



A New Deal for Renting

**Resetting the balance of rights and responsibilities between
landlords and tenants: Government Consultation**

G15 response

About the G15

The G15 is the group of London's largest housing associations. Our members house one in ten Londoners and own or manage more than 600,000 homes across the country. We're independent, charitable organisations and all the money we make is reinvested in building more affordable homes and delivering services for our residents. Each G15 member is different, but we're all striving towards the same goal – to solve the capital's housing crisis and improve the lives of Londoners.

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Summary

The G15 wholeheartedly supports the Government's decision to abolish Section 21 of the Housing Act 1988 in order to give tenants renting from private landlords the security they need to plan their future. We welcome the opportunity to feed back on the proposals for repealing Section 21 and for reinforcing the implementation of Section 8.

We appreciate the Government's interest in taking steps to ensure a tenant is always given an appropriate reason why a tenancy is brought to an end. We agree that the proposed scrapping of Section 21 will contribute to a more fair and balanced relationship between landlord and tenant, giving both parties the opportunity to recognise under which circumstances the landlord has the right to claim repossession and enforce an eviction.

The proposed changes are particularly required within the Private Rented Sector (PRS), where tenants living on assured shorthold tenancies face the continuous uncertainty associated with being at risk of eviction with just two months' notice for any reason or no reason at all. The Government has already [referenced](#) the response to the consultation in *Overcoming the barriers to longer tenancies in the private rented sector*, which provides an example of how people renting from private landlords have been left feeling insecure by short fixed-term tenancies.

With regards to Housing Associations, all G15 members would like to take this opportunity to reiterate that – as Registered Providers – we are regulated responsible landlords. Structured governance, financial strength and consistent internal policies provide us with the expertise and resources we need to ensure tenants are treated fairly.

Although we are in favour of the repeal of Section 21 – in that we do not make extensive use of the 'no-fault' eviction clause as it is always motivated by legitimate and justifiable grounds – the broad range of different housing needs we meet mean that there are various circumstances that will require special arrangements so that we can continue to support the most vulnerable. We broadly summarise these below.

Furthermore, we believe that the enforcement of the grounds of Section 8 is absolutely crucial to make sure Housing Associations are enabled to provide a wide range of tenure products tailored to specific needs. Making courts fit to handle the increased number of Section 8 cases is essential to making these reforms successful.

Specifically, Housing Associations would mainly be affected by the proposed changes in relation to:

Temporary housing where Housing Associations lease properties from private individuals and sublet, usually to homeless households as a collaborative initiative with local authorities.

- Private landlords agree to lease their property for a given period (e.g. 3 years) on the basis that vacant possession will be returned at the end of the lease. Housing Associations rely on Section 21 notices to deliver the requirements of the lease.
- This is a scarce resource often used on a temporary, short-term basis. If tenancies cannot be ended, schemes like this will not be possible.

Supported housing schemes respond to a range of usually short term need which can include but not limited to: domestic violence-safe housing, substance misuse recovery, ex-offenders and mental health supported.

- Often short-term placements.
- This is also a scarce resource with limited funding.
- Without the ability to facilitate move on from supported schemes there would be 'bed-blocking' and consequent unmet people's supports needs.
- Reduced supported housing would likely result in increased strain on health and social care sectors.

Intermediate Rent products including Key Worker housing

- These are usually offered on assured shorthold tenancies because tenants are required to meet certain eligibility criteria, for example NHS employment written into the contract as a condition for occupancy. Tenants are fully aware of criteria when taking up tenancies and Section 21 notices are used to end the tenancy where tenant is no longer eligible.
- This is also a scarce resource which needs to be allocated on the basis of employment so that key categories of people are given the chance to live within a certain distance from their workplace (e.g. nurses should be able to easily commute to hospitals).
- If proposals went through, we would need to replace assured shorthold tenancies with one of Government's proposed alternatives (Fixed Term Assured Tenancies or Assured Periodic Tenancies) and we would need alternative mechanism to end the tenancy under Section 8. Existing contracts would also need to be rewritten.

Decanting and Regeneration

- Housing Associations offer assured shorthold tenancies during regeneration schemes where existing tenants are offered temporary accommodation whilst their new home is refurbished or built.
- Properties are also offered to Local Authorities to assist them provide temporary accommodation as part of their homelessness duties where properties have been vacated ahead of demolition or refurbishment.

Fixed-term tenancies

Housing Associations use fixed-term tenancy for general needs tenants. It currently allows us to reassess the tenant's circumstances every few years, making sure that homes go to the most in need. Currently, the effectiveness of such a system is ensured by our ability to enforce a no-fault possession if the tenancy is regarded no longer to be needed.

Fixed-term tenancies are also utilised to ensure homes are fully occupied, for example when family-sized housing has come to be under-occupied because the size of the households has diminished over time.

Starter tenancies

Scrapping Section 21 means Housing Associations will no longer be able to use probationary tenancies. Some Housing Associations use these for general needs tenants. Before receiving a lifetime (or fixed-term) tenancy, a new tenant is granted an assured

shorthold, typically twelve months. This allows us to evaluate the tenant and if it becomes clear that the tenancy is unlikely to succeed, we can end the tenancy at the end of the probationary phase without the time and expense involved in demonstrating formal grounds in court.

Intermediate rent leading to ownership (including London Living Rent)

A number of Housing Associations operate schemes at intermediate rents, aimed at tenants on middle incomes, in the expectation that within a few years the tenant will be able to progress to some form of purchase such as shared ownership.

The London Living Rent (LLR) scheme takes a similar approach. Homes are typically offered on fixed-term tenancies of a minimum of three years. The intention is for the household to have saved a sufficient amount to purchase the home – either through shared ownership or outright purchase – within 10 years by virtue of having a subsidised rent linked to average local incomes.

If that household is not able to buy the home within 10 years, the guidelines suggest Housing Associations are able to seek another buyer. At the moment, it is unclear how Housing Associations would be able to obtain possession without recourse to a black and white mechanism like Section 21 since none of the grounds listed under Schedule 2 would be appropriate. Once Section 21 is repealed, schemes of this type will not be able to continue in their current form unless specific legislative provision is made for them.

Build to Rent

- The Government Consultation paper refers to Build to Rent schemes where the affordable housing contribution required under planning consents is provided in the form of affordable private rent.
- Homes might be allocated to prospective tenants based on eligibility criteria (key workers, income etc.).
- Failing to recover affordable private rented homes from ineligible tenants might result in the landlord breaching a planning condition.

G15 answer to the Consultation questions

Assured shorthold tenancies

Question 1 - Do you agree that the abolition of the assured shorthold regime (including the use of section 21 notices) should extend to all users of the Housing Act 1988? If not, which users of the Housing Act 1988 should continue to be able to offer assured shorthold tenancies?

The G15 welcomes the Government's proposal to strengthen tenants' rights so they cannot be evicted from their home without good reason. We agree that the proposed scrapping of Section 21 will contribute to a more fair and balanced relationship between landlord and tenant. The proposed changes are particularly required within the Private Rented Sector (PRS), where there is unwavering evidence that too many people have been left feeling insecure by short fixed-term tenancies.

Nevertheless, the removal of section 21 as currently proposed will have a detrimental impact on Housing Associations' ability to provide a wide range of tenure products tailored to specific needs. We strongly recommend that the practicalities of abolition are fully considered and addressed before introducing these much-needed reforms. We are particularly concerned about the removal of the regime in the following circumstances.

Supported housing which by its very nature is often short term. The assured shorthold tenancy regime will cease to exist under the government's proposals. Its removal has significant ramifications for the supported housing model that we operate.

Supported housing tenants are usually referred to our services for very specific reasons, including but not limited to: domestic violence-safe housing, substance misuse recovery, ex-offenders and mental health supported. As their circumstances may change over time, fixed term tenancies enable us to move-on tenants to more appropriate housing and free up specialist accommodation for those who need it. We do not evict tenants unless we have to. But without Section 21 we will not be able to ensure our homes meet their intended purpose in cases where tenants no longer engage in support or are eligible for support funding.

For the above reasons, we require a new mandatory ground so we can continue to operate supported housing as intended. Without it public funds will go to waste due to unnecessary bed-blocking.

Temporary housing where Housing Associations offer tenancies to help Local Authorities to discharge their duties under the Homeless Act 1996. In these circumstances we must be able to gain possession of these properties at the end of the agreement in order to return them to the owner with vacant possession. We rely on Section 21 notices to deliver the requirements of the lease.

Over the period of each of these leases we have multiple tenancies as people move onto more permanent accommodation and we must have the flexibility to use these properties as needed. If we no longer have the ability to gain possession of these properties using Section 21 then we require a clear ground for mandatory possession relating to the lease end of properties being used in these circumstances, otherwise the impact of the proposals will be to make this element of our business unviable, reducing the number of properties available to house homeless households.

Key Worker housing where accommodation is linked to employment, often in the NHS. This is also a scarce resource which needs to be allocated on the basis of employment so

that key categories of people are given the chance to live within a certain distance from their workplace.

We require a new mandatory ground so that we can retain the ability to move people out if they no longer work for the employer or are no longer entitled to the accommodation. If we are not able to quickly move people out where they are no longer entitled to accommodation this would potentially stifle the pipeline of doctors and nurses coming into the country, or into London.

Decants where Housing Associations offer assured shorthold tenancies during regeneration schemes. Existing tenants are offered temporary accommodation whilst their new home is refurbished or built.

In similar circumstances, properties are also offered to Local Authorities to assist them provide temporary accommodation as part of their homelessness duties where properties have been vacated ahead of demolition or refurbishment.

We require a new mandatory ground to continue to operate decants as intended.

Reform of the Court system

In addition to the enforcement of the grounds of Section 8, the G15 believes that a reform of the Court system is required in order to make the proposed changes successful. Currently, it takes far too long for housing providers to process eviction cases on the grounds of Section 8. Specifically, we have observed the following trends:

- The process has become considerably slower and more difficult to navigate;
- There has been a reduction in the availability of court bailiffs which has resulted in long waits to gain possession of properties. This wait can sometimes be up to 8 months long.
- In many anti-social behaviour cases the victims are neighbours of the perpetrator. These victims can suffer from physical, mental and emotional harm by the perpetrator remaining in the property for so long.

The proposed reforms to Section 21 will put more pressure on an already stretched system, especially as PRS landlords will be required to use other grounds that take longer for the Court system to process. Making courts fit to handle the increased number of Section 8 cases is essential if section 21 is to be abolished.

For the above reasons, the G15 believes there is a need to establish a new specialist Housing Court and for Government to ensure more investment goes into the Court system. This will reduce waiting times and will also allow court staff to become specialised, as they will have a niche area of knowledge that is specific to housing related cases.

Scrapping Section 21 will also affect Housing Associations' ability to use fixed-term tenancies and starter tenancies:

Fixed-term tenancies

Housing Associations use fixed-term tenancy for general needs tenants. It currently allows us to reassess the tenant's circumstances every few years, making sure that homes go to the most in need. Currently, the effectiveness of such a system is ensured by our ability to enforce a no-fault possession if the tenancy is regarded no longer to be needed.

Fixed-term tenancies are also utilised to ensure homes are fully occupied, for example when family-sized housing has come to be under-occupied because the size of the households has diminished over time.

Starter tenancies

Scrapping Section 21 means Housing Associations will no longer be able to use probationary tenancies. Some Housing Associations use these for general needs tenants. Before receiving a lifetime (or fixed-term) tenancy, a new tenant is granted an assured shorthold, typically twelve months. This allows us to evaluate the tenant and if it becomes clear that the tenancy is unlikely to succeed, we can end the tenancy at the end of the probationary phase without the time and expense involved in demonstrating formal grounds in court.

A new ground – selling the property

Question 13 - Should the court be required to grant a possession order if the landlord can prove they intend to sell the property (therefore making the new ground ‘mandatory’)?

With regards to Rent to Buy homes – such as London Living Rent – tenants are given the opportunity to rent a property for less than market rate with the idea that they can then save up a deposit for a shared ownership home. Tenancies are for a minimum of three years and during that time tenants are prioritised for shared ownership homes so they can get on the housing ladder.

If the household is not able to buy the home within 10 years, the guidelines suggest Housing Associations are able to seek another buyer. Furthermore, providers of LLR would financially appraise their LLR schemes on this basis. In such circumstances, Section 21 would be used to make sure properties are vacated. Once Section 21 is repealed, schemes of this type will not be able to continue in their current form unless specific legislative provision is made for them.

In relation to Rent to Buy, we propose that the introduction of this new ground is extended to shared ownership homes as it would provide an alternative where a Section 21 notice would previously have been used.

Rent-arrears

Question 17 - Should the ground under Schedule 2 concerned with rent arrears be revised so:

- *The landlord can serve a two-week notice seeking possession once the tenant has accrued two months' rent arrears.*
- *The court must grant a possession order if the landlord can prove the tenant still has over one months' arrears outstanding by the time of the hearing.*
- *The court may use its discretion as to whether to grant a possession order if the arrears are under one month by this time.*
- *The court must grant a possession order if the landlord can prove a pattern of behaviour that shows the tenant has built up arrears and paid these down on three previous occasions.*

We agree with the proposed changes as they would reinforce this ground and would be beneficial to Housing Associations, particularly in relation to repossession granted on the basis of a proved pattern of behaviour.

Housing Associations would certainly be aware of the impact of external conditions – such as welfare reforms (e.g. UC) – on tenants' ability to pay rents on time and they already have measures in place to support these tenants. The ground would be applicable to those customers who do not pay despite a wide range of granted support.

Anti-social behaviour

Question 18 - Should the Government provide guidance on how stronger clauses in tenancy agreements could make it easier to evidence ground 12 in court?

Ground 12 is currently vague and allows for illegitimate grounds. It would be useful to have more guidance on the level of evidence needed to prove the breach in order to address these issues.

Question 19 - As a landlord, what sorts of tenant behaviour are you concerned with? (tick all that apply)

- Nuisance (such as parties or loud music)*
- Vandalism (such as graffiti)*
- Environmental damage (such as littering or fly-tipping)*
- Uncontrolled animals*
- Don't know*
- Other (please specify)*

All G15 members are concerned with all the forms of anti-social behaviour mentioned and would support any changes that make it easier to gain possession where they occur.

Question 20 - Have you ever used ground 7A in relation to a tenant's anti-social behaviour?

Yes, ground 7A works adequately. We consider it effective for evicting on the grounds of anti-social behaviour, however there is a need to ensure that it is processed and executed more quickly by the courts. At present, the time it takes to process an eviction can have a detrimental impact on the victim's wellbeing.

Question 21 - Do you think the current evidential threshold for ground 7A is effective in securing possession?

Ground 7A currently requires the provision of strong evidence which is very difficult to obtain, especially as neighbours often refrain from providing evidence on anti-social behaviour occurring in the surrounding flats/buildings because they worry about potential consequences.

Question 23 - Do you think the current evidential threshold for ground 14 is effective in securing possession?

In relation to the current evidential threshold for ground 14, G15 members claimed having experienced issues around the length of time it takes to get to court. We find that because possession is at the courts discretion there is inconsistency in rulings, which makes collecting evidence in these cases challenging.

We would like to request more efficient processing and execution of ground 14, especially if Section 21 is abolished. In our experience, antisocial behaviour is usually an issue that needs to be dealt with as soon as possible, but delays mean these behaviours are persisting months before action is taken.

Domestic abuse

Question 24 - Should this new ground apply to all types of rented accommodation, including the private rented sector?

Yes, it should apply equally to social tenancies (secure or assured) and to private sector tenancies.

Question 25 - Should a landlord be able to only evict a tenant who has perpetrated domestic abuse, rather than the whole household?

Yes, a landlord should be able to only evict the tenants who has perpetrated domestic abuse. However, we would like to highlight that currently this is practically impossible without provision for transfer of tenancies (sole to sole or joint to sole) in such circumstances. If the perpetrator is the sole tenant, or joint tenant, then the termination of the perpetrator's tenancy will terminate the whole tenancy. This is unavoidable under the current rule in *Hammersmith v Monk* (*Hammersmith and Fulham LBC v. Monk* [1992] AC 478), as confirmed by the Supreme Court.

At the moment, to transfer the tenancy rights, either from perpetrator's sole tenancy to survivor's sole tenancy, or from a joint tenancy to the survivor's sole tenancy, a court order is required. There are currently three mechanisms by which this can be done, but only in particular circumstances and the process is uncertain and complex:

1. If the parties are married, they can apply under the Matrimonial Causes Act 1973 only if they are in divorce proceedings. The process can take over a year to obtain the transfer which will not take effect until the granting of decree absolute. This route forces parties for whom the tenancy might be the only matrimonial asset to waste court time and public funds in order to obtain a transfer. The survivor will be insecure whilst the proceedings are on-going, and the parties will become further polarised (an inevitable consequence of family litigation) which impacts the arrangements they might have reached over their children.
2. For those who are unmarried, the Children Act 1989 provides an opportunity for the tenancy to be transferred for the benefit of the children but again necessitates bringing expensive and contentious court proceedings, polarising parties who may have been able to reach agreement over many aspects of their children's care without the emotional impact of the litigated process. The transfer in these cases is further complicated by the fact that it is only for the benefit of the children so if the children are about to reach majority this remedy may not help.
3. Both married or unmarried survivors with or without children can apply under the Family Law Act 1996, however for married couples the court will insist on divorce proceedings having been commenced and will divert them down the Matrimonial Causes Act route (above) in many cases. Where the parties are unmarried the route through the Family Law Act will still necessitate lengthy court proceedings with often two or three hearings at a cost in court time in excess of £10,000 and in legal aid costs of a similar amount for either party represented. The Family Law Act 1996 is the only emergency remedy to prohibit the perpetrator serving a notice to quit but if ignored or breached the remedy for serving a notice cannot bind a non-party so that this is a deterrent only.

We therefore urge that provisions are made to make it easier in certain circumstances for a tenancy (joint or sole) to be transferred into the name of the remaining person would be more appropriate. We propose a new general mechanism by which a survivor can apply to the court for the transfer of the perpetrator's tenancy rights to the survivor solely, regardless of marital status or the presence of children, where the survivor shared or shares a household with the perpetrator and the perpetrator is the sole tenant, or the joint tenant with the survivor. This could incorporate a scale of presumption that the tenancy would be transferred. For example:

- If the perpetrator has been convicted of a domestic abuse related offence (for example, violence, harassment, coercive control) against the survivor, the court will order the transfer of tenancy.
- If a domestic abuse protection notice (as proposed in the Domestic Abuse Bill) has been made against the perpetrator, there will be a strong presumption that the tenancy should be transferred, which the perpetrator must rebut.
- Where the perpetrator is subject to some form of injunction or restraining order in relation to the survivor, there will be a presumption that the tenancy should be transferred, which the perpetrator must rebut.
- Where the court is satisfied on the evidence that the perpetrator has carried out domestic abuse, there will be a presumption that the tenancy should be transferred, which the perpetrator must rebut.

Question 26 - *In the event of an abusive partner threatening to terminate a tenancy, should additional provisions protect the victim's tenancy rights?*

Yes, additional provisions should be made to protect the survivor's tenancy rights. The only current means for preventing a notice to quit by the perpetrator is for the survivor to obtain an injunction to prevent the perpetrator serving notice. (This mechanism is also open to the perpetrator to prevent the survivor serving notice.) The injunction is a short-term solution and requires the survivor to obtain legal assistance very rapidly. The injunction is usually in preparation for an application for transfer of tenancy, but as noted above, the mechanisms for this are currently complex and limited, and need to be addressed.

A statutory requirement limiting the ability of one joint tenant to give notice in certain circumstances of domestic abuse would be a possibility, but there will be issues of evidencing the position to the landlord, such that the landlord would be confident in not accepting the notice to quit.

Question 27 - *Should a victim of domestic abuse be able to end a tenancy without the consent of the abuser or to continue the tenancy without the abuser?*

Yes, we call for a broader and more straightforward mechanism for the transfer of tenancy to the survivor in situations of domestic abuse where the survivor wishes to remain. The requirements for this are set out in our response to question 25.

Property standards

We agreed that there would not be real reason for repossession in such circumstances, but we need to make sure mechanisms are in place to allow Housing Associations to easily

access property for Health and Safety checks, especially in light of stricter regulations on fire safety related building work, improvements and repairs.

We propose that a better way of ensuring that legal Health and Safety standards can be maintained is to allow Housing Associations to use the Environmental Protection Act to access properties – as is currently the case for Local Authorities – and to provide access to one designated court responsible for dealing with refused access to landlords for health and safety checks, both of which would help us address the issue more quickly.

Specialist provision

Question 30 - Should ground 4 be widened to include any landlord who lets to students who attend an educational institution?

We support the proposal that institutional providers of student housing should continue to be exempt from the Housing Act 1988.

Whilst we agree in principle to any landlords of properties let to students being able to gain possession when students are no longer studying, we have concerns that this may have the unintended consequence of providing landlords in the PRS with an incentive to prioritise students over other groups, as it might seem easier to gain possession from students than it would be from non-students. This would potentially make it harder for non-student groups – such as families – to access accommodation.

Question 36 - Are there any other circumstances where the existing or proposed grounds for possession would not be an appropriate substitute for section 21?

Fixed-term tenancies

Housing Associations use fixed-term tenancy for general needs tenants. It currently allows us to reassess the tenant's circumstances every few years, making sure that homes go to the most in need. Currently, the effectiveness of such a system is ensured by our ability to enforce a no-fault possession if the tenancy is regarded no longer to be needed.

Fixed-term tenancies are also utilised to ensure homes are fully occupied, for example when family-sized housing has come to be under-occupied because the size of the households has diminished over time.

Starter tenancies

Scraping Section 21 means Housing Associations will no longer be able to use probationary tenancies. Some HAs use these for general needs tenants. Before receiving a lifetime (or fixed-term) tenancy, a new tenant is granted an assured shorthold, typically twelve months. This allows us to evaluate the tenant and if it becomes clear that the tenancy is unlikely to succeed, we can end the tenancy at the end of the probationary phase without the time and expense involved in demonstrating formal grounds in court.

Market rent and intermediate market rent tenancies

In addition, we use section 21 for market rent and intermediate market rent tenants in cases such as illegal subletting, again because it is an efficient way of ending the tenancy for fair reasons. We are able to evict on other grounds, especially grounds 8, 10 and 11. But at present, it takes far too long to process cases.

Intermediate rent leading to ownership (including London Living Rent)

A number of Housing Associations operate schemes at intermediate rents, aimed at tenants on middle incomes, in the expectation that within a few years the tenant will be able to progress to some form of purchase such as shared ownership.

The London Living Rent (LLR) scheme takes a similar approach. Homes are typically offered on fixed-term tenancies of a minimum of three years. The intention is for the household to have saved a sufficient amount to purchase the home – either through shared ownership or outright purchase – within 10 years by virtue of having a subsidised rent linked to average local incomes.

If that household is not able to buy the home within 10 years, the guidelines suggest Housing Associations are able to seek another buyer. At the moment, it is unclear how Housing Associations would be able to obtain possession without recourse to a black and white mechanism like Section 21 since none of the grounds listed under Schedule 2 would be appropriate. Once Section 21 is repealed, schemes of this type will not be able to continue in their current form unless specific legislative provision is made for them.

Impact and timing of implementing our changes

Question 44 - Are there any other impacts on your business or organisation the Government should consider when finalising its policy?

Build to Rent

The Government Consultation paper on Section 21 refers to Build to Rent schemes where the affordable housing contribution required under planning consents is provided in the form of affordable private rent. In such circumstances, homes might be allocated to prospective tenants based on eligibility criteria (key workers, income etc.). Failing to recover affordable private rented homes from ineligible tenants might result in the landlord breaching a planning condition.

Wider impact

Question 45/46 - Do you think these proposals will have an impact on homelessness? Do you think these proposals will have an impact on local authority duties to help prevent and relieve homelessness?

A 2017 research [study](#) on homelessness released by the National Audit Office claimed that the ending of private sector tenancies overtook all other causes to become the biggest single driver of statutory homelessness in England. The study reported that the proportion of households accepted as homeless by local authorities due to the end of an assured shorthold tenancy increased from 11% during 2009-10 to 32% during 2016-17.

The proportion in London increased during the same period from 10% to 39%. In 2017, the ending of private sector tenancies accounted for 74% of the growth in households who qualify for temporary accommodation across England since 2009-10.

In light of the above statistics, we believe that scrapping Section 21 will definitely have a positive impact in terms of homelessness reduction. Nevertheless, we have highlighted our concerns about the potential impact of these proposals on Housing Associations' ability to provide temporary housing to support Local Authorities to discharge their duties. If we no longer have the ability to gain possession of these properties using Section 21 the impact of the proposals will be to make this element of the business unviable, reducing the number of properties available to house homeless households.

For more information, please contact:

Fabio Miccoli

Research and Policy Analyst

Network Homes

020 8782 4320

fabio.miccoli@networkhomes.org.uk

Reuben Young

Research and Policy Manager

Network Homes

020 8782 4393

reuben.young@networkhomes.org.uk