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### **Considering the case for a Housing Court: call for evidence**

- Which? welcomes Government's review to improve the system for handling housing disputes in the courts and tribunal service. A well-functioning judicial system is necessary for ensuring that both landlords and tenants can gain fair access to justice.
- We have evidence from our work in providing legal advice to landlords and tenants that suggest there are a number of problems with the current system including unnecessary delays and lack of clarity about the court process. Therefore, we believe reforms in this area are needed and could deliver benefits for both tenants and landlords, including landlords becoming more willing to offer greater security to tenants in the form of longer term tenancies.
- However, the proposals laid out in this call for evidence lack the detail necessary to effectively assess which proposal will address current problems effectively.
- Government needs to set out the key tests it will use to assess different options and as part of that explain how the different options will address current problems. It is only with such detail that an effective assessment of how best Government should proceed can be undertaken.

#### **Part 1 - 3:**

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

##### **2) Enforcing a possession order**

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

Which? Legal service has experience providing advice to both landlords and tenants in the private rented sector. From this we are aware that a major issue with the current system for both parties is a lack of clarity in the court process and transparency with regards to what may be expected of them. Processes can be opaque and lead to confusion; tenants in particular can struggle to adequately understand their options which can be particularly stressful at a time when they may be faced with being evicted.

Specifically for tenants, reforms to eligibility for legal aid can restrict their ability to afford to initiate court proceedings. For example eligibility for disrepair cases is limited to cases that relate specifically to serious risk of harm to the health and safety of the occupiers. Evidencing this in order to prove eligibility can be difficult and in addition restricts the access to justice for other forms of disrepair.

For landlords, the length of time it can take for cases to be completed and for possession orders to come into effect and be enforced can be a significant area of concern. If during this time the landlord is not receiving rent payments from their tenants, a protracted process can be extremely difficult for a landlord to manage. Importantly we know that landlord's concerns about the possession process in particular can have knock-on consequences for tenants. In 2018 we conducted a large-scale survey of landlords in England. As part of this we asked landlords about their attitude to offering longer term tenancies, with 46% of landlords telling us they only offer tenancies of 12 months or less. Of these, when we asked what the reasons for this was 46% said it was due to the "inability to evict bad tenants". As such landlord's perception of issues with the process for possession cases may be discouraging landlords from offering longer tenancies.

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

As has been outlined above we firmly agree that there are issues with the current processes for housing disputes which can have a significant impact on both landlords and tenants. In considering solutions for how these issues can be overcome we believe Government needs to firstly establish the desired outcomes it wants to deliver through reform. It is only with clarity on the desired end state that a detailed consideration of the costs and benefits from different policy options in meeting those aims can be effectively done.

From our review, '*Reform of the private rented sector: the consumer view*<sup>1</sup> we believe there are some key tests which any preferred option for reform must meet. A reformed system should be:

- **Easy to navigate** with a clear and transparent process for how landlords and tenants can use the system and guidance on the required procedure so that participants can be adequately prepared.
- **Fair** in its handling of cases to ensure that both landlords and tenants have equal access to justice
- **Affordable to use**, including a consideration of the availability of legal aid.
- **Efficient** in handling its workload so that cases can be resolved without unnecessary delays.

Government needs to provide details on how the broad policy proposals put forward will work in practice. For example, how any new specialist Housing Court would be resourced to ensure that it would overcome the current capacity constraints faced by the courts to process paperwork and hear cases on an appropriate timescale. The Call for Evidence lacks any such detail and, at this stage, it is not therefore possible to properly assess how effectively the different options under consideration will be in delivering the desired outcomes.

**For further information please contact Colum McGuire, External Affairs Manager, Which? at [Colum.mcguire@which.co.uk](mailto:Colum.mcguire@which.co.uk).**

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<sup>1</sup> <https://www.which.co.uk/policy/housing/2921/reform-of-the-private-rented-sector-the-consumer-view>