governments have attached x-factor home values to homeownership in a way that they have not attached to renting. Current housing policy aims to assist households with their aspirations using legislation incentivising homeownership and regulation of the financial market to shift the emphasis towards long-term individual responsibility for housing costs for all types of households. This set of circumstances has led to the popularity of homeownership and the current

516 Shelter Report, *Housing in Transition – Understanding the dynamics of tenure change* 2012

517 F Gray, *Owner-occupation and Social Relations* in S Merrett, *Owner-occupation in Britain* (Routledge and Kegan Paul, 1982) Ch 5; J Barlow and S Duncan, *The Use and Abuse of Housing Tenure* (1988) 3(4) *Housing Studies* 219, 220

518 CIH Press Release, *Homeownership Drive Unrealistic*, June 2008

519 Zhu, H, *The importance of property markets for monetary policy and financial stability*, MF-BIS conference on Real Estate Indicators and Financial Stability, which was held on 27-28 October 2003 in Washington DC, Regeneris Consulting Ltd and Oxford Economics, *Report for HCA: the Role of Housing in the Economy*, July 2010

narrative where homeownership is the tenure of choice all feeding into the ideology of homeownership.

6.6 Tenure and Home Values

Surveys of both tenants and owner-occupiers reveal how financially secure households felt in their homes depended on their tenure. All respondents to the surveys described their dwellings as 'homes', however, both homeowners and tenants regarded homeownership as an investment and asset, which was the most significant part of home ownership that tenants felt they missed out on⁵²⁰. Admittedly, the evidence above was predominately taken at a time of a rising economy before the widespread arrears and repossession following the recession of 2008. Respondents to the survey were clearly optimistic about the value of the asset of an owner-occupied home due to the growth of house prices in the pre-credit crunch era.

The hierarchy of property tenure means that the owner-occupier with the freehold of a property subject to no mortgage being the most desirable way to hold property, whilst the renter in PRS being one of the least attractive ways to hold property, just above homelessness⁵²¹. As will be further explored in this chapter, literature has examined how the notion that a home 'interest' is enhanced when a property is owned by its occupiers, and both the arguments for and against this notion⁵²². The pervasive theme of 'home' underscores the motive behind the State's policy to promote homeownership. This thesis argues that this is not the most appropriate use of public funds given the instability of unsustainable homeownership.

520 Ibid. p. 284

521 R. Ronald, *The Ideology of Home Ownership: Homeowner Societies and the Role of Housing*, (Palgrave Macmillan, Basingstoke, 2008) p.10

522 E.g. Saunders, *P A Nation of Homeowners* (London Unwin Hyman 1990), relevant literature discussed further in section 6.7

In recent years there has been a downward trajectory with a declining number of first-time buyers. Fewer households in the future will become homeowners, the young are currently priced out the market and the rate of housing supply for homeownership is low despite the high demand⁵²³. Accordingly, the demand for homeownership does not reflect the realities or supply of homeownership.

LCHO is an example of the State intervention to increase the supply of affordable owner-occupied homes to and promote homeownership. Individual households sign up to LCHO for individualisation of responsibility for housing, but (a) the owners are dependent on the State and (b) do not enjoy the same quality of x-factors as non-marginal owners who are homeowners through conventional means without public subsidy. It is paradoxical that State schemes to encourage owner-occupation are indebted to large scale public financial support. LCHO schemes aim to provide households with their x-factor home values through assisting with homeownership, but conversely they require some initial State financial responsibility to do this.

The majority of LCHO schemes lead to long leasehold ownership or intermediate tenure which involves a peculiar bundle of right and responsibilities. Leasehold suggests a notion of a Landlord Tenant relationship, payment of ground rent and mutually enforceable obligations. Leaseholds have become significant since the construction of apartment blocks, especially since the number of flats sold through the RTB.⁵²⁴ Leaseholders may see

523 Patrick Smith, 9 Ways The Housing Crisis Is Changing The Way Young People Live: If you're aged 24 to 35, you are much less likely to own a house than your parents were ,Buzzfeed, 31March 2016 http://www.buzzfeed.com/patricksmith/ways-the-housing-crisis-is-changing-the-way-we-live?utm_term=.xhGp7x5mm#.dqa5G86qq (accessed 8 August 2016); Offshore companies buying UK property as investment asset has been suggested as a key factor to the increasing pricing out of young people; Kate Lyons, Panama Papers: To millennials caught in the rent trap, the Panama Papers matter. (The Guardian, 5 April 2016)

<http://www.theguardian.com/news/commentisfree/2016/apr/05/millennials-rent-trap-panama-papers-british-property-housing-young-people> (accessed 8 August 2016)

524 On average, between 1986 – 2014, 20% of Local Authority Right to Buy sales were for flats.

Table 681: Social Housing Sales: Annual Right to Buy Sales that were for flats for England: 1986-87 to

themselves as owners, however, leaseholders' relationship with their property is marked with limited control and autonomy, thus differs greatly from that of freeholders⁵²⁵ and not always delivering the x-factor values associated with home. X-factor values of home such as independence to make decisions about the look of the property are not consistently found in leasehold properties, where the freeholder may prevent the leaseholder making changes through covenants and management agreements. The unexpected cost of living as a leaseholder proves the most contentious aspect, with the high management service charge costs, as well as, additional repairs and major works.⁵²⁶ Cole and Robinson identified that it is the complexity of the tenure as a category which reveals the difficulty surrounding the status of leaseholders as either owners or tenants.⁵²⁷ It would seem that there is a disjunction between popular assumptions of leaseholders and the legal realities of their ownership and control over property, due to issues common to all leasehold flat ownership due to communal living.

2013-2014 (Local Authority Sales – DCLG's Local Authority Housing Statistics (LAHS) and DCLG LOGAS Net Return. Registered Provider Sales – Continuous Recording of Lettings and Sales in Social Housing in England (CORE)

525 Fox, L, Cowan, D and Cobb, N (eds.) *Great Debates in Property Law*, Palgrave Macmillan, 2012 p. 29, Another example issue is of regeneration and gentrification where houses are being demolished leaving those leaseholders having to leave their local area whereas social housing tenants can remain. Moreover leaseholders have to pay the bill for works and repairs; Foster, D, 17 July 2015, http://www.theguardian.com/housing-network/2015/jul/17/london-residents-pay-thousands-homes-town-down-cressingham-gardens?CMP=new_1194&CMP=(accessed 8 August 2016)

526 Cooper, K Right to Buy revival turns tenants into under-prepared leaseholders, 24 July 2012, *The Guardian* <http://www.theguardian.com/housing-network/2012/jul/24/right-to-buy-revival-leaseholders> (accessed 8 August 2016)

527 Cole I and Robinson D 'Owners yet Tenants: The position of leaseholders in flats in England and Wales' (2000) Vol. 15, No. 4 *Housing Studies*, 595, 608

The intermediate tenure has been described as the ‘worst of both worlds’⁵²⁸ offering neither the security of social renting nor the freedom and independence of owner-occupation⁵²⁹. The property is not really “yours”⁵³⁰ which is so closely associated with the owner-occupied home, thus again lacks the x-factor values associated with an owner-occupied freehold home.

6.7 The association of home values with home ownership

Extensive research in the social sciences has looked at ‘home ownership beyond asset and security’⁵³¹ which involves understanding the allure of homeownership other than the financial benefits connected to it. A bundle of rights and responsibilities connected to homeownership make it more attractive compared to renting.

Ontological security has been identified as a key x-factor value attached to ‘home’ which has subsequently been attached to the owner-occupied home. Saunders’ discourse concerns the enhancement of the owner-occupied house into a ‘home’ through the occupier’s sense of ontological security⁵³². Saunders proposes that homeownership is significant due to

528 Department of the Environment, Kempson, E and Mackinnon, K ‘Housing Research Report: A Foot on the Ladder – a study of households on the margins of renting and owning a home’(London: HMSO Policy Studies Institute, 1994) p. 58

529 Housing Corporation & Chartered Institute of Housing, Housing Aspirations and Shared Ownership 10 (2008)

530 Clarke et al, ‘Understanding demographics, spatial and economic impacts on future affordable housing demand’ – Paper 5 – Tenure Aspirations and shared Ownership (Cambridge Centre for Housing and Planning Research, January 2008). P. 17

531 Quiglar, D and Jones, A ‘United Kingdom: Safe as Houses?’ in Elsinga, M et al. (eds.) in ‘Home Ownership beyond asset and security: perceptions of housing related security and insecurity in eight European countries’ (Delft University Press, 2007) p. 259

532 Saunders, P A Nation of Homeowners (London Unwin Hyman 1990); Saunders, P ‘Beyond Housing Classes: The Sociological Significance of Private Property Rights in Means of Consumption’ (1984) 8 International Journal of Urban and Regional Research 202; Saunders, P, The Sociology of

financial meanings related to home in addition to the other intrinsic qualities linked to owner-occupied homes⁵³³. Saunders' characterisation of ontological security emphasises the owner's proprietary interest which enhances the experience of the property, arguing that "home of one's own' is above all else a property right which ensures both a physical and permanent location in the world, where the owner can feel literally and metaphorically at home".⁵³⁴ Saunders claimed that "owners invest a different meaning to their homes than tenants, such that they tend to equate their homes with images of comfort and relaxation, while tenants were more likely to define home in terms of family and neighbourhood".⁵³⁵ The significance being that associations with home values are tied to the experience of homeownership rather than social ties.

However, Saunders' research has garnered criticism⁵³⁶, countering his argument by stating that the ideology of homeownership is explained with reference to socio-cultural and political rhetoric, and that renters could experience home in a meaningful way in a culturally tenure-neutral jurisdiction.⁵³⁷ Traditionally, homeownership is perceived as conferring

Consumption: a New Research Agenda in Otnes, P (ed.) *The Sociology of Consumption: An Anthology* (Atlantic Highlands, Humanities Press International 1988); Saunders, P and Williams, P, *The Construction of Home: Towards a Research Agenda* (1988) 3 *Housing Studies* 81.

533 Saunders, P *A Nation of Homeowners* (London Unwin Hyman) 1990 84; there are 2 principal reasons to buy one's own home, 'one is financial – buying is seen as cheaper in the long run, or rent is seen as a waste of money, or rising house prices are seen as a means of saving for the future or accumulating capital. The other has to do with the sense of independence and autonomy which ownership confers – the freedom from control and surveillance by a landlord and the ability to personalise the property according to one's taste.'

534 Saunders, P *Social Theory and Urban Question*, (Hutchinson, London 1986) 329

535 Saunders, P. *A Nation of Homeowners'* (Unwin Hyman, London 1990) 312

536 Gurney, C *the Meaning of Home in the Decade of Owner-occupation: Towards an Experiential Perspective* (Bristol, School of Advanced Urban Studies, University of Bristol, 1990)

537 Ruonavaara, H 'Tenure as an Institution' *International Encyclopaedia of House and Home* 2012, p.185-189

homeowners with the status of greater autonomy and control.⁵³⁸ Alongside these so-called social x-factor benefits of homeownership, the financial benefits of homeownership involve the significance of an owner-occupied home acting as a financial investment, further providing a status symbol to be respected as a demonstration of one's commitment to work to be able to purchase a home⁵³⁹.

The pro-homeownership political rhetoric is artificial and does not always address the possibility of arrears and repossession, and the extent of financial liability involved. In political discourse, homeownership has been promoted as the natural tenure which satisfies a deep natural desire on the part of the householder to have independent control of that home that shelter him and his family.⁵⁴⁰ Rapoport identifies that the "ideological framework underpin(s) policies and trends which explicitly tie the tenure status of housing to the meaning of home".⁵⁴¹ This is reiterated in Kemeny's suggestion that the significance of homeownership is artificially skewed by popular conceptions of the meanings of home in

538 Ibid. citing Fitchen, J *When Toxic Chemicals Pollute Residential Environments: The Cultural Meanings of home and Home Ownership* (1989) 48 *Human Organisation* 313, 318; Rohe et al *The Social Benefits and Costs of Home Ownership: A critical assessment of the research* (Cambridge, Mass, Joint Centre for Housing Studies, Harvard University 2001)

539 Shelter, 'What does home mean to you?' *The Great Home Debate*

https://www.greathomedebate.org.uk/?reserved_appeal_code=20160402-GHD-IG-06&utm_source=Adestra&utm_medium=Email&utm_campaign=GHD_IG_Email3 (accessed 8 August 2016)

540 Department of the Environment, *Fair Dealing for Housing* (Cmnd 6851) (London HMSO 1971) 4; Harris, R and Pratt, CJ *The Meaning of Home, Homeownership and Public Policy in Bourne*, L S and Ley DF (eds.) *The Changing Social Geography of Canadian Cities* (McGill-Queen's University Press, Montreal-Quebec, 1993) 286; A Murie, P Niner & C Watson, *Housing Policy and the Housing System* (London Allen & Unwin, 1976)

541 Rapoport, A 'A Critical Look at the Concept "Home"' in Benjamin, R Lawrence, *Deciphering Home: An Integrative Historical Perspective* in Benjamin, D (ed) *The Home: Words, interpretations, meanings and environments* (Aldershot, Ashgate, 1995).

jurisdictions where homeownership is the preferred tenure.⁵⁴² Marcuse suggests that the promotion of homeownership has perhaps an insidious role to play in political rhetoric, whereby a democracy of homeowners leads to a more compliant population not tempted by extremists seeking radical changes in the established order.⁵⁴³ Marcuse adds that the meanings associated with home are not inherently tenure specific although currently regarded as contingent to ownership.⁵⁴⁴

The promotion of homeownership as a political rhetoric is long-term. Murie identified that the political rhetoric pushed forward a growth of homeownership characterised as a bulwark against bolshevism during the interwar years.⁵⁴⁵ Ginsburg has found that socialist policies which aim to find balance between local authority tenants and homeowners continue to favour homeowners.⁵⁴⁶ Gurney concedes that renting is characterised as 'money down the drain' and 'dead money'⁵⁴⁷, leading to a decrease in its popularity.⁵⁴⁸ There is undoubtedly a cultural identification of homeownership as closely associated with financial

542 Kemeny, J The Myth of Homeownership: Private versus Public choices in housing tenure (London, Routledge & Kegan Paul, 1981) 272

543 Marcuse, P The Ideologies of Ownership in Property Rights in Plunz, R (ed), Housing Form and Public Policy in the United States (Praeger, New York 1980) 41, 45.

544 Ibid.

545 Murie, A Secured and Contented Citizens? Home Ownership in Britain in Marsh A and Mullins D (eds.) Housing and Public Policy: Citizenship, Choice and Control (Buckingham, Open University Press 1998) 82

546 Ginsburg, N Home ownership and socialism in Britain : a bulwark against bolshevism 1983, Critical Social Policy (3) 34

547 Gurney, C Lowering the Drawbridge: A case study of Analogy and Metaphor in the Social Construction of Home Ownership (1999) 36 Urban Studies 1706; Gurney, C Pride and Prejudice: Discourses of normalisation in Public and Private accounts of homeownership (1999) 14 Housing Studies 163; BBC, 'Money down the Drain' First time buyers' £50,000 rent bill www.bbc.co.uk/news/business-35541835 (accessed 8 August 2016)

548 F Berry, Housing The Great British Failure (London Croom Helm 1974) p.123; D Cowan & A Marsh, There's Regulatory Crime and then There's Landlord Crime: from Rachmanites to Partners (2001) 64(6) MLR 831, 840-2

responsibility, and the financial asset of an owner-occupied home. However, Rakoff identifies that financial meanings are actually of “secondary importance in the larger meaning system of the house (as) a series of more elusive meanings carrying greater weight”.⁵⁴⁹ A stable long-term home is usually most clearly found in an owner-occupied home, compared to the relative short tenancies of a PRS home. An owner-occupied home provides better security of tenure and control over the home, akin to typical social sector rented tenancies.⁵⁵⁰ However, the financial liability, possibility of arrears and repossession are not always considered in this assessment of an owner-occupied home.

Gurney’s critique of Saunders research concerns; firstly, the single-minded positive view of homeownership which does not recognise different experiences of homeownership, and secondly the flaws in opining that all owner-occupiers share a common psychological experience⁵⁵¹. Saunders’ work ascribes certain values to a superficially homogenous class of ‘homeowners’, which does not consider the true diversity of experiences of homeownership and fragility of the sector.⁵⁵² Gurney identifies that a rise in mortgage arrears and repossessions leave homeowners feeling vulnerable rather than ontologically secure.⁵⁵³ Gurney recognises the socio-economic differentiation of the owner-occupied sector as a whole, and the expansion of homeownership through various LCHO schemes. Gurney recognises that the negative effects of default, arrears and repossession affect low-income homeowners in particular; which lead to a loss of control, financial instability and a deep

549 Rakoff, R *Ideology in Everyday Life: The Meaning of the House* (1977) 7 *Politics and Society* 85, at 93

550 Smith, S *The Essential Qualities of a Home* (1994) 14 *Journal of Environmental Psychology* 31.

551 Gurney, C *The Meaning of Home in the Decade of Owner-occupation: Towards an Experiential Perspective* (Bristol, School of Advanced Urban Studies, University of Bristol, 1990) 6

552 R Forrest, A Murie & P Williams *Home Ownership the Differentiation and Fragmentation* (Unwin Hyman 1990)

553 Gurney, C *The Meaning of Home in the Decade of Owner-occupation: Towards an Experiential Perspective* (Bristol, School of Advanced Urban Studies, University of Bristol, 1990) ‘Whilst owner-occupation may represent a change to carve out feelings of nice and belonging for some, for others it represents a housing situation of financial uncertainty, worry and lack of control’

psychological impact when a household is forced out of their home⁵⁵⁴. Accordingly, the risk of loss by default may affect x-factor values as well as the real financial interest.

Gurney recognised that households facing mortgage arrears, or essential repairs they cannot afford, seem unlikely to derive the feelings of niche and belonging from home described by Saunders.⁵⁵⁵ Instead feelings of stress, lack of affordability and insecurity of tenure may be linked to an owner-occupied home rather than a place of security and control⁵⁵⁶. Accordingly, Gurney removes ownership from the home equation, and asserts that home is where there heart is regardless of tenure⁵⁵⁷. These sentiments are recalled with reference to the failing safety net⁵⁵⁸, and the erosion of government welfare social security and legal protections for homeowners who default on mortgage repayments, (discussed in further in the next chapter).

Saunders rejects these arguments against his ontological security and homeownership theory. Saunders contends that the impact of repossession is felt at a micro level for the individual household, but where the entire economic context and psychological benefits of homeownership are reviewed the impact of repossession is minor⁵⁵⁹. This thesis argues that

554 Gurney, C Lowering the Drawbridge: A Case Study of Analogy and Metaphor in the Social Construction of Home Ownership (1999) 36 Urban Studies 1715

555 Saunders, P A Nation of Homeowners (London Unwin Hyman 1990), p.8

556 Harris, R and Pratt GJ The Meaning of home, homeownership and public policy in Bourne LS and Ley, DF (eds.) The Changing Social Geography of Canadian Cities (McGill-Queen's University Press, Montreal-Quebec 1993) 297

557 Gurney, C the Meaning of Home in the Decade of Owner-occupation: Towards an Experiential Perspective (Bristol, School of Advanced Urban Studies, University of Bristol, 1990 45

558 Shelter campaign re saving the safety net for owner-occupiers in arrears.

http://england.shelter.org.uk/campaigns/save_our_safety_net (accessed 8 August 2016); Research linking individual default to macro-economic policies including the growth of home ownership, changes in labour market structures and the restructuring of government safety nets, Ford, J, Burrows, R and Nettleton, s Homeownership in a Risk Society: A Social Analysis of Mortgage Arrears and Repossessions (Policy Press, Bristol 2001)

559 Saunders, P and Harris, C Home Ownership and Capital Gains (Urban and Regional Studies Working Paper 64, University of Sussex 1988, 18)

as more households become homeowners, this will change with the higher risk of default and repossession. A greater impact will in turn affect the cultural ontological security values of homeownership.

Saunders' theory concerns the nature of homeownership compared to other tenures. Saunders does seek to demonstrate the superiority of homeownership over renting, although he does not directly reject that renters could in theory experience home x-factor values, but to a lesser extent compared to homeownership⁵⁶⁰. This theory regarding the ontological security of homeowners is only relative to that of other households in different tenures. Saunders would argue that council house tenants are less attached to their homes since the local authority holds control through their tenancy agreements. Tenants are less likely to be able to personalise their homes, and there is less choice over the property allocation, although they do have relatively greater security of tenure.⁵⁶¹

Marxist characterisations of owner-occupation have also branded State intervention as incentivising owner-occupation for workers to enhance productivity.⁵⁶² Marxist approaches controversially identify homeownership as a false consciousness which becomes part of a system of oppression which divides people from one another, has an anti-revolutionary influence on the working classes, encourages conformity and inhibits human capacities. Homeownership is seen as the most innate and intrinsically superior way to live, but the desire for private property could stem from the socio-economic system and government manipulation and not individual choice, liberties or autonomy.⁵⁶³

560 Saunders, P A Nation of Homeowners (London Unwin Hyman 1990)

561 D Cowan and A Marsh, From Need to Choice, Welfarism to Advanced Liberalism: Problematics of Social Housing Allocation (2005) 25(2) Legal Studies 12

562 Cole, I and Furbey, R The Eclipse of Council Housing (Routledge, London 1994), p. 11 This capitalist approach with reference to the encouragement of homeownership from the 1950 onwards and in particular from the influential Thatcherite policies on the 1980s is discussed in greater detail in chapter 1

563 Ronald, R Ideology of Home Ownership: Homeowner Societies and the Role of Housing (Palgrave Macmillan, Basingstoke, 2008) p.31

6.8 Conclusion: The State's encouragement of homeownership as the ultimate individualisation of responsibility

Government policy promoting homeownership alongside the government policies leading to a diminishing PRS and social sector led to homeownership being seen as the preferred tenure.

It has been argued in this chapter that State rhetoric and policy has attached home values to homeownership further exemplify the ideology of homeownership as part of the ongoing policy to individualise responsibility for housing and welfare. The State has made use of the existing preference towards homeownership to further encourage homeownership. The State attaches home values to homeownership to promote this individualisation for responsibility, as part of the macro housing policy to encourage homeownership. The State attempts to 'individualise' and enhance the responsibility for housing costs, by promoting homeownership as the superior way to live, and promoting ideals of stability and non-reliance of other bodies or individuals.

Property remains a key means for delivering wealth, independence and freedoms. Accordingly, the allure of property ownership remains despite the most recent financial crisis which undermines ideas of ontological security, security and stability.⁵⁶⁴

As already discussed, the preference for homeownership is unsurprising since there is a lack of long-term tenure housing alternatives to homeownership with the associated home x-factors meanings, which households desire⁵⁶⁵. There has been a residualisation of social housing alongside a declining PRS. Furthermore the merits of homeownership have

564 R Dyal-Chand, *Home as Ownership, Dispossession as Foreclosure: The Impact of the Current Crisis on the American Model of "Home"* in Fox O'Mahony, L and Sweeney, JA (eds.) *The Idea of Home in Law: Displacement and Dispossession*, (2011) Ashgate 45-54

565 In recent years, the market has been represented by a declining number of local authority building, housing association building, and the private rented market is becoming more expensive and using shorter term leases, e.g. ASTs; Office for National Statistics, *Housing and Homeownership in the UK*, <http://visual.ons.gov.uk/uk-perspectives-housing-and-home-ownership-in-the-uk/> (accessed 10 May 2015)

consistently been emphasised in housing policy through the State provided LCHO schemes for acquisition costs. However, the reality is that the experience of x-factor home values for leasehold held property through RTB, or the intermediate tenure of Shared Ownership is not always consistent.

As explained earlier, the ideology of homeownership is based on political rhetoric, and in reality tenure neutrality could provide all with a more beneficial experience of home. This argument about the artificiality of the ideology of homeownership feeds into the notion that the State intervention in housing policy promoting homeownership is not a suitable starting point, especially where tax-payer's money is involved in investment into a household's private asset and the State is afforded no return. The risk of loss by default affects the experience of x-factor values as well as the financial interest in the owner-occupied home as an asset. The impact of the ideology of homeownership has compounded the meanings and values associated with home. As will be further discussed in this thesis, the State responsibility for housing should place less emphasis on the ideology of homeownership within its housing policy. The use of State assistance towards promoting homeownership is not an appropriate use of funds if homeownership can no longer deliver its promises to individuals, and risks public funds in unsustainable homeownership. It is not always the case that the State can truly individualise housing costs through LCHO, or that households in intermediate tenure owned or shared ownership homes experience the requisite x-factor home values supposedly associated with homeownership.

It will be argued in the next chapter that this starting point of policy encouraging homeownership is not reflected in the framework of welfare benefits for ongoing housing costs. This thesis questions the legitimacy of the State's different treatment of renters and owner-occupiers in social security policy.

Chapter 7: Evaluation of HB and SMI through the lens of State versus Individual responsibility

7.1 Aim

In the UK today, social security forms a large part of government spending.⁵⁶⁶ The Department for Work and Pensions (DWP) is responsible for setting social security policy and is the largest public service department.⁵⁶⁷ A two-tiered system has developed in the UK of (1) unemployment benefits with the right due to insurance contributions and (2) means-tested benefits for those without insurance rights. This distinction separates those claiming social security benefits as of a right due to their own funding towards it, and those claiming because of a need which reflects a continuing concept of the difference between deserving and undeserving poor. However, on the face of it the difference between social assistance and social insurance is blurred, to reduce stigmatisation of those not directly paying into the system. As mentioned earlier, a minimum level of social security is dependent on means-testing which involves an inquiry into the private assets and affairs of the claimant. Means-testing is now fundamental to the social security system in the UK, compared to the universalistic vision proposed by Beveridge in 1942.⁵⁶⁸

566 Harris, N, *Complexity in the Law and Structure of Welfare* (Hart Publishing, Oxford, 2013)

Approximately half of the total UK population are in receipt of one or more welfare benefits. In the financial year 2014/15, the UK government spent £258 billion on welfare, which made up 35% of all government spending. In the financial year 2010/11 the government spent £230 billion on welfare, around 33% of government spending. ONS Digital, *How is the Welfare Budget Spent?* March 2016 <http://visual.ons.gov.uk/welfare-spending/> (accessed 8 August 2016) Wikeley, Orgus & Barendt's *The Law of Social Security* (Butterworths, London 2002); Crawford, R, Emmerson, C and Tetlow, G, *A Survey of Public Spending in the UK*, Institute for Fiscal Studies, September 2009, p. 37.

567 Gov, DWP <https://www.gov.uk/government/organisations/departments-for-work-pensions> (accessed 8 August 2016)

568 Hopkins, N and Laurie, E 'The value of property rights in Social Security Law' (2009) JSSL 180

This chapter examines how public funds through social security benefits, Housing Benefit (HB) and Support for Mortgage Interest (SMI) are deployed to assist with housing costs, and to what extent these benefits accord with the State's macro housing policy as an expression of the State responsibility for housing. Accordingly, does the detailed implementation of social security benefits match the rhetoric of housing policy? The State responsibility for housing costs ostensibly covers (1) financial assistance for acquisition costs (discussed in chapter 5) (2) financial assistance for ongoing housing costs (discussed in this chapter) (3) the non-financial mechanisms to prevent repossession (also discussed in this chapter). This chapter assesses the interrelation between these State interventions as an expression of the State responsibility for housing.

The structure of this chapter is to firstly explain the eligibility criteria and entitlement of HB and SMI for tenants and owner-occupiers respectively. Through this explanation, the expression of State responsibility for housing costs in both these social security benefits is extrapolated. In line with the analysis concerning ongoing assistance for housing costs, this chapter will further discuss legislative and soft law measures to help prevent homeowners facing repossession when already in arrears. The use of legislative and soft law non-financial mechanisms to prevent repossession is an expression of the State's further intervention into homeownership as part of the overall context of State responsibility for housing costs. The chapter concludes by analysing how State versus individual responsibility is expressed through these benefits, and how this feeds into the ideology of homeownership.

As explained in Chapters 2 and 3, State responsibility is a politically assumed responsibility, thus the extent of assistance provided for ongoing housing costs through HB and SMI varies dependant on the government's political choices at any given time. As discussed in chapter 5, the State provides the financing of the home⁵⁶⁹ rather than the bricks and mortar of the housing itself, as *quid pro quo* for not building social housing. This chapter argues that the State's policy for welfare benefits to fund ongoing housing costs does not correspond with the overarching housing policy objectives. It will be further argued in chapter 8 that the regulation of HB and SMI is inconsistent with the State encouragement of homeownership.

569 Purchase cost of the home (for owners) or ongoing housing costs (for renters)

This chapter draws together a particularly pertinent evaluation since welfare benefits schemes are set to go through 'Universal Credit' (UC) reform, which aims to cut public expenditure, ensure administrative efficiency and tackle work disincentives⁵⁷⁰. The housing cost element of UC is not considered in great detail since the calculation, eligibility criteria, delivery and entitlement largely mirror the regime already used in HB and SMI, but simply renamed the 'housing element' of UC. However, specific UC reforms to eligibility for housing costs are mentioned throughout this chapter where pertinent to the discussion. With the introduction of significant reform, it is prudent to understand how the structure, eligibility and entitlement of welfare benefits affect housing costs across the two tenures forming overarching housing policy.

Prior reforms have already cut government expenditure for welfare benefits, by using bright line rules⁵⁷¹ in regulations to control the number of claimants, and the amount of entitlement for certain groups⁵⁷². Proposed reforms for SMI went for informal public consultation in 2011⁵⁷³ and recommended changes for the State to recoup the funds invested in the home by putting a charge on properties which had been partly funded by SMI⁵⁷⁴. In the 2015 Summer Budget, it was announced that SMI would change from a benefit to an interest bearing loan, secured against the mortgaged property from April 2018.⁵⁷⁵

570 Universal Credit proposals; DWP, Universal Credit: welfare that works, November 2010, Cm 7957; <https://www.gov.uk/universal-credit> (accessed 8 August 2016) Currently being implemented in stages across different geographical regions, January 2015.

571 Laurie, E. Judicial Responses to Bright Line Rules in Social Security: In Search of Principle, (2009) 72(8) MLR 384-411

572 The Social sector under occupancy penalty is an example of this; Housing Benefit (Amendment) Regulations 2012 (SI 2012/3040) described in further detail below.

573 DWP, Support for Mortgage Interest- Informal Call for Evidence, December 2011

574 Ibid. p. 4 A charge on the property, and an additional sum for interest and an administration fee, would be recouped on the death of the claimant or the sale of that property. Alternatively the claimant could choose to pay off the charge at any point. This policy would be fair to taxpayers and enable claimants to remain in their own homes.

575 HM Government, Summer Budget 2015: Policy Costings, July 2015 P. 56; Welfare Reform and Work Act 2016, s. 18 Loans for Mortgage Interest

Reforms will potentially impact the overarching policy regarding work incentives and the status of an owner-occupied home on SMI⁵⁷⁶, as well as, having an overall impact on the exchequer and uptake of the scheme. It is therefore useful to ascertain the current extent of State responsibility and the home values present in the Social Security System for housing costs and how these developed.

7.2 What are HB and SMI?

HB provides financial assistance to tenants on low incomes living in rented accommodation whether this is in the PRS or in the social sector (e.g. council or housing association accommodation)⁵⁷⁷. A tenant in the PRS pays rent to their landlord, who may be a large corporation or an individual PRS landlord, who sometimes use the rent to pay their mortgage instalments thus derives their income from their tenants receiving HB. HB is thus crucial to both the claimant tenant who can afford their accommodation due to HB, and to the claimant's landlord. The social rented sector is decidedly more complex, but in short; it involves rent being paid to public or quasi-public bodies, such as a local authority or a housing association, which manage the property. A tenant in social rented sector typically pays reduced rent dependant on means-testing. HB is a means tested, income related welfare benefit. HB works in conjunction with related welfare benefits; Income Support (henceforth IS) and income-related Job-Seeker's Allowance (henceforth JSA) or income-related employment and support allowance (henceforth ESA). Typical claimants of HB are amongst the most vulnerable in society, the majority of claimants are pensioners, the disabled or carers⁵⁷⁸.

576 8 July 2015 Summer Budget, SMI would change from a benefit to an interest bearing loan, secured against the mortgaged property from April 2018

577 S.68 of the Housing and Regeneration Act 2008, Definition of Social Housing including both low cost rental and low cost homeownership; In 1982 Housing Benefit was introduced and enabling social housing to be provided through the PRS. DWP & National Statistics, English Housing Survey Households 2013-14, p.24

578 Department of Communities and Local Government, English Housing Survey – Household Report 2012-2013, p.21

Tenants of social landlords often require HB to subsidise their rent since to fit the criteria for social housing to evidence low income. There are just under 5 million HB claimants, 68% are in the social rented sector, either in local authority housing or registered social landlord tenants.⁵⁷⁹ Certain types of households are more likely to live in social housing, usually more vulnerable groups requiring potentially further State support; for example, 11% of social renters are lone parents, and approximately 22% of social housing tenants are economically inactive which is considerably greater than those living in the PRS or in owner-occupied homes⁵⁸⁰.

SMI typically provides temporary assistance for eligible owner-occupiers to pay mortgage interest payments or other loans for the purpose of purchasing a property, a hire purchase agreement or loans for essential repairs and improvements⁵⁸¹ to maintain the home in a habitable condition⁵⁸². It is normally paid directly to their mortgagee. It is only available to owner-occupiers who are already receiving particular out-of-work means-tested welfare benefits: IS⁵⁸³, income-based JSA⁵⁸⁴, (Guaranteed) pension credit⁵⁸⁵, or income-related ESA⁵⁸⁶. Accident, sickness, redundancy and relationship breakdown are typical reasons why a household claim SMI.⁵⁸⁷

579 DWP, Official Statistics Housing Benefit caseload statistics: data to February 2016, 3 May 2016 <https://www.gov.uk/government/statistics/housing-benefit-caseload-statistics> (accessed 8 August 2016)

580 Including those with long-term illness or disability and those looking after the family or home; DWP & National Statistics, English Housing Survey Households Headline Report, 2014-15, p.13

581 Income Support (General) Regulations 1987 Sch 3, Para. 1

582 Neville Harris Social Security Law in Context (Oxford University Press, Oxford, 2000), p. 426

583 Income Support (General) Regulations 1987 (SI No 1967) Schedule 3

584 Jobseeker's Allowance Regulations 1996 (SI No 207) Schedule 2

585 State Pension Credit Regulations 2002 (SI No 1792) Schedule 2

586 Employment and Support Allowance Regulations 2008 (SI No 794) Schedule 6

587 Donald Houston, Darja Reuschke, Albert Sabater, Keith Maynard and Norman Stewart GAPS IN THE HOUSING SAFETY NET, University of St Andrews, Shelter commissioned report, July 2014

The government safety net ostensibly attempts to keep the homeowner in their home, and prevent their risk of recourse to other public funds (pursuant to the local authority's homelessness duty) if their homes are repossessed by their lender (for owner-occupiers), or they are evicted by their landlord (for tenants), which could prove costlier for the State in the long-term.

There are just under 5 million claimants of HB in the UK⁵⁸⁸. In 2014-2015, an estimated £27 billion was spent on HB⁵⁸⁹. In 2013, two thirds of social renters and a quarter of PRS tenants received HB⁵⁹⁰, which shows the significant reliance on HB for tenants to pay their rent. In 2016-17, only around 135,000 households are forecast to receive SMI, of whom 65,000 are in receipt of Pension Credit, an estimated £224 million will be spent on SMI.⁵⁹¹ HB has limited eligibility entitlement, but has much greater expenditure compared to SMI, which may explain why the State provides many more procedural mechanisms to prevent repossession for owner-occupiers.

HB and SMI form the expression of State's financial responsibility for housing costs. Other welfare benefits are also used to fund housing costs, e.g. IS for disabled people may be claimed for housing costs⁵⁹². However, HB and SMI are the main benefits designed exclusively for the purpose of funding ongoing housing costs. This chapter assesses the

588 4,731,241 Housing Benefit caseload statistics: data to February 2016 DWP and the National Statistical Office, DWP Statistical Summary Housing Benefit caseload statistics (February 2016) <https://www.gov.uk/government/statistics/housing-benefit-caseload-statistics> (accessed 9 August 2016)

589 ONS Digital, How is the welfare budget spent?, March 16, 2016 <http://visual.ons.gov.uk/welfare-spending/> (accessed 9 August 2016)

590 DCLG, National Statistics, English Housing Survey Headline report 2012 – 13. p. 8, up from 59% and 19% respectively in 2009.

591 Murphy, C, Kennedy, S, Keen, R Support for Mortgage Interest (SMI) Scheme, House of Commons Library Briefing Paper 00618, 3 May 2016

592 Gov, Financial help if you're disabled, Home and Housing, <https://www.gov.uk/financial-help-disabled/home-and-housing> (accessed 9 August 2016) IS is an important benefit because once you get it you can automatically get HB and other assistance with council tax

extent of State responsibility established in these government welfare benefits. As already mentioned, Chapter 8 builds upon this chapter's analysis of HB and SMI, and argues that the extent to which home values are recognised in these welfare benefits is inconsistent with the macro housing policy.

7.3 HB: State versus Individual Responsibility

The extent of the individual responsibility for housing costs is affected by the form of delivery of the welfare benefit, the eligibility criteria, and the need for administrative efficiency which drives the policy embedded within the regulation of these welfare benefits. The eligibility criteria and amount of entitlement of HB therefore reflect the ideological motivations of the State's policy on tenure. As argued in Chapter 4, the extent of State obligation has altered over time, which has sought to place more emphasis on individuals meeting their own housing costs. During the economic recession of the late-1980s, rents increased, the building of council housing decreased and there was mass sale of housing stock under the RTB. As a consequence, the HB expenditure tripled between the financial years 1986-1987 to 1997-1998⁵⁹³, albeit that claimant numbers fell from 7 million to 5.5 million, the rent increases and use of PRS led to this increase in expenditure. The government response was to increase public borrowing.

Since then, the government has gradually introduced rules, mainly through secondary legislation, to cut entitlement for claimants, which has disproportionately affected vulnerable households⁵⁹⁴. State responsibility for housing costs has diminished, thus increasing individual accountability to find funds through individual means (such as employment and savings) for housing costs. As will be further explored in this chapter, the

593 £3.8 Million to £12.2 Million < <http://www.politics.co.uk/reference/housing-benefit> > accessed 30 March 2013

594 Citizens Advice, Citizens Impact Assessment Lowering the Benefit Cap, July 2015
[https://www.citizensadvice.org.uk/Global/CitizensAdvice/welfare%20publications/Benefit%20Cap%20Impact%20Assessment%20\(1\).pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/welfare%20publications/Benefit%20Cap%20Impact%20Assessment%20(1).pdf) (accessed 9 August 2016)

government's rationale is that work disincentives inherent in HB are removed through cutting away at entitlement; however, this claim is yet to be fully supported by evidence. The design of HB eligibility and entitlement has ultimately aimed to cut HB expenditure and further individualise housing costs. The objective is that individual households cover at least part of their own housing costs, instead of relying on the State.

7.3.1 Key eligibility criteria, the development of HB and the resultant expression of State responsibility

The shifting of responsibility from the State to the individual for housing costs for low-income renters is demonstrated in the restrictive eligibility criteria for HB, which decreases the number of claimants.⁵⁹⁵ Various stipulations affect the amount of entitlement and eligibility of claimants for HB because of the measure of their perceived need. This section examines the criteria for HB in detail.

There are three basic conditions of entitlement for HB. (1) The claimant must be liable to make payments in respect of a dwelling in Great Britain, (2) must occupy that dwelling as a home, (3) must not have capital and income in excess of prescribed amounts.⁵⁹⁶

A dwelling for the purposes of HB is "any residential accommodation, whether or not consisting of the whole or part of a building and whether or not comprising separate or self-contained premises, and which is located in Great Britain"⁵⁹⁷. Local authorities assess

595 The main piece of primary legislation is the Social Security Contributions and Benefits Act 1992. This is supported by the Housing Benefit Regulations 2006 S.I. 2006/213 and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 S. I 2006/214

596 Social Security Contributions and Benefits Act 1992, s. 130

597 Social Security Contributions and Benefits Act 1992, s. 137(1), s. 130(1)(a). Also , Commercial or holiday accommodation are excluded (Housing Benefit Regulations 2006, Reg. 9 (1) (a) – (l))

whether the claimant receives tax credits and occupational pensions when assessing HB application claims because these count towards the income/capital of the individual.⁵⁹⁸

Many exclusions to eligibility apply⁵⁹⁹. These exclusions demonstrate the limited extent of State responsibility through eligibility criteria. Claimants can claim HB to pay for the rent of their accommodation. HB cannot cover water charges, bills, food or fuel in hostels, even if included in the rent⁶⁰⁰. Service charges to maintain a garden⁶⁰¹ are also excluded. These restrictions sometimes cause non-payment by tenants who expect these types of costs to be covered by HB, thus lead landlords to bring repossession orders⁶⁰². Accordingly the restrictions in HB regulations delineate between essential and extra costs. Further restrictions to the level of entitlement will be discussed in the following sections.

The household's circumstances such as the age of individuals in the family, the size of family and if any of the family are disabled are involved in the assessment of eligibility for HB. There can only be one claimant per household, so a claimant's partner or civil partner cannot claim for additional HB; income and capital assets are aggregated for couples and

598 Gov, Housing Benefit Claims Processing Guidance

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251256/hb-claims-processing-guidance.pdf

599 Savings over £16,000 (Housing Benefit Regulations 2006, Reg 43.), Receives the guarantee credit part of pension credit, (The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2005, Reg. 5 (2)), Full-time students, unless with children (The Housing Benefit Regulations 2006, Reg. 56(1),(2)(a)-(i)), Dwelling of a close relative (Housing Benefit Regulations 2006, Reg. 9(1)(b)), asylum seeker or only sponsored to remain in the UK (The Housing Benefit Regulations 2006, Reg 10); From April 2017 only two children in a household are taken into account in the HB entitlement calculation HM Treasury, News story Summer Budget 2015: key announcements

<https://www.gov.uk/government/news/summer-budget-2015-key-announcements> 8 July 2015

600 The Housing Benefit Regulations 2006, Reg 12 (3) (b) (i)

601 CP v Aylesbury Vale DC [2011] UKUT 22 (UT (AAC)) Rutledge, D 'Housing benefit - whether services charges for maintaining communal garden eligible' (2011) J.S.S.L. D115

602 After consultation of the rent arrears pre-action protocol

<http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_rent> accessed 19 April 2013

non-dependents.⁶⁰³ Both the claimant and their partner must provide their national insurance number, so as to identify any double HB payments made to the same household. The eligible rent will be limited to an amount reasonable for a suitably sized property in the area the claimant lives.⁶⁰⁴

HB covers the rent of a dwelling which is 'normally' occupied by the claimant and the household family as their home. If the claimant is liable for payment of two homes, HB is only available for the home which the claimant normally occupies⁶⁰⁵. However, if the household is a large family, and the local authority has to accommodate them in two dwellings, the claimant is treated as occupying both as a home and HB is payable for both dwellings⁶⁰⁶ (which accommodate one large family). Sometimes when a claimant is temporarily absent from a home for a period not exceeding 13 weeks (sometimes 52 in exceptional circumstances) they can still be treated as occupying a dwelling as a home⁶⁰⁷.

Overpayments could be due to official error, claimant innocent error or fraudulent claims⁶⁰⁸. If a suspicion is raised that a claimant has been fraudulently over-claiming Fraud Investigation Officers contacts the claimant.⁶⁰⁹ Statistics have shown that the current rate of overpayment has increased since the previous financial year, indicating a potential rise of over-claiming but also successful identification of this crime and resultant prosecutions.⁶¹⁰ The State's approach to tackling over-claiming and fraudulent HB claims, which increases

603 Housing Benefit Regulations 2006, Reg 7 (1) (b)

604 Housing Benefit Regulations 2006, Reg 93

605 Housing Benefit Regulations 2006, Reg 7(1)

606 Ibid. Reg. 7(6)

607 Ibid. Reg. 7(13) (a) – (c)

608 McKeever, Grainne (2003) Tackling benefit fraud. *Industrial Law Journal*, 32. pp. 326-331

609 Gov, Benefit Fraud, <https://www.gov.uk/benefit-fraud> (accessed 19 January 2016)

610 Gov, <https://www.gov.uk/government/statistics/housing-benefit-recoveries-and-fraud-data-april-2014-to-march-2015> (accessed 19 January 2016) Housing Benefit Recoveries and Fraud National Data 2014/2015 Data release 9th September 2015; Total value of HB overpayments identified during 2014/2015 was at £984 million, an increase of 22% in comparison with the previous year.

the rate of fraudulent claims being found and prosecuted with guilty outcomes reinforces the individual's responsibility for housing costs, and that tax payer's funds cannot be abused. Measures to limit double claims emphasise the guiding principle that individuals should claim responsibly and not become dependent on benefits, which underscores work disincentives.

As will be demonstrated in the next section, the underlying policy approach for HB is to cut away at the level of entitlement and restricting eligibility. The aim of cutting away at entitlement is to encourage individual responsibility for household costs. The following sub-sections look in greater detail at the reforms in HB design which aim to cut State financial responsibility and individualise housing costs.

7.3.2 Entitlement reforms cutting HB expenditure

As detailed earlier in the eligibility criteria, the State financial responsibility to support housing costs is concentrated upon those considered to have the most acute need. This chapter argues further that it is the State's long term goal that cuts to entitlement will permanently increase the individual's responsibility for housing costs. Forecasted expenditure on HB is to decrease over time as a proportion spent on welfare benefits.⁶¹¹ As discussed in chapter 4, policy changes had fundamentally shifted State responsibility by removing regulation of the free market. This shift is featured in the deregulation of rents in the PRS⁶¹², reduced the protective rights of tenure⁶¹³ and removed independent assessment of fair rents by rent officers⁶¹⁴. Various attempts have since been made to cut State HB

611 Richard Keen, House of Commons Library Briefing Paper No. CBP7667, 26 July 2016, Welfare Savings 2010-11 to 2020-21, p.5 Figure 2;

<http://researchbriefings.files.parliament.uk/documents/CBP-7667/CBP-7667.pdf> (accessed 8 August 2016)

612 Rent Act 1977 caps repealed by the Housing Act 1988

613 Housing Act 1988, s. 5; assured tenancies (s. 1)

614 Housing Act 1988, s. 22; introduced private sector financial input (s. 38); and a higher rent regime (s. 86) N.B. An exception to the removal of independent assessment of fair rents existed for ASTs

expenditure through bright line rules to counteract consequences from the deregulation of the PRS market, which will be discussed in the following sections.⁶¹⁵ Reforms in rent setting in the social sector have also aimed to cut HB expenditure. Initially rent convergence aimed to align rents in local authority housing and housing associations to a national rate.⁶¹⁶ Since 2015, rent setting has also aimed to cut the average social housing sector rents at a measured annual rate to reduce HB expenditure. The measure is forecast to save £1.4bn by 2020-21 in HB expenditure.⁶¹⁷

7.3.3 Shared Accommodation rate (SAR) in the PRS

For single people under 35 years of age, the HB payment is cut to the equivalent of a room in shared housing. The rationale of this policy is that it is socially acceptable to expect young people to share accommodation and that rent must be reasonable for the claimant's households needs and for the type of accommodation⁶¹⁸. The aim of the policy is to prevent putting welfare benefit claimants in a better position compared to non-claimants, and make efficient use of limited affordable housing stock⁶¹⁹. Originally the policy was introduced for

615 Local Reference Rates, Local Housing Allowance, Shared Accommodation Rate, Social Sector Under-Occupancy as outlined in Wendy Wilson, Cassie Barton, Richard Keen, Housing of Commons Library Briefing Paper No. 05638, Housing Benefit measures announced since 2010, 2 August 2016 Paper <http://researchbriefings.files.parliament.uk/documents/SN05638/SN05638.pdf> (accessed 8 August 2016)

616 2002 the Labour Government introduced a rent convergence policy, Wilson, W House of Commons Library Briefing Paper, Renting Setting: Social housing (England) Number 01090, 7 October 2015 p.1 <http://researchbriefings.files.parliament.uk/documents/SN01090/SN01090.pdf> (accessed 8 August 2016)

617 Ibid.

618 The Housing Benefit (General) Amendment Regulations 1996, amending amend the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971) Regs 3 and 4

619 Figure 16, Social Housing Shortfall, Nick Henretty, Housing summary measures analysis, Office of National Statistics, 5 August 2015 <http://www.ons.gov.uk/peoplepopulationandcommunity/housing/articles/housingsummarymeasuresanalysis/2015-08-05> (accessed 8 August 2016)

under 25s “to ensure that Housing Benefit does not encourage young people to leave the parental home unnecessarily or to take on higher priced accommodation at the taxpayers’ expense than they could afford from their own earnings”⁶²⁰ and later extended to under 35s⁶²¹.

In terms of reducing State monetary responsibility for housing costs, the SAR policy was expected to have saved £215 million on HB expenditure by financial year 2014/15⁶²². The policy forces young people to take more responsibility for their own housing costs and aims to remove work disincentives. To prevent undue hardship, exceptions exist for a range of different claimants aged under 35⁶²³.

Criticisms of the SAR policy have found that it can represent age discrimination where vulnerable adults are not suited to share accommodation. In particular, sharing accommodation may affect the health of young people with mental health issues. A survey by Crisis⁶²⁴ found concerns included SAR being set too low for adequate accommodation thus preventing vulnerable claimants from obtaining accommodation in the PRS, becoming homeless or using ‘informal’ arrangements for accommodation with a greater likelihood of

620 Department of Social Security Press Notice, 96/09, 2 April 1996

621 Housing Benefit (Amendment) Regulations 2011 (SI 2011/1736) implemented in 2012.

622 House of Commons, Housing Benefit: Shared Accommodation Rate SN/SP/5889 27 March 2012 p. 5

623 Housing Benefit (Amendment) Regulations 2011, Reg. 2 (3); DWP Housing Benefit Council Tax Benefit Circular A12/2011 (Revised)

624 Crisis, 11,000 disabled people face losing their homes 3 June 2011

<<http://www.crisis.org.uk/pressreleases.php/448/11000-disabled-people-face-losing-their-homes>> (accessed 5 March 2015) Crisis, Policy Briefing: Changes to the Shared Room Rate in Housing Benefit March 2011; Sanders, B Texiera, L No room available: study of the availability of shared accommodation, 2012

<http://www.crisis.org.uk/data/files/publications/1212%20No%20room%20available.pdf> (accessed 5 March 2015)

tenancies breaking down.⁶²⁵ Security and personal safety issues were likely to arise, especially in cases mixing people ill-equipped to manage stresses and conflicts arising in shared living spaces and that extra expense would be needed to deal with such issues. There have been calls to increase lodging and alternative shared accommodation models to increase supply. These calls have been through campaigns to raise the rent a room scheme⁶²⁶ tax threshold to promote homeowners becoming landlords and renting out a spare room to a lodger.⁶²⁷

The Government intends to go further and withdraw HB entitlement from some 18-21 year olds from April 2017⁶²⁸. This proposed policy aims to tackle work disincentives from a young age. The stated rationale is to “ensure young people in the benefits system face the same choices as young people who work and who may not be able to afford to leave home”.⁶²⁹ This again leads to identical issues regarding the exemptions for different claimants, and

625 87% of those surveyed found difficulty finding appropriate properties for people under 25 on the Shared Accommodation Rate, 72% reported that there is not enough shared accommodation available in their local area, 63% said there is a higher risk of tenancies breaking down; Social Security Advisory Committee, ‘Report on Housing Benefit: Shared Accommodation Rate’ Cm 3225, 1996; Report by the Social Security Advisory Committee under Section 174 (1) of the Social Security Administration Act 1992 and the statement by the Secretary of State for Work and Pensions in accordance with Section 174(2) of that Act, The Housing Benefit (Amendment) Regulations 2011 (SI 2011/1736), Crown Copyright July 2011; Liz Phelps (Citizens’ Advice Bureau) ‘Single Room Rent – the case for abolition’ 2005

626 Gov.uk, Rent a Room in your Home Guidance, <https://www.gov.uk/rent-room-in-your-home/the-rent-a-room-scheme> (accessed 5 August 2016)

627 Spare Room, Raise the Roof Campaign, <http://www.spareroom.co.uk/raisetherooft/about/#1> (accessed 3 May 2016)

628 Wendy Wilson, Richard Keen, Cassie Barton, House of Commons Briefing Paper No. 06473 ‘Housing cost element of Universal Credit: withdrawing entitlement from 18 – 21 year olds’ 10 April 2017, p.1; The Universal Credit (Housing Costs Element for claimants aged 18 to 21) (Amendment) Regulations 2017 (2017/252) came into force on 1 April 2017. Early Day Motion 1014, praying against the Regs, has 86 signatures (at 24 April 2017).

629 Ibid. p.1

how this will impact vulnerable young people counter-productively. This disentitlement to 18 – 21 year olds is a further expression of the diminishing State responsibility for the housing costs of young people⁶³⁰. Moreover, financial savings have been forecasted at £65m by the end of 2019/20, demonstrating the dual economic incentive alongside the ideological reasoning to implement this policy withdrawing entitlement to younger claimants.⁶³¹

7.3.4 Local Housing Allowance (LHA) in the PRS

As will be examined in this section; the macroeconomic aim of the LHA policy is to change claimant behaviour, reduce benefit expenditure and give PRS HB tenants greater personal responsibility over housing costs. An intended effect of this policy is for private landlords to base their rents upon the LHA rate, thus inadvertently allowing the State welfare benefit system to direct the rent levels charged in the PRS by landlords, creating a form of rent control. The LHA is a flat rate payment based on the number of bedrooms a claimant is deemed to require and the average market rate in an area.⁶³²

An analogy can also be drawn to rents setting at the LHA allowance for HB in the PRS to the Speenhamland system of the late 1700s, as explained in chapter 4. This demonstrates a relatively less interventionist position from the State by providing only a subsistence level of relief in the hope of incentivising work.

630 Information regarding this proposed law at House of Commons Library, Wendy Wilson, Housing Benefit: withdrawing entitlement from 18-21 year olds, Briefing Paper, Number 06473, 26 August 2015 <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06473> (accessed 19 May 2016)

631 Ibid.

632 Wendy Wilson, Private rented housing: the rent control debate, Number 6760, House of Commons Library Briefing Paper, 3 April 2017 p.7

PRS tenants typically receive HB directly into their bank accounts through LHA, which claimants use to contribute towards the rent they pay to their landlord⁶³³. The level of HB provided in the free market deregulated PRS is reached independently of the individual claimant's actual rent costs. The Housing Act 1996 introduced 'local reference rents' in the PRS which were determined by the average market rate for dwellings in the same size and area by local rent officers in each 'Broad Market Rental Area' (BRMA)⁶³⁴. The calculation is also based on the circumstances of the claimants; benefits, pensions and savings and family size. LHA is thus paid as a flat rate payment (based on the BRMA average rent) rather than being based on a particular claimant's actual rent levels. The BRMA calculation prevents tenants from being insulated from housing costs, where tenants have no ability to resist because of relative housing scarcity. Upper limits on LHA are now based on the level of LHA given on the bottom 30% of rent in the area (rather than the median)⁶³⁵. The LHA is linked to the 'consumer price' index (CPI)⁶³⁶.

A cap for different property sizes also assists with the calculation of HB⁶³⁷. The benefit cap affects claimants receiving HB and UC. The benefit cap restricts entire benefit entitlement to £500 a week for a couple with or without children, £500 a week for a lone parent with

633 The LHA was originally proposed in the 2002 paper; DWP, Green Paper: Building Choice and Responsibility: A radical agenda for Housing Benefit, London, 2002

634 Rahilly, S 'New Limits on benefit for rents: the cap that doesn't fit?' (2011) JSSL 118, Rahilly, S 'Local housing allowances' (2011) JSSL 7; DWP, Green Paper: Building Choice and Responsibility: A radical agenda for Housing Benefit, London, 2002, [6.10 – 6.11]

635 Welfare Reform Act 2007, s. 130A (Insert); Reforms first discussed in DWP, Consultation Report: A new deal for welfare: Empowering people to work, London, 2006 (Chapter 7: A radical new approach to Housing Benefit)

636 Hal Palson and Steve Wilcox, UK Housing Review 2011, p. 13; The Rent Officers (Housing Benefit Functions) (Amendment) Order 2012, s.2(13)

637 The Benefit Cap (Housing Benefit) Regulations 2012, Regulation 2: Only for claimants since 7 April 2008; 1 bedroom (or shared accommodation) up to £260.64, 2 bedrooms up to £302.33, 3 bedrooms up to £354.46, 4 bedrooms up to £417.02

children and £350 for a single parent without children.⁶³⁸ LHA numerically limits the extent of the State's financial responsibility for housing costs⁶³⁹, thus sending a clear message to claimants about the State's scope of assistance for housing costs. LHA reduces administrative costs, as rent officers no longer need to determine fair rents for individual properties. HB payments are easier to understand for claimants, and bureaucracy is reduced since claimants do not need to completely renew claims when work situations change⁶⁴⁰.

In terms of tackling work disincentives, the value of housing is represented to the claimant more clearly through LHA. LHA is paid directly into the claimant's bank account, the claimant can see their income and outgoings, and the difference a few hours extra work increases their income and equates to better accommodation standards⁶⁴¹. Nevertheless, factors influencing a decision to work are generally more complex. LHA forces tenants to bear the risk and cost of any rent increase or the choice to live in a property more expensive than LHA level. Additionally, until 1 April 2011 tenants who chose to rent below their LHA rate could keep the excess up to a weekly limit of £15 per week⁶⁴². This ability to retain excess rent for claimants renting a property cheaper than the LHA level incentivised tenants negotiating rent levels with their landlords, but perhaps placed unrealistic expectations on the ability of vulnerable claimants to do this, especially in areas of high demand. In reality,

638 The Benefit Cap (Housing Benefit) Regulations 2012, Reg 2, amending Housing Benefit Regulations 2006, Part 8A If the claimant does not receive enough HB, the cap will not be applied in full, if the claimant receives a full allowance of HB and the entirety of HB is lost as a result of the cap, a nominal 50p for HB will be paid. The Rent Officers (Housing Benefit and Universal Credit Function) (Local Housing Allowance Amendments) Order 2013 Article 2 (2) (9) £250.95 per week for a 3 bed house, £412.89 for a 4 bed house

639 Rutledge, D 'Case Comment - Housing benefit: rent restriction – LHA rules' (2011) JSSL D158

640 Although they have to make the DWP aware of a change of circumstances through their Job Centre plus claim

641 Kate Webb, Policy: Report Bricks or Benefits? Rebalancing housing investment, Shelter, May 2012 p. 18

642 DWP, Local Housing Allowance Guidance Manual, April 2014 [1.012]

there had been little evidence of “upmarketing”⁶⁴³ before the introduction of LHA and the majority of tenants were in fact surveyed as being price conscious⁶⁴⁴.

In the past, non-payment of HB by local authorities due to the flawed administration has been identified as a cause of rent arrears and eviction. It had become common to see classified advertisements and lettings agents stating “no DSS”⁶⁴⁵ for lettings due to these delays. Landlords often refuse to let to HB tenants based on historical delays by local authorities, perceptions of antisocial behaviour or unpaid rent and damage to property or furnishings⁶⁴⁶.

With the delivery of LHAs, in principle there is no need for landlords to be aware that their tenants are paying rent using HB, and to prejudice against such claimant tenants. However, mortgagees can also restrict private landlords letting to HB claimants in the Terms & Conditions of their mortgage agreements thus affecting supply of housing for HB claimants in the PRS. For example, the buy-to-let mortgage policy documents of Lloyds Banking Group (in which the Government has a stake) include restrictions to not lend on buy-to-let mortgages for properties which are rented to HB recipients.⁶⁴⁷ The extra administration of

643 Kemp, P Shopping Incentives and Housing Benefit Reform (Chartered Institute of Housing, Coventry, 2000)

644 Rahilly, S ‘From the rent stop to a rent allowance: the Government’s plans to introduce choice and responsibility in housing benefit’ (2003) JSSL 124

645 Stands for Department of Social Security – which was replaced by the DWP, however DSS is still colloquially used Zorana Halpin, No children, no dogs, no DSS: The alternative landlord guide, Shelter Blog, 19 June 2015 <http://blog.shelter.org.uk/2015/06/no-children-no-dogs-no-dss-the-alternative-landlord-guide/> (accessed 09 August 2016)

646 2010 DCLG Private Landlord survey referenced in HoC Briefing Paper, No. 7009, 8 March 2016, Alex Adcock, Can Private Landlords refuse to let to Housing Benefit claimants?

647 Lawrenson, D ‘Housing Benefit claimants increasingly excluded from private rented sector taxpayers will pick up for the bill for expensive emergency accommodation amid further mortgage lender restrictions. It’s time for the government to think again’ Guardian 28 February 2013 <http://www.guardian.co.uk/housing-network/2013/feb/28/housing-benefit-claimants-excluded-private-rented-sector> (accessed 8 May 2016) Housing Benefit recipients deemed ‘unacceptable’ tenants in mortgage terms & conditions.

HB with payment being in arrears rather than in advance and higher insurance premiums make renting to HB claimants perceived to be more risky.⁶⁴⁸ This practice is counter-intuitive since the government is continually relying on the PRS to accommodate HB recipients. According to a NHF study, the amount spent on HB in the PRS is nearly double what was paid 10 years ago.⁶⁴⁹ Moreover, anti-discrimination legislation does not extend to the practice of refusing to let to benefit claimants and it would be impracticable to do so⁶⁵⁰. This is an example where the State has not worked effectively to regulate the mortgage market to secure sufficient supply of PRS housing for HB recipients.

Local authorities do have discretion to make payments direct to the landlord for some set reasons, including where they believe it will assist the claimant in securing or keeping a tenancy,⁶⁵¹ or if landlords agree to reduce rent to match the lower LHA payments⁶⁵², or when the tenant is in arrears of up to 8 weeks with rent.⁶⁵³ The objective in these discretionary powers of Local Authorities is to encourage affordable rents in the PRS for HB recipients. Surveys have found that the majority of landlords were unhappy with the delivery of LHA. 88% of those questioned said that the introduction of LHA which made payments to tenants

648 David Lawrenson, The seven reasons why landlords won't let to tenants on benefits, The Guardian, 2 May 2012, <https://www.theguardian.com/housing-network/2012/may/02/tenants-housing-benefit-private-landlords> (accessed 8 May 2016)

649 HM Government, 'Government Response to the Communities and Local Government Committee's report: The Supply of Rented Housing', Cm 7326, September 2008, p.5; Damien Gayle, Private landlords get £9.3bn in housing benefit from taxpayer, says report, The Guardian, 20 August 2016 <https://www.theguardian.com/society/2016/aug/20/private-landlords-9bn-housing-benefit-taxpayers-national-housing-federation-report> (accessed 31 August 2016)

650 HC debate 7 Dec 2005 C1437W

651 The Housing Benefit (Amendment) Regulations 2010 – amendment to the Housing Benefit Regulations 2006, reg. 96 (3A)(b).

652 DWP, Local Housing Allowance Guidance Manual April 2014, referring to HB Reg 96(3A) and HB(SPC) 77(3A) at p.43.

653 Work and Pensions Select Committee, Fifth Report of 2009-10, Local Housing Allowance, HC 235, March 2010, para 102

rather than landlords, unless a direct payment is requested was a bad thing.⁶⁵⁴ LHA being paid direct to tenants could lead to higher frequency of misuse of funds by using HB for purposes other than its intended use leading to arrears⁶⁵⁵. Claimants had also requested for their HB be paid direct to the landlord, due to fears that landlords were less likely to rent properties to HB recipients⁶⁵⁶. Vulnerable people such as drug addicts or those with mental health problems may prefer no responsibility due to the temptation of using the money in other ways. A Freedom of Information request found that the most common reason for HB payment to be made directly to the landlord is where the claimant is likely to have difficulty in relation to the management of their financial affairs.⁶⁵⁷

The fact that there are several exemptions to the LHA being paid directly to tenants highlights the difficulty in individualising costs in the welfare system. The State remains responsible for paying landlords directly in several instances. Moreover, LHA has not fully succeeded in individualising State responsibility as the State continues to pay a high rate of HB in the PRS. The move from supply (building social housing) to demand (welfare benefits) subsidies has not decreased the budget for ongoing housing costs, and means that subsidies are pumped into private owned housing instead of a State owned asset.

654 Spare Room Survey referenced in in HoC Briefing Paper, No. 7009, 8 March 2016, Alex Adcock, Can Private Landlords refuse to let to Housing Benefit claimants?

655 The total Great Britain value of HB overpayments outstanding at the beginning of Q4 (2013/14) stood at £1.38 billion; an increase of 9% on this point the previous year. DWP, Housing Benefit Recoveries and Fraud National Statistics 2013/2014 Data, 10 September 2014

656 Hal Palson and Steve Wilcox, UK Housing Review 2011 Briefing Paper, Chartered Institute of Housing 2011, p. 13

657 DWP, Number of Housing Benefit recipients in the private rented sector, by Reason for Payment to Landlord/ Property Agent, Great Britain: May 2014, 8% of total caseload for this reason https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/407152/1031-2014.pdf 25 February 2015

Research shows mixed findings as to whether LHA enables HB recipients to consume more housing than is available to other similar non-HB recipient households in the PRS⁶⁵⁸. At the margin of eligibility and non-eligibility, there are some concerns that a reduction in LHA may have a high impact, which conflicts with the objective of LHA to merely supplement work to increase the household's income to pay for suitable accommodation. In this way, the current HB system (and wider benefits system as a whole) can affect wider economic behaviour and employment.⁶⁵⁹

HB can be used as a measure of State investment (of gift) into the landlord's individual assets, which is the case when HB is used in the PRS. A side-line practice has developed with the growth of buy-to-let mortgages and the growing PRS market; a minority of landlords have seen the potential for the lucrative HB market. 4% of landlords have indicated that they actively preferred letting to unemployed people⁶⁶⁰, due to the secured nature of rent paid by the local authority via LHA (after the initial administrative delays currently associated with HB⁶⁶¹).

The term 'benefit landlordism' has been coined for PRS landlords who purchase low value property in an area populated by low income households who are looking for permanent accommodation. Benefit landlordism is in contradiction to usual 'good business practice' as rent is usually priced at below-market levels, and it may mean foregoing charging deposits

658 Walker, B and Niner, P 'Welfare or Work? Low-income Working households' housing consumption in the private rented sector in England (2012) *Housing Studies* 27:3, 381

659 DWP, Local Housing Allowance Final Evaluation: The housing and labour market impacts of the Local Housing Allowance, 2008 Centre for Housing Policy, University of York; Centre for Regional Economic and Social Research, Sheffield Hallam University on behalf of the DWP, The impact of recent reforms to Local Housing Allowances: Differences by place, July 2014

660 Ibid.

661 Processing delays are experienced mainly due to the complexity of the claim, fluctuating incomes, whether other benefits were also being claimed, and the Local Authority workload and backlog of cases. The average speed of processing is now 25 days (2012/13) compared with 24 days (2011/2012); DWP, 'First Release: Housing Benefit and Council Tax Benefit Speed of Processing: July 2012 to September 2012' 22nd January 2013

which is the custom in the PRS.⁶⁶² This buy-to-let PRS market sustains the investment in the PRS. This use of tax-payer's money can be argued to be too interventionist in the housing market, disrupting economic supply and demand in the market. The State thus inadvertently rewards landlord for their entrepreneurialism in providing homes in the PRS by guaranteeing that at least some of the rent via HB. It is inadvertent since it would not be an explicit State policy to fund investment of the PRS housing through welfare benefits. Nevertheless, the majority of landlords and agents, in any case, would rarely express a positive preference for letting to HB recipients⁶⁶³. A problem with supply of affordable PRS accommodation persists regardless of this gift of guaranteed payment for rent by the State in the form of HB for eligible claimants.

Despite the aim of the State to decrease financial responsibility, investment in the form of LHA paid into the pockets of PRS landlords could merely drive costs up in a market of insecure, poor quality accommodation which households do not choose but see merely as a last resort.⁶⁶⁴ It is arguable whether inadvertently investing money into the PRS thus into the pockets of private landlords is good use of public money. Research suggests that rent increases in the PRS are not driven by increased costs or inflation⁶⁶⁵. Demand stokes the cost of the current supply, where the supply is not adequately increased to fulfil this deficit. A

662 Lambert, R. Social Security Committee Sixth Report Housing Benefit (The Stationary Office, London, 2000) p. 127; Although many local authorities are now offering grants or loans to assist households who cannot afford tenancy deposits under the rent deposit, bond and guarantee schemes

<http://england.shelter.org.uk/get_advice/paying_for_a_home/rent_deposit_and_bond_schemes> accessed 18 April 2013

663 UK's Biggest buy to let landlords evicting tenants on benefits

<http://www.theguardian.com/money/2014/oct/31/millionaire-landlords-fergus-judith-wilson-evicting-families> (accessed 15 May 2015)

664 Bill Davies and Anna Turley, Back to rising damp: Addressing housing quality in the private rented sector, Institute for Public Policy Research, January 2014

665 Rupert Jones, Average monthly rent hits record high of £816, highlighting housing shortage, the Guardian, 16 October 2015 <http://www.theguardian.com/money/2015/oct/16/average-monthly-rent-hits-record-high-of-816-highlighting-housing-shortage> (accessed 11 November 2015)

survey carried out by Shelter found that only 4% of landlords said they had increased rents because of increased mortgage costs. In reality, 1 in 5 had put up rents because their letting agents had encouraged them to⁶⁶⁶, thus driving up the local BRMA rent.

7.3.5 Housing Benefit in the Social Sector & Social Sector under-occupancy penalty⁶⁶⁷

Social housing tenants (local authority or housing association landlord) receive HB as a rebate in their rent account, which reduces the rent payable by the tenant so HB is paid directly to the landlord. The difference in the payment of the social sector landlords and PRS landlords is based on a number of factors including the typical greater vulnerability of the tenants in social housing and admin for social landlords where majority of tenants are paying rent through HB. The amount of entitlement for a social housing tenant depends on 'eligible' rent, if there are any 'spare' rooms, household income and savings and the circumstances of the claimant; ages of members of the household and whether any have disabilities. Eligible rent relates to the reasonable rent for a suitable property in the area for a particular household⁶⁶⁸. Delivering HB through rebate means that the individual social housing HB claimant has less responsibility over the funds as it is paid directly to the social housing supplier rather than to the claimant themselves.

The social sector under-occupancy penalty is an expression of the State attempting to reduce its financial responsibility through cutting entitlement to HB. The rationale for the penalty is to reduce expenditure and to secure behavioural changes.⁶⁶⁹ This policy is State

666 De Santos, R (2012) Homes fit for families – the case for stable private renting. London: Shelter cited in Parliamentary Written Submission from housing for 99% (PRS101) Session 2012 – 13 January 2013

667 Also known as the Removal of Spare Room Subsidy, and colloquially as the "Bedroom Tax"

668DWP, A4 - Eligible rent HB/CTB Guidance Manual, A4 Eligible Rent, July 2009

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236953/hbgm-a4-eligible-rent.pdf (accessed 8 June 2014); Gov, Housing Benefit Eligibility

<https://www.gov.uk/housing-benefit/what-youll-get> (accessed 7 August 2016)

669 Wendy Wilson, Under-occupying social housing: housing benefit entitlement, House of Commons SN06272 03 February 2016

encouragement for downsizing. The social sector under-occupancy penalty affects HB claimants in social housing only. Limits have been placed on HB claims where the claimant household is deemed to have spare unoccupied bedrooms. The eligible rent covered by HB is cut by 14% if the claimant is deemed to have one spare bedroom and 25% if the claimant is deemed to have two or more spare bedrooms⁶⁷⁰. It is hoped that the social sector under-occupancy penalty will give an incentive to HB claimants in social sector housing to downsize and move from under-occupied properties.⁶⁷¹ Exemptions apply to this reduction in HB to protect vulnerable categories of recipients⁶⁷². The cuts to entitlement have led to appeals based on discrimination against certain categories of individuals⁶⁷³.

670 DWP, Housing Benefit and Council Tax Benefit Circular HB/CTB A4/2012 (Crown Copyright 2012) p. 4; Section 130A of the Social Security Contributions and Benefits Act 1992 as amended by s.69 Welfare Reform Act 2012

671 Early impact assessments predict that this would involve an average of £14 housing benefit deduction per week in DWP, 'Criteria for people renting in the social rented sector: introducing restrictions to Housing Benefit for working age customers living in the social rented sector who are occupying a larger property than their household size requires – Equality Impact Assessment – June 2012'

672 DWP, HB U1/2014 Circular 8 January 2014; The Housing Benefit (Amendment) Regulations 2013, SI No.665; DWP Circular HB/CTB A10/2013; Reg 2(3) SI 2010 No.2449, amending reg 21(3) Housing Benefit Regulations 2006; Regs 2(1)(e) and B13(6) HB Regs 2006, as amended; DWP Circular HB/CTB A10/2013; Reg B13(8) Housing Benefit Regulations 2006, as amended; HB/CTB A10/2013 paragraph 33; DWP Circular HB/CTB U2/2013 <http://www.cpag.org.uk/content/bedroom-tax-exemptions-and-legal-challenges> (accessed 6 May 2014)

673 *Burnip v Birmingham City Council & Others* [2012] EWCA Civ 629; *MA & Ors, R (on the application of) v The Secretary of State for Work and Pensions* [2016] UKSC 58; For further analysis on *Burnip* see Cheung, Louise (2013) Housing benefit: social sector housing - challenge to the social security under-occupancy criteria affecting disabled claimants *Journal of Social Security Law*, 20, (3), p. 119; and Cheung, Louise (2013) *Burnip: the implications for housing benefit and its adjudication* *Journal of Social Security Law*, 20, (2), pp. 56

The policy reflects opinions that older people may be under-occupying large properties that could accommodate young families.⁶⁷⁴ One way that the state can ensure the most efficient use of social housing is through the benefit system. Claimant households can choose to find alternative housing which fits their preferences if they are able to raise funds to meet the shortfall of their HB entitlement and their housing costs. Accordingly, the social sector under-occupancy policy seeks to incentivise work and individual responsibility to make decisions about how best to use State funding to cover the full costs of housing or seek other funds to find alternative housing which best suits needs.

Under-occupation is actually highest in owner-occupied homes with 49% of properties deemed to fall in the bracket. Whilst, just 10% of social rented homes and 17% of private rents homes deemed to be under occupying,⁶⁷⁵ yet the moving of households in under-occupied properties is still a priority in social housing. This reflects the fact that social housing is a scarce resource and State asset, and so allocation should reflect the size of the household to ensure fairness.

The social sector under-occupancy's bright line criteria can have a counter-intuitive effect. Not only have there been several appeals to social sector under-occupancy rules due to perceived discrimination⁶⁷⁶, but also many more claimants could become homeless⁶⁷⁷ triggering the local authority homelessness duties. Eventually more social housing with

674 Shiro Oto, House of Commons Library Briefing Paper, 07423 9 December 2015, Housing an Ageing Population (England) p. 9

675 DCLG and National Statistics, English Housing Survey Headline Report 2011/12 February 2013, 1.39

676 List of Upper Tier Tribunal Decisions for Bedroom Tax Appeals [here](http://nearlylegal.co.uk/tag/upper-tribunal-admin/)

<http://nearlylegal.co.uk/tag/upper-tribunal-admin/> (accessed 7 June 2015) List of Upper Tier Tribunal Decisions for Bedroom Tax Appeals <http://nearlylegal.co.uk/tag/upper-tribunal-admin/> (accessed 8 June 2015)

677 Wendy Wilson, Under-occupying social housing: Housing Benefit entitlement, Briefing Paper No. 06272, House of Commons Library 3 February 2016 P. 39, Wendy Wilson & Rod McInnes, The impact of under-occupation deduction from Housing Benefit (social rented housing) SN/SP/6896, 15 December 2014

fewer rooms may have to be built to accommodate claimants who have had to downsize to deal with the demand resulting from the policy⁶⁷⁸, demonstrating how this policy has inadvertently affected the design and supply of social housing. Moreover, statistics have found that only 8% of tenants hit by social sector under-occupancy penalty have moved to smaller properties demonstrating its limited effect and the failings of the policy so far.⁶⁷⁹

Previously government proposals would have gone further to impact households who occupy social housing but whom now earn higher incomes, but these proposals were subsequently dropped. The State had aimed to intervene to prevent higher earners 'blocking' social housing by remaining in such homes and paying below market rent. The Housing and Planning Act 2016 included provisions for 'Pay to Stay' rent setting for tenants in social housing. The Pay to Stay policy would have charged social housing tenants rents based on their wage⁶⁸⁰. Social housing tenants with household incomes of £40,000 and above in London, and £30,000 and above in the rest of England, would have been required to pay an increased level of rent for their accommodation if their rent is currently being subsidised below market rent levels.⁶⁸¹ However, these Pay to Stay proposals were dropped due to cost and difficulty in implementation.⁶⁸²

7.3.6 The role of Discretionary Housing Payments (DHP)

DHP acts as an ad hoc measure of assistance for emergency events affecting tenant claimants' ability to pay their rent in both PRS and Social sector. DHP can be used in cases

678 Anne Power et al, The impact of welfare reform on social landlords and tenants, Joseph Rowntree Foundation, June 2014

679 Heather Spurr, Bedroom tax tenants 'fail to downsize', Inside Housing, 18 December 2015

680 Housing and Planning Act 2016, s.80 Mandatory rents for high income local authority tenants

681 Social housing: 'pay to stay' at market rents, House of Commons Library, 18 August 2015, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06804> (accessed 21 August 2016)

682 BBC News, 'Pay to Stay' social housing plan dropped, 21 November 2016 <http://www.bbc.co.uk/news/uk-politics-38058402>

where profound hardship results from cuts in entitlement.⁶⁸³ To be eligible, the claimant must be receiving HB entitlement that is less than their full rent and can prove financial struggle, health, household or other circumstances affecting their ability to pay rent.⁶⁸⁴ The use of DHP is an often cited argument by the government in response to measures which severely reduce HB entitlement to vulnerable groups of people, as described above in the different policies cutting entitlement. “The department reviews the allocation of DHP to better reflect the scope and scale of projected impacts across LAs.”⁶⁸⁵ DHP is only awarded on a discretionary basis and time limited DHP cannot be relied upon to eliminate the entire shortfall created by a cut in HB. Accordingly, the use of DHP is seen as a temporary panacea to those affected by cuts.

DHP are allocated by local authorities, which may not necessarily assign sufficient funds for all possible claimants affected by cuts to HB entitlement⁶⁸⁶, where the entitlement measures are set by central government’s DWP policy. Accordingly, the administration of DHP can be described as a postcode lottery. DHP form part of the local welfare safety net⁶⁸⁷ for ongoing

683 DWP, Guidance Claiming Discretionary Housing Payments, 21 June 2016

<https://www.gov.uk/government/publications/claiming-discretionary-housing-payments> (accessed 7 August 2016)

684 Queens Cross Housing Association, Discretionary Housing Payments

https://www.qcha.org.uk/tenants/financial_inclusion/money_advice/discretionary_housing_payment_dhp (accessed 30 August 2016)

685 Social Security Advisory Committee, The Rent Officers (Housing Benefit functions) Amendment Order 2010 (S.I. No. 2010/2836) Report by the Social Security Advisory Committee under Section 174(1) of the Social Security Administration Act 1992 and the statement by the Secretary of State for Work and Pensions in accordance with Section 174(2) of that Act, November 2010, p. 11

686 BBC, Third of councils top up housing benefits after cap, 2 July 2016

<http://www.bbc.co.uk/news/uk-england-36726302> (accessed 6 August 2016) About a third of English councils have spent additional money topping up a government fund aimed at cushioning the impact of welfare changes.

687 Alongside council tax support and local welfare assistance schemes, as articulated in House of Commons Work and Pensions Committee, The Local Welfare Safety Net, Fifth Report of Session 2015-2016, HC 373, 12 January 2016

housing costs. The House of Commons Pension and Welfare Committee found that some local authorities spend disproportionate funds on DHP to counteract the ramifications of benefit reform⁶⁸⁸. Unused DHP funding is returned to the Exchequer at the end of each financial year. It has been argued that returning DHP funding is inefficient given the continued high levels of need, and a better use of resource would be to allow local authorities to carry forward a fixed percentage of unspent DHP allocation to help manage variations in demand or allowing local authorities which had overspent their allocation to bid for unused allocations from under-spending areas.⁶⁸⁹ Increasing the budget for DHP allows there to be further recourse to funds to deal with hardship and to target resources more acutely to the most vulnerable. The Chancellor has said that these measures were to deliver the promises from past governments to get to grips with welfare and reward work⁶⁹⁰ However it can be counterintuitive to rely on DHP as a way to distribute assistance for housing costs. DHP can help 'make up the difference' for potentially discriminatory entitlement and bright line rules in regulations governing HB. Nevertheless, DHP does offer a pragmatic solution to deal with the shortfall for rent albeit an ad hoc solution lacking clear criteria or principles.

The Work and Pensions Committee had recommended a cross departmental evaluation of adequacy and effectiveness of the local welfare safety net, however, this was rejected by the Government.⁶⁹¹ The Chair of Committee responded with disappointment that the Department did not commit a proper evaluation of the adequacy and effectiveness of the localised welfare safety net. Because of this failure, any gaps leave open the risk of

688 House of Commons Work and Pensions Committee, The Local Welfare Safety Net, Fifth Report of Session 2015-2016, HC 373, 12 January 2016

689 Ibid. p. 26

690 June Budget Report Statement to the House of Commons delivered by the Rt Hon George Osborne MP, Chancellor of the Exchequer, Tuesday 22 June 2010 p. 31

691 House of Commons Work and Pension Committee, The local welfare safety net, Fifth Report of Session 2015 – 16 HC 373 12 January 2016

vulnerable people falling into severe hardship.”⁶⁹² There are no formalised review mechanisms for a negative DHP decision, the only recourse being to judicial review proceedings⁶⁹³. Recent judicial reviews on negative DHP decisions demonstrate the strict application of policies surrounding DHP is open to challenge, in particular where the council has not considered DWP guidance or individual circumstances properly⁶⁹⁴. Moreover, judicial reviews have highlighted local authorities fettering discretion where rules are potentially discriminatory by taking into account payment of Disability Living Allowance when this should be disregarded⁶⁹⁵.

Bright line rules are drafted into regulations to make administration quicker and therefore cheaper⁶⁹⁶. Such rules drafted into regulations lead to sharp ‘cliff-edges’ between entitlement and disentitlement. Sharp cliff-edges are an indication of the government’s ongoing regime to restrict the proportion of households entitled to HB, but allowing DHP administered by the Local Authority to mitigate against regulations which lead to hardship. State responsibility in this instance thus places greater importance upon reducing the level of tax payer assistance⁶⁹⁷ by creating rules which cut expenditure in the face of a greater likelihood to greater hardship.

DHP is an illustration of the fact that social security policy is politically constructed based on budgets, rather than being based on any overarching principle of human rights. DHP acts as

692 Gaps in welfare safety net still pose risk Committee says, 30 March 2016, <https://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/news-parliament-2015/welfare-safety-net-government-response-15-16/>

693 DWP, Discretionary Housing Payments Guidance Manual Including Local Authority Good Practice Guide, February 2016 p.20

694 Example of judicial review on DHP and the discretion for long term awards; R (on the application of Halvai) v Hammersmith and Fulham LBC (2017) QBD (Admin) (Sara Cockerill QC) 09/03/2017

695 Example of judicial review on DHP where Disability Living Allowance taken into account; Hardy, R (on the application of) v Sandwell Metropolitan Borough Council [2015] EWHC 890

696 For further on Bright Line Rules in Social Security law; see Laurie, E ‘Judicial Responses to Bright Line Rules in Social Security: In Search of Principle’ (2009) 72(8) MLR 384-411

697 DWP, Written Ministerial Statement, Housing Benefit Reform, 12 March 2013

an ineffective catchall administrative response to welfare benefit allowance which does not sufficiently assist households in hardship. For example, disabled people's housing costs to fund specially adapted rented homes for their conditions are not protected by a specific safety net; where regulations have an unintended discriminatory effect, only the use of DHP may assist them.⁶⁹⁸ DHP do not securely protect vulnerable groups who have to rely on it due to cuts in their HB entitlement⁶⁹⁹. DHP do not provide a sufficient solution for cuts to entitlement which are used as a blunt tool, diminishing the extent of State responsibility. Reliance on DHP can only provide limited support to a small proportion of affected individuals, which has proved insufficient protection⁷⁰⁰. Cuts to entitlement restricting the amount that claimants can claim are an ideologically motivated policy choice.

This section has demonstrated that State responsibility for renters has been undermined by the constant cuts to entitlements in policy reforms which have aimed to cut Government expenditure. The result of such cuts has on occasion had a discriminatory effect⁷⁰¹ rather than truly individualising housing costs or incentivising work as is the intended outcome of such cuts to entitlement. The next section explores these themes of State responsibility, individualising costs and work incentives for owner-occupiers receiving SMI.

698 DWP, Discretionary Housing Payments Guidance Manual Including Local Authority Good Practice Guide, April 2013, p.26

699 Ibid.

700 Local Housing Allowance - Work and Pensions Committee Examination of Witnesses (Questions 1-44) 13 January 2010

<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmworpen/235/10011302.htm>
(accessed 7 June 2016) Caroline Davey comment

701 For example, the alleged discrimination based on the social sector under-occupancy penalty and judicial reviews on the discrimination of DHP awards

7.4 SMI: State versus Individual Responsibility

7.4.1 The significance of SMI

This thesis argues that the State accepts a certain amount of financial responsibility to assist with mortgage costs because of the State's consistent promotion of homeownership. This recognition of the State responsibility for homeowners is demonstrated in the development of SMI. SMI provides temporary assistance for owner-occupiers receiving particular out-of-work means-tested welfare benefits to pay mortgage interest payments or loans for home repairs and improvements, to maintain it in a habitable condition⁷⁰². HB can be longer term compared to SMI, as SMI has in-built time limits dependant on the claimant⁷⁰³. The purpose in providing SMI is to help people maintain their existing, reasonable mortgage commitments so that they can remain in their homes. SMI does not cover the entirety of mortgage repayments. No help is provided towards mortgage capital repayments, arrears, endowment or insurance premiums. The purchase of a home involves the acquisition of a valuable capital asset and it is intended that a fair balance is struck between the needs of homeowners and the cost to taxpayers⁷⁰⁴.

702 Neville Harris Social Security Law in Context (Oxford University Press, Oxford, 2000), p. 426

The detailed rules of the SMI schemes present in Income Support (General) Regulations 1987. There are other IS type benefits available to the recipients of SMI, can notionally go towards indirectly funding ongoing housing costs; Schedule 3; Jobseeker's Allowance Regulations 1996, Sched. 2; Employment and Support Allowance Regulations 2008, Sched. 6; State Pension Credit Regulations 2002, Sched. 2

703 SMI time limits apply to JSA claimants, but there are no time limits to IS, income-related Employment and Support Allowance, Pension Credit claimants. The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (S.I.2008 No.3195) and The Social Security (Housing Costs Special Arrangements) (Amendment) Regulations 2009 (S.I.2009 No.3257): Report by the Social Security Advisory Committee under Sections 173(4) and 174(2) of the Social Security Administration Act 1992 and the statement by the Secretary of State for Work and Pensions in accordance with Sections 173(4) and 174(2) of that Act, December 2009

704 DWP, Support for Mortgage Interest – call for evidence December 2011, p. 26

SMI as an expression of State responsibility is ad hoc, back-end provision which acts after the event, in the sense that it provides assistance to eligible households where an emergency has occurred affecting the household's ability to pay for their housing costs. Arrears and possession levels have been contained by a combination of State measures including a reduction in interest rates, relaxation of the period of delay before out of work home buyers become eligible for SMI and forbearance by mortgagees (including switching mortgagors in difficulties to interest only mortgages)⁷⁰⁵. As will be described in further detail below, SMI allows mortgagees to provide forbearance measures when a mortgagor is in financial trouble to assist them short-term.

SMI is less naturally a part of the social security system. SMI provides support for an investment element; by funding the acquisition of a home and asset albeit not funding the capital cost but assistance with the interest on mortgage repayments. As will be further explained in this chapter, SMI works in parallel to other government initiatives assisting households with sustaining their homeownership. SMI funds specifically an ongoing housing cost; mortgage interest.

As discussed above, HB used in the PRS can also notionally fund the landlord's capital investment. HB indirectly finances the landlords' ownership of a buy-to-let property, since the LHA used in the PRS for rent can go towards the landlord's mortgage payments. As will be explained in this chapter, there are other IS type benefits available to the recipients of SMI, which again could notionally go towards indirectly fund ongoing housing costs. SMI enables the capital asset to be retained, without gaining any equity in that property. It is justified by the fact that payment of interest is further removed from paying for capital, and so not comparable to the State paying for the individual homeowner's mortgage⁷⁰⁶.

705 Wilcox, S. 'Rebalancing the housing and mortgage markets – critical issues' IMLA (Intermediary Mortgage Lenders Association), 2013 p. 5

706 Murphy, C, Kennedy, S, Keen, R Support for Mortgage Interest (SMI) Scheme, House of Commons Library Briefing Paper 00618, 3 May 2016 p.9

SMI is part of the responsibility that the State assumes. The macroeconomic aim of SMI is to ensure that there are fewer mortgage repossessions. State assistance in the form of SMI is available to households during genuine times of crisis to enable households to obtain sustainable homeownership. The result of SMI is the prevention of households seeking costly help later for homelessness or HB if their homes are repossessed by their mortgagee.

7.4.2 Key eligibility criteria, the development of SMI and its expression of State responsibility

As early as 1943, a housing allowance has been available to owner-occupiers, who are in receipt of social assistance⁷⁰⁷. Accordingly, the State responsibility to provide a safety net for owner-occupiers was recognised relatively early, given that such households were not viewed as the poorest, although they were vulnerable to losing not only their housing but an investment asset. Owner-occupiers could claim welfare benefits to cover mortgage interest payments, other loans for housing expenses and repairs but not for the repayment of the capital borrowed to purchase the property.⁷⁰⁸

In terms of eligibility, the claimant needs to demonstrate that they are legally liable or treated as liable for mortgage interest payments⁷⁰⁹. The dwelling must be considered a home where the claimant lives⁷¹⁰. A temporary absence is permitted for only 13 weeks⁷¹¹. The claimant cannot have savings of more than £16,000, and savings over £6,000

707 Kemp, P, Chapter 6: Housing Benefit in Britain: a troubled history and uncertain future in Housing allowances in comparative perspective (The Policy Press, Bristol, 2007) p. 119

708 The housing allowance was initially part of the Supplementary Benefit Scheme and in 1988 was replaced by Income Support.

709 Income Support (General) Regulations 1987 Sch 3 Para 2

710 Income Support (General) Regulations 1987, Sch 3, para 4

711 52 weeks with exceptional circumstances e.g. hospital, convalescence, training, fear of violence, caring, on remand in prison, or full-time student

affect the amount of entitlement.⁷¹² Eligibility for SMI is automatically assessed when the claimant applies for income-related welfare benefits⁷¹³. SMI can contribute towards paying the interest capped at £200,000 of the loan or mortgage. Since 1993, a cap was put on the size of mortgage which would be taken into account, prior to this there was no cap.⁷¹⁴ There had been accusations that the State was paying for significantly large mortgages⁷¹⁵. Interest over £100,000 is not covered by SMI⁷¹⁶. SMI does not cover mortgage interest for instances where the claimant buys out an ex-partner's share in the property, which increases the initial loan capital⁷¹⁷. SMI cannot cover loans which were originally taken out with a different purpose⁷¹⁸. Interest on arrears of mortgage interest is not covered by SMI⁷¹⁹. An exception to

712 Income Support (General) Regulations 1987; when a mortgage is in the sole name of the claimant, or their partner, or ex-partner

713 Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Pension Credit

714 House of Commons Library, Steven Kennedy – Social Policy Section Means-tested benefits: help with mortgage costs 3 December 2008, p. 4; 2 August 1993: £150,000, 10 April 125,000 and new upper limit of £100,000 9 April 1995

715 Kemp, P and Pryce G, 'Evaluating the Mortgage Safety Net' (2002) Council of Mortgage Lenders (CML) Research p. 6

716 Income Support (General) Regulations 1987, Schedule 2, para 11(9); however, this does not include a loan to cover the adaptation of a home for a disabled person; If a claimant receives SMI and moves onto Pension Credit within 12 weeks of stopping other benefits, the claimant can still get help with interest on up to £200,000.

717 Or when a claimant has reduced non-dependant deductions Income Support (General) Regulations 1987, Sch 3, para 11 (1)

718 Appeal from the Appeal tribunal upon a question of law – Commissioner AJ Gamble - [2008] UKUT 25 (AAC); An Upper Tribunal case held that where the initial purpose of the loan was to buy a second property in Estonia, the purpose of the loan could not be altered through divorce proceedings; Deferred capitalised mortgage interest is also, not covered by the SMI scheme Tribunal Case – Social Security Commissioner Judge E. Jacobs (CPC 3322 2007) 17 January 2007

719 Income Support (General) Regulations 1987 Sch 3, para 4

the standard rules being extra housing costs when a mortgage is extended, accruing extra interest in order to buy a house/ modify a house for the needs of a disabled person⁷²⁰.

SMI is paid direct to the claimant's mortgagee to pay towards interest payments on their mortgage or loans which are taken out for repairs and improvements for the home.⁷²¹ Prior to the Social Security Administration Act 1992, SMI was paid direct to claimants. The aims of these reforms were to reduce the number of repossession orders due to arrears where claimants had not used their SMI payment to pay for their mortgage interest. However, with respect to UC, there have been subsequent calls for "equal treatment of tenures" and that owner-occupiers claiming for the housing costs element under UC should be treated the same as tenants claiming for the rental costs who are paid directly. However, this aspect of UC has yet to be reformed.⁷²²

Claimants cannot claim SMI if they take out a mortgage when already claiming other benefits. Additionally, if the claimant already has the mortgage but it increases after the claimant started claiming SMI, the amount will be based on the mortgage originally borrowed⁷²³. The restrictive eligibility criteria and specific exemptions establish that the State responsibility is focussed on the most vulnerable, and to prevent work disincentives and fraud. The limited entitlement of SMI exhibits the priority made between the interests

720 Income Support (General) Regulations 1987 Sch 2, para 11(9)

721 Social Security Administration Act 1992 S. 15A (2) Mortgage Interest Direct Scheme; the SMI element was deduced from benefit payments and transferred on a monthly basis directly to the claimant's lender; <https://www.gov.uk/support-for-mortgage-interest/overview> (accessed 8 November 2011) Steven Kennedy, Support for Mortgage Interest Scheme (28 May 2013) Social Policy Section House of Commons Standard notes; the benefit was paid to the claimant in the majority of cases, except where the recipient was reluctant or unable to pay the mortgage interest themselves Direct Gov – Support for Mortgage Interest

<[http://www.direct.gov.uk/en/MoneyTaxAndBenefits/BenefitsTaxCr](http://www.direct.gov.uk/en/MoneyTaxAndBenefits/BenefitsTaxCreditsAndOtherSupport/On_a_low_income/DG_180321)

[editsAndOtherSupport/On_a_low_income/DG_180321](http://www.direct.gov.uk/en/MoneyTaxAndBenefits/BenefitsTaxCreditsAndOtherSupport/On_a_low_income/DG_180321)> accessed 08 November 2011

722 Murphy, C, Kennedy, S, Keen, R Support for Mortgage Interest (SMI) Scheme, House of Commons Library Briefing Paper 00618, 3 May 2016, p. 16 quoting Chartered Institute of Housing

723 Income Support (General) Regulations 1987 Sch 3, para. 10 (1) (c)

of the homeowners who will have difficulties paying their mortgage, and tax-payers whose money is invested into keeping homeowners in their home and their investment.

The standard interest rate used to calculate SMI is currently 3.12%.⁷²⁴ Initially SMI was based on the claimant's actual rate of interest, thus covering the claimant's entire interest in full. However, this proved costly and led to high levels of overpayment because claimants routinely failed to report decreases in interest rates leading to increased likelihood of errors, overpayments and increased costs, which would ultimately have to be borne by the taxpayer. The reform hoped to prevent fraud occurring reduce administrative complexity⁷²⁵. Nevertheless, certain factors have always been taken into account, for example, whether the home was unnecessarily large or in an expensive area ⁷²⁶, to ensure prudent management of tax-payer funds and that eligibility for SMI is not excessive. A standard interest rate was decided in 1995 to calculate SMI payments for all claimants⁷²⁷. Interest rates are currently very low, but in real terms, there may still be a surplus to pay in mortgage instalments. Claimants may find it more difficult to pay the capital owed because they have a higher rate of interest to pay even after SMI is paid, so incur a greater risk of mortgage arrears

Total claim time limits have applied to particular claimants since 2009. JSA claimants only claim SMI for up to two years,⁷²⁸ which aims to incentivise JSA claimants to return to work.

724 Gov, <https://www.gov.uk/support-for-mortgage-interest/what-youll-get> (accessed 7 September 2012) This rate is higher than most mortgage rates. In 2004, the standard interest rate was calculated by reference to the Bank of England base rate plus an additional 1.58%. It is only adjusted when the average mortgage rate differs more or less than 0.5% Unless the rate is less than 5%, in which case the actual rate is used.

725 DWP, Support for Mortgage Interest – call for evidence November 2011, p. 4

726 Income Support (General) Regulations 1987, Schedule 3 e.g. provision of a bathroom, ventilation and heating

727 The rate of interest paid was fixed at 6.08 %.

728 Unless the claimant started claiming before 5 January 2009 to which case there is no limit; The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 and The Social Security (Housing Costs Special Arrangements) (Amendment) Regulations 2009;

“This time limit on payment of SMI to JSA customers is underpinned by the principle of providing short-term help through the benefits system. It is not considered appropriate that this help is provided indefinitely and it is important to be clear to customers on this from the start.”⁷²⁹ This time limit follows the purpose of the scheme which is intended as a ‘safety net’ of short-term assistance. However, there are no equivalent time limits for SMI for claimants of IS, income-related ESA, and Pension Credit or HB.

Calls have been made to look at extending this time limit for entitlement to SMI to all claimants of both income-based and contribution-based JSA and its equivalent under the UC, especially as the State will be given a legal charge over the property where the claimant household receives SMI⁷³⁰. The explanation for this switch of SMI from being a benefit to a loan being that the State ensures that it can continue to mitigate the risk of repossession whilst providing better value for the tax payer, where the SMI scheme has become unsustainable.⁷³¹ A removal of time limits in SMI could mean SMI is transformed from a crisis payment to a longer-term form of assistance. SMI stands as a significant tension between the Government’s housing policy and social security policy⁷³² and tackling wider economic problems. A potential unemployment trap remains a central problem for SMI recipients despite reforms to remove work disincentives.

Report by the Social Security Advisory Committee under Sections 173(4) and 174(2) of the Social Security Administration Act 1992 and the statement by the Secretary of State for Work and Pensions in accordance with Sections 173(4) and 174(2) of that Act, December 2009

729 Rahilly, S ‘Amending the provisions for help with mortgage costs: reference to the Social Security Advisory Committee’ (2010) JSSL 68, p. 70 quoting the Statement by the Secretary of State, 2009, para. 14.

730 The Guardian, Jill Insley, Coalition considers charge on support for mortgage interest scheme <<http://www.guardian.co.uk/money/2011/dec/06/coalition-charge-support-mortgage-interest-scheme>> (accessed 09 December 2011), HM Government, Summer Budget 2015: Policy Costings, July 2015 P. 56 SMI to be converted into an interest Bearing Loan in April 2018; Welfare and Reform Act 2016, s. 18 Loans for Mortgage Interest

731 Welfare Reform and Work Bill, DWP Delegated Powers Memorandum & Explanatory notes 51 – EN, para 40

732 Ibid.

Currently, claimants have a waiting period of 39 weeks after the claimant commences receiving IS, ESA or JSA before SMI is released⁷³³. However, there is no waiting period for those already receiving pension credits.⁷³⁴ The rationale behind this difference is that the waiting period is an attempt to incentivise work, whilst this is not applicable to retired claimants on pension credit. Waiting times made it less attractive to claim SMI, and incentivise potential claimants to find work rather than rely on the State. Waiting times enhance the individual responsibility inherent in the SMI scheme, by incentivising the claimant to find alternative means to pay their mortgage interest instalments in the short-term. The effect of the waiting time incentivising finding work in the alternative could be an unintended impact or indeed the policy objective of including a waiting time for SMI compared to HB. Since 1987, for claimants aged 60 and under, SMI only covers half the mortgage interest for the first sixteen weeks, increasing to 100% thereafter.⁷³⁵

On the other hand, waiting times can also create work disincentives. A claimant would have to reapply and go through another waiting period for SMI, if adverse circumstances meant that the claimant found a job but subsequently lost it. Consequently, there is no incentive to take low-paid work, since SMI is unavailable for those who work for more than sixteen hours, no matter how low the income. This highlights that the State's financial responsibility can run on for longer due to an inherent work disincentive in the scheme. Waiting periods can be counterproductive and result in more cases of repossession as lenders are disinclined to allow their customers to continue to accrue mortgage arrears over the waiting time

733 Previously 13 weeks The Social Security (Claims and Payment) Regulations 1987, The Income Support (Housing) Regulations 1995; from April 2016 the waiting period increased to 13 weeks which was its length before the introduction of temporary measures in January 2009

734 Pension Service technical guide PC10S, Pension Credit - A detailed guide for advisers and others, May 2008

735 DWP, Support for Mortgage Interest – call for evidence November 2011, p. 4; House of Commons Library, Richard Cracknell, Pat Strickland & Wendy Wilson, Research Paper 95/73 Income Support and help with mortgages, 9 June 1995

period. Lenders already have to carefully balance allowing a person to remain in their home while not allowing their financial position to worsen.⁷³⁶

Unfortunately, a further work disincentive is found in the proposed housing costs element of UC for owner-occupiers, where a “zero earnings rule” follows where the owner-occupier is provided no assistance for housing costs if doing any paid work⁷³⁷. The Work and Pensions Select Committee has nevertheless recommended reviewing this rule since it could “discourage claimants from entering part-time employment, especially the newly separated and those recovering after a long-illness”.⁷³⁸

However, there is also further State financial support through the transitional benefit ‘Mortgage Interest Run On’ (MIRO)⁷³⁹, to counter the work disincentive effect. MIRO can be claimed for four weeks after the claimant starts a job, if IS, income-based JSA or income-related ESA is going to stop because the claimant is returning to work, or is increasing their working hours or earning money.⁷⁴⁰

MIRO demonstrates that the State has actively provided some form of assistance to homeowners liable to arrears due to a change in personal circumstance but who are working. This demonstrates the State’s commitment to preventing work disincentives embedded within the welfare system, and this includes providing transitional assistance. The State’s financial responsibility thus transcends subsistence benefit, and aims to assist

736 Welfare Reform and Work Bill Committee, Written evidence submitted by the CML (WRW 56), Session 2015-16, Para. 11

<http://www.publications.parliament.uk/pa/cm201516/cmpublic/welfarereform/memo/wrw56.htm> (accessed 7 August 2016)

737 Regulations 25 -26 and Schedule 5 of the Universal Credit Regulations 2013

738 Work and Pensions Select Committee, Third Report of 2012-13, HC 576, November 2012

739 <https://www.gov.uk/support-for-mortgage-interest/further-information>;
<https://www.gov.uk/mortgage-interest-run-on>

740 Income Support (General) Regulations 1987, Sch. 3, para. 7; DirectGov – ‘Mortgage Interest Run On’

http://www.direct.gov.uk/en/MoneyTaxAndBenefits/BenefitsTaxCreditsAndOtherSupport/On_a_low_income/DG_10018935 accessed 08 November 2011

homeowners until they are in an improved financial state to be able to pay their own housing costs and keep accommodated in their home.

State assistance can also sometimes transcend accepted eligibility criteria in the case of assistance for the housing costs where the claimant was not originally liable for housing costs. In *Ewens v Secretary of State for Social Security*,⁷⁴¹ a claimant was able to rely on the Income Support General Regulations 1987 to claim IS for interest costs arising from loans which were secured on the property she was occupying as her home in the case of a former partner's failing to meet the relevant costs.⁷⁴²

Prior to April 2011, another State 'safety net' scheme for owner-occupiers called 'Homeowners Mortgage Support'⁷⁴³, in cooperation with the lender, allowed deferring a proportion of their interest, payments for two years.⁷⁴⁴ The premise of the scheme was to assist households having trouble keeping up with their repayments because their household income had fallen temporarily. The State thus demonstrated further responsibility for safety net assistance. However, lack of funding has meant that this assistance is no longer available. The State can be agile enough to provide assistance where the nature of the housing and employment market has adversely affected owner-occupiers, and they are prone to arrears and facing repossession. However, in reality the Homeowners Mortgage Support was of limited effect since it had a short run, assisted a minimal amount of people

741 [2001] EWCA Civ 270

742 Income Support (General Regulations) 1987 Sch 3, para 7 (7)

743 Shelter, Homeowners Mortgage Support,

<http://england.shelter.org.uk/get_advice/debt_and_arrears/mortgage_arrears/homeowners_mortgage_support> (accessed 27 November 2011)

http://webarchive.nationalarchives.gov.uk/+/www.direct.gov.uk/en/HomeAndCommunity/BuyingAndSellingYourHome/Mortgagesandrepossession/DG_177639 National Archives Snapshot of Direct.gov information relating to 'Homeowners Mortgage Support' (accessed 25 March 2013)

744 Bright, S 'Dispossession for Arrears: the Weight of Home in English Law' in O'Mahoney, L and Sweeney, J 'The Idea of Home in Law: Displacement and Dispossession' (Ashgate, Farnham 2011)

and the lender's use of forbearance is ultimately dependent on the lender and is not applicable to all households.⁷⁴⁵

Before starting repossession proceedings, lenders must consider whether the mortgagor has applied for SMI and their likely chance of success. For example, "the mortgagee must consider a reasonable request from the mortgagor to change the date of regular payment (within the same payment period) or the method by which payment is made."⁷⁴⁶ Accordingly, time for negotiation is encouraged to keep a relationship between mortgagee and mortgagor. A mortgagee cannot start a possession claim for mortgage arrears, where the mortgagor has submitted a claim to the DWP for SMI or an insurer under a Mortgage Payment Protection Insurance (MPPI) policy. MPPI, as discussed in further detail below, is private insurance to protect against repossession when certain personal risk factors appear leading to arrears.

Surveys have shown that owner-occupiers did not see SMI as the most appropriate safety net to rely upon, preferring instead savings or alternative employment.⁷⁴⁷ It perhaps demonstrates that there is less reliance upon housing welfare benefits from homeowners due to preparing for risk factors appearing and ensuring employment security to pay housing for costs. It has also been argued that "SMI provides some relief for borrowers but is poorly targeted, lacks precise payments and its effectiveness is less certain going

745 Emma Simon, How previous Government housing schemes have failed to help buyers and home owners, *The Guardian*, 21 November 2011

<http://www.telegraph.co.uk/finance/personalfinance/borrowing/mortgages/8904602/How-previous-Government-housing-schemes-have-failed-to-help-buyers-and-home-owners.html> (accessed 7 May 2015)

746 Pre-action Protocol for Possession Claims based on Mortgage Arrears in Respect of Residential Properties, 2009 para. 5.4

747 Quiglars, D and Jones, A 'United Kingdom: Safe as Houses?' in Elsinga, M et al. (eds.) in 'Home Ownership beyond asset and security: perceptions of housing related security and insecurity in eight European countries' *Housing and Urban Policy Studies*, Delft University Press, Amsterdam 2007

forwards.”⁷⁴⁸ Accordingly, it is beneficial to provide safer lending regimes and in-work benefits to support mortgagors experiencing arrears due to reduced income from labour market disruption.⁷⁴⁹

This analysis of SMI demonstrates a limited State responsibility for owner-occupiers housing costs due to the continual cuts at entitlement. As mentioned earlier, the future policy transforming SMI into a State backed interest bearing loan again cuts at entitlement and the amount of State responsibility for the ongoing housing costs of owner-occupiers in arrears. Moreover, a transformation of SMI to be treated as a loan distinct from the rest of universal credit benefit entitlement for housing element, could mean that it is cannot legitimately be treated as a welfare benefit. The next section analyses the legislation and soft law measures to prevent households losing their owner-occupied homes, as part of the overall context of State assistance for ongoing housing costs.

7.5 The use of legislative and soft law mechanisms to assist homeowners in arrears

As explained in chapter 5, the State’s attempts to assist with the acquisition costs for owner-occupiers have on occasion risked causing unsustainable homeownership. This thesis outlines that there is a legitimate argument for further State responsibility to assist homeowners to retain their homes and investment in their property if facing repossession. Pragmatically assisting households to remain in owner-occupation prevents them from seeking help from their local authority via the homelessness provision. State involvement in mortgage regulation has led to increased mortgage terms, which reduced monthly repayments. Construction for ownership has become more profitable compared to building to let out for revenue, with an ever-increasing demand for owner-occupation accommodation. The State has already invested using tax-payers money into the subsidised

748 Wallace, A ‘Feels like I’m doing it on my own: Examining the Synchronicity between policy responses and the circumstances and experiences of mortgage borrowers in arrears’ (2012) 11 Social Policy and Society, 117, p. 124

749 Ibid.

LCHO home, thus has a further responsibility to assist if the household is likely to risk losing this investment. State measures are designed to assist homeowners with financial crisis by assisting homeowners with their mortgage repayments. However, the subsequent assistance from the State affects the individualisation of responsibility intended from the State assisting households to ownership.

Nevertheless, quantitative research has shown that tenants are more likely to see social security benefits as a potential safety net for failing to afford rising housing costs, whilst homeowners were more likely to feel that their home was their own individual responsibility, and identified finding job or funds from their family as their safety net.⁷⁵⁰

State responsibility for housing costs for owner-occupiers also manifests through regulatory procedural mechanisms in addition to financial support via SMI. It would be erroneous to simply consider SMI in isolation from the other mechanisms which form the basis of the State responsibility to assist owner-occupiers in arrears. This section analyses the success of legislative and soft law (non-financial) mechanisms as an expression of this State responsibility for housing costs to support owner-occupation.⁷⁵¹ The aim in exploring these provisions is to dissect the extent of responsibility assumed by the State to prevent repossession, which supplements the limited scope of SMI to give a more accurate overall picture of how the State assists homeowners in difficulty.

Most renters have relatively less protection compared to owner-occupiers⁷⁵². Typical renters benefit solely from a pre-action protocol for rent arrears. The Housing Act 1988, Schedule 2

750 Quiglar, D and Jones, a 'United Kingdom: Safe as Houses? In Elsinga, M et al (eds.) in 'Home Ownership beyond asset and security: perceptions of housing related security and insecurity in eight European countries' (Delft University Press, 2007) p. 284

751 Please refer to Appendix 3: Level of State intervention for State mechanisms which prevent repossession p. 203 which details the point at which the State measure intervenes into the mortgagor-mortgagee relationship, and the level of intervention articulated diagrammatically

752 Secure tenants have better security of tenure. Ground 8, Schedule 2, Housing Act 1988 which provides for proceedings for possession with 8 weeks of arrears does not apply to secure tenancies. But fixed term AST tenants can be served a section 8 notice to quit possession notice with 2 months' rent arrears. (Section 8, Grounds listed under Schedule 2, Housing Act 1988)

Ground 8 Mandatory Repossession for 2 months' rent arrears for PRS tenants are in complete contrast to the various mechanisms to assist homeowners in financial difficulty. With respect to pre-action arrears in the Social rental sector, as part of the UC agenda local authorities have developed ways to assist HB households holistically when facing eviction. For example, the pre-emptive programme, Gateway, piloted by Croydon Council helps welfare benefit recipients manage debt better.⁷⁵³ This use of pre-emptive action demonstrates how local government is trying to work more efficiently to assist welfare benefit recipients through the new benefit landscape. State mechanisms to prevent renters risking possession are far less numerous, however, HB is the major financial assistance to renters for housing costs. HB expenditure is also greater because households on low-incomes are concentrated in the rental sector, whereas, owner-occupiers are relatively wealthier⁷⁵⁴. Moreover HB can be provided on a longer-term basis, whilst SMI is most commonly a short-term last resort solution.

In terms of mortgage possession defences, it is clear that the legal understanding of a mortgage is different to the popular cultural expectations of a mortgage. In *National Westminster Bank plc v Skelton*⁷⁵⁵, it was held that

“the bank’s claim is one simply for possession, not payment. The general rule established by long-standing authority is that except in so far as his rights are limited by contract or statute, a mortgagee by way of legal charge is entitled to seek possession of the mortgage property at any time after the mortgage is executed”.

A lender has a right to immediate possession of the property regardless of whether there was any default on the part of the borrower, and so the right to possession arises before the ink is dry⁷⁵⁶. This section will assess the State regulatory mechanisms used to prevent

753 Lizzie Presser, *Compromised and under pressure: Social housing in the wake of universal credit* (The Guardian, 1 March)

754 DWP & National Statistics, *English Housing Survey Households Headline Report, 2014-15*, p.13 & p. 19

755 [1993] 1 WLR 72

756 *Four Maids Ltd v Dudley Marshall (Properties) Ltd* [1957] Ch 317, p. 320 Harman J

individuals facing repossession when in arrears. This chapter assesses how the regulatory and financial measures of State assistance work to prevent repossession.

State mechanisms used to prevent repossession include powers invested in regulatory bodies to provide regulatory guidelines on lending practices⁷⁵⁷. Other aspects are legislative provisions which confer certain discretion upon the courts encountering repossession claims. State mechanisms have also included financial measures provided for eligible households, but this has now become limited to SMI. State financial schemes have closed as financial budgets have depleted in this area⁷⁵⁸. The State has concentrated on early intervention through regulation of mortgage lending practices, rather than last resort financial bail-outs of indebted households. This manifestation of State responsibility is highly controversial, as it involves the State intervening in a private contract to direct lenders to behave in an assigned way, thus directly intervening in the market forces.

As a package of measures, the mechanisms discussed in this section further demonstrate the State's commitment to homeownership as the preferred tenure. The mechanisms represent a hotchpotch of hard and soft law regulatory provisions which have the effect of assisting homeowners in arrears. Market intervention, welfare benefit and non-financial procedural mechanisms form this landscape of State assistance to prevent repossession. Mechanisms become significant at different stages heading towards default⁷⁵⁹, which is noteworthy, as it is understood that SMI is only intended to be a final resort because these

757 Such as those created by the previous Financial Services Authority (FSA) Due to the Financial Services Act 2012 responsibilities of the FSA have transferred to the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA). (now FCA), which are the bodies now responsible for the regulation of the financial services. Although the board was appointed by the Treasury, it is actually independent from the government

758 For example, the now defunct 'government mortgage rescue scheme' which provided financial support in the form of a shared equity loan or mortgage to rent device for homeowners in arrears and facing repossession.

759 Please refer to Appendix 3: Level of State intervention for State mechanisms which prevent repossession to find a diagrammatic representation of when these mechanisms come into play, p.

other options should be available to assist households to prevent repossession when in arrears. The State measures to prevent repossession discussed in the following sections are analysed in the context of how legislation controls the court process dealing with homeowners in arrears and facing repossession.

The next sub-sections explain the non-financial regulatory mechanisms used by the State to assist homeowners in arrears, facing repossession. Some of these measures are a result of the 2008 recession and credit crunch resulting in high levels of repossession.

7.5.1 Mortgage Market Review (MMR)⁷⁶⁰ and Mortgage Conduct of Business Rules (MCOB 13)⁷⁶¹

The 2013 Mortgage Market Review (MMR) led to new rules regulating new mortgages, remortgaging and charging loans. MMR is an example of the State's evolving responsibility for mortgaged households. The MMR promotes responsible lending and forensic questions to be asked to mortgage applicants before mortgage approval.⁷⁶² Improvements have been made to the screening process to ensure that a mortgage is affordable for the applicant, and it suits their needs and circumstances. The MMR rules cover mortgages where the home is used as security for the loan, but not buy-to-let or second mortgages.⁷⁶³ The MMR rules demonstrate how the State uses soft law measures to imbue responsibility upon individuals and lenders in the market. The MMR rules protect the interests of mortgagors and

760 FCA, <http://www.fca.org.uk/consumers/financial-services-products/mortgages/mortgage-market-review> (accessed 7 September 2013); House of Commons Library Timothy Edmunds, Mortgage Market Review, 7 August 2012 SN/BT/5808

761 Financial Conduct Authority, Mortgage and Home Finance: Conduct of Business Sourcebook (MCOB), Arrears and Repossessions: regulated mortgage contracts and home purchase plans (MCOB 13) <http://fsahandbook.info/FSA/html/handbook/MCOB>

762 There is a proposed EU Directive on Residential Property Credit Agreements; the Mortgage Credit Directive which will aim to implement similar frameworks into national legislation.

763 FCA, <http://www.fca.org.uk/consumers/financial-services-products/mortgages/mortgage-market-review> (accessed 7 September 2013); House of Commons Library Timothy Edmunds, Mortgage Market Review, 7 August 2012 SN/BT/5808

mortgagees in responsible lending practices, good governance of the mortgage market, and preventing poor practice by finance providers.⁷⁶⁴

The core aspects discussed in the Financial Conduct Authority (FCA) policy paper are that (1) mortgages and loans can only be provided where there is a reasonable expectation that the customer can repay without relying on uncertain further house price rises thus the lender should assess reasonable affordability (2) Affordability assessments should take into account interest rate rises (3) Interest only mortgage should be assessed on a repayment basis.⁷⁶⁵

Statistics have shown that the new lending rules have led to fewer mortgages approved amongst the other key effects that the MMR has had on the mortgage market.^{766,767} The MMR lending rules demonstrate the extent of the State's intervention into the everyday practices and behaviour of mortgage lenders. State responsibility is striking earlier into the process of house buying, as a result of problems with irresponsible lending. The MMR rules shift responsibility to lenders to ensure more responsible lending and mean borrowers think carefully before committing themselves to a mortgage of an owner-occupied home. However, the MMR rules could also work against the State's promotion of homeownership since the corollary is fewer households being approved for mortgages to be able to achieve homeownership, albeit that it does promote more sustainable homeownership.

764 FCA, <http://www.fca.org.uk/firms/firm-types/mortgage-brokers-and-home-finance-lenders/mortgage-market-review> (accessed 7 September 2013)

765 Consultation FSA - CP11/31 - Mortgage Market Review: Proposed package of reform; FCA, <http://www.fca.org.uk/your-fca/documents/consultation-papers/fsa-cp11-31> (accessed 7 September 2013)

766 FCA, Thematic Review: Embedding the Mortgage Market Review: Responsible Lending Review TR16/4, May 2016 <https://www.fca.org.uk/publication/thematic-reviews/tr16-04.pdf>

767 Mortgage approvals fall to lowest level since June 2013, The Guardian, Katie Allen, Monday 30 June 2014 <http://www.theguardian.com/business/2014/jun/30/mortgage-approvals-fall-in-may-housing-market> (accessed 7 May 2016)

MCOB 13 is the FCA's main regulatory instrument to ensure borrowers⁷⁶⁸ are treated fairly by regulated lenders with regards to the repossession process,⁷⁶⁹ and provides further details about forbearance measures⁷⁷⁰. The extent of intervention in the negotiation of terms and initial transaction is limited, as this is already regulated by principles of contract law, for example in the Consumer Rights Act 2015⁷⁷¹. MCOB holds a regulatory role in lender-borrower relationship in the repossession process, and declares repossession to be a last resort⁷⁷² and implies action must be taken by the lender to avoid repossession.

MCOB 13 details the fair process involved when repossession is sought⁷⁷³, alongside 'Treat Customers Fairly' (TCF)⁷⁷⁴ Principles. Accordingly, MCOB 13 helps vulnerable homeowners in arrears avoid surplus debt after sale, when the proceeds of sale are less than the amount due.⁷⁷⁵ The TCF acts as the overarching principles for lenders' behaviour and sets the

768 MCOB 1.2.2.G: MCOB applies to activities carried out in respect of four types of product: regulated mortgage contracts (which include lifetime mortgages), home purchase plans, home reversion plans and regulated sale and rent back agreements.

769 The MCOB also contains provisions about the approach to granting mortgage finance and ensuring potential borrowers understand the consequences of a mortgage loan and will be able repay it.

770 MCOB 13.3.2AR (6)

771 Fairness of contract terms in financial services contracts discussed in Irina Nechifor, Consumer Rights Act 2015 – the impact on financial services firms, LexisNexis Blog 1 October 2015

<http://blogs.lexisnexis.co.uk/fs/consumer-rights-act-2015-the-impact-on-financial-services-firms/>

772 MCOB 13.3.2A(2); MCOB 13.3.4A (2)

773 MCOB 13.6.1

774 FCA, Treating Customers Fairly, <http://www.fca.org.uk/firms/being-regulated/meeting-your-obligations/fair-treatment-of-customers> (accessed 8 June 2014), FSA, Treating customers fairly – guide to management information July 2007

775 MCOB 13.6.5; a firm is not required to recover a sale shortfall. A firm may not wish to recover the sale shortfall in some situations, for example, where the sums involved make action for recovery unviable.

intended outcomes. The FCA⁷⁷⁶ defines forbearance as “when a bank grants a concession for reasons relating to the actual or apparent financial stress of a customer” and can benefit both the customer and the lender. The customer receives additional time to recover their financial position, the benefit to the lender being greater likelihood of full repayment over time. Early communication between the borrower and lender is important to prevent borrowers from struggling with repayments. Forbearance measures include payment holidays, temporary reduction in monthly repayments, partial debt write off, deferral of interest, temporarily switching borrowers to interest-only mortgages and extending mortgage terms for struggling borrowers to increase their chances of remaining in their homes.⁷⁷⁷

Nevertheless, the lender’s right to possession remains absolute, as demonstrated in *Thakker v Northern Rock Plc*⁷⁷⁸ which is a case of counter claim and defence to possession proceedings followed by an equitable set-off, because the bank had been in breach of MCOB rules, so that damages could be applied to reduce or extinguish the arrears. In the absence of contractual provisions postponing the right to possession in the event of a failure to comply with the relevant regulatory provisions, there remained no basis for saying that the right to possession had not arisen. There remains an inbuilt disproportionate prioritisation for the financial interests of the lender affecting that of the interests of borrowers. The lenders’ interests have priority as compared to the borrower-consumer as part of the competing interests’ paradigm in repossession for arrears⁷⁷⁹. Lenders may lose their licence if they do not comply with the regulatory frameworks; however, the balance is

776 Pursuant to the Financial Services Act 2012 responsibilities of the FSA have now transferred to the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA). References made to the FSA relate back to measures created by the FSA body, which is now overlooked by the regulatory body of PRA and FCA, which act as the quasi-judicial bodies responsible for the regulation of the financial services.

777 FSA, Finalised Guidance: Forbearance and Impairment Provisions – Mortgages October 2011, Annex 2: Forbearance facilities observed, p. 43

778 [2014] EWHC 2107

779 Bright, S ‘Dispossession for Arrears: The Weight of Home in English Law’ in Fox-O’Mahony, L and Sweeney, J (eds.) *The Idea of Home in Law: Displacement and Dispossession* p. 13

undoubtedly weighed against the consumer in the courts, with pro-lender actions in the majority of cases due to the financial interest undermining the owner-occupier's 'home' interest.

MCOB 13 also works in conjunction with the pre-action protocol (described in the next subsection) which drives lenders to act fairly towards borrowers. MCOB does not apply to buy-to-let mortgages which are considered to be commercial. However, some owner-occupier households have been known to take up buy-to-let mortgages due to the preferential rates and ability to curtail the affordability requirements but utilise this 'buy-to-let' property as their first home albeit against the rules of such mortgage contracts⁷⁸⁰. The pre-action protocol has greater scope as it applies to mortgages not regulated by the FCA so can reinforce forbearance rules on a wider range of mortgagees. These soft law measures demonstrate that the State's responsibility and regulated protection extends to owner-occupied home; and not commercial enterprises with respect to prevention from repossession.

The FCA has conversely warned that the overuse of forbearance can put vulnerable claimants in an even worse position, where marginal homeowners with significant arrears will still eventually lose their homes⁷⁸¹. This would mean that forbearance simply prolongs the inevitable. For example, conversions to interest-only repayments can still effectively mean that particularly vulnerable borrowers will not be able to repay at a future point⁷⁸².

780 Nicole Blackmore, Desperate first-time buyers warned over attempts to use buy-to-let mortgages, 23 August 2014, The Telegraph

<http://www.telegraph.co.uk/finance/personalfinance/borrowing/mortgages/11031884/Desperate-first-time-buyers-warned-over-attempts-to-use-buy-to-let-mortgages.html> (accessed 24 August 2014)

781 Paul Thomas, FSA: 'Forbearance could leave thousands worse off' 9 November 2012

<http://www.moneymarketing.co.uk/fsa-forbearance-could-leave-thousands-worse-off/1061253.article> (accessed 8 June 2014) quoting Katie Wilshire, FSA's Principal Risk Specialist

782 FCA, Financial Conduct Authority, Guidance consultation: Dealing fairly with interest-only mortgage customers who risk being unable to repay their loan (May 2013)

The State's own financial measures (SMI) significantly influence the extent of lenders' own forbearance policies. The State's use of financial measures are a strong incentive for mortgage lenders to use forbearance under circumstances they would normally seek repossession of a home. Accordingly, the State responsibility towards households in arrears is expressed through the regulation of the mortgage market and lender practices to prevent repossession. However, the lender's adherence to these regulatory forces is incentivised through SMI to make forbearance measures have a discernible effect on the ability of households being able to repay their mortgage.

A rough indication for the success of forbearance is possible through analysis of the amount of borrowers in default versus the number of repossession actions. The Council of Mortgage Lender statistics demonstrate a reduced level of repossessions from 12,700 in 2009 to around 8,500 in 2010 attributed to forbearance measures⁷⁸³. There were fewer repossessions in the recession of 2008 compared to the recession of 1991.⁷⁸⁴ At least some of this decrease in transfer from arrears to repossession can be attributed to the success of the State intervention through compelling lenders to use forbearance measures, and to some extent the behaviour of interest rates⁷⁸⁵ which increased in the early 1990s to reduce

783 Repossession and repossession prevention: number of outstanding mortgages, arrears and repossessions. United Kingdom from 2008; 2008 72,000 in 6-12 months' worth of arrears with 40,000 taken into possession. In 2012, this dropped to 69,900 in 6-12 months' worth of arrears with only 33,900 taken into possession.

784 Tejvan Pettinger, Mortgage default and repossession rates in UK, June 21, 2013 <http://www.economicshelp.org/blog/761/mortgages/mortgage-default-rates-in-uk/> (accessed 8 June 2014) 1991- 75,500 properties taken into possession, 2008 - 40,000 properties taken into possession.

785 The CML has attributed lower than forecast repossession rates by first charge mortgage lenders to low interest rates. The number of repossessions across the UK was set to come in at less than 30,000 in 2013, which is below the 35,000 it had forecast at the start of the year, and that it would be revising down its prediction of 37,000 in 2014; CML, Arrears and repossessions continue to fall, says CML 14 Nov 13 <http://www.cml.org.uk/cml/media/press/3731> (accessed 8 June 2014) The CML Director General, Paul Smee has said that, "Low interest rates, continuing employment, lender

inflation, but were kept low during the 2008 recession to encourage lending.⁷⁸⁶ Moreover, the housing market has changed since the early 1990s, with the private PRS increasing and the numbers of people who will become homeowners decreasing even though homeownership (subject to a mortgage) remains the most desired and currently most common tenure⁷⁸⁷. The transitional flow from arrears to repossessions has decreased over time⁷⁸⁸. The State's less interventionist approach through the creation of MCOB rules has worked to prevent mass household repossession.

7.5.2 Pre-action protocol⁷⁸⁹

The pre-action protocol is a regulatory framework which reiterates the tools of forbearance implemented in 2008.⁷⁹⁰ It is difficult to ascertain the extent of effect which this regulatory

forbearance and tactical public policy support have combined to ensure that repossession really is a last resort.

786 Ibid, and Monetary Policy Committee, Bank of England set interest rates

<http://www.bankofengland.co.uk/monetarypolicy/pages/overview.aspx> (accessed 8 July 2016)

787 The CML annual survey, Smith, J (March 2005) Attitudes to home-ownership and moving in 2004 in CML Housing Finance, London: CML as quoted in Edwards, L, Home Truths: the reality behind our housing aspirations, Shelter August 2005.

788 As at the end of 2013, 1.29% of all mortgages were in arrears to the value of at least 2.5% of the loan balance (that is, at least £2,500 arrears on a £100,000 loan). At 28,900, the number of repossessions represented 0.26% of outstanding mortgages. CML, 2013 repossession rate lowest since 2007, (13 Feb 14) <http://www.cml.org.uk/cml/media/press/3817> (accessed 17 February 2014) ;CML, Mortgage possession cases fall in second quarter, 08 August 2013

<http://www.cml.org.uk/cml/media/press/3605>, (accessed 17 February 2014) The Head of Policy at the CML Jackie Bennett

789 Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_mha (accessed 17 February 2014) It applies to: first charge residential mortgages and home purchase plans by the FSA under the Financial Services and Markets Act 2000; second charge mortgages over residential property and other secured loans regulated under the Consumer Credit Act 1974 on residential property; unregulated residential mortgages

framework has on the behaviour of lenders and the role of forbearance. Provisions are expansively drafted and given as merely advice or guidance.⁷⁹¹ Compliance with the pre-action protocol is expected from reputable mortgagees and the Financial Ombudsman Service deals with any complaints from mortgagors about non-compliance.⁷⁹²

Early communication is encouraged between lender and borrower of potential arrears. However, this does not compel lenders to view repossession as a last resort. Crucially the pre-action protocol does not substantially alter the relationship between parties, and their consequent rights or obligations⁷⁹³. The provisions highlight the types of measures which can be made before a repossession order may be sought.⁷⁹⁴ However, provisions do not confer greater protection within the repossession process but merely restates existing measures available.⁷⁹⁵ In reality these provisions demonstrate the State's lack of strong lender regulation with no enforcement mechanism.

Both MCOB 13 and the pre-action protocol show soft touch intervention by the State on the regulation of mortgages, possession claims and lender behaviour. The aims of the soft law provisions are positive for lender-borrower relations; however, their impact protecting mortgagors against repossession is likely to be minimal. In isolation these procedural

790 Civil Justice Council, Consultation Paper: Mortgage Arrears Protocol, February 2008

<http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/cjc/pre-action-protocols> (accessed 17 February 2014)

791 Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property 2.2.www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_mha (accessed 17 February 2014)

792 FSA Handbook - Mortgage Conduct of Business para. 8.1; 8.2; 13.3.2A
<<https://fsahandbook.info/FSA/html/handbook/MCOB/13/3>> (accessed 17 February 2014)

793 Whitehouse, L. (2009) 'The Mortgage Arrears Pre-action Protocol: An Opportunity Lost' *Modern Law Review* vol. 72(5), p. 793

794 Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property 6.1www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_mha (accessed 17 February 2014)

795 Ibid. 7.7.

measures are of minimal effectiveness, but combined with State financial measures such as SMI can provide sufficient confidence to lenders to enable them to use forbearance measures. Whitehouse has said that the role of the borrower is more aligned to a consumer as opposed to a 'property or homeowner' which should place some burden on further reforming the regulation of mortgages⁷⁹⁶. Consequently, there should be greater responsibility put upon the lender to ensure that the borrower can afford the mortgage. The lender can no longer be a 'self-interested' player. The use of regulatory instruments such as MCOB 13 and the pre-action protocol is in line with a neoclassical liberal stance on the type and extent of State intervention on the market, without unduly disrupting the lender-consumer relationship. The pre-action protocol and MCOB 13 could be described as soft law which provide regulatory framework and enforceability through a breach of a statutory duty where a lender does not follow the rules, but lack the direct enforceability of an Act of Parliament or regulation.

The preventative approach evidenced in pre-action protocol also mirrors recent legislation in the Homelessness Reduction Bill currently awaiting approval. The Homelessness Reduction Bill will use public money to provide innovative approaches to tackle homelessness to prevent households getting to the stage of homelessness and thus relying on the local authority's homelessness duty to be accommodated, and so requires local authorities to intervene earlier with those threatened with homelessness to provide support services to those in need⁷⁹⁷. This demonstrates that the State is leaning towards measures which aim to act earlier to prevent households requiring later more State costly support if they are to lose their owner-occupied home, social housing or PRS accommodation in the event of arrears.

796 Whitehouse, L. (2013) 'The Mortgagor: Property Owner or Consumer?' Workshop at Durham Law School 'Conceptualising "Consumers" of Financial Services: A New Approach?' 12 April 2013; Whitehouse L, 'The First Legal Mortgagor: A Consumer Without Adequate Protection?' [March 2015] Journal of Consumer Policy

⁷⁹⁷ Homelessness Reduction Act 2017 – Private Members' Bill, awaiting Royal Assent <http://services.parliament.uk/bills/2016-17/homelessnessreduction.html>; Wendy Wilson, Homelessness Reduction Bill 2016-17: Report on Committee Stage, House of Commons Briefing Paper No 07854 23 January 2017

7.5.3 Section 36, Administration of Justice Act 1970

The State measures evaluated in this chapter are all measures which effectively try to postpone the stage where s.36 proceedings are commenced which are the legal measures required to execute a repossession order.

Section 36 of the Administration of Justice Act 1970 (henceforth AJA) confers discretion upon the court with regards to executing a repossession order, and the considerations which are to be taken into account. Accordingly, s. 36 AJA 1970 does not limit the lender's inherent right to take possession⁷⁹⁸. Section 36 merely controls the exercise of this right by giving the court power to adjourn proceedings, or to stay/postpone execution of the order for possession.

Once the lender has brought proceedings, s. 36 can assist borrowers who are in arrears who can offer to pay the arrears off over a period of time, thus invite the court to suspend any order for possession on terms rather than suffer an immediate order for possession⁷⁹⁹. The court cannot give an indefinite period of suspension but can extend the stay upon the borrower making a further application. A court may grant the order for possession but not allow the lender to ask the bailiff to execute the order, therefore giving the borrower time to repay arrears owed. For mortgages regulated by the Consumer Credit Act 1974, which concern mortgages made between an individual and a business Creditor⁸⁰⁰, there is an additional discretion conferred upon the court to grant a time order to extend the time for enforcement of the lender's right to possession, thus amending or varying the mortgage terms where necessary.⁸⁰¹

798 A legal charge of land is entitled to take possession of the charged property. This right arises because a legal charge is entitled to the rights of a mortgagee by way of sub-demise who enjoys a right to immediate possession by reason of the leasehold term, Law of Property Act 1925, s. 87(1).

799 Cheltenham & Gloucester plc v Norgan (1996) 1 ALL ER 44 (CA); arrears to be paid over the full term of the mortgage

800 Consumer Credit Act 1974, s.8 Consumer Credit Agreements, Consumer-to-Business creditor relationship, rather than Business-to-Business creditor relationship

801 Consumer Credit Act 1974, s.136 Power to vary agreements and securities

For s. 36 to apply, it must appear to the court, based on evidence, that if it suspends the order on terms, the borrower is likely, within a reasonable period, to pay any sums due, or to remedy any other breach.⁸⁰² Typically the court's discretion is cautiously used.⁸⁰³ The borrower's ability to meet its financial commitments is paramount. The use of soft law measures and state welfare benefit, such as SMI, mitigate against the harshness of the legislative measures concerned solely with the borrower's financial standing. The State responsibility for households in mortgaged homes thus extends these soft law measures which affect lender behaviour. Specific forbearance provisions for lenders are detailed below detailing their true effect upon vulnerable households in arrears.

7.5.4 Mortgage Payment Protection Insurance (MPPI)

As noted before, an alternative measure to State assistance is found in the use of Private insurance to cover mortgage payments, with the premium related to the amount of monthly mortgage repayments. MPPI encourages owners-occupiers to take individual responsibility for the risk of arrears and default due to illness or redundancy; however, only 17% of eligible households have taken out MPPI⁸⁰⁴. Owner-occupiers continue to be able to meet the demands of their mortgage payments and retain their individual responsibility for

802 Administration of Justice Act 1970, s.36(2); *National & Provincial Building Society v Lloyd* [1996] 1 ALL ER 630 (CA); Court should have some "evidence" on which to exercise its discretion; If the court is satisfied that it is appropriate to suspend an order, it will typically make an order for possession in 28 days, suspended upon payment of (1) the arrears, by a specified sum per month and (2) the usual monthly instalments.

803 See for example cases: *Halifax Plc v Okin* [2007] EWCA Civ 567; *Cheval Bridging Finance Ltd v Bhasin* [2008] EWCA Civ 1613

804 Ford J 'MPPI take up and retention: the current evidence' (2000) *Housing Finance* Vol. 45 Feb, p. 45 -51; David Cowan and Alex Marsh (eds.) *Two Steps Forward: Housing Policy into the New Millennium* (The Policy Press, Bristol, 2001) p. 343; Ford, J and England, J 'Data and Literature on Mortgage Interest: State Provision and Private Insurance: An Evaluation Report and Source Book - In-house report 65' Department of Social Security

housing costs through MPPI. The risk of an emergency presenting itself is thus accounted for by individualising the cost through MPPI, rather than a household seeking recourse to State welfare benefit for housing costs. Protection offered by MPPI is preferable since it covers the full amount of mortgage repayments, rather than just the interest provided by SMI. Nevertheless, there has been relatively low uptake of MPPI.

Reasons for low uptake include the cost, negative publicity associated with loan insurance schemes and the availability of SMI. The unpopularity of MPPI is due to negative publicity highlighting that initiatives are not always in the best interests of the homeowners; leading to mistrust and low uptake. The reputation of MPPI has been affected by insurers who have proven unaccountable and dented consumer confidence⁸⁰⁵. It seems that “MPPI is typically sold rather than bought”⁸⁰⁶. Some claimant applications are rejected by insurers due to high risk of default⁸⁰⁷. Commonly, justifications for MPPI applications being rejected include borrowers being sacked or leaving work voluntarily, the ending of temporary or fixed-term contracts and pre-existing medical conditions. Challenges to rejection decisions were rarely successful⁸⁰⁸. Kempson’s research has measured the effectiveness of MPPI to prevent repossession, it was reported in 1999 that 21% of households who made a successful claim on MPPI had nevertheless gone on to develop mortgage arrears because the sum received from their policy fell short of their actual mortgage repayments,⁸⁰⁹ accordingly MPPI can be viewed as a weak safety net.

805 The Guardian, Payment Protection Insurance, < <http://www.guardian.co.uk/money/payment-protection-insurance>> (accessed 10 January 2012); Commission Competition, Payment Protection Insurance Market Investigation Order 2011; Money Saving Expert, ‘PPI Reclaiming Guide’ <<http://www.moneysavingexpert.com/reclaim/ppi-loan-insurance>> (accessed 10 January 2012)

806 Kempson, E, Ford, J and Quilgars, D ‘The effectiveness of mortgage safety nets’ York: Joseph Rowntree Foundation, April 1999 p.4

807 Pryce, G and Keoghan, M ‘Determinants of MPPI Uptake’ Scottish Homes (Pryce & Keoghan, 1999)

808 Kempson, E, Ford, J and Quilgars, D ‘The effectiveness of mortgage safety nets’ York: Joseph Rowntree Foundation, April 1999 p. 1

809 Kempson, E. Ford, J and Quiglars, D ‘Unsafe Safety Nets’ 1999 York, Centre for Housing Policy; In terms of effectiveness, the essential indicators are the extent to which borrowers can access MPPI,

Key criticisms of successful claimants of MPPI include; excessive delays, the ‘wait’ period before the payment commenced (during which time a number had in fact returned to work) and the time limits of payments. In research concerning the methods to encourage home ownership for low income households throughout OECD countries, it has been said that “private MPPI has a role to play; but that private insurance is not a good enough substitute for a state-provided protection, especially for low-income groups.”⁸¹⁰

Approximately 40% of borrowers have no insurance of any kind. Some households cannot qualify for insurance policies or cannot afford them, already spending most of their income on the mortgage. Households without MPPI risk losing the capacity to pay their greatest outgoing cost, which is their property and home.⁸¹¹ Reliance upon the decreasing resources of the State will have an adverse effect on their security.⁸¹² Research on strategic income protection planning for households earning more than £40,000 per annum has found that occupational redundancy pay is a major source of income protection.⁸¹³ The participants interviewed in the study mostly found private insurance expensive and did not plan to use this means to cover the risk of unemployment.

MPPI is often considered by mortgagor households as poor value for money, and associated with unhelpful sales techniques, particularly when sold bundled with a mortgage.⁸¹⁴

the claims rejected and the extent to which MPPI prevents mortgage default and loss of the property.

810 Atterhog and Song, A Survey of Policies that may Increase Access to Home Ownership for Low-Income Households (2009) 26(4) Housing, Theory and Society 248 p. 265

811 Stephens, M ‘Housing market recessions and sustainable homeownership’ Centre for Housing Policy and Department of Economics and Related Studies, University of York, Joseph Rowntree Foundation, July 2008, p.11

812 Gwilym Pryce, Theory and Estimation of the Mortgage Payment Protection Insurance Decision (2003) Scottish Journal of Political Economy (2002) 49(2), p. 216

813 Clasen, J and Koslowski, A ‘Unemployment and Income Protection: How do Better Earning Households expect to manage financially?’ (2013) Journal of Social Policy, 1

814 Ashton J and Hudson, R ‘Working paper: The price, quality and distribution of mortgage payment protection insurance: A hedonic pricing approach’ Nov 2011

Research has found that the characteristics and conditions of MPPI policies vary substantially when sold jointly or independently of a mortgage.⁸¹⁵ The private sector individualising mortgage costs during emergencies through MPPI remains important, nevertheless following the concerns about MPPI, the inherent strengths of the State 'safety net' in SMI should not be undervalued⁸¹⁶. MPPI could have greater impact alongside SMI as part of an overarching safety net for owner-occupiers which balance the demands of homeowners in arrears and appropriate use of tax-payer's money. The State could have a role in regulating MPPI to improve the reputation of MPPI as an individualised means of protecting against arrears and repossession. Crucially MPPI is not a compulsory aspect of a mortgage, and does not cover risk factors such as financial mismanagement.⁸¹⁷

Nevertheless, State assistance for mortgage costs is seen as inherently less risky compared to MPPI⁸¹⁸, as the welfare of the occupier was more likely to be taken into account, thus more likely to be preferred by homeowners. In terms of providing a robust safety net, MPPI is deficient and so the individual cannot hold the entirety of the responsibility for housing costs in the case of an event which has not been prepared for.

815 Ibid, p.15; When MPPI is sold independently, the MPPI policy tends to have lower premiums in the age range, where people are likely to be taking out mortgages.

816 Kempson, E, Ford, J and Quilgars, D 'The effectiveness of mortgage safety nets' York: Joseph Rowntree Foundation, April 1999 p. 4

817 Karen Croucher, Deborah Quilgars, Alison Wallace, Sally Baldwin and Lisa Mather, Paying the Mortgage? A Systematic Literature Review of Safety Nets for Homeowners ESRC Evidence Network: Systematic Reviews In Social Policy And Social Care, University of York 2003, p.50

<https://www.york.ac.uk/media/chp/documents/2003/payingthemortgage.pdf> (accessed 17 August 2016)

818 Donald Houston, Darja Reuschke, Albert Sabater, Keith Maynard and Norman Stewart. Gaps In The Housing Safety Net, University of St Andrews, Shelter commissioned report, July 2014, p. 19

7.6 Conclusion: The extent of State Responsibility in the Social Security System for renters and owner-occupiers: HB versus SMI

This chapter has assessed the extent of State versus individual responsibility in the eligibility and entitlement of HB and SMI, the State's non-financial soft law mechanisms and MPPI in order to understand how the social security system for renters and owner-occupiers fit into the overarching macro housing policy promoting homeownership.

State responsibility for housing has undoubtedly diversified since the original building of local authority housing, discussed in chapter 4. Legislation has incrementally developed subsidies for low income tenants and owner-occupiers. This significant change in policy marked a point where State responsibility for housing costs altered in form. The provision of subsidies has had a lasting effect. Rising demand for subsidies has led to increasing HB budgets. There is now greater reliance upon private rented housing which in part is funded by the State through demand side subsidies such HB and social housing managed by housing associations, and a move away from investment in bricks and mortar with a corresponding rise in expenditure on HB.⁸¹⁹

This chapter has argued that the State's evolving attitude towards responsibility for housing costs is exhibited in the extent and type of assistance for low-income households, entitlement criteria for welfare benefits.

The State responsibility for housing costs has concentrated on reducing entitlement to HB for the purpose of cutting the overall expenditure on welfare benefits and to individualise housing costs. The cutting away of entitlement emphasises the significance of individual responsibility over State provision, so is critical to evaluate how the State views the rented home, generally, and welfare benefit recipients, in particular. In terms of the design of HB,

⁸¹⁹ Kate Webb, Bricks or Benefits? Rebalancing housing investment, Shelter, May 2012,p.9
http://england.shelter.org.uk/_data/assets/pdf_file/0009/436275/Bricksorbenefitsfullreport.pdf

SAR is an example of the State attempting to reduce financial responsibility but at the expense of discriminating against young people. LHA aims to increase fairness, choice, transparency, personal responsibility, financial inclusion as well as improve administration and reduce barriers to work⁸²⁰. However, the design of the LHA policy does not consistently achieve these aims successfully.

Social sector under-occupancy penalty encourages personal responsibility for housing costs and reduces State financial responsibility. However, this is at the cost of potentially the need to build more expensive social housing to support this policy of downsizing. The extent of State responsibility expressed through DHP is both broadened through a catch-all type of assistance, but also diminished since the State attempts to be less accountable for different types of claimants requiring assistance. By limiting the budget for DHP, only subsistence assistance is available for those deemed most deserving of assistance for housing costs. It is deeply unsatisfactory to set out clear bright line rules and to depart from them in individual cases, this does not adequately mitigate against hardship. Accordingly, DHP do not ensure protection for vulnerable groups who have to rely on DHP due to cuts in their HB entitlement. State responsibility is merely concentrated on a subsistence level, and is prone to discriminate against the most vulnerable. The analysis demonstrates that cuts to entitlement not only individualise costs with limited success, but also can have a discriminatory effect and hardship. The rationale behind the cuts of HB are likely to be both economic (based on funding being unsustainable) and the product of a policy choice based on political ideology

The SMI safety net aims to prevent repossession or delay it, but the individual homeowner is still fundamentally responsible for their long-term ongoing housing costs for their owner-occupied home. SMI enables struggling owner-occupiers to cover their mortgage interest payments and contribute towards arrears. The State aim to place responsibility on the

820 DWP, Local Housing Allowance Final Evaluation: The housing and labour market impacts of the Local Housing Allowance, 2008 Centre for Housing Policy, University of York p.9

<https://www.york.ac.uk/media/chp/documents/2008/LHAfinal-hsglabourmkts.pdf> (accessed 17 February 2014)

individual rather than reliance upon the State to ‘bail’ claimants out thus encourages the individual households to be able to repay their debt. Owner-occupiers are expected to make greater provision against risk of accident, unemployment and sickness, either through insurance or savings. This includes insurance against these risks, or accumulating sufficient savings to cover costs. MPPI is an attempt to tackle the challenge of creating safety nets where individuals are responsible, thus a way to individualise housing costs through the private sector.

SMI represents a policy choice for State financial responsibility to promote sustainable homeownership in times where homeowners are at risk of arrears to prevent later financial dependency on the State if the owner-occupied home is repossessed. If the State did not intervene to assist owner-occupiers retain their homes, this would undoubtedly put strains on HB, the rental market, the local authorities’ homelessness duty and adversely affect the housing system and financial stability. Once households return to sustainable homeownership they can benefit from the home values associated with homeownership, retain their investment and maintain individual responsibility for their housing costs. The waiting times associated with SMI also tie in with the guidance given in the pre-action protocol⁸²¹, which aims to foster an effective relationship between mortgagors and mortgagees, thus demonstrates a coherent policy between the guidance provided and welfare benefit receipt. This thesis argues that since the State has promoted homeownership, the State does have a further financial responsibility to provide assistance to owner-occupiers when they are at risk of losing their home. The limited eligibility and entitlement of SMI reveal where the State has drawn the line between justifiable and unjustifiable expenditure by not allowing tax-payers’ funds to pay towards the capital asset, and only assist with mortgage interest. However, the line drawn by the State is perhaps inappropriate given the broader issues of discrimination and human rights feeding into this State responsibility. The reform to transform SMI into a State funded interest bearing loan

821 Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property para. 2.1 http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/protocols/prot_mha.htm (accessed 17 February 2014)

goes further at demonstrating the State's requirement of a financial equity in the property to allow State funds support the asset and home when the claimant household can no longer finance the property themselves.

The soft law measures such as the pre-action protocol and MCOB 13 merely recommends that borrowers and lenders should take all reasonable steps to discuss with each other, or their representatives, the cause of the arrears, the borrower's financial circumstances and the proposals for repayment of the arrears⁸²². This expression of the State responsibility to owner-occupiers does not offer a robust enforcement mechanism which can ensure this. The 'enforcement' is through any potential infringement being alerted to the FCA, who can remove the licence from the financial service, bank, building society who does not follow these rules. This demonstrates a strong reliance upon the regulatory bodies to investigate any violations. The lack of a strong enforcement mechanism to penalise contravention by lenders may be borne by a political preference for free market solutions. Typically, liberalisation rather than legislative regulation is favoured by lenders, since regulation can restrict market success. Accordingly, soft law regulation could be a beneficial compromise between the State and the mortgage industry for the benefit of mortgagors. Taking into account the already neo-liberal approach taking by the State as discussed earlier with respect to the sale of council housing.

Waiting times inherent in the benefit system provide work incentives if mortgages are at risk of default. It also encourages the uptake of private MPPI, which would be a self-sufficient way to repay mortgage repayments, without having to rely on the State.

This chapter has demonstrated that the design of HB and SMI has had a limited effect of promoting individualised responsibility for housing costs, thus does not match macro housing policy. Not only does the framework of social security benefits provide limited individualisation of housing costs, the cutting of entitlement can have a discriminatory effect causing hardship. The next chapter looks further at how the eligibility and entitlement

822 Ibid. 5.2

of HB and SMI do not exhibit home values as an expression of the macro housing policy objectives of promoting homeownership.

Chapter 8: Evaluation of HB and SMI and their recognition of home values

8.1 Aim

This chapter explores how home values (explored in Chapter 6) interact with the characteristics of HB and SMI, including eligibility criteria, level of entitlement and overarching policy (detailed in Chapter 7). This chapter considers if any aspects of HB and SMI policy enable recipients to better experience x-factor home values, as an extension of the promotion of homeownership as the fulfilment of individualised responsibility for housing. This thesis argues that given the State encouragement of homeownership, which is based around the promotion of x-factor home values, the current social security framework for housing costs is insufficient.

This discussion is key to the thesis question concerning the relevance of State intervention into ongoing housing costs, given the continuing focus on homeownership as a policy goal. This chapter reviews the expression of home values in HB as used in the different tenures: PRS, Social Sector and the intermediate tenure Shared Ownership⁸²³. The Chapter later reviews the recognition of home values in SMI.

823 68.1% of Housing Benefit recipients were tenants in the Social Sector. 86.8% of the 1.53 million Private Sector Housing Benefit recipients were receiving LHA. DWP and the National Statistical Office, DWP Statistical Summary Housing Benefit caseload statistics (May 2015) p. 25

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/477328/dwp-stats-summary-nov-2015.pdf (accessed 17 June 2015) ~5m HB recipients in Social Rented tenancies, ~1.5m HB recipients in PRS tenancies Housing Benefit caseload statistics: data to August 2015 <https://www.gov.uk/government/statistics/housing-benefit-caseload-statistics> (accessed 5 May 2016)

8.2 HB and Home Values

8.2.1 HB in the PRS

As discussed earlier in chapter 6, PRS tenants are unlikely to experience x-factor home values because of the widespread use of ASTs which provide limited security of tenure⁸²⁴. The legislation governing tenancies does not support PRS tenants to develop home values through the use of ASTs. Tenants usually have limited autonomy to make changes within the rented home, although that is a matter of contract, rather than statutory provisions. In a high demand area tenants' sense of autonomy, control and security will probably be further diminished because the landlord has much greater bargaining power. Low income tenants have the added insecurity of not knowing whether they are going to afford the rent, especially those living in areas of high demand for housing, with subsequent elevated rental costs. This lack of x-factor value home experience is exemplified by PRS tenants who use HB to pay rent, due to their low-income and reliance upon the State. Thus, PRS tenants in receipt of HB are likely to feel the lack of x-factor home values more acutely.

HB as part of social security policy to fund on-going housing costs exhibits a limited expression of home value for the interests of tenants. The limited availability of social housing means that low-income households reliant on HB have to seek housing for themselves, inevitably in the PRS with limited security of tenure. This sense of a limited security of tenure is also mirrored in the social sector (including the use of flexible tenancies and phasing out of lifetime tenancies⁸²⁵) means tenants are less tied to a particular dwelling or surrounding community. The PRS is seen as transitory, and containing poorer quality homes, demonstrating a lack of consistency in the treatment of renters.⁸²⁶ Morgan makes

824 AST is the default category of residential tenancy introduced in Housing Act 1988 and whose definition was extended in Housing Act 1996, s.96 and more generally ss. 96-102

825 Also Housing and Planning Act 2016, s.118 abolishes lifetime tenancies in social sector, described in further detail below.

826 Hannah Gousy, *Safe and Decent Homes: Solutions for a better private rented sector*, Shelter, British Gas, 2014

an analogy with casualization in employment, a job for life is said to be a thing of the past. How many people can reasonably expect to have a home for life? ⁸²⁷ This lack of security of tenure in the PRS is perpetuated by seemingly unfair practices of some landlords, for example, landlords who do not rent to tenants on 'zero hours' employment contracts, who are often the most vulnerable in society.⁸²⁸ It could also be argued that PRS landlords have this right as individuals to choose their tenants in their investment homes.

The cuts in entitlement of HB in the PRS coupled with the lack of security of tenure affecting vulnerable claimants are an illustration of the erosion of home values. The lack of individualised financial responsibility of the tenant for their housing costs can lead to less attention paid to their home and a feeling of a lack of control on their surroundings. The relatively short fixed-term of a tenancy is less of a commitment and maintenance and repairs are largely the responsibility of the landlord, not the tenant. ⁸²⁹ Renting is "less hassle, less responsibility".⁸³⁰ It has been argued that there are links between an absence of security of tenure and lack of a stake in the community. This argument can be likened to the phenomenon termed broken windows theory in social policy, relating to crime.⁸³¹ Where

http://england.shelter.org.uk/__data/assets/pdf_file/0003/1039530/FINAL_SAFE_AND_DECENT_HOMES_REPORT-_USE_FOR_LAUNCH.pdf p.19

827 Morgan J, 'The Casualization of housing' (1996) *Journal of Social Welfare and Family Law* 18(4) 445, p. 445

828 Hannah Fearn, Zero-hours contracts: no security at work and no security at home , *The Guardian*, 6 November 2014 http://www.theguardian.com/housing-network/editors-blog/2014/nov/06/zero-hours-contracts-security-work-home?CMP=new_1194 (accessed 17 February 2015) ; Notorious landlord Fergus Wilson also does not let to: 'battered wives', 'coloured' people, single parents and plumbers <http://www.independent.co.uk/voices/fergus-wilson-kent-landlord-coloured-people-tenants-london-housing-crisis-property-homes-a7656606.html> (accessed 19 April 2017)

829 DCLG, *English Housing Survey 2012-13*, July 2014, p. 15

830 Tom de Castella How do you prepare for a lifetime of renting?, *BBC*, 19 June 2013 <http://www.bbc.co.uk/news/magazine-22952667> (accessed 17 February 2014)

831 James Q. Wilson and George L. Kelling, *Broken Windows*, *The Atlantic*, March 1982, <http://www.theatlantic.com/doc/print/198203/broken-windows> (accessed 24 April 2017)

*“untended property becomes fair game for people out for fun or plunder and even for people who ordinarily would not dream of doing such things and who probably consider themselves law-abiding.”*⁸³² The anonymity of individuals in a community leads to a lack of care for the surroundings which multiplies in greater crime and disorder in a dilapidated area. On the other hand, there is a great deal of criticism of this contentious broken windows theory, diminishing the significance of tenure on the experience of a lack of community ties and care for the appearance of the rented accommodation.⁸³³ As discussed in chapter 7, the various reforms which have taken place to erode the entitlement of households can cause distress to vulnerable claimants as they find themselves susceptible to homelessness.

The SAR policy affecting young people also demonstrates a lack of significance placed on the x-factor home values of HB claimants. Sharing accommodation does not take into account important x-factor values such as independence, security and choice. Conversely, the design of LHA in the PRS has attempted to give households more responsibility for their housing costs as well as simultaneously cutting government expenditure on HB. LHA can provide recipients more choice in selecting their dwelling house in the PRS. HB tenants can search for a property within the entire PRS which can contribute to improving tenants’ ‘home values’. Conversely, the PRS can negatively affect home values with limited choice based on the expensive PRS for low-income HB tenants, limited quality and affordability for those on low incomes. There are issues of letting fees and high deposits which low income tenants cannot afford. Choice built into the scheme enhances the x-factor values associated with home, as a ‘choice’ is a factor which has been pinpointed as important for individualised responsibility and the ideology of homeownership, where those in the PRS and social housing lack ‘choice’⁸³⁴. It can be said that in this regard, the law and policy is attempting to provide those who cannot afford to buy, with a good substitute to homeownership.

832 Ibid. p. 2

833 Christina Sterbenz, How New York City Became Safe Again, Business Insider, 2 December 2014, <http://uk.businessinsider.com/criticism-for-giulianis-broken-windows-theory-2014-12> (accessed 5 August 2016)

834 DETR, Quality and Choice: A Decent Home for All The Housing Green Paper’, April 2000
Department of the Environment, Transport and the Regions Department of Social Security; King, P

Despite the lack of security of tenure offered to PRS tenants who commonly rent on the basis of an AST, PRS tenants can be in a safer position to remain tenants in the property, compared to the owner when their landlord defaults and loses their investment asset⁸³⁵. Secured creditors who recover possession from landlords usually retain tenants to collect rental income as revenue for their investment⁸³⁶. The owner may lose the asset; however, their tenants may be able to continue occupying the dwelling as their home. Additionally, County Court judges have a power to delay mortgage possession, where there are tenants in the property so that the tenants can stay in their homes a little longer and have time to find alternative accommodation, even though their landlord has defaulted on their mortgage⁸³⁷.

In cases of 'benefit landlordism' where PRS landlords are letting to LHA recipients only, tenants can feel secure in the knowledge that their HB will secure their rent which in turn pays for the landlord's mortgage. This helps landlords fund that their mortgage payments, as they can be reassured that the tenant's rent will be paid via HB. This offers the buy-to-let landlord relief and 'peace of mind' in their investment that government housing subsidies for their tenants ensures that their rents are paid, and in turn their buy-to-let mortgage. The landlord's peace of mind is not a concern of the State but is a by-product of the use of HB in the PRS.

(2008) Editorial: Housing For The Poor: The Role Of Government, Institute of Economic Affairs 2008. Published by Blackwell Publishing, Oxford

<http://www.iea.org.uk/sites/default/files/publications/files/upldeconomicAffairs336pdf.pdf>
(accessed 17 February 2014)

835 Mortgage Repossessions (Protection of Tenants etc.) Act 2010 and The Dwelling Houses (Execution of Possession Orders by Mortgagees) Regulations (SI 2010/1809); does not prevent lenders from seeking repossession against tenants but it ensures that they should be notified of the mortgage repossession proceedings of their landlord and gives them more time to seek alternative accommodation where necessary

836 Wilson, W, 'Mortgage Repossession: Rights of Tenants' House of Commons Standard Note SN/SP/5019 24 October 2011, tenant's rights p. 4

837 Cheung L, 'Comment: A Critical Assessment of Assured Shorthold Tenancies' (2012) (2) SSLR 53, 58

Nevertheless, the continual reforms to HB regulations cut entitlement and further marginalise tenants who claim HB. The cuts to entitlement for HB also perpetuate the illusion of a divide between the tenures of ownership and renting with adverse effects on tenants' experience of x-factor home values.

8.2.2 HB in the Social Housing sector

HB tenants in social housing typically benefit from longer security of tenure improving their experience of x-factor home values; however, the long-term nature of HB and longer security of tenure in social housing could potentially lead to work disincentives⁸³⁸, making it difficult to motivate low-income claimants to escape the 'low income' bracket and lead to a 'poverty trap'. The unemployment trap arises out of the withdrawal of aid to households immediately above relevant income support thresholds. Some authors argue that tenants lack interest in the level of housing costs since the rent is paid for by HB.⁸³⁹ Claimants without work have no incentive to improve their employment position to improve their housing. However, the reforms which have cut entitlement and put time-limits of the length of claims prevent work disincentives, in the hope of claimants becoming higher earners through work and being able to invest and become homeowners which can offer security of tenure and better experience of x-factor home values.

As detailed in chapter 7, the degree of entitlement to HB is restricted in the social sector through the social sector under-occupancy penalty. The social sector under-occupancy penalty means that the level of HB is cut based upon the claimant's eligibility criteria and number of spare rooms. The social sector under-occupancy penalty policy extracts part of previously proposed controversial steps to evict tenants from under-occupied social housing, and move them to other homes. We have many elderly people living in houses which they cannot run and we've got queues of desperate people with families who are

838 Gibb, K 'Helping with housing costs? Unravelling the political economy of personal subsidy' in Cowan, D and Marsh, A (eds.) *Two Steps Forward: Housing policy into the new millennium*, (Policy Press, 2001, Bristol) p. 348

839 Robson, P 'Housing Benefit' in Cowan, D and Marsh, A (eds.) *Two Steps Forward: Housing policy into the new millennium*, (Policy Press, 2001, Bristol) p. 324

living in one and two-bedroom houses and flats.⁸⁴⁰ Potential for home dispossession are problematic and are liable to affect the household's sense of home values. The social sector under-occupancy penalty aims to free up bigger properties, to be able to be used more efficiently. It is perhaps telling about the importance of individualisation that although the under-occupancy rates in the owner-occupied sector are much higher⁸⁴¹ that no equivalent action is taken by the State in the owner-occupied sector regarding reducing under-occupation of owner-occupied homes.

However as discussed in chapter 7, very few households have actually successfully moved home to downsize as a result of this policy, due to their exceptional needs for larger properties (many exemptions to the policy apply) or a lack of properties with few bedrooms available on the market. Proposals have included council tenants in areas with low work opportunities being incentivised to move to areas with high work⁸⁴². This policy could be achieved by placing such tenants at the top of the housing list in the new area. However, this policy would lead to greater questioning of the meaning of 'home' through the act of dispossession. There are obvious concerns that this is an extreme practice, leading to current tenants having unnecessary anxiety about moving to wherever the local authority places them, not taking into account local ties or family origins for the sake of employment only. Moreover, the social sector under-occupancy penalty policy can conversely be characterised as inefficient. There are not enough one bedroom flats and so not enough housing for dispossessed tenants, thus invoking the homelessness duty for such tenants, which is more expensive to local authorities in the long-term. However, the successful

840 The Telegraph, 28 June 2010, Tom Whitehead (Home Affairs Editor – Law and Order) Pensioners could be forced to move to help free up large council homes

<<http://www.telegraph.co.uk/news/uknews/law-and-order/7857396/Pensioners-could-be-forced-to-move-to-help-free-up-large-council-homes.html>> accessed (09 November 2011)

841 Under-occupation is highest in owner-occupied homes with 49% of properties deemed to fall in this bracket; DC:G and National Statistics, English Housing Survey Headline Report 2011/12 February 2012, 1.39

842 BBC, 'Duncan Smith considers incentives to relocate jobless'

<http://www.bbc.co.uk/news/10426714> (accessed 09 November 2011)

challenges of vulnerable claimants of discriminatory regulations on HB entitlement in the social sector under-occupancy penalty suggest that the home values of the most vulnerable tenants are protected⁸⁴³.

HB policy in the social sector has more positive impact on home values compared to HB in the PRS. The use of choice based lettings (CBL) allocations in the social sector increases the individualised nature of allocating housing improving x-factor home values. The use of CBL schemes to allocate local authority and housing association housing is in line with changes in HB generally, for example, the use of LHA in the PRS. Autonomy to move and choice of properties differs between the two tenures and thus the two social security schemes. Although choice based lettings in social housing and the use of LHA in the PRS gives HB claimants some choice in their rented accommodation, these represent the limited inroads in the operation of social security benefits into giving renters the same x-factors of choice and autonomy which contribute to the idea of 'home' for owner-occupiers. Choice is built into the scheme which enhances the x-factor home values.

The security of tenure in the social rented sector has slowly eroded away where tenancies have moved away from secure/assured tenancies into introductory /demoted tenancies⁸⁴⁴. The eroding security of tenure affects the claimant's home values and their stake in the community. The Housing and Planning Act 2016 has now phased out tenancies for life thus eradicating security of tenure in council housing⁸⁴⁵, thus affecting the future home values of

843 *Burnip v Birmingham City Council & Others* [2012] EWCA Civ 629; List of First Tier Tribunal Decisions for Bedroom Tax Appeals here <http://nearlylegal.co.uk/bedroom-tax-fft-decisions/> (accessed 7 June 2015); List of Upper Tier Tribunal Decisions for Bedroom Tax Appeals here <http://nearlylegal.co.uk/tag/upper-tribunal-admin/> (accessed 8 June 2015)

844 Housing Act 1996, s. 124 Introductory tenancies and Anti-Social Behaviour Act 2003 amended the Housing Act 1985 and Housing Act 1988 to give county courts power to change secure or assured tenancies into demoted tenancies. Under Housing Act 1985 s82A and Housing Act 1988 s6A, LAs, HATs, RSLs may apply to a county court for demotion orders

845 Housing and Planning Act 2016, s.118 abolishes lifetime tenancies in social sector; Parkin, E & Wilson, W, House of Commons Briefing Paper Social Housing: the end of 'lifetime' tenancies in England? 07173, 27 May 2016

social rented sector tenants. Councils will now typically offer new tenants fixed term leases between two and five years, although they do have the capacity to offer a 'maximum' ten year terms,⁸⁴⁶ and exceptionally more, for example, in situations where the household includes a child⁸⁴⁷. Once the fixed term has ended, councils will carry out a review of the circumstances of the tenant, and either; grant a new tenancy, move the tenant into another more appropriate social rented property, or terminate the tenancy.

However, an unintended consequence of the lack of security of tenure is that councils could now avoid granting the RTB completely.⁸⁴⁸ A minimum of three years' tenancy is required to be able to obtain the RTB⁸⁴⁹. The best RTB discount only arises after five years' tenure⁸⁵⁰. Accordingly, if a council only offers a five year tenancy and decides to not renew following review of circumstances, the tenant cannot claim this discount which has the effect of disincentivising the RTB which government policy had aimed to stimulate to promote homeownership. However, the government has since conceded that fixed terms can be up to ten years but of course this depends on how long individual local housing authorities choose to grant tenancies for⁸⁵¹.

Local authorities have to now contend with the general policy aiming to decrease length of tenure in social housing but also the policy developing the RTB. This represents the incoherence in the government strategy, whereby policy has aimed to rejuvenate the RTB

846 Housing and Planning Act 2016, Schedule 7, inserting s.81A(2) into Housing Act 1985

847 Housing and Planning Act, Schedule 7, inserting s.81A(3) into Housing Act 1985

848 NearlyLegal, The law of unintended consequences (or, why everyone needs a housing lawyer) 10/12/2015 http://nearlylegal.co.uk/2015/12/law-unintended-consequences-everyone-needs-housing-lawyer/?utm_source=wysija&utm_medium=email&utm_campaign=mail+updates (accessed 15 August 2016)

849 Housing Act 1985, s.119(A1)

850 Housing Act 1985, s.129 1 % p.a. for houses and 2% p.a. for flats

851 Richard Hanstock, Phasing out Tenancies for Life, Cornerstone Barristers Special Edition Housing Newsletter, May 2015, p. 21 <http://cornerstonebarristers.com/wp-content/uploads/2016/05/Cornerstone-Housing-Special-Edition-Newsletter-MAY-2016-FINAL.pdf> (accessed 23 August 2016)

(extending RTB to Housing Association homes⁸⁵²); however, subsequent policy reducing security of tenure can have the opposite effect and contradict the overarching policy initiative to promote homeownership. Moreover, the devolved governments of Wales and Scotland have scrapped the RTB demonstrating a lack of consistency in the significance of the RTB policy across the UK. A reducing security of tenure in any case is likely to affect the experience of home values for tenants in the social sector claiming HB.

8.2.3 Shared ownership and HB

As explained in chapter 5, through a shared owner's status as both a renter and an owner, HB can be claimed to pay for the rental element of the property for eligible households, and SMI can be claimed for the mortgage/loan element of the property for eligible households.⁸⁵³ As already outlined in chapter 5, low-income households typically become shared owners through a LCHO scheme to assist with the aspiration of homeownership

In *Richardson v Midland Heart*⁸⁵⁴, the shared owner household relied upon HB to pay for the rental element of their housing costs. As detailed in chapter 5, the shared owner accrued rent arrears when the claimant was no longer eligible for HB which eventually led to the claimant losing their investment in their home. *Richardson v Midland Heart* exposes the inherent legal issues with the framework of a shared ownership agreement where arrears occur, and repossession can become automatic⁸⁵⁵. Shared ownership has been described as

852 Housing and Planning Act 2016, s. 64

853 Entitled to, Shared Ownership <http://www.entitledto.co.uk/help/Shared-ownership> (accessed 8 August 2016); for SMI requiring existing entitlement to Pension Credit, Income Support, income-based JSA or income-related ESA

854 [2008] NLJ 327

855 Practical Conveyancing, <http://www.practicalconveyancing.co.uk/content/view/10570/1124/>; (7 May 2016) Giles Peaker, The Hidden Dangers of Shared Ownership, The Guardian 3 September 2013 <http://www.theguardian.com/housing-network/2013/sep/03/hidden-dangers-shared-ownership> (7 May 2016)

the “worst of both worlds”⁸⁵⁶ and is not considered to carry the same ‘home’ values as conventional homeownership with a mortgage.

The State intervention creating intermediary tenure has reduced State responsibility for housing costs in the long-term by enabling individuals to enter the ownership market, but concurrently is an extensive use of State resources and developing State responsibility for this purpose. Shared ownership serves to assist low-income households to become homeowners. However, shared ownership will not necessarily reduce HB expenditure by the State, since HB can be utilised to pay the rental element in a shared ownership scheme.

There is a desirability of owning an asset which provides a financial return. A homeowner becomes responsible and accountable for the costs of their home. However, the mere fact that HB can be used in shared ownership represents that homeownership for low income homeowners can lead to further reliance on the State for housing costs. As explained in chapter 5, LCHO schemes may lead to unsustainable homeownership for households where budgeting for housing costs is not considered properly, or there are issues with redundancy or ill health may inevitably lead to recourse to State funds and an extended State responsibility for housing costs. Moreover, arrears may continue and repossession may nevertheless result in the long run, meaning that tax-payers’ funds in the form of HB and SMI were used to no avail to prevent repossession.

8.3 SMI and Home Values

8.3.1 The recognition of home values in SMI

This section analyses whether there is recognition of home values in the design of SMI to identify the importance of promoting homeownership by the State. This analysis will assist to explain why SMI exists to assist households to remain in their owner-occupied homes.

⁸⁵⁶ Department of the Environment, Kempson, E and Mackinnon, K ‘Housing Research Report: A Foot on the Ladder – a study of households on the margins of renting and owning a home’(London: HMSO Policy Studies Institute, 1994) p. 58

owner-occupation remains the preferred tenure of choice⁸⁶¹. As explained in Chapter 6, owner-occupation is promoted by the State, as it supports the State's individualisation of responsibility and is cheaper than the State developing homes, whilst also promoting the 'home' values intrinsic to homeownership. Moreover, owner-occupation supports asset based welfare investment for the future.⁸⁶² The fact that SMI assists low-income owner-occupier recipients in times of difficulty can bolster their 'ontological security', thus their 'home' interest because they can feel secure in the knowledge that the State will subsidise their mortgage interest repayments.

As explained in chapter 6, individual responsibility, accountability and autonomy are aspects of the 'home' x-factor values of homeownership, which the State attempt to imbue into home ownership to individualise housing costs. Autonomy is the more positive face of responsibility which can have negative financial implications. An owner occupier dependent on SMI still has the choice to continue attempting to pay off their mortgage debt and invest their money into their home, downsize or move into the rented sector. There is greater autonomy of choice for owner-occupiers compared to renters. The operation of SMI can reflect the ideology of homeownership as part of the macroeconomic policy of incentivising owner-occupation.

8.4 Conclusion: The relevance of Home Values: HB versus SMI

The relevance of 'home' values are only exhibited to a very limited extent in the eligibility criteria, the delivery and ultimately the existence of HB and SMI. As explained in chapter 6, the legal dichotomy between owner-occupation and renting is illusory, and the framework of property tenure is complex. Nevertheless there remains an ideology of homeownership.

This chapter has demonstrated that the ad hoc nature of the development of policy in HB has resulted in different contradictory assumptions around the expression of x-factor home

861 Neal Hudson, The housing crisis: A crisis of home ownership?, 17th July 2015, Savills

http://www.savills.co.uk/research_articles/186866/190266-0 (7 May 2016)

862 Discussed in Laurie, E and Hopkins, N, Social Citizenship, Housing Wealth and the Cost of Social Care: Is the Care Act 2014 'Fair'? Volume 78: Issue 1 - January 2015 MLR, p.112

values experienced by HB recipients. As discussed earlier, all PRS tenants experience limited x-factor values because of the lack of security of tenure. However, the limited choices of young vulnerable people affected by SAR in the PRS means that HB recipients in the PRS particularly experience limited x-factor home values. However, the use of LHA in the PRS enhances individual responsibility which can partly enhance x-factor home values. The choice based lettings allocation system available to HB recipients in the social sector enhances x-factor home values, whilst the lack of control displayed in the social sector under-occupancy penalty does the inverse. The social sector under-occupancy penalty policy demonstrates the extent of trade-off between cost to the tax-payer and home interest of HB claimants. This is a world away from the lifetime secure tenancies and succession rights previously offered to local authority housing tenants. When the government weighs the 'home' interest of the claimant HB household against the needs of the 'public purse', the social sector under-occupancy demonstrates that cuts to the HB budget and individualising responsibility for housing costs is deemed more important by the State. At the current rate of expenditure, the forecasted funding of HB in the PRS is untenable, which explains the rationale behind the State policy eroding entitlement.

Security of tenure would have given households a right to remain in occupation for at least a lifetime and often more (for their successors) thus likened to the perceived positive aspects of homeownership of long-term security of tenure which is central to x-factor home values. Significant changes made to housing policy have diminished the security of tenure for many residential occupiers. The revitalisation of the PRS has resulted in high turnover, with more tenants having no security of tenure; even though households in PRS are not only young and/or mobile. The 'casualized' status of PRS and the residualised nature of social housing have increased the desirability of owner-occupation.⁸⁶³ This eroding security of tenure in the rented sector thus contrasts even more clearly with the perception of stability in homeownership and feeds into the ideology of homeownership. However, owner-

863 Jill Morgan, Housing and Security in England and Wales: casualization revisited (2009) IJLBE p. 42 P.45; Jill Morgan, Housing and Security in England and Wales: casualization revisited (2009) IJLBE p. 42 and Housing and security: casualization revisited' (RICS construction, building and real estate research conference (COBRA)) September 2008, Dublin Institute of Technology, Republic of Ireland.

occupation can also be a risky option, due to the difficulties of the market, and the shrinking safety net putting households at risk of arrears and having their owner-occupied home repossessed.

Since SMI assists homeowners who would otherwise find it difficult to remain in their homes, the sustainability of housing thus supports home values of security of tenure. Macro housing policy encourages households to take responsibility for their housing costs and eventually to use their resources to achieve aspirations of homeownership which is seen as the preferred tenure choice. Homeownership is seen to encompass home values, and the corollary is that the State can spend less on subsidising on-going housing costs for low-income households in the rental sector. Since the State has promoted homeownership, it is only prudent that the State provides safety net assistance for households experiencing unsustainable homeownership which deflates their experience of x-factor home values. Nevertheless, SMI in its current form represents a limited safety net so can only provide limited protection of x-factor home values.

Responsibility for housing costs has shifted towards the individual who has to provide their own safety net in the case of a damaging event which affects the financing for their owner-occupied home. The ultimate individual responsibility for housing costs makes owner-occupation risky.

The likely consequence of the promotion of homeownership is a greater proportion of low income households becoming homeowners. The proportion of low income owner occupier households is currently relatively low⁸⁶⁴. However, if the government pursues LCHO policies, it is likely to result in more marginal households systematically becoming unable to pay for their mortgage, requiring SMI to act akin to HB providing longer-term assistance. Unless the government intervenes further in mortgage regulation rather than through soft law measures without reinforcement more owner-occupiers could be at risk of arrears and repossession. Moreover, lenders will remain unwilling to lend to low-income households to become owner-occupiers irrespective of government policy to promote ownership.

864 DWP and National Statistics, Households Below Average Income An analysis of the income distribution 1994/95 – 2012/13, July 2014 (United Kingdom), p. 37

The next chapter provides the conclusion of this thesis bringing together the key arguments with relevance to State versus individual responsibility, home values, the ideology of homeownership and the State safety net for housing costs for both tenures to answer this thesis question.

Chapter 9: Conclusion

9.1 Conclusion

This thesis has argued that there is a mismatch between the design of the framework for social security benefits for ongoing housing costs for ownership and renting, and the State's twin macro housing policy objectives of (1) the provision of adequate housing for low-income households to rent and (2) encouraging homeownership.

By examining the State versus individual responsibility for ongoing housing costs alongside the promotion of homeownership ideology, this thesis has demonstrated the incompatibility between the macro housing policy objective and the operation of social security benefits for ongoing housing costs. There is an accepted legitimacy by policy makers that social security benefits form part of the housing policy and there is an expected degree of coherence between welfare and housing policy. A comprehensive benefit and social welfare housing system is part of the group of measures to tackle undersupply of housing⁸⁶⁵, which is recognised as a major problem in the UK⁸⁶⁶. This analysis of housing and social security policy in tandem demonstrates the State's hotchpotch of objectives and initiatives with no cohesive underpinning message. The State's use of back-end financial assistance reveals the originally ill-conceived housing policies. Alongside, the financial assistance, non-financial soft law mechanisms provide minimal assistance to mortgagors as they lack enforcement. State assistance for on-going housing costs is rife with inconsistencies, work disincentives and lack of an overarching coherent policy taking into account the now longer-term role of renting in the PRS⁸⁶⁷ and the State objective promoting the ideology of homeownership.

⁸⁶⁵ Alongside incentivising house building, and planning system improvements; Wendy Wilson, Cassie Barton, Louise Smith, Tackling the under-supply of housing in England, House of Commons Briefing Paper No. 078671 19 January 2017

⁸⁶⁶ Current backlog of housing need compared to demand at 50,000-60,000 new homes; *ibid.* p.3

⁸⁶⁷ Although this is now being addressed by the recent government white paper with policy objectives benefiting renters in the PRS: DCLG, Fixing our broken housing market, February 2017

The current framework of social security benefits aims to individualise housing costs by cutting entitlement and incentivising work. The assistance provided by social security benefits to fund ongoing housing costs has eroded to subsistence level or below. The government rhetoric of owner occupied home shown in the government LCHO policy is only reflected to a limited extent in the design of SMI and the soft law measures designed to assist households with arrears preventing repossession. In reality, the State assistance for ongoing housing costs has the inadvertent effect of creating work disincentives and potential discrimination of vulnerable claimants for renters claiming HB. The eventual outcome of housing policy as expressed in the social security welfare benefits for housing costs does not achieve this aim of encouraging homeownership and only provides a relatively limited safety net to assist low income renters remaining in their home. The framework of welfare benefits therefore does not achieve the Government's overarching aims.

9.2 State versus Individual Responsibility in housing policy

The key macro housing policy objectives discussed in this thesis were (1) the provision of sufficient adequate and affordable housing and (2) the encouragement of homeownership as a form of individualising responsibility for housing costs. It has been demonstrated that the extent of State responsibility into housing policy can be viewed along the continuum of State intervention from being very active in terms of provision and funding, to the bare minimum safety net of subsidy or procedural mechanisms⁸⁶⁸. The State responsibility for housing costs has manifested in different ways, and has gradually worked towards the individualisation of housing costs, risk and responsibility for both owners and renters. The State responsibility has particularly focussed in recent years to promote homeownership as the ultimate expression of the individualisation of housing costs transferring risk and responsibility away from the State to the individual. Moreover, the PRS has expanded further where tenants now use HB in the PRS rather than occupy the ever residualised social

⁸⁶⁸ Please refer to Appendix 3: Level of State intervention for State mechanisms which prevent repossession to find a diagrammatic representation of when these mechanisms come into play, p.203

housing sector as a further expression of the individualisation of responsibility for housing costs.

Although the right to housing is valued as a human right in international conventions, the true application of this right depends on the State's political motivations and assumed responsibility for funding ongoing housing costs. The nature of State responsibility as assumed means that it is part of the political ideology rather than on a legal basis so can be eroded at any time. An acknowledgement that the origins of the State responsibility is assumed and based on political ideology (rather than a legal obligation) explains why this State responsibility developed, and has subsequently been reduced thus based on party political predilections at any given time. The encouragement of homeownership, and subsequent diminution of social housing represents a changing State responsibility and financial burden.

The broader context of housing policy shows the eroding State responsibility in treatment of owners and renters. There is now a lack of security of tenure in the PRS, limited availability of social housing as it becomes more marginalised and less social housing is built. The eroding security of tenure in both tenures will also have a significant effect upon tenants' experience of x-factor home values which should not be underplayed. In the past, long-term security and succession rights were given to households living in both the PRS and social rented sector, and settled accommodation to the statutorily homeless. The inaffordability for renters in the PRS further compounds these problems concerning lack of an identifiable 'home'. Individuals in the PRS are offered minimal assistance except for the very low income households through the provision of HB. However, through LCHO, the State has demonstrated its preference to assist even middle income households reach homeownership with the incentive for the State that assisting with the acquisition costs of homeownership may lead to eventual individualised responsibility of housing costs.

Concerns regarding affordability and accessibility in the ownership sector led to State funding LCHO schemes. The social security policy for housing costs overlap this backdrop of housing policy to build a safety net, but does not provide a sufficiently successful response to the eroding State responsibility thus impacting vulnerable members of society. The

shifting State responsibility for housing costs is evidenced in the RTB policy which shifts responsibility to individuals and the LSVT policy which shifting to housing associations.

These policies were part of the shift to privatisation from the 1980s onwards in the wake of changing attitudes towards State intervention and nationalised services. Moreover, the deregulation of financial markets was part of this context. It is contradictory that in order to shift this responsibility, the State had to offer a financial incentives in the form of discounts and so use public money in order to enable long term individualisation of this responsibility for housing costs.

9.3 State versus Individual Responsibility for ongoing housing costs

It has been argued in this thesis that the social security policy itself does not represent a robust enough safety net for housing costs. The entitlement for HB has reduced over time, and led to potential discrimination of vulnerable claimants. SMI typically only provides crisis and short-term financial assistance and does not always assist households to sustainable homeownership.. The future conversion of SMI from a benefit to an interest bearing loan demonstrates that the State views that SMI as a benefit is not an appropriate use of tax payer funds, as it can risk these funds if there is eventual repossession of the property from arrears. The fact that the State accepts a certain amount of financial responsibility for mortgage costs through SMI perhaps reflects the State's accountability for promotion homeownership so should provide safety net assistance for those susceptible to repossession. Reductions to the social security benefits have proved counterproductive as the safety net becomes weakened. Moreover, soft law measures have provided limited assistance alone to households in arrears facing repossession as they lack enforcement.

Social security policy for ongoing housing costs must strike a balance between the interests of claimants and tax payers. Control is needed of public expenditure for social security which fund housing costs in both tenures, but also there continues a need for some provision to support the housing policy goals. HB can notionally fund PRS landlords who may use the rent received which is supported by HB to pay their mortgage instalments. The use

of HB in the PRS acts as a version of privatisation. UC reform is a chance to create a more joined-up approach in social security for housing costs. Benefits to UC include tenure-neutrality of the housing element so that tenants and owners are not treated differently in the receipt of assistance for housing costs.

9.4 The ideology of homeownership: State encouragement for this aspiration through on-going housing costs?

State policy has favoured homeownership as the ultimate expression of the individualisation of responsibility, although in reality this is not the case where low-income households become homeowners thus entering unsustainable homeownership and become susceptible to arrears. The promotion of homeownership has been achieved through an ongoing narrative discussed in chapter 4 elevating homeownership as the superior tenure, exemplified latterly by the State essentially eliminating all other tenure options for long term housing. LCHO is a demonstration of the State's assumed responsibility for low-income owners to assist with the acquisition costs for an owner-occupied home. However, as demonstrated in Chapter 6, shared owners and leaseholders acquiring their property through LCHO schemes can be far from independent of the State, and do not truly experience home values perpetuated through the ideology of homeownership. Nevertheless, the State has encouraged homeownership through LCHO schemes thus introducing marginal owners to the market due perpetuating a flawed ideology.

The use of State assistance towards promoting homeownership is not an appropriate use of funds, if homeownership can no longer deliver its promise to individuals and also risks public funds in unsustainable homeownership. The fact that the policy of encouraging homeownership is not reflected in the framework of welfare benefits for ongoing housing costs could mean that using the aspiration of homeownership as the starting point and guiding principle does not filter down truly to those on low incomes.

The State makes available financial assistance in the form of SMI, and non-financial soft law measures to assist households to prevent repossession if in arrears. However, the extent of

support available has eroded to provided only limited assistance and provide an insufficient safety net. The eligibility and entitlement for HB has eroded to provide only subsistence level assistance, meaning claimants do not experience x-factor home values and in addition face potential discrimination from cuts in HB expenditure. Reductions to HB and SMI are counterproductive whereby the safety net is weakened. Reductions in entitlement may lead to long-term systemic issues if households cannot afford housing so become homeless, and thus reliant upon the local authority's homelessness duty. The nature of State assistance for buyers is different to the State assistance for the ongoing housing costs for existing homeowners, demonstrating the different drivers for this assistance, where one elevates the household to individualised responsibility for housing and the other is subsistence assistance where arrears occur. In combination the State assistance for acquisition costs and assistance for those in arrears do not provide a thorough enough safety net.

The State's policy for HB and SMI do not correspond with the overarching housing policy objectives. The mismatch between housing policy and social security policy is reflected in the design of HB and SMI including inbuilt work disincentives in entitlement, which has the effect of preventing households from achieving independence from welfare benefits and true individualisation of housing costs. The ideology of homeownership is not genuinely reinforced through the social security system, moreover the safety net provision of housing for low-income tenants is insufficient.

Appendix 1: Housing Rights obligations in international law terms

Table reproduced from UN Housing Rights Programme (joint programme between UN Habitat Programme and UN High Office of the High Commissioner for Human Rights. UN Doc HS/C/17/INF/6 http://mirror.unhabitat.org/downloads/docs/1986_44675_inf6.htm (accessed 30 August 2016) titled *Table 2: Responsibilities of States for the full and progressive realization of the human right to adequate housing and possible actions at the national and local levels*

Responsibilities				
Possible actions	<i>To Respect</i>	<i>To Protect</i>	<i>To Promote</i>	<i>To Fulfil</i>
	Prevention of Illegal Evictions	Preventing Violations of Housing Rights	Develop National Housing Rights Strategies	Combating, Reducing and Eradicating Homelessness
	Prevention of All Forms of Discrimination	Ensuring Domestic Legal and Other Remedies and the Domestic Application of Int. Law	Develop Benchmarks of Full Realization	Increase and Properly Target Public Expenditure on Housing
	Prevention of any Measures of Retrogressivity	Ensuring Equality Rights for All Groups	Legislative Review and Recognition of Housing Rights	Adequate and Habitable Housing for All
	Housing-Based Freedoms	Access for All to Affordable Housing and the Development of an Affordability Benchmark	Security of Tenure	Develop Minimum Physical Housing Standards
	Right to Privacy and Respect for the Home	Accessibility of Housing to Disadvantaged Groups Requiring Special Measures	Focus on the Rights of Vulnerable Groups	Provision of All Necessary Services and Infrastructure
	Popular Participation in Housing	Democratic Residential Control of Housing	Access to Housing Information	Popular Housing Finance and Saving Schemes
	Respecting the Cultural Attributes of Housing	Safeguarding Residential Stability	Ensuring a Sufficient Supply of Affordable Land	Social Housing Construction

Appendix 2: Level of State intervention for different tenures

Tenure	Level of State intervention when arrears/repossession looms
Private Rented Sector	Pre-action protocol for rent arrears. The law itself is harsh on tenants e.g. Housing Act 1988 Ground 8 Mandatory Repossession for 2 months' rent arrears. Some eligible for housing benefit can use this towards rent in the PRS.
Social Rented Sector	High level of State responsibility – funded by the State. Most eligible for housing benefit can use this towards rent in the PRS.
Owner-occupied Sector (typical)	Pre-action protocol for mortgage arrears e.g. forbearance, MCOB 13, Support for the mortgage Interest
Intermediate (e.g. Shared Ownership)	High level of State responsibility – funded by the State. Can use State assistance such as the above, as well as possibly welfare benefits such as housing benefit for the rental component where household is eligible

Appendix 3: Level of State intervention in State mechanisms which prevent repossession of the owner-occupied home

State mechanism used to prevent repossession	Level of State intervention / Stage when the measure becomes significant
REGULATORY AND LEGAL MECHANISMS	
MCOB 13	PREVENTATIVE MEASURE
PRE-ACTION PROTOCOL	PREVENTATIVE MEASURE
S. 36 ADMINISTRATION OF JUSTICE ACT 1970 (AND SS. 129 AND 130 CONSUMER CREDIT ACT 1974)	DISCRETION FOR COURT DECISION AGAINST REPOSSESSION
FINANCIAL MECHANISMS	
SMI	FINAL RESORT

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