

# **First-tier Tribunal (Housing and Property Chamber)**

Data analysis and  
recommendations

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## KEY POINTS

- This briefing outlines the findings from a short piece of data analysis on the First-tier Tribunal (Housing and Property Chamber), including an examination of each of the 266 entries published in the Eviction and Civil Proceedings Decisions database in January and February 2019. The majority of cases at this time related to short assured tenancies. Cases relating to private residential tenancies are increasing in frequency in the period since.
- There is minimal published data on the tribunal which makes a comprehensive understanding of how tenants are engaging with the system difficult.
- The use of the tribunal for housing cases was intended to offer “a new, more accessible and effective route to justice for landlords and tenants in the sector.”
- However, tenant attendance at the hearing is low: in four out of five cases in our sample where the landlord was the applicant, the tenant did not attend their hearing. When tenants did attend, the tribunal was more likely to find in their favour (13% compared to 6%).
- Furthermore, in most of the cases there was no representation or support for tenants recorded as present (234, or 88% of 265 cases). Conversely, when the applicant was a landlord (as in most cases) the landlord had professional representation in 3 out of 4 cases. When landlords were represented, the tribunal was more likely to find in their favour (98% compared to 81%).
- Whilst these findings are inconclusive given the limited data available, they give clear cause for concern regarding a potential power imbalance between tenants and landlords using the tribunal. Consideration is required on how to enable tenants to effectively use the tribunal system to realise their rights.

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## CONTEXT

The First-tier Tribunal (Housing and Property Chamber) initially dealt with a small number of cases relating to Scotland's private rented sector. Its remit grew from December 2017, as part of a package of reform to Scotland's private rented sector. The jurisdiction of the Sheriff Court in relation to civil cases arising from private sector tenancies was transferred to the Chamber, and at the same time, a new private residential tenancy regime was introduced with the Chamber providing the dispute resolution mechanism for issues arising from these new tenancies. The stated purpose of the restructuring of Scotland's tribunals is to "make sure they are easier to understand and more user-friendly",<sup>1</sup> and the use of the tribunal for housing cases was intended to offer "a new, more accessible and effective route to justice for landlords and tenants in the sector."<sup>2</sup> At present, there is little publicly available information or statistics on tenant experience going through the tribunal system.

There are now 340,000 households in the private rented sector, and the sector has tripled in size since 1999.<sup>3</sup> This equates to 14% of Scotland's households renting from a private landlord or letting agent, and yet around 36% of Shelter Scotland's clients rent privately<sup>4</sup>: an overrepresentation which suggests private renters still face considerable housing challenges.

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<sup>1</sup> Scottish Government, [Access to justice policy](#) (last accessed January 2020)

<sup>2</sup> Scottish Government (2014) [Consultation on a New Tenancy for the Private Sector, page 10](#)

<sup>3</sup> Scottish Government (2019) [Scottish Household Survey 2018: Key Findings Summary Report](#)

<sup>4</sup> Shelter Scotland (2018) [Impact report 2017/18](#)

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# METHODOLOGY

## Research aim

This project set out to analyse a sample of cases from the evictions database of the First-tier Tribunal to better understand tenant experiences of using the tribunal system, and to consider recommendations going forward.

The project consisted mainly of analysis of Tribunal case decisions, alongside some desk-based research and a small number of interviews.

## Data analysis

All Tribunal decisions and statements of reasons for those decisions are published on the Chamber website and are therefore publicly available. These include decisions from a hearing or at a case management conference, which can be conducted in person or teleconference.

A sample of these cases was identified for analysis, consisting of each of the 266 entries published in the Eviction and Civil Proceedings Decisions database in January and February 2019.<sup>5</sup> Many Tribunal decisions were recorded more than once on the database and one entry in the database had no decision attached; these cases were removed from the data analysis.

For each case decision in our sample, the following details were recorded:

- Basic information: the rule applied under; tenancy type; identity of applicant - i.e. landlord or tenant; the local authority area. A brief case summary was also noted.
- Representation and support: whether the respondent attended; if the landlord had legal representation at the hearing; if the tenant received support (in the form of representation at any stage of the hearing or if the decision noted they had sought advice before the hearing).
- Case outcome: if the Tribunal decision was made in the tenant's favour.

## Interviews

Interviews were conducted with two members of Shelter Scotland staff with experience of representing multiple tenants at Tribunal, as well as one tenant who had gone through the Tribunal process to provide some qualitative data.

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<sup>5</sup> Housing and Property Chamber, First Tier Tribunal for Scotland, [Evictions and Civil Proceedings Decisions Database](#)

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## Desk based research

There is limited published information on the tribunal, but both the annual report of the Scottish Tribunals<sup>6</sup> and Robson and Coombe's paper in *Juridical Review*<sup>7</sup> provided important data for the research and has been cited in the report. In addition, a Freedom of Information request was made to the Scottish Legal Aid Board (SLAB) and one to the First-tier Tribunal (Housing and Property Chamber), however the figures these organisations were able to provide were of limited use to our analysis.

The information request made to SLAB sought figures for how many times legal aid was accessed for representation at First-tier Tribunal for each quarter of 2018-19. Corresponding cash value figures were also sought. Within their recording system SLAB do not have specific category codes for the First-tier Tribunal (Housing and Property Chamber), but do have codes which cover general subject matters that may indicate a case being dealt with at the Tribunal. Few of these cases involve representation, but a number do concern advice relating to these cases or appeals. The recording system features a free entry text field for completion by solicitors – the quality of data from which is variable and therefore cannot be used to provide a categorical assertion of case content.

The request to the Tribunal sought figures on total applications under each rule; total applications from each local authority; figures on tenant attendance; figures on tenant support/representation; and figures for applications by tenancy type. As with SLAB, the data received was limited and figures could only be provided on local authority area of application, application type (by rule) and tenancy type.

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<sup>6</sup> [The Judiciary of Scotland](#) (July 2019)

<sup>7</sup> Robson, Peter and Combe, Malcome M. (2019) The First year of the First-tier: private residential tenancy eviction cases at the housing and property chamber. *Juridical Review*, 2019 (4). Pp. 325-333

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# FINDINGS

## Reasons for application

The Chamber received 3781 applications in 2018-19.<sup>8</sup> The Tribunal has dealt with a much higher number of cases than originally anticipated and as a result cases had been subject to some delay in processing.<sup>9</sup>

Of the private rented sector (PRS) applications received around half (51%) concerned eviction, while 37% were for civil proceedings in relation to private tenancies.<sup>10</sup> The bulk of these applications were for payment orders and typically accompany an eviction application, concerning rent arrears and/or damage to rented property. A further 11% covered applications for an order where the landlord has failed to pay a tenancy deposit into an approved scheme, and there were a small handful of applications to draw up the terms of a tenancy; for damages for unlawful eviction and/or for a wrongful termination order; for declarator of the type of the tenancy; and landlord registration appeals.<sup>11</sup>

Similarly, in our sample, roughly half of all cases were for an order for possession and half for other civil proceedings which includes payment of rent arrears. This is applicable for both assured/short assured and private residential tenancies.

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<sup>8</sup> Judicial Office for Scotland (July 2019) [The Scottish Tribunals: Annual Report 2018-19](#), p19

<sup>9</sup> Scottish Housing News (11 January 2019) [Private rented sector work within the First-tier tribunal for Scotland](#)

<sup>10</sup> Cases brought by tenants will only feature on the Evictions and Civil Proceedings database when raising civil proceedings arising from a tenancy for issues that are not covered by other Rules.

<sup>11</sup> Judicial Office for Scotland (July 2019) [The Scottish Tribunals: Annual Report 2018-19](#), p19

<b>Tribunal rule by tenancy type</b>	<b>Decisions recorded (Jan and Feb 2019)</b>
<b>Assured tenancies</b>	<b>204</b>
Rule 65: Order for possession	37
Rule 66: Order for possession (short assured only)	53
Rule 70: Other civil proceedings (including payment of rent arrears)	114
<b>Regulated and part VII</b>	<b>1</b>
Rule 91 <sup>12</sup> : Other civil proceedings	1
<b>Private residential tenancy</b>	<b>61</b>
Rule 109: Order for eviction	31
Rule 111: Other civil proceedings (including payment of rent arrears)	30
<b>Total decisions</b>	<b>266</b>

**Table 1: Rules applied under by tenancy type, from analysed sample**

### Tenancy type

In 2018-19, the majority of applications were for assured (including short-assured) tenancies. Applications relating to private residential tenancies accounted for 23% of eviction applications and 22% of civil proceedings in 2018-19.<sup>13</sup> Similarly, in our sample, the majority of decisions recorded in our sample timeframe were for assured or short-assured tenancies.

This reflects the time frame for both datasets was pulled: any tenancy in the PRS starting on or after 1<sup>st</sup> December 2017 is a private residential tenancy and prior to this the most common tenancy type in the private sector was a short-assured tenancy.

### Local authority

Most cases in our sample are from Glasgow (44 out of 266 cases) and Edinburgh (36 out of 266 cases). These were followed by North Lanarkshire (20 cases), South Lanarkshire (20 cases) and Dundee (12 cases) (see appendix). This is

<sup>12</sup> This application was erroneously made under the wrong rule and amended to Rule 70 – hence its inclusion in this database.

<sup>13</sup> Judicial Office for Scotland (July 2019) [The Scottish Tribunals: Annual Report 2018-19](#), p19

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consistent with the information provided by the Tribunal (see appendix) which shows that these five areas make up the majority of applications for 2018-19.

### Applicant

The applicant for the analysed decisions was the landlord in 97% of cases. A handful of these cases were raised on the behalf of the landlord by an agent or solicitor who had given their name as the applicant.

### Attendance

In four out of five cases where the landlord was the applicant, the tenant did not attend their hearing.

Did the tenant attend?		
Tenant attended	54	20%
Tenant did not attend	207	80%
Total cases	261	100%

**Table 2: Tenant attendance at hearings, where the landlord was the applicant, in analysed sample.**

There is no recorded evidence on why this is the case: it may be because tenants do not feel confident or able to attend a hearing, or they may not understand the procedures. Equally, it may have been because they accepted that they were responsible for arrears or understood that the grounds of their eviction were automatic grounds which could not be contested – other than by pointing out technical errors made by the applicant.

The anecdotal experience of our advisers is that many tenants have said they would be unlikely to attend a hearing without some form of support, partly because of a lack of awareness and also because they feel uncomfortable without support in what they perceive to be a formal environment.

For example, one tenant we spoke with described the experience as *“frustrating...I felt cross examined, and I felt that the landlord was assisted in answering questions”*.

### Support and representation at hearings

There are a variety of ways in which tenants and landlords can have support or representation for a hearing. Both tenants and landlords may arrange for professional representation at the hearing, which could be a solicitor or other representation, for example an adviser from an advice organisation. Alternatively, some tenants may seek advice (legal or otherwise) ahead of the hearing. Where this was referred to in the case notes we included it in our analysis, but this was not always recorded.

Both tenants and landlords can also arrange for emotional or practical support, for example having a friend or family member attend with them.

There is a huge inequality in representation between landlords and tenants: 70.9% of landlords had professional representation in some form at a hearing or case management whereas for tenants this figure was only 7.9%. Among those tenants who attended their hearing this figure rises to 22.4%.

## Tenants

The vast majority of tenants did not have any form of support or professional representation at the Tribunal hearing or case management conference (234 or 88.3% of cases).

In only 21 of 265 cases (or 7.9% of cases) was the tenant professionally represented at the Tribunal.

<b>Tenant representation at Tribunal, all sample cases</b>		
<b>Any form of representation or support noted for tenant</b>	<b>31</b>	<b>11.7%</b>
Professional representation at Tribunal hearing or case management conference (adviser or legal representation)	21	7.9%
Informal support or advice sought from agency or solicitor prior to Tribunal or case management conference (where noted in decision)	10	3.7%
<b>No form of support noted for tenant</b>	<b>234</b>	<b>88.3%</b>
<b>Total cases</b>	<b>265</b>	<b>100%</b>

We would suspect that more tenants may have sought some advice from an agency such as Shelter Scotland or a Citizens Advice Bureau beforehand than might be recorded in the published decision. It certainly may be the case that the tenant concluded, on the basis of such advice, that they were being evicted on automatic grounds and therefore the tenant may have chosen not to attend.

As might be expected, more tenants had support with them if they themselves chose to attend the hearing and published decisions also tended to record a little more detail on different forms of support. Of those decisions whereby the tenant attended, 22.4% of tenants had professional representation (13 of 58 cases). A further 8 tenants had some sort of support – it was recorded that 2 had sought advice prior to the hearing and 6 had family support present. For 63.8% of tenants attending (37 of the 54) no support whatsoever was recorded.

<b>Tenant representation at a hearing, all sample cases where tenant attended<sup>14</sup></b>		
<b>Any form of representation or support noted for tenant<sup>15</sup></b>	<b>21</b>	<b>36.2%</b>
Professional representation (adviser or legal representation)	13	22.4%
Informal (e.g. family or friend)	6	10.3%
Advice sought from agency or solicitor prior to hearing (where noted in decision)	2	3.4%
<b>No form of support or representation noted for tenant</b>	<b>37</b>	<b>63.8%</b>
<b>Total cases</b>	<b>58</b>	<b>100%</b>

For one tenant we spoke to, their landlord had legal representation which they said made the process daunting. Whilst she didn't have legal representation herself, she said she would advise tenants in future to get some to address the imbalance – though she wouldn't recommend going through the tribunal system which she described as *"not fit for purpose"*.

In addition to the 'open/shut' nature of some of the eviction cases particularly those dealing with short assured tenants, other suggestions have been put forward for the lack of tenant representation including that many tenants do not understand the new system, are unable to secure legal aid, and that there is a reluctance from advice organisations and solicitors in wanting to take on cases. Furthermore, and also anecdotally, many tenants are unsure about how to secure representation for a hearing, and fearful of the financial risk in doing so. For one case we are aware of, legal fees for a client who did choose to instruct a solicitor amounted to £8,000 which was a stressful situation for the tenant. In this case the Tribunal found in the tenant's favour and they were awarded costs which covered the fee.

## **Landlords**

Conversely, when the applicant was a landlord (as in the majority of cases) the landlord was represented in 7 out of 10 cases.

<sup>14</sup> In 54 of the 58 cases, the landlord was the applicant, and in 4 the tenant was the applicant. Interestingly in the 4 tenant applicant cases none of these tenants had support or representation recorded.

<sup>15</sup> There were a further 3 cases where the identity of representatives present was not recorded and therefore it is unclear whether and in what capacity they were providing support to the tenant.

Was the landlord professionally represented? (where the applicant was the landlord)		
Landlord professionally represented	183	70.9%
Landlord not professionally represented	75	29.1%
<b>Total cases</b>	258	100%

### Case Outcomes

In our sample, the Tribunal found in the tenants' favour 6% of the time. This figure is reflected in research by Robson and Combe which looked solely at eviction cases from April 2018 to March 2019, finding that the eviction success rate was 95%<sup>16</sup>

Two factors seem to significantly affect success for tenants and landlords at tribunals:

- **Tenant attendance.** Among tenants who attended their hearings, there was a higher success rate: 14% of cases were found in the tenant's favour. Many of the cases in this database were uncontested. However, we do not know whether tenants sought advice and chose not to attend, for example if they had been advised that their case was incontestable, or believed this to be true. The sample numbers are very low and should be viewed with caution.
- **Tenant representation.** If a tenant had representation, it was more likely a decision would be made in their favour (14% compared to 6% where tenants were not represented). However, again, the sample numbers are very low and should be viewed with caution.
- **Landlord representation.** Landlords who were represented have a much better success rate than those who went without representation (98% versus 81%).

<sup>16</sup> Robson, Peter and Combe, Malcolm M. (2019) The first year of the First-tier: private residential tenancy eviction cases at the housing and property chamber. *Juridical Review*, 2019 (4). pp. 325-333

<b>Case outcomes</b>			
	Decided in tenant's favour	Decided in landlord's favour	Other outcome
<b>Tenant attendance</b>			
Where tenant attended	14% (8)	86% (50)	
Where tenant did not attend	4% (8)	95% (196)	1% (3)
<b>Tenant representation</b>			
Where tenant was represented	14% (3)	86% (18)	
Where tenant was not represented	6% (14)	94% (218)	0% (1)
<b>Landlord representation</b>			
Where landlord was applicant and represented	2% (3)	98% (185)	0% (1) <sup>17</sup>
Where landlord was applicant and not represented	16% (11)	81% (56)	0% (2) <sup>18</sup>
<b>Total cases</b>	6% (16)	93% (246)	1% (2) <sup>19</sup>

<sup>17</sup> Case was resolved at another hearing

<sup>18</sup> 2 cases were dismissed

<sup>19</sup> Dismissed figure refers to two cases involving same applicant and respondent – one for eviction and another for order of payment. In each case neither party attended.

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# CONCLUSIONS

## **Recommendation 1: Further research is required.**

This research was limited in scope: the data analysis exercise focused solely on evictions and was constrained to a two-month timescale. It would be worthwhile to investigate other parts of the Tribunal system and to focus on a wider timeframe.

It would be also be useful to carry our further research to explore if there are different outcomes on decisions made at case management discussion compared to those made at a hearing.

## **Recommendation 2: Publicly available data is limited, and further data publication and analysis should be considered.**

Publicly available data was limited as was data which we were able to gather via freedom of information requests.

We recommend that the data routinely recorded and published by the Tribunal should be expanded, making information more freely available rather than only from extrapolating data from published decisions. As Robson and Combe also noted – there is no formal template to decisions, and some give greater detail, clarity and transparency than others.<sup>20</sup> Standard recording of data such as total rent arrears or monthly rent amount could provide valuable figures for policymakers. In addition, a satisfaction survey for attending parties could be used to establish if they have found the system to be simple to interact with; and if they received advice from organisations like Shelter Scotland or Citizens Advice Bureau before attending their hearing – even for a short period.

One of the major limitations of this study is that we do not get an idea of how many tenants are seeking advice from advice-giving organisations or solicitors. It would be worthwhile to note whether, in each case, representation was carried out or if only basic advice was given. Other advice-giving organisations could also give some thought to gathering information in this way.

## **Recommendation 3: Consideration is required on how to enable tenants to effectively use the Tribunal system to realise their rights.**

The data clearly shows an inequality in representation, with landlords much more likely to be represented than tenants, and indeed landlords much more likely to attend the hearing. This may be related to landlords having greater means to afford representation via a solicitor or their letting agent. Although the system is meant to be simpler and more accessible, landlords without representation were unsuccessful more frequently than those who were represented. We also know that tenants were less likely to attend their hearing or case management

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discussion, or have representation, and decisions were more often made against them.

Representation at a hearing is not the only response. Consideration should be given to other tools which may help tenants (and indeed, landlords) actively participate and put forward their case using the Tribunal system. This could, for example, include a digital tool or advice pre-hearing.

#### **Recommendation 4: Training for advice providers**

There needs to be a focus on capacity building for organisations that provide housing advice and support. There is currently a lack of training for providers in how to support tenants through the tribunal system, and so there needs to be additional resources created to meet this need.

## APPENDIX: APPLICATIONS AND DECISIONS BY LOCAL AUTHORITY

Local authority	Applications to the First-tier Tribunal (Housing and Property Chamber) 2018-19 (data provided in response to FOI from Tribunal)	Decisions published (From sample: all published decisions in Evictions and Civil Proceedings Database, Jan-Feb 2019)
Glasgow City Council	<b>582</b>	<b>44</b>
City of Edinburgh Council	<b>462</b>	<b>36</b>
Dundee City Council	<b>280</b>	12
North Lanarkshire Council	<b>253</b>	<b>20</b>
South Lanarkshire Council	<b>217</b>	<b>20</b>
Fife Council	172	<b>16</b>
Renfrewshire Council	161	9
South Ayrshire Council	113	1
North Ayrshire Council	110	8
Aberdeenshire Council	108	
West Lothian Council	101	8
Aberdeen City Council	100	4
East Ayrshire Council	99	8
Perth & Kinross Council	94	10
Falkirk Council	92	6
Dumfries & Galloway Council	77	6
Angus Council	70	7
Inverclyde Council	68	7
East Dunbartonshire Council	66	9

Scottish Borders Council	62	4
The Highland Council	62	4
Stirling Council	55	3
East Lothian Council	55	4
East Renfrewshire Council	55	2
Midlothian Council	55	6
Argyll & Bute Council	43	3
West Dunbartonshire Council	40	2
The Moray Council	28	2
Clackmannanshire Council	22	2
Orkney Islands Council	8	1
Comhairle nan Eilean Siar	3	
Unknown	-	2
<b>Total</b>	<b>3,713</b>	<b>266</b>

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