Considering the case for a Housing Court A Call for Evidence

**QUESTIONS FOR ALL RESPONDENTS**

**Q1. Have you had experience of possession cases in the county court?**

Yes- *please go to Q2*

**Q2. If you answered yes to Q1, was possession sought under section 8 or section 21 of the Housing Act 1988?**

Both

**Q3. If you answered yes to Q1, what were your experiences of these cases? Please provide details in the text box below.**

The majority of County Court Judges are not housing specialists and do not have a complete understanding of the nuances of s.21 notices. The statutory scheme has become burdensome and complicated. The s.21 validity rules are different depending on the year that the tenancy commenced, the deposit protection rules are at times difficult to navigate, and recent County Court judgments relating to the service of an gas safety certificate or EPC certificate may mean that if a landlord has not served the certificate before the commencement of the tenancy then no s.21 notice could be relied on at all.

The s.8 notice rules on the other hand are perceived as being straight forward. However, there is a conception by County Court judges that ASTs terminated by a s.8 notice are treated in the same way as social tenants. This can lead to a burdensome and long process for private landlords.

**Q4. If you answered yes to Q1, are there any particular stages within the possession process where you have experienced delays?**

Yes- *please go to Q5*

**Q5. At which stage of the possession action process through the court did you experience delays?**

**Please tick one or more of the options below, and in the textbox explain what, from your understanding, were the reasons why these delays occurred.**

 Landlord claim process
x Court order issued
x Warrant for eviction
x Possession by county court bailiff

There are often e.g. month long delays in the drafting of court orders even when draft orders and emailed to court the same day

The first delay is caused between the first hearing for possession and any subsequent hearing, if for any reason the tenant asks for more time (for example, to seek legal advice). This can take up to six months to get back in front of a Judge.

The worst delay is undoubtedly the time between an application for a warrant for possession, to the warrant being issued and then to the bailiff appointment for enforcement. There is also enormous disparity between court centres with bailiff appointments in city areas taking longer than in rural areas. Anecdotally we understand Oxford CC is currently quick on 3-4 weeks and Coventry CC struggling on 8 - 13 weeks.

The MOJ latest statistics suggest that the average (non-median) time for a bailiff to evict a private tenant is 23-26 weeks. It is 67 weeks for social landlords. This can be resolved with investment in bailiffs rather than the creation of a housing court (<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679781/mortgage-landlord-possession-statistics-oct-dec-2017.pdf>).

**Q6: Do you understand how each stage of the possession action process works (a summary of the process is provided at Annex A)?**

Yes- *please go to Q8*

**Q7. If you answered no to Question 6, please provide more information on the stage or stages of the possession action processes which you do not understand, and why, in the textbox below.**



**Q8. Are improvements to the county court possession action processes needed?**

No- *please go to Q10 (landlords only) or Part 2 (other respondents)*

**Q9. If you answered yes to Q8, what are the main issues at each stage of the current process? Please provide details in the text box below.**

**a) From application to first Court Hearing date**

* Too complex
* Too confusing
* Takes too long
* Other

**b) From first Court Hearing date – To obtaining a Possession Order**

* Too complex
* Too confusing
* Takes too long
* Other

**c) From obtaining a Possession Order – to Enforcement (getting possession of the property)**

* Too complex
* Too confusing
* Takes too long
* Other

**QUESTION FOR PRIVATE LANDLORDS ONLY**

**Q10. As a private landlord, how satisfied are you with the time taken to complete possession cases?**

Not satisfied
Neither satisfied nor dissatisfied Fairly satisfied
Satisfied
Very satisfied

Please explain your choice in the text box below.

**QUESTIONS FOR ALL RESPONDENTS**

**Q11. Do you have experience of the enforcement stage of a possession order in the county court?**

Yes- *please go to Q12*

**Q12. If you answered yes to Q11, how satisfied were you with the enforcement process in a) the county court (warrant for possession) or b) the High Court (writ of possession).**

**a) County court enforcement process**

 Not satisfied
x Neither satisfied nor dissatisfied
 Fairly satisfied
 Satisfied
 Very satisfied
 I have not experienced the county court enforcement process before

**b) High Court enforcement process**

 Not satisfied
 Neither satisfied nor dissatisfied
 Fairly satisfied
 Satisfied
x Very satisfied
 I have not experienced the High Court enforcement process before

**QUESTIONS FOR PRIVATE LANDLORDS ONLY**

**Q13. As a private landlord, were you aware of the need to apply for a warrant or writ from the court before a bailiff / High Court Enforcement Officer would be instructed to take possession?**

Yes

No

**Q14. Was there an application to suspend the warrant or writ made in your case?**

Yes- *please go to Q15*

No- *please go to Q16*

**Q15. If you answered yes to Q14, what were your experiences of the timeliness and processing of the application to suspend the warrant or writ? Please explain in the text box below.**

**Q16. What, if anything, do you think could be improved about the process for enforcing possession orders in:**

**a) the county court? Please explain in the text box below.**

**b) the High Court? Please explain in the text box below.**

**QUESTIONS FOR ALL RESPONDENTS**

**Q17. Have you had recent experience of property cases in the county court or the tribunal? If yes, please provide details of the types of property cases of which you have had experience in the text box below.**

X Yes, I have had experience of county court cases- *please provide further details in the text box below, then go to Q18*

X Yes, I have experience of property tribunal cases-*please provide further details in the text box below, then go to Q20*

* No, I have no experience of county court or property tribunal cases- *please go to Q22*

The members of the Social Housing Law Association have collective experience across the range of county court and tribunal cases.

**Q18. From your experience what could be made better or easier in the *court* processes to provide users with better access to justice in housing cases?**

Please provide details of the improvements you think need to be made in the text box below:

The highest volume of court action by social landlords against tenants is rent arrears possession claims. Their tenants are generally on extremely limited incomes, and even the requirement to pay £3.75 per week towards their arrears puts a strain on their weekly budget. In that context, the process of court closures has had an enormous impact on the ability of tenants to actually get to court. In one case against a social tenant, the tenant had walked for 3 hours, setting off at 6am from Hawkshead to Kendal County Court. The court closures have had a detrimental effect on access to justice for social housing tenants.

Social housing providers have cut in-house costs and rarely instruct a legal professional to draft a claim for possession and put together their cases. In-house officers would benefit from user friendly check lists and guidance on completing e.g. Particulars of Claim proforma. The complexities for social housing providers often lead to cases being struck out, or delayed to resolve issues, which leaves many landlords with a negative view of the court process.

The cuts to legal aid brought about following the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) have restricted free legal advice for tenants. This has had obvious detrimental effects on access to justice for tenants. However, perhaps an unforeseen consequence is that the quality of duty advisers in the county court has deteriorated. The advisors often lack the confidence to deal with cases immediately and seek adjournments which are not necessary. This increases costs across the board, taking up additional court time, adding to financial pressures when tenants are already in rent arrears, and causing court lists to be delayed. For those tenants who live in legal aid advice deserts e.g. in North Yorkshire, they are left to navigate a complex area of law on their own with obvious negative implications for access to justice.

**Q19. How satisfied were you with the average time taken to resolve the *county court* cases you have experienced?**

X Not satisfied
 Neither satisfied nor dissatisfied Fairly satisfied
 Satisfied
 Very satisfied
 Please provide further details in the text box below.

Social housing landlords experience delays caused by;

 - tenants being unable to attend court because of the distance and cost of actually travelling to their local court, and subsequently applying to set aside orders;

- tenants not being able to navigate the court process on their own for want of a competent advisor who is able to represent them on a legal aid scheme;

- a lack of bailiffs able to process a warrant for possession and then to fix a timely appointment to evict.

**Q20. From your experience (*if applicable - please go to Q22 if you have not had experience of the First-tier tribunal*) what could be made better or easier in the *tribunal* processes to provide users with better access to justice in housing cases?**

Please provide details of the improvements you think need to be made in the text box below:

The current distribution of jurisdiction between the county court and the tribunal is complicated and gives rise to confusion and frustration for the majority of lay users. This has been made significantly easier in areas where the pilot has operated to allow tribunals to make orders previously reserved to the county court. The existing powers for courts to transfer cases from the county court to the tribunal (under s.176A of the Commonhold and Leasehold Reform Act 2002 and s.231B of the Housing Act 2004) promotes access to justice.

**Q21. How satisfied were you with the average time taken to resolve the cases you have experienced?**

 1 -Not satisfied
x 2 -Fairly satisfied
 3 -Satisfied
 4 - Very satisfied

Please provide further details in the text box below.

The tribunal does not present the same delays as the county court, and times to resolve matters are better. This is likely due to the tribunal being better equipped to deal with litigants in person, a narrower jurisdiction, and less complex rules.

**Q22. On the whole, the *county court* provide fair access to justice for property cases. Do you agree or disagree with this statement?**

X Yes, I agree
 No, I disagree
 Neither agree nor disagree

Please provide reasons for your answer in the text box below.

There is nothing intrinsically wrong with the county court and it is capable of providing fair access to justice as it used to do effectively if (1) it is funded properly so that it can operate to its full potential, with sufficient court staff to administer the court office and sufficient bailiffs employed to deal with the volume of work and improved IT (e.g. digitising more processes as has taken place in the criminal courts (e.g. digital bundles for trials are used rather than hard copies), (2) court users are able to access advice through properly funded duty advisors through legal aid.

**Q23. On the whole, the *First-tier Tribunal* provides fair access to justice for property cases. Do you agree or disagree with this statement?**

X Yes, I agree
 No, I disagree
 Neither agree nor disagree

Please provide reasons for your answer in the text box below.

The tribunal is well equipped to deal with litigants in person and the costs regime allows tenants to raise a grievance without fear of an adverse costs order. It is however still quite slow.

**QUESTIONS FOR ALL RESPONDENTS\**

**Q24. Which of the following policy options for reform would be your preference?**

Establish a new, specialist Housing Court

Make structural changes to the existing courts and property tribunals

Make changes to the enforcement process in the county court

No changes (‘do nothing’ option) but strengthen guidance to help users navigate the court and tribunal process.

**QUESTIONS ABOUT A HOUSING COURT**

**Q25. Do you think there is a case for a specialist Housing Court?**

Yes- *please go to Q26*

**Q26. If you answered yes to Q25, what do you think a Housing Court should be able to do? Please give details and evidence in the text box below.**

There is a case for a specialist housing court to deal with;

(1) Accelerated Possession claims where the only issue is the validity of a s.21 notice, and

(2) Stand-alone disrepair claims, where there is no other issue before the court.

These two areas are typically litigated by unrepresented landlords, and often unrepresented tenants. A tribunal with an inquisitorial approach is likely to promote access to justice.

However, where disrepair is raised as a defence to a claim for possession, these cases may well be better litigated in the county court in the context of the possession claim.

Members of the Social Housing Law Association have communicated a concern that most social housing issues which come before the county court are multi-disciplinary. They concern elements of contract, tort, and sometimes issues of a semi-criminal nature such as anti-social behaviour and social housing fraud. In addition, some tenants will be protected parties due to a lack of mental capacity. Such cases of a complex nature are simply not suitable for a housing tribunal.

Alternatively introduce a “housing ticket” for judges in the same way there is a ticket for family or CoP work so that only those judges or DDJs who have done specific housing training hear housing cases.

**Q27. If you answered yes to Q25, do you think a specialist Housing Court would provide benefits in terms of:**

a) a reduction in costs for those bringing cases?

No

b) improved access to justice?

No

c) Easier access for users?

No

d) improvements to the timeliness of property cases (please specifiy which types of cases in the text box below)

Yes

Please use the text box below to explain your answers.

The housing court would not necessarily reduce costs for court users. The current issue fee for possession claims is £355, whilst in the tribunal the cost is £200. There is not much difference in the cost of bringing such a claim for a landlord.

There is a case for Accelerated Possession claims to be dealt with in a tribunal setting, but these would have to be transferred to the county court for any substantial defence to be litigated. We note the plan to create a digital system in 2019 like PCOL to issue these claims which would be very welcome.

For those disrepair cases which are brought by tenants, the issue fee is based on an estimate of general damages and can be a high cost. The incorporation of stand alone disrepair claims into the tribunal jurisdiction would have the effect of allowing tenants to bring a claim without the high issue fee.

There is no evidence to suggest that tenants are reluctant to bring claims for disrepair. Indeed, the evidence of SHLA members is that there has been an sharp increase in such claims in the last 2-3 years. Such are usually funded through a CFA and administered by claims companies previously known for personal injury work.

The tribunal may be in a better position to carry out site visits and become more readily versed in the level of damages along with the legal issues, in order to provide some greater consistency in this area of law.

Social housing cases have made a significant contribution to the current law as reflected in the Equality Act 2010 and human rights. Social housing law requires the expertise of the county court judiciary with a wide experience to determine these cases. They are simply not suitable for a tribunal jurisdiction. Indeed, within the tribunal it is likely that these cases will be subject to a disproportionate number of appeals which will lead to delays in the appellate courts.

The tribunal jurisdiction is not set up for anti-social behaviour cases. There is no dock e.g. for committal hearing when a defendant is produced following arrest for breaching an injunction, and there is no way of guaranteeing safety for witnesses.

There is a disparity in the recoverability of costs in the county court and tribunal. If social landlords were unable to recover their costs this would have a significant impact on their budgets (although they cannot recover costs against legally aided defendants of course). Conversely, legal aid providers are often dependent on inter partes costs orders if they are successful in order to remain profitable. Importing a no-costs jurisdiction to too broad a spectrum of social housing cases may have significant unintended consequence of discouraging legal aid practitioners from remaining in business.

In North Yorkshire there is a legal aid desert which means very few homelessness decisions are challenged so this can reduce the quality of Council decision making. This is a definite access to justice issue arising from the under funding of legal aid.

If existing legal aid providers cannot be paid on an inter-partes basis then this may lead to a greater funding gap. This is likely to particularly adversely affect individuals with a protected characteristic.

**QUESTIONS ABOUT STRUCTURAL CHANGE TO THE EXISTING COURTS AND PROPERTY TRIBUNALS**

**Q28. Do you think there is a need for changes to be made to the types of cases currently considered by the courts and property tribunals?**

No

**Q29. Do you think there is a need to transfer property cases from the courts to the First-tier Tribunal or vice-versa?**

No- *please go to Q30*

**Q30. If you answered no to Q29, why do you *not* think there is a case for transferring property cases between the courts and the First-tier Tribunal? Please provide details and evidence in the text box below, then go to Q33.**

It is an important consideration that the fee income to county courts generated by the possession claims list is so substantial that smaller courts may be forced to close if all possession claims moved to a separate tribunal. This would present a significant issue for access to justice for members of the public to access their local courts.

The cost of setting up a housing court is likely to be disproportionate to the benefits. Parallels can be seen with the employment tribunal system which has a significant infrastructure.

Social housing cases have made a significant contribution to the current law due to the number of cases involving the Equality Act 2010 and human rights. Social housing law requires the expertise of the county court judiciary with a wide experience to determine these cases. They are simply not suitable for a narrow tribunal jurisdiction. Indeed, within the tribunal it is likely that these cases will be subject to a disproportionate number of appeals which will lead to delays in the appellate courts.

The dissatisfaction with the county court system is caused solely by under funding of the back office and bailiffs and with legal aid. It is a false economy to under fund the county court system and create a similarly underfunded parallel new tribunal system. Much better to properly fund one we suggest.

**Q31. If you answered yes to Q29, please indicate, using Annex B as a reference, which types of property and housing cases, if any, you think could be transferred FROM the courts TO the Property Chamber in the First-tier Tribunal? (Tick all that apply)**

X I do not want cases to be transferred from the courts to the Property Chamber of the First-tier tribunal

**Please use the text box to give further details of what you would consider the benefits to be of transferring these cases, in terms of both judicial processes and timescales.**

**Q32. If you answered yes to Q28, please indicate, using Annex B as a reference, which types of property and housing cases, if any, you think could be transferred FROM the Property Chamber of the First-tier Tribunal TO the courts.**

x I do not want cases to be transferred from the Property Chamber of the First-tier Tribunal to the courts.

**Please use the text box to give further details of what you would consider the benefits to be of transferring these cases, in terms of both judicial processes and timescales.**

**QUESTIONS ABOUT IMPROVED GUIDANCE**

**Q33. Do you think that further guidance is needed to help users navigate the court and tribunal process? If yes, please provide details on what guidance you think is needed on which parts of the court and tribunal process in the text box below.**

X – Yes

Guidance or checklists on s.21 notices and completing accelerated possession claims should be provided. This area has become unwieldy and unnecessarily complicated.

**Q34. Do you consider that any of the structural changes suggested above (options 1, 2 and 3) would impact on people who share a protected characteristic, as defined under the Equalities Act 2010 (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex or sexual orientation), differently from people who do not share it? If yes, please provide details.**

Yes

There is a disparity in the recoverability of costs in the county court and tribunal. If social landlords were unable to recover their costs this would have a significant impact on their budgets. Conversely, legal aid providers are often dependent on inter partes costs orders if they are successful in order to remain profitable. Importing a no-costs jurisdiction to too broad a spectrum of social housing cases may have significant unintended consequence of discouraging legal aid practitioners from remaining in business. This would impact those with a protected characteristic.

About you

**Q35. in which capacity are you completing these questions? (please tick all that apply)**

On behalf of an organisation – the Social Housing Law Association (SHLA)

**Q36. If you are replying as a landlord, how many rental properties do you own?**

The collective housing stock of members of the Social Housing Law Association or landlords represented by the solicitors and counsel in SHLA comprises many thousands of properties across England.

**Q37. If you are replying on behalf of an organisation, which of the following best describes you? Please leave blank if you are answering as an individual.**

Landlord organisation

**Q38. Please provide your contact details in case we need to contact you about your responses to these questions**

**Refer to Annex C for an explanation of your rights and the information you are entitled to under the Data Protection Act 2018. (see also Annex D).**

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