

# **Reviewing consumer redress in Scotland's social and private rental sectors**

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# INTRODUCTION

Strengthening the rights of tenants through forms of redress is an enduring public policy issue in Scotland, responding to concerns as to the ability of tenants to exercise and uphold their rights in relation to rental properties and tenancies. Systems of redress, where complaints and disputes between landlords and tenants are resolved, are particularly important for tenants, as they enable them to hold landlords to account, to assert their legal rights, and to ensure their home is well managed.

There are a number of ways in which tenants can seek redress outside the court system. These include via Ombudsmen services: independent bodies usually sponsored by but independent from Government, charged with investigating and adjudicating over complaints. Another form of redress is via tribunals, which hold hearings over disputes and often comprise a mix of legally trained members and ‘ordinary’ members with specialist expertise in the tribunal’s area. This specialist focus means that tribunals may be seen as preferable and advantageous compared to the court systems. There are also alternative dispute resolution schemes, encouraging parties to resolve their problems without recourse to tribunals or to litigation, using approaches such as mediation to try and reach mutually agreeable solutions. Alternative dispute resolution has been supported for decreasing the time and cost of accessing justice, though others have argued that its effectiveness is dependent on appropriate resourcing, education, and infrastructure (Quek Anderson, 2019).

While the Scottish housing system has several redress options available according to rental tenure, raising disputes and pursuing redress presumes awareness of rights and the ways in which these can be asserted. Tenants’ knowledge of their rights can be limited (Gowans, 2018) and, even where they are aware of their rights, there may be confusion about the ways in which they can be exercised or concern as to the consequences of raising disputes. The mere existence of legal rights does not necessarily mean that they are well understood, asserted or enforced.

This report provides a short review of existing systems of redress in Scotland’s social and private rental sectors and, drawing upon international examples, indicates some key principles which may inform future debate as to the design and effectiveness of systems of redress and dispute resolution.

Section 2 provides a definition and overview of tenant rights in Scotland and introduces the platforms available for rights to be asserted. Section 3

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discusses the raising and resolution of disputes in the social and private rented sectors, drawing upon a limited evidence base to indicate the types of redress that are sought and outcomes achieved by renters in different tenures and using different platforms. Section 4 introduces some examples of consumer redress from elsewhere in the UK and internationally. Section 5 offers a conclusion and some recommendations for future research that may inform and aid policy development.

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# DEFINING AND EXERCISING TENANT RIGHTS IN SCOTLAND

Tenant rights differ by tenure. Most residents of social housing will hold a Scottish Secure Tenancy (SST) which provides a number of statutory rights, including:

- Security of tenure
- Rights to apply for a joint tenancy
- Rights of succession
- Rights to repair
- Rights to information and consultation
- Rights to compensation for improvements
- The ability to assign their tenancy or exchange or sublet their house.

Rights and responsibilities in private tenancies can differ according to the nature of the tenancy and what is agreed between landlords and tenants, but under the Private Residential Tenancy introduced in 2017 these typically include rights to information, notice as to rent increases, the ability to challenge rent increases, the right to the property being kept in a reasonable state of repair, the right not to be discriminated against, and the right to only be evicted according to one of the 17 designated grounds, and protection from wrongful tenancy termination.

The last decade has seen substantial reform to the circumstances and forums which these rights can be asserted. In 2010, the contemporary form of the Scottish Housing Regulator was created. The Regulator's role is to monitor, assess and intervene in the performance of social housing landlords (housing associations and local authorities). By doing so, their objective is to support the ability of tenants to hold their landlords to account by gathering and providing transparent and systematic information regarding performance and governance. This includes publishing data in accessible forms, requiring landlords to meet particular standards of performance and governance that are regularly assessed. The Regulator does not hear individual service-related complaints from tenants, though tenants can raise complaints with the Regulator if there is a significant performance failure.

Individual service-related disputes are directed to the Scottish Public Services Ombudsman, which hears cases related to social housing raised by tenants. Tenants are able to take complaints to the Ombudsman provided they have exhausted their landlord's internal complaints procedure. If complaints are unresolved by the landlord, tenants can raise

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issues with the Ombudsman related to repair and maintenance, tenancy problems, procedural failures in relation to eviction threats, or their landlord's failure to appropriately handle or resolve complaints.

While the Ombudsman provides a route for social renters to proactively hold landlords to account, this is not the only circumstance or forum where awareness of rights is important. Tenants can be summoned to the Sheriff Court system in cases where a landlord seeks to evict a tenant due to rent arrears. Ensuring that tenants are aware of their rights in these circumstances is equally as important as ensuring they are able to proactively assert them.

In the private rented sector, the introduction of a new Private Residential Tenancy (PRT) in 2016 was accompanied by a reform of the dispute resolution process. The PRT theoretically provides greater security of tenure for tenants by mandating particular and prescribed grounds by which tenancies can be terminated, contrasting with the old system where 'no fault' evictions could be applied. Disputes between landlords and tenants are now the responsibility of a specialist First-tier Tribunal (Housing & Property Chamber), rather than through the Sheriff Court.

There are also three tenancy deposit schemes operating in Scotland's PRS, operated by the three agencies with which deposits are lodged. Landlords are mandated to lodge deposits with a deposit scheme at the beginning of new tenancies. Each deposit scheme operates its own alternative dispute resolution process to handle disputes over deductions from deposits.

As housing is a devolved policy issue, practice across the UK differs. Recent reforms in Scotland arguably represent the most significant action to strengthen tenants' rights and support their ability to exercise them, particularly in the private rented sector where opportunities for redress and dispute resolution are more limited in other UK jurisdictions (Moore, 2017).

However, research shows that there are a number of issues that prohibit or affect the assertion of tenant rights. Research shows that there is a lack of awareness of rights amongst social and private renters (Gowans, 2018). One third of renters in Gowans' study for Citizens' Advice were unaware of their rights and that specialist advice from third party agencies was crucial in raising awareness.

Even where tenants are aware of their rights, they can be a reluctance to exercise these through formal processes. This can relate to the accessibility of forums (Gowans, 2018) and to issues of insecurity and powerlessness felt by renters, particularly in the private rented sector

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where tenants may not wish to harm their relationship with a landlord, even if theoretically protected from eviction (Moore and Dunning, 2017; McKee et al, 2020).

There is surprisingly little independent research that explores the ways in which tenants engage with systems of redress and dispute resolution. Harris' systematic review of alternative dispute resolution (ADR) systems in the private rented sector found that "very little is known about the use, strengths and limitations of using ADR in this context" (Harris, 2020, p. 4). While applied exclusively to the private rented sector, Harris devised a set of key principles that may underpin effective dispute resolution for landlords and tenants. These were:

- A multi-tiered dispute resolution system that encourages consensual forms of dispute resolution (e.g. mediation between disputing parties) before progressing to evaluative or determinative forms (e.g. courts and tribunals);
- Active participation and client empowerment in access, including choice in the methods by which disputes can be resolved;
- Proportionate and appropriate dispute resolution, including encouragement of consensual resolution and providing for the opportunity to resolve disputes before they escalate to formal court and tribunal systems;
- A user-focused approach that acknowledges issues of access, literacy and engagement when using dispute resolution services and systems.

This typology is an encouraging step in the literature and provides a useful framework for understanding how current systems and platforms operate. While substantial research has been done on the experiences of tenants living in social and private rented sectors, there is need to more systematically understand the reasons why tenants are motivated to raise complaints and disputes or dissuaded from doing so, and the ways in which this might be overcome. A better understanding of tenant engagement with systems of complaints, disputes and redress will aid a better understanding of the opportunities and barriers tenants encounter when asserting their rights.



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## RAISING AND RESOLVING DISPUTES

As detailed in Section 2, there are a number of avenues available for social and private renters to raise complaints and disputes and to assert their rights. This section utilises data reported publicly by the national agencies responsible for overseeing these forums.

### *Complaints, disputes and redress in the social rented sector*

Social housing tenants are, in the first instance, expected to raise disputes through their landlords' internal complaints procedure. Outcome 2 of the Scottish Social Housing Charter states that one outcome must be that "tenants and other customers find it easy to communicate with their landlord and get the information they need about their landlord, how and why it makes decisions and the services it provides" (Scottish Government, 2017). This includes making it easy for tenants to make complaints and to receive communication as to what has been done in response to complaints. If complaints are raised by tenants and remain unresolved, they are able to escalate this to the Scottish Public Services Ombudsman (SPSO). The SPSO's remit in relation to housing covers service-level disputes such as repair and maintenance issues, tenancy problems, procedural failures in relation to evictions, and failures to appropriately handle or resolve complaints. The SPSO gathers information from the complainant and the organisation (landlord) that is the subject of the complaint and aims to investigate within 80 working days. Cases of significant complexity are aimed to complete within 12 months. Once resolved, either party is able to request a review of the outcome, though only if new information has come to light or it can be proven that there were errors in procedure or use of evidence during the initial SPSO investigation.

SPSO data shows that in 2019/20 609 enquiries and complaints related to housing association and local authority housing combined were received (SPSO, 2020a). The most common reason for enquiry and complaint was related to repair and maintenance (44%), followed by neighbourhood disputes and anti-social behaviour (17%). However, statistics show that not all enquiries and complaints progress through a full investigation. In 2019/20 (see SPSO, 2020b for the following data), 557 cases were determined in total, but 544 of these were resolved at either the Assessment stage (where complaints are determined to be out of out of the SPSO's jurisdiction or were withdrawn by complainants) or the Early

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Resolution stage (where the SPSO has confirmed that the matter is within their jurisdiction, but it is most commonly considered that it would not be proportionate to investigate due to the need to use public resources effectively). A proportionally large number of cases determined before an investigation are done so because the complainant has withdrawn their complaint (131), perhaps due to a change of circumstances or because they stop contacting the SPSO, or because a complaint has been prematurely sent to the SPSO (114).

While the number of complaints logged with the SPSO is proportionally small relative to the number of social housing tenants, evidence on their role in administering redress is largely limited to official statistics and reports. What is not clear from these sources is how tenants experience the complaints procedure, the factors that motivate or dissuade them from lodging complaints with the SPSO and that influence their decisions to withdraw them, nor the types of redress that are sought and achieved.

Data is also available as to the performance of social housing landlords in handling and resolving tenant complaints prior to SPSO involvement. Complaints operate through a two-stage process: Stage 1 of frontline resolution within five days of the complaint being made to the landlord, with escalation to Stage 2, a more detailed internal investigation, where complaints are to be resolved within 20 working days. Aggregated data across housing associations and local authorities reported by the Scottish Housing Regulator (2020) show that a high proportion of both first and second stage complaints are responded to within the designated timescales (86.9% of first stage complaints in 2018-19; 83.8% of second stage complaints), implying a high degree of efficiency. Of these, just over half (54.7%) of first stage complaints are upheld (i.e. the landlord decides in favour of the complainant) and just under half (48.3%) of second stage complaints are upheld.

While this statistical data is useful in providing key indicators related to performance and determinations, the evidence base is limited by a lack of qualitative material that explores the motivations, decisions, perceptions and experience of complaint and dispute services provided either by social landlords or by the SPSO. Some elements of the dispute resolution framework appear to reflect some of the key principles outlined by Harris (2020); for instance, the multi-stage process attempts to avoid escalation disputes, but there has been little study of the lived experience of these processes and the ways in which it impacts on tenant wellbeing, confidence, and the awareness or interest in asserting rights.

The Scottish Housing Regulator undertakes surveys and interviews with a national panel of tenants, covering a range of issues. The most recent

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publication referenced complaints related to the use of digital tools when contacting landlords, where it found that 77% of users were interested in using digital options to make complaints (though only around half had done so) (Scottish Housing Regulator, 2019). This is significant, for issues of access, preference and platform are key to understanding the motivations and decisions that tenants make when deciding whether to assert their rights or not. While this report predominantly looks at instances where tenants are able to proactively assert their rights, Gowans (2018) discusses the ways in which the accessibility of Sheriff Courts affects tenants facing eviction, highlighting that the platform through which disputes are handled can affect perceptions and experiences of access and resolution.

### *Complaints, disputes and redress in the private rented sector*

Dispute resolution in the private rented sector is principally handled through the First-tier Tribunal (Housing and Property Chamber), introduced in 2017 alongside the new Private Residential Tenancy. In this respect, it can be understood as the platform and tool through which the tenant rights detailed in the Private Residential Tenancy are enforced. Responsibility for dispute resolution was transferred from the Sheriff Courts to the First-Tier tribunal. Specialist tribunals are considered preferable to the court system due to perceived advantages in accessibility, speed, and user-friendly procedures and experiences (Gowans, 2018). The free and less legalistic methods of the tribunal are also perceived well by landlords (Scottish Association of Landlords, 2020). The First-tier housing tribunal deals with determinations related to rent or repair issues, rights of entry, and issues related to evictions and procedural failures arising from the Private Residential Tenancy (e.g. if a landlord fails to protect a deposit). Landlords and tenants are both able to apply to the tribunal, though an application can be rejected if it is not deemed appropriate or within the jurisdiction of the tribunal. Reflecting on Harris' (2020) principles of dispute resolution, the tribunal does not offer first-stage mediation services, though can identify cases as suitable for mediation and provide information to the parties as to what is involved and why their case may be suitable. It is the responsibility of the disputing parties, however, to agree and pursue mediation.

Data on the work of the tribunal is limited. The most significant pieces of published work to date are by Shelter Scotland (Tooms-Moore, 2020) and Indigo House as part of a three-year evaluation funded by the Nationwide Foundation (Evans et al, 2020). Tooms-Moore (2020) analysed the published proceedings and outcomes of cases to date. It found that tenant attendance at hearings is often low, though when tenants did attend the tribunal was more likely to find in their favour, and that in most cases tenants did not have professional representation but landlords did. While inconclusive, this initial data suggests greater consideration as to how tenants can be enabled to engage with the tribunal system is required.

This view was supported by the Living Rent tenants' union in a submission to a recent Local Government and Communities committee, where concerns were expressed over accessibility, complexity, and the level of support available to tenants in pursuing disputes through the tribunal (Living Rent, 2020). Evans et al (2020), in their research on the new Private Residential Tenancy and First-Tier Tribunal found that awareness of the tribunal was low amongst tenants and that, although based on a small sample, there appears to be an asymmetry of power favouring landlords who are more likely to have professional representation than tenants. The annual report of the Scottish tribunals service shows that half of private rented sector applications to the Tribunal concerned eviction, while a further 37% were for civil proceedings, usually for payment orders concerning rent arrears or damage to rented property (President of the Scottish Tribunals, 2019). The report does not detail how many applications are raised by tenants and how many by landlords, though this would be important data to know to understand the ways in which the Tribunal is utilised.

In addition to the First-tier tribunal, there are three tenancy deposit schemes, each with their own dispute resolution process. If landlords fail to lodge deposits in a Government-approved scheme, tenants can raise this as a dispute with the First-tier tribunal. Table 1 shows that the number of deposits protected has increased year-on-year since tenancy deposit legislation applied in 2012.

**Table 1:** Number of tenancy deposits protected in Scotland (March 2013 to March 2019); Source and Analysis: [The Dispute Service \(2019\)](#)

Year	Total deposits protected
March 2013	116,839
March 2014	149,639
March 2015	171,466
March 2016	186,070
March 2017	202,514
March 2018	211,955
March 2019	219,629

Paralleling this, Table 2 shows that the number of adjudications, where tenants felt their deposit was unreasonably withheld, has also increased year-on-year.

**Table 2:** Adjudications completed by year, for all tenancy deposit schemes in Scotland (March 2013 to March 2019); Source and Analysis: [The Dispute Service \(2019\)](#)

Year	Total deposits protected
March 2013	116,839
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March 2016	186,070
March 2017	202,514
March 2018	211,955
March 2019	219,629

The March 2019 figure of adjudications represents 2.79% of all deposits protected in Scotland. Recent research commissioned by the Scottish Government (2018) provides some insight into awareness and use of tenancy deposit dispute resolution services. While 39% of tenants had their deposits returned in full, the remaining 61% of tenants felt that going through dispute processes would not make any difference, did not want to spend the time or effort in a dispute process, or were unaware that a dispute process was available (Scottish Government, 2018, p. 37). Some tenants also felt they needed more information regarding what to do in case of a disagreement regarding deposits and how complaints could be made. Taken together, this data suggests that there may be barriers to raising and pursuing disputes through tenancy deposit dispute resolution schemes, including awareness of schemes and perception of the effort, procedures and value of schemes. The study also commented that there may be scope for greater consistency in procedure and process across the three schemes, particularly to help landlords fulfil their duties (Scottish Government, 2018).

### *Summary*

Previous studies have established that tenants are often unaware of their rights (Gowans, 2018) or may feel uncomfortable asserting them due to feelings of insecurity or fear of damaging their relationship with their landlord, particularly in the private rented sector (Moore and Dunning, 2017; Hoolachan et al, 2017; McKee et al, 2020). While there are a number of organisations that provide specialist and expert advice to support tenants (e.g. Shelter and Citizen's Advice), studies have found that there is a critical need for more and earlier education and information regarding rights and the ways in which they can be exercised (Gowans, 2018).

It is not yet clear whether and how the last decade of reforms in Scotland have fully enabled tenants to better assert their rights and hold landlords to account, though initial evidence suggests that awareness of formal route to redress and justice is low (Evans et al, 2020). Evidence and data are often available in aggregate, statistical form, and while information as to the efficiency and outcomes of schemes is of interest, it is equally important to understand the circumstances and reasons that discourage tenants from raising disputes. This is particularly important to understand

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in the context of recent legislative changes and an apparent strengthening of tenant rights and the platforms through which these are asserted.

Areas of particular interest include:

- **Awareness** of dispute resolution services, including the ways in which tenants are made aware of their rights, the circumstances and avenues through which they can be exercised, and whether and how education and information is available to support this. This is also important given the number of agencies involved in complaint handling and dispute resolution. Scotland's processes are streamlined compared to other UK jurisdictions, but there remain a number of different entry points to raising disputes.
- The **engagement** of tenants in the different stages and procedures of dispute resolution services, and the ways in which this affects pursuit and outcomes of disputes. Use of digital tools, for instance, as indicated by tenants in the Scottish Housing Regulator panel survey (2019), may help overcome power imbalances.
- **Design** of dispute resolution services, including the extent to which early stage, consensual forms of resolution are incorporated. These are supported for their potential to avoid formalities and legalities of courts and tribunals, and for avoiding adversarial disputes (Harris, 2020), but require careful design and resourcing to be effective.

The following section explores some of these issues in relation to international examples of consumer redress in housing.



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# INTERNATIONAL EXAMPLES OF CONSUMER REDRESS IN HOUSING

This section details some international examples of consumer redress in housing. These have been selected purposefully as some elements of each system reflect either key principles of dispute resolution or appear to respond to some of the issues and challenges highlighted in Section 3, including access, engagement and representation, and awareness. However, similar to the Scottish context, the evidence base is often limited to material produced by advocates or through a limited number of research projects. Furthermore, the specificities of legal and housing policy contexts mean that direct transfer should not be assumed or advocated. Rather, the examples here are intended to provoke thinking and debate as to the whether and how systems of redress and dispute resolution are reformed in a Scottish context.

## Dispute resolution in England

While housing is a devolved matter in the UK, the housing markets in England and Scotland are broadly comparable in terms of some of tenure trends and challenges faced by households, notwithstanding some key differences in relation to policies such as Right to Buy. In recent years, reforms to Scotland's private rented sector have distinguished it more from other UK jurisdictions (Moore, 2017).

Social housing tenants in England can take their complaints to a dedicated Housing Ombudsman, provided they have been through their landlord's internal complaints procedures. Access to redress schemes in the private rented sector is variable depending on whether tenants rent from a landlord or from a letting agent. Letting agents are overseen by two redress schemes, the Property Ombudsman and the Property Redress scheme, which can be used by tenants to pursue disputes, while those who rent from a landlord are unlikely to have access to any redress scheme. Theoretically, private landlords can join the Housing Ombudsman scheme that oversees disputes between social renters and their landlords, but as this is optional only a very small number of private landlords join the scheme. The Housing Ombudsman's most recent annual report indicates they had only 73 voluntary members (the term used to categorise private landlords) (The Housing Ombudsman, 2020). Similarly, landlords can voluntarily opt into the two redress schemes that apply to letting agent tenants. Whether a tenancy is covered by a redress scheme is therefore entirely at the discretion of the landlord rather than the tenant. The only recourse for private renters is to pursue justice through the court system,

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though if disputes relate to deposit retention or deduction they are able to access free dispute resolution services via tenancy deposit protection schemes, similar to the service available to renters in Scotland.

There are proposals to reform the redress system in England, responding to concerns over inconsistent coverage and access to redress across the main rental tenures, and concerns that even where redress exists there are multiple entry points, which can create “a lack of public awareness and some confusion about which are the right organisations for consumers to approach to seek redress” (MHCLG, 2018). Fragmentation and lack of clarity regarding redress and dispute resolution is a continued concern (Gill et al, 2017). Following a consultation, proposals announced in 2019 include a new Housing Complaints Resolution Service, to act as a single point of entry for all existing dispute resolution service, and mandating private landlords to belong to a redress scheme. While one of the rationales is to reduce fragmentation and confusion around accessing schemes, the English Government proposals allow for multiple redress schemes to compete provided they operate according to consistent standards (MHCLG, 2019). The consultation also keeps open the prospect of a Single Housing Ombudsman in the future, though this is not yet recommended.

While Scotland’s system of redress and dispute resolution is arguably more advanced, given it provides specialist platforms and services that private tenants can access, the English case may be instructive in terms of how dispute resolution and redress may be organised. The single point of entry may theoretically enhance clarity and access for tenants in different tenures. Furthermore, while this paper is focused on social and private renting, the proposals also include the creation of a New Homes Ombudsman for private developers, which will implicate on those that operate in Scotland (MHCLG, 2019, p. 41). There may therefore be some future overlap between housing redress schemes.

### **The Civil Resolution Tribunal in British Columbia, Canada**

The Civil Resolution Tribunal (CRT) provides an interesting example of the use of digital tools in facilitating dispute resolution and access to justice. The CRT provides online dispute resolution for a range of civil matters. The CRT’s jurisdiction with respect to housing is limited to ‘strata’ property (i.e. commonhold property and condominiums) and a small number of



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housing-related disputes, such as disputes in house shares and short-term rentals.<sup>1</sup>

The CRT aims to facilitate the resolution of disputes through online platforms. Those wishing to raise disputes are guided through a four-stage online process<sup>2</sup>, which begins with a ‘Solution Explorer’, which provides free legal information, educational tools, and guides users through a step-by-step process with details as to how disputes are raised, investigated, and explored. Alternative courses of action are also signposted and the information presented varies according to the details provided by the user, ensuring that information is presented in an accessible and familiar way. This diagnostic stage allows complainants to work out whether and how they wish to pursue their dispute. If the problem is progressed, the disputing parties proceed to a stage of Negotiation, where the parties interact over a private message portal which is overseen by a CRT case manager. A number of resources are made available, such as a plain English guide including tips for negotiation and a preparation worksheet that encourages parties to consider the purpose, objectives and desired or acceptable outcomes. If an agreement can’t be reached, the Case Manager will attempt to mediate and support the parties to reach an agreement. Finally, if an agreement still can’t be reached, an independent CRT member will decide about the dispute, often involving exchanges of written submissions and/or digital videoconferencing.

Agreements and decisions arrived at through the CRT can be registered with a court and enforced like a court order.

The CRT is designed to be accessible to self-represented parties and to encourage self-help and empowerment in the dispute resolution process. Its multi-stage process has been advocated for its ability to support early resolution of disputes (Harris, 2020), with only 16% of cases as of early 2019 progressing beyond the self-diagnosis Solution Explorer stage (Henderson, 2019). Other benefits include shorter time periods for case resolution compared to courts, the informal and accessible nature of the information, including educational tools, and flexibility of use and access enabled by using a digital platform (Cambridge Pro Bono Project, 2019). Although the CRT is primarily online, offline options are also available to those digitally excluded. The CRT charges fees, with discounts offered for use of the online platform and automatic fee waivers available to those lacking resources upon completion of some personal details (Salter, 2020).

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<sup>1</sup> The majority of housing-related disputes, such as deposits, rent issues, and repairs, are dealt with by the Residential Tenancy Branch.

<sup>2</sup> See <https://civilresolutionbc.ca/> for further details.

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Research and evidence on the effectiveness of the CRT is limited, with a number of desk-based reviews (Cambridge Pro Bono Project, 2019; Harris, 2020) supplemented by work by advocates or those involved with the CRT (e.g. Salter, 2017; 2020). Some concerns about online dispute resolution relate to a potential dilution of the human aspects of resolution, including body language and personal interactions, and risks to transparency and accountability (Quek Anderson, 2019; Tan, 2019). In this context it should be noted that the CRT is entirely human-driven and does not operate or utilise algorithms or such like to direct or influence outcomes. Furthermore, distance mediation may have advantages over in-person settlements, including enhanced access to justice for those unable to attend in-person hearings or those who feel more mentally and physically comfortable participating online in their own home (Salter, 2017).

The limited evidence base means that it is not possible to draw definitive conclusions or recommendations regarding the CRT's effectiveness and potential application elsewhere. Potential issues of digital exclusion should also be noted, while the system has not been applied to rental tenure disputes. However, the user-centred principles and multi-stage process aims to avoid adversarial conflict, at least in the first stages, and the use of digital technology to facilitate redress and resolution is unique compared to the context in UK housing redress. Easily accessible online resources that clearly signpost and explain the stages of dispute resolution, with content automatically adapted according to the problem and responses to questions, may also enhance accessibility. Given increasing online use, as well as interest in digital tools amongst social rented tenants (Scottish Housing Regulator, 2019), this may be a topic worthy of further research and exploration.

### **Civil and Administrative Tribunals, Australia**

The main forum for the resolution of rental tenure disputes in Australia is a state and territory-level Civil and Administrative Tribunal (CAT)<sup>3</sup>. These tribunals cover both private tenancies and social housing and reflect changes over time which have shifted the decision-making for such disputes from courts to tribunals, premised on improved accessibility and enhanced speed and determinations (Edgeworth, 2006). While other forums exist, for instance some states have public Ombudsmen who may deal with some public housing complaints, tribunals have greater powers with respect to issuing binding orders.

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<sup>3</sup> With the exception of two – Western Australia and Tasmania – which still use magistrate courts.

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The tribunals deal with a number of issues, including termination proceedings and tenancy agreement breaches. Key characteristics of the tribunals include their emphasis on informality, that the legal rules of evidence mostly do not apply – the tribunal operates in an investigative manner, and that parties are not entitled to be represented by lawyers except with express permission (Martin, 2016a). As in other systems, disputing parties are encouraged to reach an agreement before a tribunal hearing is held. Hearings are held in-person, evidence can be provided and witnesses can be called. Tribunal decisions are legally binding and enforceable, though can be appealed either on matters of law or if the appealing party can show that decisions were not fair, equitable, or consistent with new evidence that has arisen since the hearing.

There are some aspects of this system that may appeal to the Scottish case, such as limiting representation given emerging concerns at the way this may be creating imbalances of power between tenants and landlords in a small number of First-Tier Tribunal cases (Evans et al, 2020). However, the Tribunals in Australia have also been shown to be conflicted by legislative and policy changes that restrict their discretion to decline termination, and the ways in which they can approach particular types of evidence, specifically related to tenancy terminations where social landlords are able to present recorded tenancy breaches as proved if tenants did not dispute them with landlords within designated time periods (Martin, 2016b). This has resulted in some punitive decisions and impacts on vulnerable families in response to crime and anti-social behaviour (Martin, 2016b; Martin et al, 2019).

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## CONCLUSION

The analysis presented in this report has provided an overview of the landscape and operation of consumer redress available to social and private renters in Scotland. While there is aggregated, high-level data that details the operation of Ombudsmen, Regulators, and Tribunals, there remains an evidence gap regarding the actual qualitative experiences of tenants that choose or choose not to raise and pursue disputes, and the experiences and value of different systems and forms of redress. This evidence gap would be aided by more consistent and joined-up monitoring and evaluation of the patchwork of redress mechanisms available to renters, including more detailed data being made available regarding the working and operation of the First-Tier Tribunal in Scotland.

While it is clear that some tenants do not express their rights because they are either unaware of them or dissuaded from doing so due to power imbalances, what is less clear is what would enable them to do so better. Advocacy agencies have a crucial and important role to play in advising and signposting people, providing not only in-person support but also web resources, but it has been argued that there needs to be much earlier education and information provided to people if they are to effectively assert rights (Gowans, 2018). Given the number of agencies and authorities involved in redress, understanding of the value of this and the most effective way of raising awareness regarding the exercise of rights and redress procedures would also benefit from a consistent and joined-up primary evaluation of existing systems.

A better understanding of how aware tenants are of their rights and what would actually, practically support them to assert them would in turn enhance the ability of researchers and advocates to research and recommend enhancements and alternatives to the current system. Some of the international examples detailed here appear to offer some useful insights into how access to and procedures of redress can be enhanced. Ongoing debates in England regarding streamlining and consolidating dispute resolution processes offer insight into how issues of awareness and confusion may be avoided, though these are not currently implemented. Key principles from the Canadian example include emphasis on active agency, participation, and consensual forms of dispute resolution, as well as use of digital tools. The Australian case highlights that some tribunals operate without legal representation, which some may interpret as an effort to de-emphasise legalities and restore power imbalances (though it should be noted that representation may also have

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a positive affect for tenants through provision of expert advice and guidance).

However, both the limited international evidence base and lack of detailed research domestically limits the extent to which recommendations can be made. Actual lived experiences of consumer redress in housing are understudied internationally. The framework developed by Harris (2020) detailed in Section 2 may provide a useful frame for future analysis. Its four facets – multi-tiered/staged dispute resolution; active participation and empowerment; proportioned and appropriate resolution; and a focus on users and literacy of dispute processes and methods – encapsulate trends in recent and ongoing forms of consumer redress in housing in the UK. Further research and data are required to understand the needs of Scotland’s social and private renters, their experience, interest and use of existing platforms of redress, and the extent to which principles or elements of examples elsewhere will better support them to assert their rights.

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