

## Housing, Regeneration and Planning

### **Better Dispute Resolution in Housing: Analysis of Responses to the Consultation on the Introduction of a New Housing Panel for Scotland**

Chris Thornton and Lucy Robertson, Craigforth

This paper summarises the analysis of responses submitted to the *Better Disputes Resolution in Housing* consultation. The consultation looked at improving the effectiveness and efficiency of dispute resolution for rented housing cases, along with the potential for a Scottish Housing Panel as an alternative mechanism for making decisions about housing disputes.

### **Main Findings**

- A majority of respondents did not want the Scottish Government to consider legislative action to assist with the early resolution of disputes, with many suggesting the emphasis should be on ensuring effective implementation of the current regulations, or on further non-legislative measures to encourage the prevention and early resolution of housing disputes.
- There was considerable support for making mediation more widely available, although views were mixed as to whether it would be better to expand existing provision or create a new housing mediation service.
- A clear majority of respondents felt that a pre-court Housing Panel should not be established.
- Those opposed made clear that they agree with the intended outcomes of the pre-court Housing Panel, but saw other options as more likely to achieve these, and suggested a pre-court Housing Panel risked adding further delay and cost to dispute resolution. Around half of those opposed to a pre-court Housing Panel felt that required improvements in dispute resolution would be better delivered through civil court reforms.
- Around half of all respondents were in favour of the creation of a Housing Panel to replace the courts as the main decision maker for housing disputes.
- The core suggestion was for 3-5 Housing Panel members, including a legal professional, housing professional and lay person with suitable housing-related experience. A Housing Panel may also need to draw on other qualifications and experience given the broad range of cases to be considered.
- Most respondents suggested a Housing Panel's remit should focus on specific types of dispute such as housing debts and antisocial behaviour, potentially taking into account whether mediation has failed or where tenants' needs may be better met via a less formal inquisitorial approach.
- Views were divided on the issue of fee charging for a new Housing Panel. Nearly half of respondents felt that one or more parties should be charged a fee for raising actions before a Housing Panel. However there remained a minority who were opposed, with affordability and accessibility for those on low incomes a significant concern for some.

## Introductions

These Research Findings present the key issues to emerge from the analysis of responses submitted to the Scottish Government's *Better Disputes Resolution in Housing* consultation. The overall focus of the consultation was on improving the effectiveness and efficiency of dispute resolution for rented housing cases, and the potential for a Scottish Housing Panel as an alternative mechanism for making decisions about housing disputes.

The consultation ran from 16th January to the 9th April 2013. The Scottish Government received 116 responses, 101 from groups or organisations and 15 from members of the public.

## Preventative Action

The first option considered was the role preventative action can have in avoiding or resolving housing disputes. However, a clear majority of respondents did not want the Scottish Government to consider legislative action to assist with the early resolution of disputes, with many suggesting the emphasis should be on ensuring effective implementation of current regulations. Those who did believe the Scottish Government should consider legislative action were often looking to create greater consistency in practice between landlords, along with easier and swifter resolution of some disputes.

A clear majority considered there to be further non-legislative measures that could be taken to encourage the prevention and early resolution of housing disputes. A popular suggestion was the development of national standards and further good practice on early stage intervention and resolution techniques.

There was a considerable level of support for making mediation more widely available. The areas of dispute in which respondents thought mediation might have a role to play included: standards of service; a tenant's failure to meet their obligations; and low level neighbour disputes. Some respondents thought rent arrears cases could be mediated, although others felt this was not an issue for which mediation would be appropriate.

Views were mixed as to whether it would be better to expand existing provision or create a new housing mediation service. More respondents favoured expanding existing provision, although the balance of opinion did vary significantly with respondent type. In particular, while a clear majority of local authority respondents favoured the expansion of existing services, a majority of RSL, tenant and resident group and individual respondents supported the development of a new service.

Respondents tended to take one of two broad positions on funding. Most respondents took the view that any service or services should be wholly or partially funded by the Scottish Government. Others suggested that funding should come from a broader range of organisations, most obviously those that could make savings if more effective dispute resolution was available.

Suggestions around improving public awareness of mediation as a way of solving housing disputes tended to focus on the need for a national and/or local publicity campaign. It was also suggested that mediation should be promoted not only to the public but also to relevant public agencies across Scotland and that appropriate guidance should be issued to encourage consistency in practice across all local authority areas.

## A Pre-Court Housing Panel

The second option proposed the creation of a pre-court Housing Panel to which housing disputes could be referred before a case reached court. Such a panel could make enforceable decisions but where these are not complied with, cases could be escalated to court. It would also still be for courts to end tenancies and evict tenants.

A clear majority of respondents felt that a pre-court Housing Panel should not be established.

There was some suggestion that the more inquisitorial panel approach could be suited to the consideration of most or all housing dispute cases. However, most respondents suggested the pre-court Housing Panel's remit should focus on specific types of dispute such as housing debts and antisocial behaviour, potentially taking into account whether mediation has failed or where tenants' needs may be better met via a less formal inquisitorial approach.

Respondents were divided on the range of parties who should be able to refer the case to the pre-court Housing Panel. Some suggested that third parties should be able to make a referral, including neighbours, mediation officers, local authority or other statutory bodies. Others suggested that a referral should only be made by those party to the dispute, potentially including mediation services or representatives and advocates involved in the case.

Most respondents suggested that pre-court Housing Panels would be most effective where members have a range of backgrounds, skills and qualifications – suggestions typically including lay person representation alongside members with housing and legal qualifications.

A range of specific timescales were suggested for pre-court Housing Panel orders to remain in place, including reference to ensuring consistency with other tribunals, courts and

relevant legislation. It was suggested there may be benefit in the pre-court Housing Panel tailoring the length of time an order should remain in place based on the specifics of the case.

Views on how and when cases should be escalated to court ranged from the pre-court Housing Panel being permitted some discretion in how cases are escalated to court, to those suggesting that fast-track escalation to court should occur immediately and automatically upon first breach of the pre-court Housing Panel order.

Those opposed to the creation of a pre-court Housing Panel made clear that they agree with the intended outcomes of the panel, particularly in terms of the need to address delays and inconsistencies in the current court-based housing dispute process. However a pre-court Housing Panel was seen as less likely than other options to achieve these outcomes, and as risking further delay and cost to resolution of housing disputes.

Around half of those opposed to a pre-court Housing Panel felt that required improvements in the dispute resolution system would be better delivered through proposed civil court reforms. This was linked to a view that in the absence of a clear case for the pre-court Housing Panel delivering significantly better outcomes than reformed courts, the expense of the panel could not be justified. There is also a perceived need to allow court reforms to 'bed in', to allow an informed view on whether a pre-court Housing Panel would further improve dispute resolution.

## **A Housing Panel to Replace Courts as Decision Maker**

The third option proposes the creation of a Housing Panel to replace courts as the main decision maker in certain housing dispute cases. This type of panel would be a tribunal. It would involve transferring jurisdiction for specific types of housing dispute cases from the courts. A Housing Panel could also make the same kind of binding orders as a court, including the power to end tenancies and evict tenants.

Half of all respondents to the consultation were in favour of the creation of a Housing Panel to replace the courts as the main decision maker for housing disputes. This included a large majority of RSLs, local authorities, housing representative agencies and other representative agencies. In contrast, the majority of legal firms and representative groups, letting agents and private landlords and individual respondents were opposed to this option.

Those opposed to a Housing Panel to replace courts as a decision maker were broadly in support of the intended outcomes of a Panel. However, respondents identified a number of issues which, in their view, undermine the case for a Housing Panel being the best way of achieving these outcomes. This included: significant concerns about proposals to deal with an individual's tenancy status outwith the court system; the significant resource requirements to establish a new Housing Panel; and a need to allow civil court reforms to complete prior to making a decision on introduction of a Housing Panel.

The core suggestion for Housing Panel membership was for 3-5 members, including a legal professional, housing professional and lay person with suitable housing-related experience. It was also suggested that the broad range of cases to be considered by a Housing Panel may require representation of other qualifications or fields - as standing Panel members, or the facility to draw in other qualified individuals as required by specific cases.

Respondents were divided on whether a Housing Panel should be created by expanding the caseload of the Private Rented Housing Panel. This was the case across most respondent groups, although the majority of housing representative agencies and local authorities answering the question were opposed to this option.

There was some suggestion that all civil cases that would normally be referred to the court should fall within the remit of a Housing Panel. However, most respondents suggested a Panel's remit should be focused on specific types of dispute such as housing debts and antisocial behaviour, potentially taking into account whether mediation has failed or where tenants' needs may be better met via a less formal inquisitorial approach.

Views were divided on the issue of fee charging for a new Housing Panel. Nearly half of respondents felt that one or more parties should be charged a fee for raising actions before a Panel. However, there remained some who were opposed to fee charging. This mix of views was evident across all respondent groups.

Around a quarter of respondents felt that required improvements in the dispute resolution system would be better delivered through proposed court reforms. This profile of views was broadly consistent across respondent types.

This document, along with full research report of the project, and further information about social and policy research commissioned and published on behalf of the Scottish Government, can be viewed on the Internet at: <http://www.scotland.gov.uk/socialresearch>. If you have any further queries about social research, please contact us at [socialresearch@scotland.gsi.gov.uk](mailto:socialresearch@scotland.gsi.gov.uk) or on 0131-244 2111.

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