

House of Commons Justice Committee Inquiry: Work of the County Court
Response from Propertymark
December 2023

Background

1. Propertymark is the UK's leading professional body for estate and letting agents, inventory providers, commercial agents, auctioneers and valuers, comprising over 17,500 members representing over 12,800 branches. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

Overview

2. The Justice Committee have opened an inquiry to examine the work of County Court's amid long-standing concerns over their capacity and resources. It comes as data on the work of the County Court shows the time taken from claim to hearing continues to rise. We have responded to this inquiry from the perspective of County Court disputes over private rented sector (PRS) housing. Currently, a landlord operating within the Private Rented Sector (PRS) can gain possession of their property from a tenant by issuing either a 'no fault' Section 21¹ notice or a Section 173 notice in Wales². Alternatively, if a tenant is alleged to have broken the terms of their tenancy, then a landlord may wish to issue a Section 8 notice which includes mandatory grounds for possession and discretionary grounds which are considered by the courts. Alternatively, a tenant may wish to take their private landlord to court over disputes on quality of the housing, failing to make repairs or other disputes such as unreasonable landlord behaviour.

Call for evidence

What the current level of delay in the County Court is; the extent of any regional variations; and the effect of delays on litigants and the administration of justice.

Current level of delay

3. According to data from HM Courts and Tribunal Service³, for quarter two of 2023, there were 7,301 possession claims made by private landlords in England and Wales. Prior to the Covid-19 pandemic, when possession claims were very low, the current level of claims is the highest since the HM Courts and Tribunal Service broke the data down on a quarterly basis in 2009. Furthermore, possession claims have increased by 16 per cent compared to quarter two of 2019 before the pandemic. There are several potential explanations for this rise in possession claims:

¹ [Evicting tenants in England: Section 21 and Section 8 notices - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/evicting-tenants-in-england-section-21-and-section-8-notices)

² [Renting Homes \(Wales\) Act 2016 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2016/16/section-173)

³ [Mortgage and Landlord Possession Tables Q2 Apr to Jun 2023.ods\(live.com\)](https://www.hmcts.gov.uk/mortgage-and-landlord-possession-tables-q2-apr-to-jun-2023)

- Increased legislation in Wales with the Renting Homes (Wales) Act 2016⁴ and the prospect of reform of the PRS in England from the Renters (Reform) Bill.⁵
- Landlords are operating under difficult financial circumstances with the current cost of living which is of increased concern to landlords due to Section 24 of the Finance Act 2015⁶ which removes a landlord's right to deduct the majority of their finance costs, including mortgage interest and arrangement fees, from their rental income before calculating their tax liability. Given the removal of these tax deductibles, the current Bank of England Bank rate rising exponentially to 5.25 per cent⁷ has resulted in most landlord's mortgage and other related costing increasing significantly.

Essentially, increased legislation and the difficult financial climate landlords are operating under may have influenced many landlords to exit the sector and subsequently retake possession of their properties to sell.

Impact of delay

4. The overall increase in the volume of possession cases since the pandemic, has undeniably impacted the performance time in determining possession cases for private landlords. This is clear by an increase in the number of weeks taken to determine a possession claim for private landlords accelerating since 2019. Courts data shows the mean wait time for a private landlord in Q2 2023 was 29.1 weeks while the median time was 22.7 weeks. While this determination time has slightly improved from the previous quarter where the mean time was 30.2 weeks, and the median was 23 weeks.

Extent of any regional variations

5. While the performance of the County Court system for landlords in gaining possession is not performing at an acceptable level across England and Wales, there are some regions where the performance of the courts is even more concern. The time taken to complete possession cases in London is of major concern where in some cases it can take up to 40 weeks to complete. This could be because of lack of resources and the volumes of caseloads. While the courts continue to perform at unacceptable levels, the impact is felt significantly on landlords. While it is positive that following the second reading of the Renters (Reform) Bill, the proposed abolishment of Section 21 will not go ahead until court improvements have been made, this needs to be achieved as a matter of urgency. Failure to do so could result in more landlords exiting the market, resulting in less supply of PRS accommodation. The reduced supply will result in less housing options for tenants and higher rents of properties that remain within the sector.

⁴ [Renting Homes \(Wales\) Act 2016 \(legislation.gov.uk\)](#)

⁵ [Renters \(Reform\) Bill - Parliamentary Bills - UK Parliament](#)

⁶ [Finance \(No. 2\) Act 2015 \(legislation.gov.uk\)](#)

⁷ [Bank Rate history and data | Bank of England Database](#)

The ways in which the County Court engages with litigants in person, and how this could be improved.

6. We have already highlighted the considerable challenges that County Courts have with dealing with possession cases within the PRS. Under the existing system, research from Citizens Advice found just 23% of tenants feel confident applying to court. 54% said they did not take a claim to court because of the complexity of the process. A similar number (45%) said they were put off by the length of time involved. We have already discussed that County Courts hear a variety of cases. Given the current pressures, we believe the UK Government should implement a dedicated housing court to hear cases involving disputes involving the PRS including possession cases. The Levelling Up, Housing and Communities Committee supported a dedicated housing court in their inquiry on Reforming the Private Rented Sector.⁸ The introduction of a dedicated housing court would take the pressure of PRS disputes off the County Courts. Furthermore, attending a hearing at County Court can be intimidating for both landlords and tenants involved in the dispute and access is problematic for some given the closer of many County Courts across England and Wales.⁹ To improve access to procedures and swift justice, a dedicated housing court could be built on to the remit of the Property Tribunal and cover matters such as property standards, whether landlords are meeting their legal obligations and repossession cases. This is an argument we used for our response to the Welsh Government’s consultation on proposals to reform devolved tribunals in Wales, with the aim of creating a unified and coherent tribunal.¹⁰ Alternatively, access to a dedicated housing court could be improved by holding hearings either online or by using current public buildings such as schools or town halls. This could also allow for improved access to local authority specialists such as local authority surveyors and housing inspectors.

The condition of the court estate, and its effect on the work of the County Court

7. Anecdotal evidence from conversations with property agents and their landlords has suggested that the condition of County Courts is not fit for purpose. Issues include:
 - Poor condition of the court estate.
 - Unreliable wi-fi.
 - Lack of information on how to use systems and procedures.
 - Limited reasonable adjustments made to allow people with a disability to get access to justice and attend court.

8. With the Ministry of Justices plans to digitalise more court procedures relating to housing possession cases, without greater support to new administrative procedures and facilities such as reliable wi-fi, the initiatives will be severely compromised. Both landlords and tenants, who are impacted by disabilities, should be allowed reasonable adjustments to be made to allow them to get access to justice and attend court. This could include disabled parking spaces near to the courthouse, hearing aid induction loops in courtrooms, information being provided in large print and improved advice and information being provided on court procedure.

⁸ <https://committees.parliament.uk/work/6862/reforming-the-private-rented-sector/>

⁹ <https://www.lawsociety.org.uk/campaigns/court-reform/whats-changing/court-closures>

¹⁰ <https://www.propertymark.co.uk/static/64aff7dc-0e7d-4342-8530631b9994b037/Welsh-Government-consultation-A-new-tribunal-system-for-Wales-Propertymark-response.pdf>

Unfortunately, on some occasions reasonable adjustments are not being met even when evidenced by a doctor’s letter. This has included the timings of court hearings and the length both of which impact landlords and tenants equally. Research from the Law Society highlighted the extent to which disabled court users are let down by a system that does not meet their needs. Their research from over 500 solicitors found that disabled court users are even less likely to feel physically secure or safe from harm while attending court. Disabled people were also significantly more likely to be excluded from the use of technology and the courts physical building.¹¹ With many court buildings being generally old buildings, turning to current more accessible public buildings in the form of a housing court could improve physical access for marginalised groups.

The use of technology in the County Court and how it could be used to improve the service provided by the County Court

9. Back in October 2023, the UK Government acknowledged that the court system needs to improve for landlords and tenants involved in disputes.¹² The UK Government stated that although the overarching number of tenancies do not end up in court, with many tenancies ending by the tenant¹³, when there are disputes the system needs to be streamlined and improved. The UK Government’s White Paper, A fairer private rented sector¹⁴ outlined several key proposals on improving the court system including a commitment for the Department for Levelling Up, Housing and Communities to work in partnership with the Ministry of Justice and HM Courts and Tribunal Service. However, there had been little progress on fostering this relationship until the Government reaffirmed this priority in October 2023. During the Second Reading of the Bill, the Secretary of State confirmed the UK Government’s commitment to abolishing Section 21. However, we welcome the acknowledgement that this must be delayed until sufficient court improvements are put in place. As a matter of urgency, the UK Government must now outline how they will use technology to improve the court system for landlords, their agents, and tenants. This must include clarity on how they will digitalise more of the court process to make it simpler and easier for possession cases to be processed. Key areas to improve through digitisation are:

- The fees schedule needs to be digitalised to ensure shift action for justice and that paperwork does not hold up the process... The MoJ also needs to explore how it can prioritise the most contentious possession cases including those involving anti-social behaviour especially in cases where the perpetrator is still living in the dwelling.
- Ensuring future online systems are user-designed and introduce a minimum service level standard.

¹¹<https://www.lawsociety.org.uk/topics/research/are-our-courts-fit-for-purpose>

¹²

<https://publications.parliament.uk/pa/cm5803/cmselect/cmcomloc/1935/report.html#:~:text=The%20government%20wants%20to%20avoid,the%20rate%20they%20deem%20appropriate.>

¹³ <https://www.gov.uk/government/statistics/english-housing-survey-2021-to-2022-private-rented-sector/english-housing-survey-2021-to-2022-private-rented-sector>

¹⁴ <https://www.gov.uk/government/publications/a-fairer-private-rented-sector>

- The Money Claim Online (MCOL) process would be improved by being updated. The existing MCOL website presents itself as outdated. The user guide looks contrastingly modern in comparison.¹⁵
- Mandatory notices for eviction should be integrated into the Possession Claim (PCOL) system.

The current level of fees and the approach taken to costs in the County Court, and how the fees collected are used as part of the current funding arrangements for the County Court.

10. Court fees for landlords and agents increased back in September 2021. This included a rise from £121 to £130 for a warrant of possession, a warrant of control increased from £77 to £83 and previously if a landlord wanted to apply for an attachment of earnings or charging order to secure a debt, fees have increased from £110 to £119.¹⁶ The fees schedule is a particularly complex area and should be seen as a key area for improvements through digitalisation. Some landlords or their agents may wish to use the Small Claims Court for especially for disputes to damages under £1,000. However, fees have also increased for accessing the Small Claims Court depending on the amount being claimed back. One procedure that already has been digitalised is possession orders for accelerated claims and possession hearings. The digitalisation of these procedures is illustrative of how administrative costs can be reduced as these fees have remained static at £355 when other fees have increased.

Whether there is sufficient judicial capacity in the County Court, and current steps to improve judicial capacity.

11. The first challenge in improving judicial capacity is the extent of new legislation on the Private Rented Sector in England and Wales. The Renters (Reform) Bill is making it's way through parliament, meanwhile, the Renting Homes (Wales) Act 2016 has been enacted giving Wales a separate legislative framework from England. While both pieces of legislation in England and Wales have virtues in improving the sector, District Judges will require time to understand and interpretive the legislation accordingly. There have been some cases where the brevity of district judges understanding of housing law has been clear. The Civil Justice Society highlight the importance of property cases being heard by an expert judge or tribunal¹⁷. The advantage of having expert judges include accuracy and consistency in decision making, efficiency and consequential savings in cost for parties and for the judicial system. Conversations with some local authorities, especially those in rural and remote areas, have alluded to concerns over the lack of specific knowledge in the judicial system on disputes around housing. Some local authorities have expressed a desire to develop briefing papers or guidance to district judges to improve their knowledge on housing disputes. In essence, we believe housing matters being heard by specialised judges, preferably in a dedicated housing court, will also help to guarantee that people without access to legal counsel have the best opportunity of going through a consistent and equitable procedure. Such a legal framework may also make it possible for

¹⁵ <https://www.moneyclaim.gov.uk/web/mcol/welcome>

¹⁶ <https://www.gov.uk/government/publications/fees-in-the-civil-and-family-courts-main-fees-ex50/civil-court-fees-ex50>

¹⁷ <https://www.judiciary.uk/wp-content/uploads/2011/03/final-interim-report-cjc-wg-property-disputes-in-the-courts-and-tribunals.pdf>

members of the legal profession to specialise in housing via education and experience, expanding the pool of highly qualified housing specialists.

Whether there is sufficient staffing of the County Court

12. We think that staffing levels at County Courts are insufficient, and for housing related disputes are at the detriment of both landlords, agents, and tenants. In many cases, both landlords and tenants lack knowledge of the court procedure. Both parties are only able to access duty solicitors late into the process. Cuts to legal aid have made access to support even more problematic. Even when landlords and their agents have secured possession through the courts, there can often be further delays due to the availability of bailiffs. When a landlord requires a bailiff, they must use a County Court Bailiff which can be accessed through a warrant of possession. Prior to this, landlords or their agents must complete and submit a risk assessment form which must be completed before the eviction date to highlight any risks. There have been significant delays in bailiff enforcement on health and safety grounds particularly in London and larger cities. This is chiefly down to shortages in Personal Protective Equipment to ensure that all evictions can go ahead safely and securely. One method to get around this problem is that landlords and agents are transferring this duty to High Court Enforcement Officers. Permission is required from the County Court to transfer the possession order to the High Court to obtain a writ of possession. This is requested under Section 42 of the County Courts Act 1984¹⁸

The current procedural mechanisms used by the County Court to resolve disputes

13. We have already addressed the pressure put on the County Court system and solutions including a dedicated housing court to release pressure on County Courts. While most tenancies end amicably, when a problem arises between a landlord and tenant, greater efforts need to be made to resolve these disputes before relationship break down and court proceedings become inevitable. The UK Government's White Paper stated that they will strengthen mediation and alternative dispute resolution to enable landlords and tenants to work together to reduce the risk of issues escalating. While this is welcome, PropertyMark has made the case during the mediation pilot scheme, that support must be deployed as early as possible to ensure that mediation has the best opportunity to improve relationships before it is too late. This can be supported by including local authority housing and homelessness departments in the referral process, who are usually in contact with tenants at a much earlier stage and may be able to deliver guidance and signposting to the scheme before it is too late.

The quality of data available on the work of the County Court

14. The quality of data on the work of County Courts has improved. The Ministry of Justice (MoJ) now publicly publish data on possession times including regional variations. Nevertheless, more work needs to continue improving the accountability and transparency of the work of County Courts. The MoJ do not publish data on dispute decisions including if possession claims

¹⁸ <https://www.legislation.gov.uk/ukpga/1984/28/contents>

were successful by landlords. This would be useful to see the impact legislation from across the UK has had on decisions, if there any regional factors behind dispute decisions and to improve the overall confidence of the Courts for both landlords and tenants.

What future reforms to the County Court should be considered

15. Once the UK Government have implemented court improvements to pave the way for the abolishment of Section 21 in favour of a grounds-based approach, the government must consider additional mandatory grounds for possession via a Section 8 notice. These additional grounds should include if the tenant is persistently late in paying rent, if the tenant fails to provide access to the property for inspections by landlords or their agents, if the tenant has acquired the property with false or incorrect information and if the tenant is in breach of their tenancy agreement.