

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

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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

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.

Councils believe that the current range of legislative procedures to assist early resolution of disputes is broadly sufficient, particularly when this may well be augmented by additional measures relating to tenancies and allocations etc likely to appear in the forthcoming Housing Bill. Any further legislative burdens would potentially inhibit the speedier and more effective path to dispute resolution sought by all.

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.

N/A

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

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?

Enabling landlords to resource the full range of existing support measures known to assist the early resolution and prevention of housing disputes. Such measures would include the provision of financial advice and support and effective mediation services. It should be said at the outset that housing practitioners in councils, and no doubt their colleagues elsewhere in the social housing sector, consider that they already engage with tenants and other stakeholders in what could be termed “upstream actions” virtually every day of their working lives. Much of this work is wholly focused on problem solving through early intervention, in an effort to minimise the likelihood of future disputes arising. This is nothing more or less than good housing management practice, and will continue whatever options we adopt to improve current dispute resolution procedures and outcomes.

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.

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

Mediation is not a new concept to councils, nor is it mutually exclusive when considered alongside other potential dispute resolution improvement measures such as a new housing panel. Intervention through mediation is likely to be most successful at the early stage of dispute resolution, before behaviour worsens and attitudes have hardened. Consequently issues likely to prove amenable to mediation include :

- low grade, early stage anti -social behaviour , often involving children or young people (and perhaps related to “lifestyle clashes”)
- boundary disputes over curtilage or gardens (overhanging trees and overgrown gardens or hedges, for example)
- disputes relating to common areas such as cleaning of close stairs or bin areas
- landlord/tenant (or owner/factor) disputes relating to repairs obligations, particularly those which may involve withholding of rent or other payment due

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

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

Mediation is not consistently used throughout Scotland, and sadly in the current economic climate some councils may be reducing this service, or even relinquishing provision altogether. Mediation will only be seen as a potential option if it offers the prospect of speedy dispute resolution with satisfactory outcomes for the parties involved. Consequently, available services will need widespread local and possibly national publicity, through landlord newsletters and other means. Tenants and others involved in potential or actual disputes will only seek to pursue this option if they are aware such a service is available and they believe that it holds out the prospect of a successful outcome. The onus is on landlords and others likely to benefit from successful mediation to ensure widespread awareness of available services. This of course will require sufficient resources to do so.

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

Charging users for mediation services would do nothing whatever to improve uptake. If government and landlords are convinced of the preventative spending benefits of mediation they will wish to invest in a service, not least to realise the savings which will accrue from avoiding the significantly greater costs incurred if disputes escalate. In the current economic climate, and to ensure consistency of outcome, Scottish government might wish to take the lead in pump priming resources.

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

This is difficult to answer without detailed knowledge of the current pattern of mediation service distribution and availability. Consequently, it would be beneficial to conduct a national "mapping" or similar exercise to establish the extent of available mediation services and uptake throughout Scotland. This should include an assessment of costs and outcomes, and the identification of good practice where evident. Such information could also prove invaluable for a housing panel wishing to use mediation as part of its

disposal powers.

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

Widespread publicity of service availability across all tenures. (See 4d above).

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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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)?

N/A

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

N/A

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

Although we detect broad support for removing housing cases from the courts, ALACHO is not convinced by the case for a pre-court Housing panel. We agree with CIH that the pre-court panel could actually increase delays rather than reduce them, and could potentially result in an additional layer to the system which would only serve to confuse an already complicated landscape. Improving operation of the current court system under the Gill reforms is another option, but we are not convinced that these will have the desired impact in improving the speed and quality of housing dispute resolution. Consequently ALACHO favours establishment of a discrete specialist housing panel, covering all tenures, and with the potential to promote mediation, advocacy and support interventions as appropriate, as the best means of achieving the desired outcomes.

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

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

The new Housing Panel will need to have a range of skills at its disposal, albeit these will be required to a greater or lesser degree depending on the complexity of individual cases. As a minimum we would expect to see

- legal representation , with specific expertise in housing law,
- technical expertise to cover disputes about buildings and repairs,
- housing management expertise in the form of experienced housing practitioners,
- lay expertise, from the likes of tenants or other seasoned users of housing services , for example owners in factored blocks.

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

Yes No Don't Know

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

The new housing panel should consider a comprehensive range of housing disputes, including those currently disposed of in the Sheriff Courts, those currently dealt with by existing tribunals, and other situations where currently no formal dispute resolution procedure is available. ALACHO believes the scope of the Panel should also include resolution of disputes between private owners such as failure to agree on common repairs, or the right to adapt common areas. In summary, cases to be considered could include:

- Local authority homelessness decisions
- Refusal of a social landlord to allow an applicant to access a housing register
- Failure of a social landlord to consult
- Awarding of a short Scottish Secure Tenancy
- Failure to consent to applications for subletting
- Refusal of a request to create a joint tenancy
- Appeal against the conversion to a short Scottish secure tenancy
- Appeals against the right to succeed a tenancy
- Actions to deal with anti social behaviour, including eviction, interdict and interim interdict, anti social behaviour orders
- Actions to deal with rent arrears, including eviction.
- Rent disputes and disrepair disputes.
- Right to Buy appeals
- All disputes currently heard by the Private Rented Housing Panel.
- All disputes currently heard by the Homeowner Housing Panel.
- Variation of terms of a tenancy
- Appeals against, and compensation for, unlawful eviction
- Compensation for improvements
- Failure to protect a deposit

- Appeals against statutory action taken by local authorities.
- Needless to say, adequate resourcing of the Panel, and support for those using its services, will be essential .

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 (further discussion required on possible options)

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

N/A

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

Equality issues

8. Which equality groups, if any, do you think will be differently affected by each of the options in this consultation paper?

If properly established and adequately resourced, all equalities groups have the potential to benefit from the potential improvements to disputes resolution procedures implied in the three different options, although if Option 2 resulted in delay and additional bureaucracy as we fear it might this would disadvantage equalities groups in the same manner as the wider population. Consequently, ALACHO believes that a combination of adequately resourced mediation and a new housing panel offers the best scope for improving engagement with, and outcomes for, equalities groups.

9. How do you think they will be affected by each option (positively or negatively)?

See 8 above.

10. What changes could we make to each of the options to mitigate or remove any adverse effect on the equality groups you have identified?

ALACHO believes that, properly implemented, resourced and supported, the preferred options of a new housing panel with increased use of

mediation as and where appropriate, will have a positive impact on all equalities groups.

11. What opportunities do the changes/options present for equality of opportunity to be advanced, and/or the fostering of good relations between and among different people?

Resolving potential disputes at an early stage through mediation, coupled with effective redress via the new housing panel as and when this proves necessary, has the potential to engender a significant positive effect on the fostering of good relations between neighbours, and between landlords and tenants in all sectors. Widespread publicity and information on the availability of disputes resolution procedures, coupled with free access to these services would clearly encourage equality of opportunity and successful outcomes to the fostering of good relations.

Business and Regulatory Impact Assessment

12. Are there businesses, public bodies or 3rd sector organisations not already listed in the BRIA that we should engage with in developing one or more of these policy options?

Yes No Don't Know

If yes, please provide details of these organisations.

The BRIA consultation list at sections 7.10 & 7.11 of the consultation is fairly comprehensive. We note however that SFHA suggest the Scottish Mediation Network should also be consulted. This seems to us to be a most helpful suggestion given the undoubted importance likely to be placed on effective mediation under any new regime aimed at improving the housing disputes resolution process.

13. Which options will impact on these organisations and what would the impact be?

Comments

14. Could the enforcement, sanctions or monitoring of any of the options have a disproportionate impact on any organisation or group of organisations within the public, private or third sectors?

Yes No Don't Know

If yes, please explain what the impact will be

Clearly, the introduction of an adequately resourced Housing Panel supported by effective mediation procedures would represent an entirely new way of working for local authorities, whose chief housing officers ALACHO represents. It is impossible to say at present exactly what the impact will be and consequently whether it will be “disproportionate “. Much will depend on the scope and responsibility placed on the new Housing Panel, and the extent of take up. As noted throughout this response, adequate resourcing will be crucial to make a success of the new regime. It is to be hoped that savings realised from elsewhere in the disputes resolution system, particularly from Sherriff Courts, will go some way to offsetting the costs of the new regime.