



The Law Society

Ministry of Justice

OPTIONS FOR DEALING WITH SQUATTING CONSULTATION

Response by the Law Society
of England and Wales
October 2011

supporting
solicitors

Response to the Ministry of Justice's 'Options for dealing with squatting' consultation

The Law Society is the representative body for more than 145,000 solicitors in England and Wales. The Society negotiates on behalf of the profession, and lobbies regulators, government and others.

This response has been drafted with the assistance of members of the Law Society's Housing Law Committee, which is made up of specialist legal practitioners who advise a wide range of clients including local authorities and housing associations.

Summary

We are concerned that the proposals in this consultation are based on misunderstandings by the media of the scale of the problem and a misunderstanding of the current law.

The consultation proposes to create a new criminal offence of squatting. This is unnecessary. It is our experience that squatting is not a significant problem and that where it does occur there is a range of laws both civil and criminal that are adequate to deal with it.

Paragraphs 3 and 12 of the paper acknowledge a lack of statistical evidence. We object to changes to the law that are not evidence based. It is entirely disproportionate to create a new offence without obtaining evidence to assess the scale of the problem. We urge the government to conduct statistical research rather than reacting to media heightened public concern created by the media. This is a question of education and administration not legislation.

The consultation has partly been prompted by the media interest in the cases such as that of Dr Oliver Cockerell and his pregnant wife, Mrs Cockerell. The media reported that the police told the Cockerells that the law did not allow them to remove the squatters. This is legally incorrect. Criminal offences already exist for a squatter occupying a residential home. Under the Criminal Law Act 1977, it is a criminal offence for a squatter to remain if they have been informed of a displaced occupier or a protected occupier. The police can arrest a squatter who does not leave, as a trespasser. Squatting in a commercial property is a criminal offence once the interim possession order is made and served and the squatters have not left within 24 hours. The current law is comprehensive and effective.

Q.1. Is squatting a particular problem in your area and where does it occur the most, e.g. in residential or non-residential property? Were these properties empty/abandoned/derelict before they were occupied, or were they in use?

Squatting is not a significant problem. It occurs infrequently and where it does sufficient laws exist to remove the squatters. Our experience is that squatting most regularly occurs in council or commercial properties that are unoccupied for a significant amount of time. Our members have had experience of tenants who have been unjustly accused of 'squatting' by their landlords.

Q.2. Please provide any evidence you have gathered on the number of squats and the nature of squatting in your area or nationwide?

We direct the government to the research commissioned by Crisis published on 3 October 2011 (<http://www.crisis.org.uk/publications-search.php?fullitem=327>)

Q.3. Do you have any information on the demographic profile of people who squat - e.g. do they share any of the protected characteristics set out in the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)? Do they live alone or with others?

We have no statistical evidence on this issue. It is essential that thorough research is conducted into the demographic of squatters. Any proposals implemented without this risk adversely impacting on vulnerable groups. Charities such as 'Crisis' (<http://www.crisis.org.uk/pages/squatting.html>) and 'Shelter' (www.shelter.org.uk) should be consulted on this.

Q.4. Do you think the current law adequately deals with squatting? Please explain your reasons.

The current law deals adequately with squatting. Home owners are protected by section 7 of the Criminal Law Act 1977. A homeowner will be a 'displaced residential occupier', or, if they are not yet residing in the property, a 'protected intended occupier'. It is a criminal offence for a squatter to remain once they have been informed of the displaced occupier or a protected occupier. The police can arrest any trespasser who does not leave.

Squatting in a non residential property is not automatically a criminal offence. The person with a right to the property may obtain a 'possession order' or an 'interim possession order'. Once the interim order is served, the squatters will be committing a criminal offence if they do not leave within 24 hours. The current law is conclusive, providing a range of effective orders both civil and criminal to deal with squatting.

Improvements should come from changes to the court process, not the legal framework. The speed of the process could be improved by modernising courts.

Increased guidance and training on the legal mechanisms that are already in place should be provided to the public and the police. This will help to counter misinformation and misguided concern.

Q.5. If you have taken steps to evict squatters from your properties, what difficulties have you encountered (if any) in removing squatters from your property using existing procedures? Have you had any positive experiences of using existing procedures?

The procedures are rarely used because squatting is rare. Where the procedures have been used they have been effective, uncomplicated and predictable. Problems occur where the procedures are not explained correctly to the public by the police or other individuals. More guidance on the current law would solve this problem.

Q.6. Do you think there is a need for a new criminal offence of squatting?

No. There is no need or justification for a new criminal offence for squatting. The current law is effective and unnecessary regulation should be avoided. Squatting is a rare problem and introducing new offences when there are already a range of existing offences would be disproportionate and counterproductive.

There is no discussion in the consultation of who will enforce the proposed new offence. The police are currently unwilling to involve themselves in disputes relating to property and it is unlikely that the proposed new offence will change this. Resource strapped local authorities will not be willing to enforce the law either.

Introducing a new criminal offence will exacerbate existing problems of mental health, addiction, street crime and homelessness. Homelessness has far-reaching consequences for individuals and society. All possible precautions should be taken to stem the increase in homelessness. Introducing a new criminal offence for squatting will unnecessarily criminalise those squatters that leave within 24 hours of service. This will prevent them from accessing employment and social housing in the future.

Q.7. If so, do you agree with the basic definition of squatting set out in paragraph 21 (i.e. the unauthorised entry and occupation of a building)?

We disagree with the creation of a new criminal offence.

Q.8. How should the term 'occupation' be defined? Should it cover those who occupy a building for a short period (e.g. a couple of hours)?

We disagree with the creation of a new criminal offence.

Q.9. What 'buildings' should be covered by the offence? Should it cover all buildings or only some (e.g. should it cover public and private buildings, outbuildings, abandoned or dilapidated buildings, or buildings that have been empty for a long time)?

There should be no new criminal offence created for buildings of any type. Squatting in residential and non residential buildings is adequately dealt with by current laws.

Q.10. Do you think there should be any exemptions to any new offence of squatting? If so, who should be exempt and why?

We disagree with the creation of a new criminal offence.

Q.11. Do you agree that the existing law provides adequate protection against false allegations?

It is possible for landlords to falsely label tenants as squatters to secure an unlawful eviction or alternatively to use Interim Possession Orders to speed up the eviction process. This is illegal under section 75 of the Criminal Justice and Public Order Act 1994.

Q.12. If not, what other steps could be taken to protect legitimate occupiers from malicious allegations?

The legal framework is satisfactory but it needs to be enforced more consistently. Guidance needs to be provided to tenants and the public on their legal options when facing an unlawful eviction.

Q.13. What do you think would be the most appropriate maximum penalty for a new squatting offence?

We do not agree that a new offence should be created.

Q.14. In your experience (e.g. as a displaced residential occupier or protected intending occupier or as a law enforcer), how effective is the existing offence in section 7 of the Criminal Law Act 1977?

Notwithstanding misrepresentation in the media that a new criminal offence for squatting is required, the law already provides a criminal offence for displaced residential or intended occupiers. Section 7 of the Criminal Law Act 1977 makes it a criminal offence to fail to leave a property after 'being required to do so' by or on behalf of either a displaced residential occupier or a protected intending occupier. This is not often used, as squatting happens infrequently, but where it is our members report that it is extremely effective. They have not encountered any problems in using this provision to ensure that squatters leave the property.

Q.15. How does the definition of 'displaced residential occupier' and 'protected intending occupier' work in practice?

We have no specific experience on this point.

Q.16. If we were to expand section 7 so that it covered squatters who refused to leave other types of building when required to do so by the rightful occupier, what type of buildings and what types of occupier should be specified?

Section 7 should not be expanded to cover other types of building. Current provisions cover the use of both residential and non-residential buildings. If the definition were expanded it would require more police time and training.

There are clear legal processes to evict squatters from both residential and commercial properties. Problems occur due to lack of police training and understanding about possession issues. Resources should be directed into improving guidance and training rather than creating new offences.

Q.17 If section 6 were amended to exempt additional categories of people from the offence, which categories should be exempted? Are there any categories of people that should not be exempted?

We do not agree that further categories of people should be exempt from the offence, as this would increase risk of violence and assault, putting at risk both the squatter and the individual from the protected category.

A displaced or protected occupier may use 'reasonable force' to gain entry into their property. A clearer definition of 'reasonable force' is required for the protection of the squatter and the displaced or protected occupier.

Q.18 Do you know of circumstances where the section 6 offence has been used –was it used to protect a tenant from forcible entry by a landlord or was it used for other reasons, e.g. to stop a violent partner from breaking back into his home? Please describe the circumstances.

Section 6 is used very rarely. We have no experience of section 6 offences being used in a domestic context. This area is adequately covered by a range of remedies such as a non molestation orders, occupation orders and injunctions.

Q.19 What barriers (if any) are there to enforcement of the existing offences and how could they be overcome?

Current barriers are procedural, not legal. The single most effective way of improving the efficiency of enforcement of squatting offences would be to provide more guidance to police officers and the public about the range of mechanisms available to enforce property rights against squatters.

Q.20 Are you aware of the Government's new guidance on evicting squatters under existing laws? If so, is it helpful? Do you think the guidance could be improved in any way?

The guidance has not been effective in stemming the concern generated by the media. The guidance has not been adequately publicised and has been repeatedly contradicted by ministers and government spokes people. The guidance needs consistent support from the government, to encourage accurate representation of the existing law in the media.

Q.21 If any of the proposals in this document were to be adopted, what impact would this have on you, your organisation or those whose welfare you promote?

The proposals in this consultation would have a significant effect on vulnerable and disadvantaged individuals and far reaching consequences for society. Criminalising has far reaching implications on individuals stigmatising them and preventing them from accessing social housing in the future. This will exacerbate existing problems of homelessness, addiction, mental health and street crime. Criminalisation should occur only where absolutely necessary. Current laws deal adequately with squatters.

Q.22 Do respondents who identify themselves as having a protected characteristic (listed in paragraph 39) or who represent those with protected characteristics think any of the proposals would have a particular impact on people who fall within one of the protected characteristics? If so why?

We have no statistical evidence on this issue. Anecdotally those who squat often present a complex cocktail of behavioural and social problems, to which a new criminal offence is not the solution.

It is our view that the proposals in the consultation will adversely affect vulnerable and disadvantaged groups. The consultation itself acknowledges this at paragraph 39 that 'the data the government has at present does not enable it to assess whether those who squat or those who suffer from the actions of squatters typically fall within any of the protected characteristics in the Equality Act 2010.'

Further research should be done before the proposals are taken further.