

# Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux  
www.cas.org.uk



## Better Dispute Resolution in Housing

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- Citizens Advice Scotland and its member bureaux form Scotland's largest independent advice network. CAB advice services are delivered using service points throughout Scotland, from the islands to city centres.
- Citizens advice bureaux in Scotland helped clients with over 500,000 new issues in 2011/12 – more than 1,400 new issues for every day of the year. Nearly 200,000 clients brought new issues to a bureau over the year.
- In 2011/12, Scottish bureaux achieved a financial gain of almost £140million for clients based on funding of £16.9million.

# Annex A CONSULTATION ON DISPUTE RESOLUTION IN HOUSING



## RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

### 1. Name/Organisation

Organisation Name

Citizens Advice Scotland

Title Mr  Ms  Mrs  Miss  Dr  *Please tick as appropriate*

Surname

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### 3. Permissions - I am responding as...

Individual

/

Group/Organisation

*Please tick as appropriate*

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate*  Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

*Please tick ONE of the following boxes*

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please tick as appropriate*  Yes  No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

*Please tick as appropriate*  Yes  No

## Introduction

Citizens Advice Scotland (CAS) welcomes the acknowledgement of the importance of appropriate and proportionate options for resolution of housing disputes which in turn increases access to justice. In 2011/2012, bureaux across Scotland advised on almost 52,000 housing issues: work which included facilitating early dialogue between landlord and tenant and representing clients in the judicial process.

CAS welcomes the 'whole system' approach this consultation takes to housing disputes: from the importance of advice and early dialogue, to alternative dispute resolution and finally judicial action. The preventative work carried out by advice agencies which facilitates early dialogue and resolution of issues makes an invaluable contribution to effective operation of the legal system. Without such intervention, the number of cases reaching judicial process would undoubtedly be greater than current levels.

## General Comments

- The new housing body, whatever form that might take, should be very aware and sensitive to the differences between social and private rented tenants. In the experience of the Citizens Advice Service, the two groups have very different issues and their reasons for the need of access to dispute resolution in relation to housing are also very different.

For example, many rent arrears cases are caused in social rented situations because of problems linked to benefits – sanctions, benefits mis-administration and with all probability in the coming months the consequences of under occupancy charges. Specialist knowledge of benefits would therefore be an advantageous addition to a panel considering social rented issues.

In the private rented sector however, deposits is the biggest issue with which clients present to bureaux. With this in mind, and with consideration of letting agents (discussion in next bullet), members of a housing panel considering private rented cases would benefit from a knowledge of consumer regulations.

- This consultation focuses on the general assumption of a landlord/tenant relationship but disputes can be complicated, or created, in the involvement of letting agencies as third parties. The role of letting agencies should be given significant consideration as their role is a prominent feature of many private rented housing disputes:
  - A North of Scotland CAB reports of a client with a landlord problem. The client had rented house from landlord for three years. In that time clients had asked landlord if he wished them to carry out any running repairs. Landlord tended to carry them out himself. Permission had also been granted for clients to erect garden shed and build front garden fencing. Generally good relationship with landlord as rent always paid and no damage done to property. At end of tenancy

County Properties (agent charged by landlord to manage property on his behalf) had carried out final inspection prior to tenants vacating and pronounced that there were no problems. After vacating, tenants were billed by landlord for cost of extensive list of repairs totalling £815.00, but landlord reduced this to £415, claiming no charge would apply for certain repairs. Landlord stated total cost of bill was £1200 minus tenants security deposit of £675. Clients insist none of the repairs on list are their responsibility and they had been meticulous in ensuring property was left in appropriate condition on vacating - even paying for cost of carpet cleaning, cleaning walls, and ensuring the garden was tidy etc. Clients not happy and disputing this bill.

The issues relating to letting agencies are not necessarily the same as those which might be present in a landlord/tenant dispute. In some cases the dispute will involve the tenant and the letting agency with the exclusion of the landlord, and in some others the dispute will involve the letting agent and the landlord with the exclusion of the tenant. If this body is to consider dispute resolution as a whole, it must also fully consider these issues.

- A West of Scotland CAB reports of a client who is a landlord. She rented out her property through a letting agent while she worked abroad. She returned at the end of the tenancy. The client had to collect the keys from tenant herself because the Agency had said they were too short staffed. The client discovered that the tenants had had 9 other people living at the flat, used address for fraudulent activity and that 3 rooms were infested with bedbugs. Client had exhausted complaining to Council. She has lost money fumigating and destroying furniture.
- The new body – whether pre-court panel or tribunal – should be required to monitor the cases which come before it as well as how and when those cases are settled. This consultation itself highlights problems with ineffective court data (3.15, 3.17) and so lessons should be learned from this.

The path from how a dispute arises to how it is resolved is important to monitor in ensuring that it is not simply the immediate threat of action which ensures resolution. Monitoring on a wide scale, and engaging with other bodies such as CAS to understand the individual issues consumers face as one whole problem can facilitate the development of meaningful preventative policy.

- Care must be taken in the operation of a panel to treat all social landlords the same, and not to treat the Local Authority as a landlord any differently than a private company would be treated. Duties and expectations should not differ, thus ensuring a consistent service for all social rented tenants in Scotland regardless of the status of their landlord.

- Accessibility is a key feature which should be considered including accessibility of the processes and physical accessibility. This is especially so in light of probable court closures in rural locations.
- The new housing body should take over summary applications to the courts enforcing penalties on landlords who refuse to put PRS tenancy deposits in an authorised tenancy deposit scheme. A summary application, which has to be made by an initial writ with separate pleas in law etc., is a complex legal procedure requiring the use of a solicitor. Tenants may be eligible for legal aid, but many tenants will be working and will have to make a substantial contribution.

Therefore, under the current system the rational approach for a tenant will often be not to bring a summary application, but instead bring a small claim (with capped expenses) for the deposit at the end of the tenancy if there are any problems in recovering the deposit. Currently, the system does not work to the benefit of consumers. These problems would be removed if applications were dealt with under a simple Housing Panel procedure.

## ANNEX B

### CONSULTATION QUESTIONS

#### Option 1: Preventative Action

1. Do we need to consider legislation to assist the early resolution of disputes, for example by imposing additional legal duties on landlords or other public bodies?

Yes  No  Don't Know

If "yes" please provide reasons for your answer.

CAS welcomes the efforts already made in the new duty on landlords to provide a Tenant Information Pack. The rights promotion which these packs are intended to achieve is a desirable aim and CAS will monitor the impact of the implementation of the packs.

Early resolution of disputes is a positive and desirable thing. In 2011/2012, almost 35,000 new issues in relation to housing were recorded by bureaux across Scotland. This figure more than halved to 17,000 repeat issues (where a repeat issue is recorded, this could include a client coming back for a 2<sup>nd</sup>, 3<sup>rd</sup> or 4<sup>th</sup> time and so the actual proportion of new/repeat issues is always lower than the reported figure). This shows that early advice can be a significant factor in resolution: whether that resolution is between parties or closure for a client on an area they sought advice.

In certain cases, early resolution can also lead to a more sustainable solution and long-term prevention from the judicial process.

For example, in a case where a client presents to a bureaux with an issue with payday loans, the adviser they see will explore the wider context of that issue and possible related issues such as non-payment of rent. An adviser is then able to deal with the financial issues relating to the payday loan issue, as well as communicating a payment plan to the landlord addressing the arrears. The whole problem including consequences has been resolved and not just the single issue.

The client in this case is prevented from eviction action, has had advice and help on their financial situation and is potentially offered debt and/or money advice to help them avoid situations where they may take out a high-interest payday loan in the future. If the client does fall in to debt again, they are more likely to return to the bureaux for early assistance.

In our experience, it is rare for a problem to consist of an isolated issue. In 2011/2012, clients presented with an average of 5.99 new issues per enquiry.

The value of advice in assisting and facilitating the early resolution of

disputes should not be underestimated and we strongly believe more consideration should be given to advice agencies like the Citizens Advice Service in the development of a dispute resolution system.

Better understanding of the benefits of early advice, as well as sustainable resourcing for advice in housing-related issues would allow promotion of early advice without the need for legislation.

1a. If yes, in what areas should these duties be imposed and for what purpose? e.g. should we impose wider pre-action requirements before landlords could raise eviction proceedings in any case?

Please explain your own views.

Pre-action requirements for private landlords may be useful requirements in ensuring careful consideration before taking drastic action such as eviction, but care should be taken not to introduce measures which lengthen the time before resolution can be facilitated (either through advice, mediation or judicial means).

The introduction of such steps may introduce further complications in producing scope for legal disputes over whether the correct procedure has been followed.

2. Would this sort of upstream action be preferable and achieve better outcomes than a new Housing Panel or reformed courts?

Yes  No  Don't Know

This sort of encouragement of early resolution of disputes should be *in addition* to a new Housing Panel or reformed courts.

Access to justice is about the ability to access appropriate and proportionate justice from the whole spectrum of resolution. Advice, early dialogue, ADR and judicial means should all be available and accessible, as should appropriate signposting. The importance of early interactions in the dispute resolution system is considerable - in the assessment of the appropriate pathway for the resolution of that dispute and the encouragement of that pathway to be followed.

Again the role of advice agencies as the gatekeepers of many disputes is key. Where disputes cannot be resolved at the dialogue stage, advice agencies could have an instrumental role in encouraging parties to go on to ADR, or judicial process where appropriate. While funding is mentioned in this consultation in relation to mediation (5.18), it is not discussed in relation to advice.

Advice and the facilitation of early dialogue from that platform is more easily accessible to parties in familiarity and process than ADR. In the approach which tackles all of the individual but interconnected issues which are entwined in a consumer's problem produces sustainable solutions. The role of advice and early dialogue should be considered as a fundamental part of the dispute resolution landscape, as should the funding for this.

3. Are there non-legislative measures we could take to encourage the prevention and early resolution of housing disputes between parties?

Yes  No  Don't Know

3a. If yes, what measures would these be?

There are measures which already exist in legislation which could be utilised to a greater extent to encourage the prevention and early dispute resolution between parties.

In terms of social rented housing for example, Dumfries and Galloway Citizens Advice Service (DAGCAS) provide an exemplary service which supports clients at risk of eviction. They make use of existing legislation, s11 of the Homelessness etc (Scotland) Act 2003, which is designed to give Local Authorities early notice of households at risk of eviction and homelessness. Working with their local Housing Associations, DAGCAS are notified alongside the Local Authority of households at risk and they then offer their services to all at risk.

They phone and send a letter to all households identified. Where help is accepted at the initial contact stage, clients are offered comprehensive advice on debt, money, benefits maximisation and any other advice which will help to address the issues combining to make a client's problem. They are then able to be supported by the in-court advice and representation team.

In the lead up to the date the case has been listed for court, DAGCAS will send a further letter which outlines the services and help they can offer. If there is still no contact, there is further opportunity to engage with the in-court advice and representation team on the day of the court hearing who will then assist at first instance, and refer back to the bureau.

This service helps to put solutions to a client's fundamental issues in place. Arrears commonly manifest from other interlinked factors like debt or (in the social rented sector) problems with benefits.

This is one example of where accessible information and signposting can encourage consumers to address their problems, and not wait until crisis point before seeking help. Even when a client does not engage until the

day of court, they are familiar with the service through the contact previously attempted by the bureaux and are less likely to be intimidated in asking for help.

The results achieved by DAGCAS are aspirational in terms of early dispute resolution. Similar measures do exist in other areas of the country, and the potential to achieve the type of service nationally is very real without the requirement for any further legislation. They would, however, require to be resourced appropriately.

### Option 1: Mediation

4. Do you think mediation should be made more widely available for housing disputes?

Yes  No  Don't Know

4a. If no, please explain your views.

Comments

4b. If yes, what sort of housing issues would mediation be most effective at resolving?

It would be very positive if mediation was more widely available. However, it should be recognised:

- other methods of ADR like arbitration which produce binding solutions may be more appropriate or desirable to parties in some cases – sometimes parties want to be given a decision  
For example, an East of Scotland CAB reports of a client and her husband who are having difficulty in getting back a £425 deposit from previous landlord who states he is experiencing “financial difficulties.” He has continually made promises about returning the money but as yet has not kept any of these. There is no justifiable reason for the landlord to keep the money. The client is unemployed and husband on minimum wage, so £425 is a significant amount of money to them and the prospect of having to use the Small Claims Court to recover it is daunting and upsetting for them. The client and her husband left the private rented property in March after a six month lease.
- Broadly, mediation may be more appropriate in private rented situations. The power imbalance in social rented situations may make mediation less feasible
- Mediation will only be successful in situations where there is a dispute, for example where there are issues with repairs or the (non)

return of a deposit. Unless rent arrears relates to money held back for non-repair of property, it is not generally a dispute and so would not perhaps be appropriate for mediation

- Mediation would possibly be helpful in disputes which arise between the landlord, the tenant and a letting agency
- Mediation would not be appropriate where mutual trust and confidence has gone. It may be most appropriate in cases where the resolution is sought as close to the time of the dispute arising as possible

4c. If yes, would it be better to do this by expanding existing provision or by creating a new housing mediation service?

Expanding existing provision  New mediation service

Both a new service and expansion would have their benefits/drawbacks. A new service may allow for better consistency across the country which will be crucial to the success of mediation. Existing provision may take less time to get off the ground, and may have less teething problems.

Whatever is decided, accessibility is key. The service should be accessible regardless of location, especially with probable court closures.

4d. If yes, how can parties be encouraged to use mediation to resolve housing problems?

I think this question and question 5 link and so they will be answered as one.

The cycle of awareness – use – knowledge – expectation should be thought of as a whole. If awareness improves, use, knowledge and expectation will also improve where there has been positive experience. Public awareness and uptake require an efficient and accessible system from the start to ensure positive experience and in turn positive communication of that experience by consumers. Word of mouth is a powerful tool.

This cannot happen without signposting however. Parties must be encouraged to access resolution which is proportionate to their dispute and this involves belief in the system by the whole system: judicial process should not look down on advice and mediation just as advice and mediation should acknowledge the appropriateness of judicial process as a forum for many cases which they cannot resolve.

Improving awareness should be targeted at the groups who may need to access mediation as a way of resolving housing disputes. This could be done through means such as:

- Information in the Tenant Information Pack

- Advice services
- Projects such as the DAGCAS one outlined above
- Provision of clear information about the whole system in one place, eg a single gateway website and clear leafleting which explains the whole system - each aspect of dispute resolution from advice to judicial process

Parties should not feel compelled to use mediation.

4e. If yes, how might mediation be funded?

While appreciating the pressures on public expenditure, mediation should not be funded through charging fees. Imposing fees would discourage use by landlords and tenants: at worst, bad landlords would use the need to pay mediation fees as a threat to discourage use. Where letting agents are involved the issue of fees would become even more complicated.

4f. If yes, do you feel there are enough mediators across Scotland to deal with housing cases?

Comments

5. What can we do to improve public awareness of mediation as a way of solving housing disputes?

See comments in 4d.

## Option 2: Pre-court Housing Panel

6. Do you think there should be a Housing Panel as a pre-court dispute resolution forum for some housing disputes?

Yes  No  Don't Know

6a. If yes, which cases should the panel handle?

A Housing Panel which could take binding decisions as an alternative to going to a full court or Housing Tribunal hearing could play a useful role in solving disputes in a non-adversarial way.

However, a pre-action panel which is a stage between mediation and further judicial process could simply mean that disputes take longer to resolve. If

seen by landlords and others as merely a stage to get through on the way to court, it may not be treated seriously with a resultant waste of resources.

The introduction of a panel such as this could have significant resource implications for agencies such as Citizens Advice who in places provide representation for clients in housing disputes. At 5.49 the consultation implies that most parties should not need legal representation, but this opens a discussion as to the meaning of representation. 5.50 goes on to talk about support in the form of advice and advocacy services, but the services provided by bureaux are in many cases more in line with lay representation than advocacy.

If some cases were heard before the panel, and some before the court, this difference in the skills required and in the physical ability to represent clients in two places would have to be taken into account.

These two paragraphs of the consultation require thought: as to the definition of advice and advocacy and as to how support will work in practice. Adequately supporting consumers could mean the difference between successful engagement at the most appropriate and proportionate stage of the dispute resolution and not.

6b. If yes, are there cases which would not be appropriate?

Comments

6c. If yes, who should be able to refer cases to the panel?

A single gateway for applications to bring a case may be a good way to facilitate referral to the panel, or the court if it is the more appropriate option. A facilitator like this should take decisions quickly but could ensure cases reach the right forum for their dispute to be resolved.

Referral to the panel by the parties themselves may be problematic without extensive help in the form of toolkits, etc. when there is not a representative involved.

6d. If yes, who should be panel members and would they require particular qualifications?

As in the opening general comments, make-up of panels should take account of the type of cases which may come before the panel and would realistically differ between private and social cases.

For example, social rented cases are more likely to involve issues with benefits, anti-social behaviour or significant and persistent arrears while private cases are more likely to involve issues with deposits, letting agents, illegal charges, House of Multiple Occupancy issues and short-term arrears.

It follows then that an expert on benefits may be very appropriate for a number of social rented cases but for only a small number of private rented cases. Similarly, an expert in consumer redress may be very appropriate in many private rented cases but almost no social rented cases. Repairs would be an issue common to both case types.

Effectively, this could lead to a situation where there are two panels – one for each case type. This could be arranged if a single gateway for case sifting is introduced, as above.

6e. If yes, how long should panel orders remain in place for?

Comments

6f. If yes, if panel orders (e.g. to pay rent arrears) were not complied with, how and when should the case be escalated to court for a final decision (e.g. on whether to evict the tenant)?

Comments

6g. If yes, in addition to the management activities of landlords and regulatory bodies, what added value would a Housing Panel provide?

Comments

6h. If no, what alternative form of formal dispute resolution might better apply to the cases described here?

Comments

6i. If no, do you think improvements to the dispute resolution system would be better delivered through proposals for civil court reform as outlined in paragraphs 4.5 to 4.9?

Yes  No  Don't Know

### **Option 3: Housing Panel Replacing the Courts as Decision Maker**

7. Should there be a new housing tribunal, to be called the Housing Panel?

Yes  No  Don't Know

The exception may be evictions. Evictions involve the removal of a person's home. Moreover, they often involve purely or mostly legal questions as to

whether the correct paperwork and procedures have been followed, and the interpretation of legislation or leases.

These questions seem more suitable to the courts. These might be specialist sheriffs with housing expertise. That said, separating evictions from other housing cases can be seen as artificial as a Housing Panel would still be dealing with some of the causes of evictions, e.g. anti-social behaviour.

This emphasises the importance of a holistic approach to the resolution of problems which the Citizens Advice Service promotes and applies.

7a. If yes, who should be members of this type of Housing Panel?

7b. If yes, should the Housing Panel be created by expanding the caseload of the Private Rented Housing Panel?

Yes  No  Don't Know

The proposed scope of its jurisdiction would turn it into a new type of body; so to a large extent it would start from scratch. This would be particularly true if it covered the social rented sector.

7c. If yes to question 7, which housing cases should a new Housing Panel consider?

Comments

7d. If yes to question 7, should parties be charged a fee for raising actions before a new Housing Panel?

Yes  No  Don't Know

7e. If no to question 7, what do you see as the main difficulties and challenges in establishing a Housing Panel?

Comments

7f. If no to question 7, do you think improvements to the dispute resolution system would be better delivered through proposals for civil court reform as outlined in paragraphs 4.5 to 4.9?

Yes  No  Don't Know

These proposals should undoubtedly be considered as part of wider reform. Not to do so would invalidate their potential. If this panel goes ahead, it should then become a consideration within the structure of civil court reform. The worst thing for consumers would be for this panel to launch and then for similar cases to be open to call before summary sheriffs therefore undermining the operation and intentions of this panel.