

## Impact case study (REF3)

<b>Institution:</b> University of Bristol		
<b>Unit of Assessment:</b> 18) Law		
<b>Title of case study:</b> Improving housing law in Wales and England		
<b>Period when the underpinning research was undertaken:</b> 2012-2017		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b>	<b>Role(s) (e.g. job title):</b>	<b>Period(s) employed by submitting HEI:</b>
Dave Cowan	Professor of Law and Policy	08/1995-present
<b>Period when the claimed impact occurred:</b> 2014-2018		
<b>Is this case study continued from a case study submitted in 2014?</b> N		

**1. Summary of the impact**

Cowan's research has had two major impacts on housing law in Wales and England. It has provided the legal and intellectual underpinning and evidential basis for the regulation of nearly all rented accommodation in Wales, directly impacting on the lives of approximately half a million households who are private or social tenants, and their landlords. The research also provided an underpinning evidence base which directly influenced the successful passage of the Homes (Fitness for Human Habitation) Act 2018, which affects over 8 million private and social rented tenancies in England. The Bill's successful passage was partly due to the lobbying activities of Shelter, whose approach was itself enabled and informed by that research.

**2. Underpinning research**

Cowan has produced an original body of work which questions the operations of, and assumptions behind, housing law with a specific focus on its application to tenants of different landlords [3.1-3.6]. One of the key insights of his research has been to highlight the apparent legal dissonance between different housing tenures, which have grown up without cross-reference, leading to highly inequitable outcomes between tenures, despite uniform points of access ([3.1], described as "a monumental text" by a reviewer in the leading journal in the field, *Housing Studies*). For example, although the label "social housing" assumes uniform rules, the rules are different between occupiers in different sectors [3.1, 3.4]. Further, the rules are dependent on the thin distinction between a lease and licence; and the demands of property law mean that single occupiers under 18 are in a difficult legal position despite their vulnerability. Cowan's research laid bare the diverse locations, bases and principles upon which housing rights can be adjudicated [3.1, 3.3 and 3.6]; while in [3.2] Cowan moved from analysis of these problems to an innovative discussion of how to ameliorate them through use of alternative legal techniques.

A substantial research paper was commissioned by the Joseph Rowntree Foundation Housing Market Taskforce [3.3]. That paper drew on and developed aspects of the authors' earlier research, including: Cowan's three-part structure for understanding housing law and policy in terms of regulation, access, and rights and responsibilities [3.1]; Cowan and colleagues' British Academy funded research into the workings of private landlord associations [3.5]; and on housing associations and possession claims (funded by the Tenants Services Authority) [3.4]. The Joseph Rowntree paper consolidated and developed this wide-ranging body of work, advancing a closely argued and highly original case for a coherent programme for housing tenure reform, premised on a rigorous analysis of different elements of risk in each area.

In 2017, in the aftermath of the Grenfell Tower disaster, Cowan and colleagues were commissioned by Shelter to investigate the gaps in current legislation that may make housing less safe and/or prevent households from remedying problems, as well as to identify legal remedies to strengthen protection for tenants. Using an innovative qualitative online methodology, the research team captured the views of a range of professionals, landlords, and

## Impact case study (REF3)

occupiers about the current state of the law [3.6]. The report argued that the current law is shocking, concerning, and dangerous – it is largely based on an outmoded Victorian heritage and lacks coherence depending on an occupier’s housing tenure; for example, in Grenfell Tower itself, the occupiers had a range of housing tenures.

Overall, Cowan’s research provides a compelling case for the need for reform and the various objectives that must inform it, including simplification, uniformity across tenures, neutralising the politics of housing and moving away from the existing diverse types (or layers) of housing tenure [3.1-3.6].

### 3. References to the research

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- 3.1 **Cowan D** (2011), *Housing Law and Policy*, Cambridge University Press, ISBN 9780521199971. Submitted to REF2014. [Available on request]
- 3.2 **Cowan D** and Dearden N (2002). The minor as a subject, in Fionda J (ed), *Law and Childhood*, Hart Publishing, pp.165-183, ISBN 1 84113 150 4. [Available on request]
- 3.3 Carr H, **Cowan D** & Hunter C (2010), *Tenure Rights and Responsibilities*, JRF Programme Paper: Housing Market Taskforce, York: Joseph Rowntree Foundation, ISBN 9781859357897, <https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/tenure-rights-responsibilities-full.pdf> (Funded through competitively awarded grant process. Cowan was the PI) [Available on request]
- 3.4 **Cowan D**, Hunter C and Pawson H (2012). Jurisdiction and scale: Possession proceedings, eviction and human rights, *Journal of Law and Society*, **39:2**, pp.269-95, <https://doi.org/10.1111/j.1467-6478.2012.00581.x>
- 3.5 **Cowan D** and Carr H (2008). Actor-network theory, implementation and the private landlord, *Journal of Law and Society* (Special Research Issue), **35:1**, pp.149-166, <https://doi.org/10.1111/j.1467-6478.2008.00430.x>
- 3.6 Carr H, **Cowan D**, Kirton-Darling E and Burtonshaw-Gunn E (2017), *Closing the Gaps: Health and Safety in Housing*, Bristol: University of Bristol, [https://england.shelter.org.uk/professional\\_resources/policy\\_and\\_research/policy\\_library/policy\\_library\\_folder/report\\_closing\\_the\\_gaps\\_-\\_health\\_and\\_safety\\_at\\_home](https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/report_closing_the_gaps_-_health_and_safety_at_home) (Funded through competitively awarded grant process. Cowan was PI) [Available on request]

### 4. Details of the impact

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During this REF period, Cowan’s research has helped reform both housing law in Wales, and fitness for human habitation law in England, impacting approximately 9 million households/tenures across the two nations.

#### Housing Law Reform in Wales

Cowan’s research had a direct impact on the Renting Homes (Wales) Act 2016. The Act was based on Law Commission reports and the Commissions’ draft Bill, to which Cowan contributed in 2005-2007, when seconded to the Law Commission, but contains some significant changes in response to the research above. The Act creates a unified rental housing market, clearer rights and responsibilities for tenants and landlords, and a radical overhaul of repairing standards, thus responding to the reasoned case for such reforms made in [3.1] and [3.3]. The Policy Director of the Residential Landlords Association (RLA) comments that it will have an ‘*enormous impact*’ on residential housing [5.2] as it re-writes every existing short tenancy agreement in Wales, whichever landlord granted it. The benefits of the Act were put succinctly by a representative of the Housing Law Practitioners’ Association, in evidence to the National Assembly, Communities, Equality and Local Government Committee, 20<sup>th</sup> May 2015 [5.8]: ‘*If you pass this in something vaguely approaching the form that it’s in at the moment, I will be able to take my clients— landlord or tenants—to hopefully no more than one, possibly two, pieces of legislation and say, “These are the source of your rights”. Whereas, at the moment, I have to take my clients through*

## Impact case study (REF3)

*a mishmash of common law, statutory law and some bits tucked away in obscure statutory instruments’.*

The background to the Bill was the recognition by the National Assembly for Wales (once it was given devolved powers over housing in 2011) of the serious inadequacies of current law and the compelling need for legal reform. An initial 2011 discussion paper on options for reform, which, as the Project Manager for the Welsh Government on the legislation, remarks, drew heavily on **[3.3] [5.1, esp. para 2.1]** led to Cowan’s appointment to the expert panel advising on the legislation, attending key stakeholder meetings prior to 2015.

In March 2014, Cowan drafted the legal instructions to the Office for Legislative Counsel, on behalf of the Welsh Government, *‘ensur[ing] the Bill accurately addressed [their] policy intentions, as well as helping to shape policy’* **[5.1]**. As the relevant Team Leader at the Law Commission commented, it is very rare for instructions to be drafted other than by a Government lawyer **[5.3]**. He further commented:

*My assessment is that, without Professor Cowan’s contribution, it is likely that either the Instructions would have taken a considerably longer time to produce and/or they would not have been of an adequate quality. If they had taken longer to produce, the legislative timetable would have been upset, and the much-needed reforms would have been at best delayed. Inadequate quality would also have resulted in delay (because it would cause difficulties with Legislative Counsel); and would have resulted in a less robust final draft. The quality of the final draft of the bill was an important factor in assuring its passage through the Assembly largely unscathed.*

Cowan’s insights from **[3.1]**, in particular, assisted with the *‘complex interactions between housing and human rights law’* **[5.1]**, and his academic position enabled the civil servant responsible for delivering the Bill, against a backdrop of the opposing views of landlord and tenant bodies, to garner cross-interest group acceptance of the proposals. As the RLA’s Policy Director states, *‘[Cowan] has been a powerful force in the Welsh legislation and it is clear that it would not have been as effective or as tidy without his input at the drafting stage...the RLA ... is clear that his involvement has been crucial’* **[5.2]**. The Welsh Government’s Project Manager for the legislation notes:

*... the direct and highly constructive contribution [Cowan] made ... to the Bill itself, and continuing to assist in advising on queries arising during the legislative scrutiny, has made a significant contribution to the Bill successfully completing its passage through the Assembly. I would highlight the particular policy matters which have benefitted from the insights developed in [Cowan’s] research as being recognition of the separation between social and market tenure, the abolition of mandatory Ground 8 in respect of rent arrears, and the interaction between human rights law and that applying to anti-social behaviour.* **[5.1]**

The abolition of Ground 8 – mandatory ground for possession based on rent arrears of two months or more – was specifically argued for in **[3.1]** and **[3.3]** as a consequence of moving towards a tenure-neutral framework; the development of human rights law had been a particular focus of Cowan’s research following from his intervention in **[3.1]**. Cowan’s research on the values of administrative justice in housing law and policy **[3.1]**, as well as the relationship between regulation and rights/responsibilities **[3.1]** and **[3.3]**, were reflected in the final draft of the Bill, which included greater use of review processes than those in the original Commission draft Bill. Those provisions in the final Act were regarded by the RLA as being reflective of *‘[Cowan’s] views on the use of administrative justice and the proper place of due process. More specifically this is visible in the use of fixed penalties and practical consequences to drive compliance rather than a resort to the Courts. This is also visible in the novel approaches to retaliatory eviction, a topic which is of increased interest and in which Welsh thinking has informed action elsewhere’* **[5.2]**.

## Impact case study (REF3)

In one respect, Cowan was *unsuccessful* in translating his research into the provisions of the Bill – in seeking to ameliorate the position of minors in rented accommodation [3.2]. However, while this part of the Bill was dropped, his research has put this issue firmly on the policy agenda for possible future action. This provision, in the original Bill, applied the principle that the rules should apply to *all* tenancies, including those granted to those between the ages of 16 and 18. It did not make it into the final Act due to concerns regarding the enforceability of other contracts and their vulnerability. However, the RLA believes that, while *'It was unfortunate that [Cowan's] ideas around rights for minors in rented accommodation were so watered down in the final legislation as to be almost invisible [...] this is an idea that is likely to resurface in future'* [5.2]. This is because discussion of this issue during the passage of the Bill through the National Assembly, particularly the expert witnesses before the Communities, Equality and Local Government Committee, put it firmly on the political radar. For example, there was support for the provision from a range of other sources, including the Welsh Local Government Association and Community Housing Cymru, which regarded the provision as a homelessness prevention device [5.9].

The reforms within the Renting Homes (Wales) Act 2016 have directly affected the lives of approximately half a million households who are private or social tenants, and their landlords.

### Influencing Fitness for Human Habitation Law in England

Drawing on and developing the work he did with the Welsh Government leading to the 2016 Act, Cowan with his colleagues (Carr and Kirton-Darling (Kent), and Burtonshaw-Gunn (Bristol)) have influenced: (i) Shelter's lobbying strategy regarding housing conditions in England; and, (ii) the successful passage in the Westminster Parliament of the Homes (Fitness for Human Habitation) Bill (a private member's Bill sponsored by Karen Buck MP that obtained Government support). That Bill, now enacted, will affect every social and private rented tenancy of less than seven years in England, involving around 8.8 million properties (Ministry of Housing, Communities and Local Government, Dwelling stock Estimates: 2017, England). As the name suggests, the Act creates an implied covenant into every such tenancy that the dwelling be fit for human habitation at the commencement of and during the term of the tenancy. The Act amends the largely redundant section 8, Landlord and Tenant Act 1985, which implied a similar covenant but only to tenancies with rent levels of less than GBP80 pa in London and GBP52 elsewhere (figures that had not been updated since 1957).

Shelter has attested to the way in which the *Closing the Gaps* research [3.6] enabled it to focus its lobbying strategy in this area, and influenced their presentation to the Communities and Local Government Select Committee (in both written and oral evidence), as well as their other lobbying positions. Shelter comments that *Closing the Gaps* [3.6] *'... informed our decision to prioritise the fitness [Karen Buck] bill for short-term influencing. We integrated the findings of the report into our messaging on the Bill, particularly around framing of the problem. [It] helped us to broaden out the scope of our evidence, pointing to deficiencies in the legislative framework on top of quantifying the extent of poor conditions/Category 1 hazards'* [5.6]. Shelter added: *'It's fair to say that the findings in the report have influenced the perspective of Committee members. ... in subsequent sessions, MPs have used those observations from the report – particularly the legislative framework being piecemeal – to pose questions to other witnesses, including the Homelessness Minister'*.

*Closing the Gaps* [3.6] was cited consistently throughout a House of Commons Library Report [5.4], prepared to assist MPs' appreciation of the issue. The Report cited the key findings of [3.6], including that the law *'... is piecemeal, out-dated, complex, dependent on tenure, and patchily enforced. It makes obscure distinctions, which have little relationship with everyday experiences of poor conditions'*.

Karen Buck MP cited *Closing the Gaps* [3.6] when opening the debate on the Second Reading of her Bill [5.5], and has said that she regarded it as a *'very timely and valuable contribution to the debate'* [5.7]. Indeed, she noted that, *'As I was preparing for the critical Second Reading stage and lobbying for government support, having such a comprehensive and rigorous report*

## Impact case study (REF3)

*could not have been more useful, and I made extensive reference to it* [5.7]. Consequently, the research had a direct influence on the proposer of the Bill, which was also used by her to enrol other actors, thus giving rise to the broad coalition of support for the Bill. This support across Parliament was, in many ways, a remarkable thing given that, as the Project Leader from the Welsh Government noted, there had been historical antipathy since 1957 to updating the rent levels in the previous provision [see 5.1].

Shelter confirmed that *Closing the Gaps* [3.6] was used to provide ‘... an additional, independent endorsement of the policy solution i.e. the fitness standard. This was valuable for discussion with potentially sceptical MPs and helped to give our recommendations more weight. Given that Shelter had campaigned on the Bill before, its position was perhaps seen as “predictable” and being able to point to other organisations making the same policy recommendation was helpful for engaging with a broader range of MPs’ [5.6].

Subsequently, the government supported the Bill, and Buck suggests ‘...that something – and perhaps more than one thing – changed the political conditions and I would be confident that the appearance of the report [3.6] at exactly the right time armed Ministers with arguments to explain the new, supportive, position’ [5.7]. Shelter also notes that ‘We know that the report was well received by senior officials, who commented that it made a valuable contribution to the debate. We’d be comfortable to predict that it helped inform the government’s thinking’. Shelter also noted a further concrete sign of approval of the research was ‘... the director at MHCLG [Ministry of Housing, Communities, and Local Government] waving the report while proclaiming “I love stuff like this”’ [5.6].

The Bill was given Royal Assent on 20 December 2018 and came fully into force on 20 March 2020 in respect of virtually all existing tenancies, whether granted before or after the Act.

### 5. Sources to corroborate the impact

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- 5.1 Welsh Government – Email (November 2015), Project Manager, Tenure Legislation
  - 5.2 Residential Landlords Association – Email (February 2017), Policy Director
  - 5.3 Law Commission – Email (June 2017), Former Team Leader, Public Law Team
  - 5.4 House of Commons Briefing Paper CBP08185 (14 January 2018), *Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill 2017-19*
  - 5.5 Transcript, Homes Bill (19 January 2018), col 1175:  
[https://hansard.parliament.uk/commons/2018-01-19/debates/8B42756A-B334-4C72-AD8D-BF437FE1C66B/Homes\(FitnessForHumanHabitationAndLiabilityForHousingStandards\)Bill#contribution-94EEB27D-9AAE-4579-BF8B-708C8459D58A](https://hansard.parliament.uk/commons/2018-01-19/debates/8B42756A-B334-4C72-AD8D-BF437FE1C66B/Homes(FitnessForHumanHabitationAndLiabilityForHousingStandards)Bill#contribution-94EEB27D-9AAE-4579-BF8B-708C8459D58A) [Accessed 11/2/21]
  - 5.6 Shelter – Email (March 2018), Head of Policy21
  - 5.7 Karen Buck MP, Corroborating Letter (August 2018)
  - 5.8 National Assembly for Wales, Communities, Equality and Local Government Committee (CELGC), – Transcript (20 May 2015), [Renting Homes \(Wales\) Bill: Evidence session 10—Housing Law Practitioners Association](#) [Accessed 11/2/21]
  - 5.9 National Assembly for Wales, CELGC – Transcript (6 May 2015), [Renting Homes \(Wales\) Bill: Evidence Session 4—Chartered Institute of Housing, Community Housing Cymru, Welsh Local Government Association](#) [Accessed 11/2/21]