



## Crisis' response to the Ministry of Housing, Communities and Local Government's call for evidence, 'Considering the case for a Housing Court'

*18 January 2019*

Crisis is the national charity for homeless people. We are dedicated to ending homelessness by delivering life-changing services and campaigning for change.

Our innovative education, employment, housing and well-being services address individual needs and help homeless people to transform their lives. Our eleven UK Skylight Centres offer holistic support across a whole range of issues, including support to secure access to adequate and affordable housing and employment support to help people prepare for, find, sustain and progress in work. Ensuring that homeless people can get access to affordable, decent, secure housing is central to our services for homeless people.

The private rented sector is increasingly important in helping to end homelessness. It is often the only viable housing option for single homeless people. Despite this, the ending of an Assured Shorthold Tenancy has become the leading cause of homelessness in England. The sector is also characterised by a lack of security and six or 12 month fixed term contracts are the norm. These often fail to provide homeless people with the security they need to rebuild their lives.

The speed and effectiveness of the process for landlords to gain possession of their property through the court system has been identified as one of the main barriers to longer tenancies. We welcome the government's aim to address these concerns and improve the court service for both landlords and tenants in possession cases.

### **Part 1: The private landlord possession action process in the county court**

We strongly support the government's aim to provide greater security for tenants in the private rented sector. Longer tenancies could help tackle the insecurity currently experienced by many private renters and would be particularly important for homeless people who need stability to help them rebuild their lives. To ensure that people have enough time to put down roots in their community, find and maintain employment and access any support services they may need we would like to see the government go further and introduce a new standard open ended private tenancy, where the landlord could only give notice by using specified grounds. This would reflect the changes that have recently been introduced in Scotland and ensure that private renters in England benefit from the same level of security that new tenants in Scotland now have. To ensure that all tenants, including those who have experienced or are at risk of homelessness, can benefit from increased security of tenure, legislation should be introduced to require all landlords to offer the new standard longer tenancy. We set out our position in full in our response to the government's recent consultation, 'Overcoming the Barriers to Longer Tenancies in the Private Rented Sector', and have attached a copy for reference.

Landlords' confidence in the court system's ability to respond to legitimate concerns around evicting tenants who breach the terms of their agreement is one of the biggest barriers to introducing more stable and secure tenancies. Thirty five per cent of landlords surveyed reported that they did not have confidence in the court system to resolve disputes between landlords and tenants fairly, compared to only a quarter who did.<sup>1</sup> Landlord associations have reported concerns around waiting for court dates to pursue evictions under the possession grounds within the fixed term period, and in many cases will advise landlords to wait until they can issue a Section 21 notice instead.<sup>2</sup> The government should take action to improve the speed and effectiveness of court processes in England and Wales so that landlords can feel confident offering long term tenancies without it threatening their business in the small number of cases where significant problems arise, for example with rent arrears or damage to the property.

### **Part 3: Access to justice and the experience of court and tribunal users**

It is essential that a new specialist housing court or tribunal work to ensure that survivors of domestic abuse are appropriately supported. Crisis is a member of the National Housing and Domestic Abuse Policy and Practice Group, led by the [Domestic Abuse Housing Alliance](#) (DAHA). The main aims of this group are to ensure that the experience of survivors of domestic abuse is more prominent in the housing sector and helps shape improved and enhanced service delivery; that women and children can access secure housing and good quality services when experiencing domestic abuse; and that co-ordination exists between the housing, homelessness and domestic abuse sectors.

In the UK there are already a number of specialist Domestic Violence Courts, for example the ones coordinated by [Standing Together Against Domestic Violence](#). We would not expect specialist housing courts to take the place of these but to have general awareness of domestic abuse and how it might present or end up in a housing court. Given the potential overlap between the two courts, it is essential that panel members in the new specialist court are trained to understand the impact of domestic abuse and on housing management functions. This could include rent arrears that have been accrued as a result of economic abuse and where housing providers mistake domestic abuse as Anti-Social Behaviour (ASB) therefore taking inappropriate enforcement action when it should be one of support.

The Government should also consider whether a new specialist housing court could be used to speed up the eviction of perpetrators of domestic abuse and improve the waiting times for cases involving domestic abuse being listed for hearing so that these cases are prioritised and dealt with more quickly than at present. Similarly, the Government should consider its role in helping people experiencing domestic abuse to ascertain orders/ injunctions against a perpetrator more quickly and introduce special measures to ensure the safety of survivors who may have to face their

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<sup>1</sup> Shelter (2016) *Research Report: Survey of Private Landlords*.

<sup>2</sup> De Santos, R. (2012) *A better deal – towards more stable private renting*. London: Shelter.

perpetrator in court. A recent report from Women's Aid England has highlighted how perpetrators have used the family court as a means of continuing to abuse women. It is essential that a specialist housing court mitigates against this.

#### **Part 4: The case for structural changes to the courts and the property tribunal**

The government should introduce measures in England and Wales to improve the speed and effectiveness of court processes in England and Wales. This would help landlords feel confident offering long term tenancies, without it threatening their business in the small number of cases where problems arise. Any reform should ensure that:

- Both tenants and landlords have swift access to justice.
- All judges hearing housing cases have sufficient specialist expertise in housing.
- Sufficient resources are provided to allow court processes to work quickly and effectively.

This could be achieved by making structural changes to existing courts and property tribunals, for example by having more frequent specific housing days at county courts, or by establishing a new, specialist housing court to deal with all non-criminal housing-related matters. One benefit of establishing a specialist housing court is that it should help to ensure a more consistent level of housing expertise among judges hearing cases.

In considering the case for structural changes to the court system in England and Wales, it will be important to consider evidence from Scotland, which already has a specialist housing tribunal. The First-tier Tribunal for Scotland (Housing and Property Chamber) was formed to help resolve issues arising between landlords and tenants in the private rented sector, such as repairs or determinations of rent. From 1 December 2017, landlords in Scotland have also been able to apply to the First-tier Tribunal for eviction and repossession orders where they consider that they have grounds for eviction. This change was expected to make the repossession process easier and quicker for landlords, while still ensuring that tenants' rights are properly protected and that all judges have a sufficient level of housing expertise.

As the First-tier Tribunal has only been hearing repossession cases for one year, it is too early to draw any definitive conclusions about the advantages and disadvantages of having a specialist housing tribunal dealing with applications for eviction or repossession. Initial evidence shows that since the types of cases that can be brought to the tribunal was expanded in December 2017, there has been a significant increase in the volume of cases. 688 private rented sector applications were received within the first four months of operation, and projections from the Judicial Office for Scotland indicated that the overall number received within the first year would be around

2,500. This is three times the projected caseload.<sup>3</sup> Recent reports have also highlighted a significant increase in the number of deposit protection cases being heard by the tribunal.<sup>4</sup> This suggests that there is demand for the free to access, specialist service provided by the tribunal that was not being met by the previous system. The higher than expected volume of private rented sector applications has had a significant impact on the availability of resources within the Housing and Property Chamber, including caseworkers, hearing clerks and other staff, hearing venues and tribunal members. Anecdotal evidence gained through work with private rented sector tenants, landlords and agents, and through discussion with members of the First-tier Tribunal, indicates that processing times for possession and disrepair cases has increased.

However, despite frustrations with the slower processing times for cases amongst both landlords and tenants, there has been positive feedback about the tribunal as a whole. Anecdotal evidence suggests that all parties have welcomed having a free to use option to resolve housing issues.

It is crucial that any new specialist housing court or tribunal established in England has sufficient resources to effectively manage the volume of applications and meet potential increases in demand. The initial evidence from the recent changes to the First-tier Tribunal in Scotland further highlights the importance of this.

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<sup>3</sup> Judicial Office for Scotland (2018) *The Scottish Tribunals: Annual Report prepared by the President of the Scottish Tribunals, 1 December 2016 - 31 March 2018*. Edinburgh: Judicial office for Scotland.

<sup>4</sup> Scottish Housing News (2018) 'Judging by the Scottish case, a specialist Housing Court in England will see a wave of deposit protection cases', *Scottish Housing News*, 17<sup>th</sup> December