

# CIH response to Considering the case for a housing court



Chartered  
Institute of  
Housing

## About CIH

Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple - to provide housing professionals and their organisations with the advice, support and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world.

Further information is available at: [www.cih.org](http://www.cih.org)

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## Introduction

We welcome the opportunity to respond to this consultation. As the professional body for people working in housing, our members work across both the social and private rented sectors, as well as for local authorities who have responsibility for enforcing minimum housing standards. They therefore experience the existing county court and tribunal systems in several different ways.

We have not responded to each question in the consultation individually, as we are not direct users of the existing court and tribunal systems. We feel that others will be better placed to share their personal experiences of current processes. However, in preparing our response, we have engaged with our members and with a number of partner organisations and have drawn on their experiences to make a number of over-arching comments on the options presented in the consultation.

Our particular focus is on questions 24 - 27, on the potential merits of creating a specialist housing court.

## Our key points

1. It is clear that users of the current county court system, both social and private landlords alike, experience a number of difficulties including:
  - the time taken for cases to be resolved, with landlords particularly telling us about lengthy delays at various stages of the possession process
  - significant inconsistencies in both processes and timescales between different county courts. These inconsistencies can create difficulties for larger landlords who operate across many different areas
  - a lack of understanding about court processes and procedures. While most social landlords are experienced users of the legal system this is not necessarily the case for private landlords, for whom being a landlord is often a small scale, part time exercise. Navigating the legal system can be complex and this is exacerbated by inconsistencies between courts in different areas. Furthermore, feedback from our members also suggests that tenants often do not know what to expect from the court system and we are concerned that a lack of understanding of processes and procedures may sometimes inhibit their ability to exercise their rights effectively

- inconsistencies in decision-making caused by a lack of housing knowledge among some judges. Landlords told us that judgements are inconsistent and are sometimes wrong in law
  - high costs. Court fees for possession cases have increased significantly in recent years and arguably no longer represent value for money. Landlords told us that they appear to exceed the actual costs which would typically be incurred by the court for these kinds of cases.
2. Reform of the court process would benefit tenants and both private and social landlords but is particularly important if government is to achieve its wider objective of improving security for private renters. We strongly support the principle of improving security and used [our response to the recent consultation on Overcoming the barriers to longer tenancies in the private rented sector](#) to argue that government should legislate to make longer tenancies mandatory in most cases.

However we also acknowledged that landlords have a legitimate need to recover properties quickly in the event that there are problems, such as rent arrears. If landlords' ability to make use of so called 'no fault' evictions is to be reduced, or removed entirely, we must ensure that the process for them to seek possession under a provable ground (such as rent arrears) is efficient and reliable. This is not currently the case.

We would therefore encourage government to consider the introduction of longer tenancies and reform of the possession process together, an approach previously adopted by the Scottish Government when introducing open ended tenancies alongside a new Housing and Property Chamber as part of the Tribunal system.

Our overall view is that longer tenancies introduced alongside a quicker and more reliable possession process would strike a reasonable balance between tenants' need for greater security and landlords' need to minimise the risk of rent arrears and other breaches of tenancy conditions.

3. Although there are a number of potential options for reform, we support in principle the option to create a new housing court. In particular, we feel that housing law is a complex, specialist area which would benefit from having specialist judges. Feedback from users of the existing county court system suggests that decisions are often inconsistent and are sometimes wrong in law. We believe that creating a specialist housing court, with specialist judges, would be the best way to address this problem.

4. If a specialist housing court is created, it will be essential to ensure that it is properly resourced. Currently delays are often caused by a shortage of available judges and, unless this is addressed, there is a danger that the creation of a specialist housing court will not lead to cases being resolved more quickly.

For example, [initial evidence from Scotland](#) shows that the government may have underestimated the volume of cases that their newly established tribunal would have to handle and that, as a result, landlords and tenants are still experiencing some delays. It will be essential to learn the lessons from this experience and to ensure that any new housing court is adequately resourced.

5. It will also be vital to ensure that cases brought before a specialist housing court are eligible for legal aid. This is particularly important when dealing with possession cases, where at present participants are generally able to access legal aid. It is vital that any change to the way in which these cases are heard does not prevent people from accessing and affording the legal advice and representation they need.
6. It is also vital that court costs do not exceed the actual cost of handling cases. We are concerned that at the moment some fees are set at a level that does not appear to represent value for money for those using the system. As these fees are often passed on to tenants when a judgement is made in favour of their landlord, it is particularly important that they are fair and proportionate. In addition, there we are also concerned that they may sometimes be a barrier which prevents people from bringing cases to court in first place.
7. Finally, some thought should also be given to how a specialist housing court could be made more accessible and easier to navigate. For example, we would suggest that some guidance be produced to provide both landlords and tenants with information on how the court operates and what to expect, in an easy to understand format.