

Call for evidence response

Shelter submission to MHCLG

Considering the case for a housing court

January 2019

Shelter helps millions of people every year struggling with bad housing or homelessness. We provide specialist advice and support on the phone, face to face and online, and our legal teams can attend court to defend people at risk of losing their home.

However, at Shelter we understand that helping people with their immediate problems is not a long-term solution to the housing crisis. That's why we campaign to tackle the root causes, so that one day, no one will have to turn to us for help.

We're here so no one has to fight bad housing or homelessness on their own.

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Until there's a home for everyone.

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Shelter

EXECUTIVE SUMMARY

We welcome the opportunity to respond to this call for evidence on the case for a specialist housing court. Although it should always be the last resort for resolving issues, the court and tribunal system has a vital role to play in ensuring that people can access and keep a decent home.

Everyone should have a home that is safe and secure, but all too often this is not the case. Every year, Shelter helps millions of people with issues related to their housing through our helpline, website and network of different face to face services. Last year, under legal aid contracts, our legal services provided a range of advice and support to 6,395 households on housing issues. This included support to defend possession proceedings, advice to tenants coping with disrepair and support to challenge local authority homelessness decisions.

In our experience, more people would be able to have access to justice if some improvements were made to the county court system. There are barriers that stop people from receiving legal advice, such as not being able to access legal aid¹ and others that stop people accessing the court system directly, such as the immediate costs associated with making an application to the courts.² Therefore, we strongly welcome holistic consideration of how to improve the court system.

In particular, as the government is taking steps to introduce new rights for tenants, such as enacting the Homes (Fitness for Human Habitation) Act and considering how to introduce longer tenancies, it is essential to consider what is needed from the court system to ensure that both tenants and landlords can enforce their rights. Rather than focussing solely on the issues with the current court and tribunal system, we urge government to focus on what the court system will need to deliver in the future – particularly in a world where landlords can only evict tenants when they have a legitimate ground to do so, rather than relying on Section 21 notices.

One essential component in any reformed court system will be legal aid and it is vital that the government increases the availability of legal aid as part of any proposals for reform. Legal aid is crucial to prevent and resolve housing issues, including the prevention of homelessness. But changes to legal aid have meant that fewer households can get timely advice to enable them to avoid a crisis – by which time homelessness cannot be prevented. An increasingly crisis-driven approach to housing advice in general, and the removal from scope of welfare benefits, is leaving people to fall through the net. Therefore, if the government wants to ensure that people are able to secure justice for housing issues, they must ensure that people can access timely legal advice. Legal aid increases are critical to ensure that the current system works efficiently and would be equally important in any future court reform.

Overall, considering the challenges with the current court system and forthcoming changes which are likely to place new demands on the court system, we are positive about the opportunities created by setting up a specialist housing court, as long as resources are made available to ensure that current issues are addressed and improved. As one of our lawyers put it:

Local, easily accessible, specialist housing courts could be a really good thing and the idea of having specialist judges who are experts in that area of law is attractive (*Shelter lawyer, London*)

¹ MoJ (2016) Legal Aid Statistics: October to December 2015

² House of Commons Library, [Employment tribunal fees](#), p. 13

However, our support for a specialist court is entirely conditional on it having the characteristics that would tackle the problems that we are seeing within the current court system, namely by:

- ❖ Having specialist judges with expertise in housing law
- ❖ Being accessible – both in terms of ease of physically accessing court buildings and by having simpler court rules.
- ❖ Being low cost so that fees or fear of paying costs do not prevent people bringing cases
- ❖ Offering clear service standards and being supported by robust and properly resourced infrastructure
- ❖ Enabling people to access Legal Aid for advice and representation
- ❖ Operating as part of a wider preventative system so that as far as possible cases do not need to come to court:
 - By enabling people to access other advice, including welfare and debt advice
 - By ensuring people can access legal advice with a view to resolving issues without the need for court action
 - By making use of alternative dispute resolution

A specialist housing court might improve access to justice, but without sufficient resourcing and access to legal aid, changes to the court system could be disastrous for renters. Our support for a specialised housing court is entirely dependent on it being adequately resourced, and the broad nature of this call for evidence means we have used our submission to outline what positive, well-resourced reform might look like.

The other recommendations we make in this response are:

1: a new specialist housing court should be more geographically accessible

2: a new specialist housing court should be supported with new user-friendly guidance on how to navigate the court system, particularly to help those who are not eligible for legal aid

3: a new specialist housing court could give judges the opportunity to build up a housing specialism through training and experience

4: a new specialist housing court should be low cost for the user, so that access to justice does not continue to be an impossibility for people on low incomes

5: a new specialist housing court should be supported by extended legal aid, with welfare benefits and disrepair brought into scope

6: a specialist housing court must be well-resourced, with enough time to give due consideration to matters and enough staff to properly administer business and respond to urgent queries. It must have adequate infrastructure and communication systems, to ensure that courts are accessible, user-friendly and responsive

7: a specialist housing court should have specific service standards, e.g. for the length of time it should take to schedule a hearing and the amount of time available to hear a case

8: in designing a new specialist housing court, the government should make sure the new system is future-proof and has the capacity to help tenants take advantage of recent legislation and/or legal remedies

9: there should be no weakening of existing safeguards for tenants in possession processes

CONSULTATION RESPONSE

Introduction:

Shelter welcomes the opportunity to contribute to this call for evidence on the case for a housing court.

Nearly four million people a year come to us for advice and support via our website, webchat, helpline and network of face-to-face services. As part of this, we have extensive experience of interaction with the courts system, and last year saw 6,395 households under legal aid contracts.

Our legal services team operate from 16 offices around England and Scotland and take action to:

- defend possession proceedings, brought by both social and private landlords
- request reviews of and appeal against adverse homelessness decisions under sections 202 and 204 Housing Act 1996
- apply for judicial review of local authorities' refusal to provide temporary accommodation to homeless families
- apply for judicial review of social services' refusal to assist families under the Children Act 1989
- assist young persons and care leavers who are homeless or threatened with homelessness
- provide advice to tenants coping with disrepair which poses a serious risk of harm to their health or safety
- defend applications for anti-social behaviour injunctions and committals
- seek reinstatement and/or damages for those who have been unlawfully evicted

We have extensive experience of the ways in which the current court system sometimes fails to deliver access to justice in housing cases. Therefore, we welcome the government's consideration of how to improve the court system and whether a specialist housing court could make it easier for all users of court and tribunal services to resolve disputes.

Rather than answering every individual question, we are responding to the questions which are most relevant to our clients and where we have the most extensive experience. Therefore, our response is divided into three main sections:

- 1) The need for court reform (primarily addressing questions 17-19 and 22)
- 2) Specific issues related to possession cases (primarily addressing questions 1-9, 11 and 12)
- 3) The case for a specialist housing court (primarily addressing questions 25-27)

1. The need for court reform

In our experience, the current court system is sometimes not effective in resolving housing disputes. The county court does not always provide fair access to justice in property and housing cases. Tenants are, in some circumstances, prevented from obtaining the remedy they need or defending a claim against them.

The need for court reform focuses on the county court system, as this is where the majority of housing cases are heard. We believe there are five main reasons why court reform is now essential.

- accessibility

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- costs
 - legal aid
 - lack of court infrastructure
 - to support the effectiveness of government policy

A. Accessibility

There are a range of barriers that deter people from going to court to seek justice for a housing issue. These barriers often disproportionately affect people on lower incomes or vulnerable people who lack support. A new housing court should be used as an opportunity to make courts more accessible.

Geography

For many people, the county court system does not provide fair access to justice simply because courts are difficult to get to.

“Courts aren’t geographically accessible. There are two in the county and public transport is dire.” (*Shelter lawyer, South West*)

Since 2011, the Ministry of Justice (MoJ) has embarked on a significant programme of court closures, in an effort to save the department money. As a result, the number of courts across England and Wales has been significantly reduced. More than 200 courts and tribunals have closed since 2011. A further eight court closures are planned for 2019.³

This not only means that people have to travel significantly further to get to court, often at a greater cost. It has also made it more difficult for people to attend hearings in person, affecting their ability to both bring a claim and defend a claim brought against them.

“[People have] to travel for miles to get to their ‘local’ county court. It leads to people not showing up for their hearings.” (*Shelter lawyer, London*)

“The closure of the smaller outer courts in the Greater Manchester area has had a significant impact for tenants. They have to travel longer distances into the city centre for their Court hearings resulting in them being less likely to attend court. Matters are listed at 10am, meaning they are forced to travel at peak times” (*Shelter lawyer, North West*)

“With the loss of rural public transport routes as well, it is becoming increasingly hard for clients in deprived rural areas to get to the larger towns and cities where the courts sit... There needs to be the ability to phone up and explain when [someone is] running late.” (*Shelter lawyer, East*)

Our legal services across the country have noted the marked decrease in the number of people attending hearings and those who greatly struggle to attend court, due the distance they need to travel to court. People who are at risk of eviction due to rent arrears, and generally in situations of severe financial hardship, are often unable to afford the increased travel costs to attend court. This is in addition to the cost and strain of taking time off work and arranging childcare. We are

³ News release, Law Gazette, [HMCTS reveals 8 proposed new court closures](#), January 2018

concerned that this disproportionately affects more vulnerable groups, including people with disabilities and low-income families. Combined with the increasing cost of attending court and the decline in legal aid availability (both addressed below), court closures are creating further inequalities between those who can and cannot afford to go to court.

As well as clearly reducing access to justice, increasing hardship and leading to worse outcomes for tenants, we are concerned that this has simply shifted costs to other government departments. For example, where a tenant's inability to attend a court in person contributes to them becoming homeless, this adds to the growing homelessness crisis and the cost falls back onto local authorities.

Recommendation 1: a new specialist housing court should be more geographically accessible and consider making use of other local buildings such as magistrates' courts to hold hearings

Complexity of the Court System

The court system's complexity and idiosyncrasies also make it hard to access for all court users.

The court system will always have an element of complexity due to the nature of housing law. However, there are some aspects of court procedure that act as a real barrier to people taking their own cases to court. This includes the complexity of the paperwork for applying to court. County courts are governed by the Civil Procedure Rules which set out how cases are dealt with, including the track on which cases should be heard (e.g. Small Claims, Fast Track or Multi-Track) and the pre-action protocols which should be followed, including for disrepair and rent arrears.

The inaccessibility of the Civil Courts was summed up in the Briggs review, which concluded "the civil courts are, by their procedure, their culture and the complexity of the law which they administer, places designed by lawyers for use by lawyers."⁴ This complexity has contributed to a

"general lack of understanding of processes and procedures" (Shelter lawyer, *West Midlands*)

As a result, tenants are deterred from taking their landlord to court because of the complexity of the rules. 54% of private tenants stated the complexity of the court system as the reason they did not pursue court action when their landlord failed to carry out repairs.⁵

This general complexity is further exacerbated by geographical variation and inconsistency in approach and decision-making.

"Different courts will give different responses to the same query depending on who you speak to" (Shelter lawyer, *London*)

"I have been told by two different judges when making submissions on applications for a warrant suspension [at a county court] that I am not following [their] 'way of doing things', the inference being that what may work in another court would not wash [there]!" (Shelter lawyer, *North West*)

⁴ Lord Justice Briggs, [Civil Courts Structure Review: Final Report](#), 2016

⁵ Citizens Advice, [It's broke, let's fix it: Improving redress for private renters](#), p.3

We believe that, while a certain level of complexity is inevitable in court due to the nature of housing law, a new housing court could support people through legal processes (including both landlords and tenants). For example, one Shelter lawyer summed up the frustration some parties feel:

“Landlords don’t understand the Deregulation Act. They look at you with derision when telling them that it has to be on Form 6A, and a How to Rent leaflet needed to be served. Then during the hearing it’s amazement. After the hearing it’s despair.”

They went on to say that a specialist housing court would be in the position to support all parties

“by making sure that the paperwork is filled out properly before issuing it. For example, the Family Court won’t issue a divorce petition unless it is filled out properly. The court office checks minute details such as that the parties’ names exactly match the wording on the marriage certificate, and exactly match where the marriage took place. One letter different and the family court won’t issue the petition. The housing court could do the same – making sure that all the correct paperwork exists in the first place. For example, we have defended claims for possession where the claim was filed more than 6 months after the notice was served and had expired. The court office could have picked up on that immediately.”
(*Shelter lawyer, East*)

Recommendation 2: a new specialist housing court should be supported with new user-friendly guidance on how to navigate the court system, particularly to help those who are not eligible for legal aid

Specialised Housing Judges

Ensuring that judges hearing housing cases are specialists in housing law would ensure more consistent decisions are made and could help court users navigate the system. Shelter legal services across the country have experienced inconsistency in judges’ decision making, often as a result of those judges’ lack of experience of housing cases.

Particularly in courts outside of urban areas, judges are not always used to dealing with housing law.

“Getting judges who understand the detail of housing law [is a challenge]... It is surprising the number of judges who don’t know that disrepair acts as a counter claim against a Ground 8 rent arrears, and therefore a mandatory [claim] can’t be made. Possession lists are sometimes run by a deputy who has scant knowledge of housing beyond what the mandatory grounds are” (*Shelter lawyer, East*)

“[the judges at my local county court] are not experienced in housing so, unless agreed before going in, a lot of time is spent arguing and explaining” (*Shelter lawyer, West Midlands*)

As well as making court processes less efficient and contributing to delays (covered in more detail below), this can make for inconsistent rulings, creating the risk that tenants lose their home even where the law is on their side.

“You can get a totally different response to the same type of hearing depending on the judge’s experience” (*Shelter lawyer, London*)

“The range of decisions from deputies and district judges never ceases to amaze me!”
(*Shelter lawyer, North West*)

“There is no uniformity in the way that cases are dealt with. An argument raised successfully in one case may not be accepted in another despite there being similar facts”
(*Shelter lawyer, South East*)

Within the current county court system, having a ticketed system where all housing cases would go to one specialist judge might ensure that those who are unable to obtain legal representation have the best chance of a consistent, fair decision-making process.

Additionally, inexperienced judges can undermine MHCLG’s efforts to improve landlord practice and crack down on rogues. For example, the government’s attempts to encourage landlords to protect deposits, get gas safety checks, etc. by restricting the use of ‘section 21’ notices on assured shorthold tenancies where these have not been done, only work if they are implemented by the courts.

“They are so reliant on deputy district judges for the possession list. Deputies frequently have no housing law experience at all. One has, on several occasions, despite us having a defence, asked me what the point of us defending a Section 21 case was given that they would get possession eventually anyway. Given that she does box work, it makes me wonder whether she even looks at whether the Section 21 is valid before making an order in accelerated proceedings” (*Shelter lawyer, South West*)

Recommendation 3: take advantage of a new specialist housing court to give judges the opportunity to build up a housing specialism through training and experience

B. Costs

Going to court is expensive for both tenants and landlords. We consider a new specialist housing court an opportunity to reduce costs for all parties, so that people are not prevented from accessing justice because of their income. Costs can include legal representation or lost earnings and travel expenses from going to court.

The costs of going to court are highlighted as the main barrier for tenants wanting to take their landlords to court because of failure to carry out repairs, ruling out access to justice for 66% of tenants with on-going disrepair.⁶

“The costs are prohibitive for tenants wanting to appeal decisions or those who do not qualify for legal aid or who have a contribution to pay, resulting in tenants not able to properly defend cases.” (*Shelter lawyer, North West*)

The range of costs includes:

- **Court fees:** litigants bringing action to court are subject to court fees which can often amount to £350-£600. This applies not just to landlords but also to tenants trying to seek justice. Despite the possibility of fee remission in some cases, the fee represents what can be an insurmountable barrier to accessing justice for many people. When fees were introduced in employment tribunals (later ruled unlawful), the number of simple cases brought per quarter was 68% lower between October 2013 and June 2017 than in the year

⁶ Citizens Advice, [It's broke, let's fix it: Improving redress for private renters](#), p.19

to June 2013.⁷ This is stark evidence of how costs deter people from bringing claims in the court system. Our solicitors see that the costs are a barrier for both defendants and claimants, and argue that if they did not have to pay significant upfront costs, landlords would be more open to negotiations in a case where a tenant has arrears, leading to a quicker, less traumatic process.

- **Legal representation:** due to the scarcity of legal aid representation, if tenants wish to effectively pursue a claim against their landlord (for disrepair, for example), they must generally pay for legal representation. Legal aid firms are reluctant to undertake cases under a Conditional Fee Agreement unless they are confident that they will win the case, as they will otherwise not be paid for their work. Furthermore, if the case is based upon expert evidence, the tenant will incur the cost of a specialist report. They are unlikely to have their costs paid unless the claim is worth more than £10,000, even if they win. This leaves many people who are unable to afford private representation without access to justice.

Recommendation 4: a new specialist housing court should be low cost for the user, so that justice is accessible for people on low incomes

C. Legal Aid:

Access to legal advice will continue to be crucial under any court system, and for people on low incomes legal aid is the only way they can meet this cost. The development of a new housing court represents an opportunity to address the urgent need for greater access to legal aid for early advice and representation at court in housing and related matters.

The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 removed many housing cases, as well as almost all debt and benefit cases, from the scope of legal aid. As with court closures, in addition to leading to worse outcomes for tenants, we are concerned that the effect of this has been to shift costs elsewhere within the system and onto other government departments.

Our legal services consistently see clients who would not have been in court if they had been able to obtain legal aid. Some, seen only at the very last moment at the Court Duty scheme, have gone on to lose their home. 96% of our legal services had held cases in the past 12 months that included issues that had been taken out of scope of LASPO. 81% stated that it was subsequently “much more difficult” to ensure that their clients received advice for those out of scope issues, demonstrating the severe shortage of advice available for people in desperate need.⁸

“I genuinely believe that more people have lost their homes as a result of the legal aid cuts. I’ve seen people wondering about court on the day of eviction instead of actually making an application [to stop it]” (*Shelter lawyer, London*)

Access to legal advice could often have prevented a problem becoming a crisis, and therefore kept cases out of the county court altogether or prevented homelessness that could otherwise have been easily resolved at an early stage.

“People can’t access legal aid for early advice that would prevent them coming to court in the first place, e.g. there’s no legal aid available for welfare advice on housing benefit issues that would potentially stop arrears building” (*Shelter lawyer, London*)

⁷ House of Commons Library, [Employment tribunal fees](#), p. 13.

⁸ Shelter (2018) Evidence to the Statutory Review of LASPO

“Not being able to deal with benefits means we can never really resolve or properly defend a claim for possession” (*Shelter lawyer, West Midlands*)

If legal aid were available for benefit and debt cases, many possession proceedings undertaken on the grounds of arrears would be prevented from reaching court stage. This would alleviate significant pressure on the county court system and minimise the need for cases to be adjourned to allow people time to resolve benefit problems that have caused them to accrue arrears.

Furthermore, the narrow scope of legal aid has meant that in some areas providing any legal aid service for housing matters at all – even those that legally remain in scope – is increasingly difficult.

“[It] is leading to providers pulling out and therefore creating housing advice deserts. There is now only one housing lawyer in the whole of Cornwall.” (*Shelter lawyer, London*)

“In [my county] there is just us providing meaningful housing law advice. There is another firm, who are not committed to legal aid. They have the court duty contract, but don’t always attend the courts, and are difficult to get appointments with. So all the burden of defending possession proceedings falls to this office. And we try to cover [the next county] too” (*Shelter lawyer, East*)

It is worth noting that the Housing Possession Court Duty Schemes play a vital role in ensuring that those who have been unable to receive legal advice have access to a defence in a possession case. Shelter Legal services note that tenants who have been unable to find legal representation before the date of the court heading are in a much better position to keep their home where they have access to the emergency assistance provided by the duty solicitor on the day.

Recommendation 5: a new specialist housing court must be supported by extended legal aid, with welfare benefits and disrepair brought into scope

D. Lack of court infrastructure / efficiency:

Our legal services encounter a lack of court infrastructure that leads to critical delays and inefficiency in the county courts, to the detriment of claimants, defendants, lawyers and judges. This also has the effect of seriously damaging court users’ faith and confidence in using the courts. One Shelter lawyer summed up their day-to-day experience of the courts as:

“Delayed hearings and chaotic court administration” (*Shelter lawyer, London*)

The range of problems Shelter’s lawyers experience with court administration is wide, with documents being lost, possession orders being sent out after the possession date and incorrect email addresses being advertised. The shortage in court staff means it is difficult to get updates about a case, putting people at risk of missing crucial deadlines and potentially losing their home.

“Getting through on the phone is a nightmare. Email addresses for filing documents frequently change... letters get lost. It often feels very chaotic” (*Shelter lawyer, London*)

“Orders are late or inaccurate, listing errors are made and it is very difficult trying to resolve the matters sensibly without creating additional work. It can be difficult to contact the court by telephone.” (*Shelter lawyer, North West*)

Another problem is

“The length of time that can be taken [for administration]. For example, an order can be made under the accelerated procedure giving possession in 14 days, but by the time the

court office have typed it up and posted it out the 14 days have already passed... it's all just a mess" (*Shelter lawyer, East*)

"Sometimes it can be months after filing [a consent order], and the parties have already started to rely on it before the terms are approved by the court" (*Shelter lawyer, East*)

As well as causing frustration, upset and the risk of a bad outcome, poor administration can lead to protracted delays:

"For example, in a case... I took on [in August], the client is profoundly deaf. At least three weeks prior to the hearing, the claimant had written to the court asking it to provide a British Sign Language interpreter. It failed to do so [and the hearing was adjourned as a result]. And in two subsequent hearings (which have also been adjourned) there has been no interpreter present despite the court ordering there to be one available" (*Shelter lawyer, London, writing in the following January*)

There is a general sense that the courts are overstretched and try to deal with too much business in the time available, leading to long waits for matters to be heard, insufficient time to properly consider matters and adjournments.

"The length of time people have to wait at court in bulk possession list... often leads to landlords and tenants sitting around for long periods at court" (*Shelter lawyer, North West*)

"Only 5/10 mins are available for case in bulk possession list, meaning that if any defence is raised, it cannot ordinarily be determined at the initial possession hearing and has to be adjourned" (*Shelter lawyer, North West*)

"The most common issue is that the judges want to deal with the matters far too quickly because of the amount of matters in the list... Often the list is divided into time slots but there may be 10-20 listed in an hour which means the judges have to work quickly... Judges are far too quick to want to stamp suspended possession order for almost every case without considering whether it is reasonable... Some judges don't explain anything to the tenants and talk so fast that the tenants have no idea what the decision was in court." (*Shelter lawyer, North West*)

"[My local court] rely on deputy district judges for their possession list but often can't get one, so they have to adjourn lists. This annoys landlords and causes uncertainty for tenants." (*Shelter lawyer, South West*)

These problems are undoubtedly a result of several factors, including court closures drastically increasing the workload at courts that remain open, reduced resources, and the lack of preventative work possible due to LASPO placing further and unnecessary demand on the courts.

Recommendation 6: a specialist housing court must be well-resourced, with enough time to give due consideration to matters and enough staff to properly administer business and respond to urgent queries. It must have adequate infrastructure and communication systems, to ensure that courts are accessible, user-friendly and responsive

Recommendation 7: a specialist housing court should have specific service standards, e.g. for the length of time it should take to schedule a hearing and the amount of time available to hear a case

E. Effectiveness of legislative change

A specialist housing court could also be used to ensure that government initiatives, which rely heavily on people being able to access the court system, are effective. Recent legislation enhances and strengthens tenants' consumer rights, which we welcome. However, people must now be given the tools to enforce them.

For example, in order for tenants to take their landlords to court over a property's unfitness, the court system must be accessible, procedurally clear to navigate, affordable and have a robust structure which makes provision for legal advice and representation.

Furthermore, in anticipation of longer tenancies, which Shelter has been campaigning for, an efficient and well-resourced court is essential for both landlords and tenants. Delays in the court process, often the result of poor infrastructure and a lack of bailiffs and court staff would render a longer tenancy model more difficult to implement.

*People cannot enforce their rights if they don't have access to lawyers and the courts
(Shelter lawyer, London)*

Recommendation 8: in designing a new specialist housing court, the government should make sure the new system is future-proof and has the capacity to help tenants take advantage of recent legislation and/or legal remedies

2. Specific issues related to possession cases

The issues related to possession cases have also been considered in some detail in Section 1. However, in this brief section we draw out some key themes for re-emphasis that we believe are contributing to the current frustrations that all court users experience with possession cases.

Our legal services have extensive experience of both social and private possession proceedings, both under Section 21 and Section 8. While these comments are necessarily from their perspective, we have tried to recognise the views of other court users too.

A. Delays

While the average time taken to take a private landlord's claim to possession by county court bailiffs is 16.1 weeks, the evidence already considered in Section 1 demonstrates that some cases are subject to needless delays. In other cases, the process can *feel* long due to waits at court, chaotic administration and uncertain outcomes.

Adequate resourcing and specific service standards should help eradicate unnecessary delays and give court users more certainty about how long processes should take.

However, we also stress that allowing adequate time for tenants to defend a case and following the correct court procedures is vital for ensuring that tenants have time to seek advice and, where applicable, file a defence to the claim, or otherwise to search for a new home to avoid homelessness. Where a case has been adjourned, or a landlord has made errors in the possession process, we do not consider this an unnecessary delay.

Recommendation 9: there should be no weakening of existing safeguards for tenants in possession processes

Some possession cases do take significantly longer than the average, but for good reasons. These cases tend to be for social tenants with greater security of tenure who is given the opportunity to

resolve a benefit issue, where they are not receiving the welfare benefits they are entitled to. This gives people the invaluable opportunity to keep their home.

We recognise that landlords sometimes wait a long time for a county court bailiff's warrant and for hearings to be scheduled, as a result of overstretched administration in the court. It is undoubtedly frustrating to wait for a warrant after a possession order has been granted, and improved court infrastructure and efficiency would reduce this waiting time and subsequent exasperation. Therefore, any court reform would need to consider the need for efficient administration and resourcing in order to avoid unnecessary procedural delays.

While bailiffs have been over-stretched, causing delays in the execution of warrants for possession, the Homelessness Reduction Act 2018 (HRA) should go some way to avoiding the need for court proceedings at all. Where tenants who had no means of securing alternative accommodation were previously advised by their local authority to stay in their property until the bailiffs attended, the local authority's duty to prevent homelessness is now triggered following the service of a valid section 21 notice. If the Act is implemented as intended, the number of possession claims should fall, as the local authority will have assisted the tenant to move at an earlier stage.

Some other delays in possession cases are linked to the problems caused by the wider system. We urge government to look holistically at the court system to address these systemic problems. Court closures put pressure on remaining courts, which in turn delays administration in many county courts, which then leads to delays in processes including issuing bailiffs' warrants.

Similarly, a lack of legal aid for benefit issues means that simple problems, arising through no fault of the tenant, can put a tenant unnecessarily in court, leading to a hearing which is then adjourned by the judge to give them time to seek advice. This creates delays for landlords seeking to evict their tenants, whereas possession action was entirely avoidable. We urge government to use any court reform as an opportunity to look holistically at the problems faced by both tenants and landlords in the courts, and the ways the burden on the system could be reduced by tenants being able to access early advice.

B. Complexity of the possession process

Landlords cite the complexity of the possession process as an issue as much as tenants, as discussed above. Our solicitors observe frustration from private landlords at the high level of attention to detail required in any possession claim, especially since the passage of the Deregulation Act 2015.

This is pertinent for landlords using a Section 21, or 'no fault' eviction process, as landlords' failure to fulfil their obligations under the law may afford a defence to the tenant. Housing law is complex by nature, and we believe that given what is at stake for the tenant, landlords must be able to demonstrate that they have complied with their legal and procedural requirements. While a property is a landlord's commodity, it is also a tenant's home, and there should therefore be robust processes that need to be followed.

Moving to a specialist housing court will not change the complexity of the underlying law and whilst some simplification in process may be possible, if the law is to be fairly applied, it will inevitably require a certain amount of formality and complexity in the court processes. Landlords and tenants alike should seek legal guidance in order to feel confident following these processes and, as stated above, those who do not have the resources to obtain legal representation or are not eligible for legal aid to do so need effective guidance on how to navigate the court system.

3. A specialist housing court we would support

The court must:

- ❖ Have **specialist judges** with expertise in housing law
 - Consistency and fairness in decision making processes are key to ensuring access to justice and efficient court processes. Shelter Legal report having to explain legal issues to judges and that the lack of expertise sometimes leads to inconsistent decision making. Specialised judges with expertise in housing law would enhance the decision making of the courts and ensure that all parties have access to justice.
- ❖ Be **accessible** – both in terms of ease of physically accessing court buildings and by having simpler court rules.
 - Creative yet practical thinking about where county court cases are heard and how people can get in contact with them will improve access to justice and should inform any court reform. County court hearings do not have to be heard in a court; expanding the network of locations where hearings are held would allow for people, often in situations of financial hardship, to present their cases and defend their homes with greater ease.
- ❖ Be **low cost** so that court fees or fear of paying costs do not prevent people bringing cases
 - The reduction of court fees would encourage and enable access to justice for both defendants and claimants. Going to court should always be a last resort, but an often-insurmountable financial barrier should not prevent people from being able to enforce their rights.
- ❖ Offer **clear service standards** and be supported by **robust infrastructure**
 - **Clear service standards**, so that people who are involved in a claim in the county court know what to expect and when, and in order to reduce delays in the possession process. For example, claimants and defendants should be given clear timelines for different stages of their claim. This will manage expectations about when they will receive a hearing date, when they might receive a possession order, and when they might receive a warrant for possession.
 - **Enough resourcing for the courts to employ enough bailiffs and administrative staff to minimise delays in processes that affect both landlords and tenants.** A specialised housing court should be well-staffed and make use of digital technologies so that people can call up with queries, email documents and have readily available access to advice.
- ❖ Enable people to **access Legal Aid** for advice and representation
 - **Our support for a specialist housing court rests on the condition that the provision for legal aid remains. Furthermore, the government should reinstate legal aid for benefit and disrepair issues**, to minimise the strain on the courts and ensure that people can effectively enforce their rights.
- ❖ **Operate as part of a wider preventative system** so that as far as possible cases do not need to come to court:
 - By enabling people to **access other advice**, including welfare and debt advice
 - A specialised housing court has the valuable opportunity to tackle the root cause of a person's housing problem. We therefore recommend that there should be a range of other support services based in the court, such as benefits and debt advisers, so people can get more holistic support to address the root cause of their issues.
 - By ensuring people can **access legal advice with a view to resolving issues without the need for court action**

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- As well as the need for expansion of the scope of legal aid, it is vital that **legal aid must be available for early advice**, in order to prevent small problems from becoming full-blown crises and alleviate pressure on the courts.
 - By making use of **alternative dispute resolution**
 - We recommend that the government considers how to make better use of alternative dispute resolution (ADR). ADR can take place both within and outside of the court process and includes approaches such as mediation and Early Neutral Evaluation (ENE). Whilst not appropriate for all cases, ADR can change the adversarial nature of housing disputes and help to achieve mutually beneficial outcomes, without parties being burdened with the financial and emotional costs of going to court.

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