



**Ministry of Housing, Communities and Local Government
Consultation – Housing Courts Call for Evidence**

**A Response by
The Chartered Institute of Legal Executives (CILEX)**

[January 2019]



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1. Summary of Recommendations

- 1.1. A new integrated Housing Court should help to make the current court system easier to navigate, faster and more cost efficient. (Para 3.1, 4.2-4.5)
- 1.2. However, it will fail unless Housing Courts are adequately resourced with specialist judges, court staff and court locations to ensure access to justice. (Para 3.1.1, 4.4)
- 1.3. Housing courts should be supplemented with increased guidance for navigating the court structure and court processes. (Para 4.3)
- 1.4. The level of court fees charged for resolving property disputes needs to be revaluated as they are prohibitively high. (Para 3.2, 4.5.3)
- 1.5. Greater resources need to be invested within county courts to improve efficiency. (Para 4.4, 5.2)
- 1.6. Ground 8 possession orders under the Housing Act 1988 should be amended to protect against disproportionate landlord possession claims. (Para 3.3)

2. Introduction

- 2.1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers. Amongst these more than 5,800 specialise in conveyancing including CILEx advocates with advocacy rights to handle civil litigation matters within the County Courts and First-Tier Tribunal (Property Chamber) as authorised by CILEx Regulation.¹
- 2.2. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it.
- 2.3. This response includes contributions from some of CILEx's members working in conveyancing. CILEx liaised with practitioners through its Conveyancing Specialist Reference Group and conducted a survey of members into their experience of the current court structure with regards to solving property disputes, as well as landlord possession claims sought within the County Court. These are expanded in more detail below.

¹ https://www.cilexregulation.org.uk/~media/pdf_documents/cilex-regulation/rules/rights-to-conduct-litigation-and-rights-of-audience-certification-rules-aug-17.pdf?la=en

3. General Points

- 3.1. CILEx provisionally welcomes proposals for a new integrated Housing Court but stresses the importance of adequate resourcing to improve the capacity and efficiency of case handling.
 - 3.1.1. Meaningful access to justice requires that litigants are not only able to bring their claim to court and have their case heard, but promptly obtain expert judgments capable of enforcement to resolve the dispute at hand. Whilst an integrated Housing Court shall help in creating a simplified framework that is easier for consumers to understand and navigate, obtaining prompt judgments and securing enforcement of case outcomes will not be possible without sufficient court staff and resources.
- 3.2. Anecdotal evidence from CILEx members suggests that court fees around property-related disputes have increased over time and are no longer proportionate to claims raised. As a result, it is feared that this may be dissuading litigants from bringing their claims before the courts/tribunals.
- 3.3. CILEx recognises that current court processes may make it difficult for landlords to repossess their properties in circumstances where a tenant has persistently failed to pay their rent. However, it is essential that Ground 8 possession orders under the Housing Act 1988 (as amended by the Housing Act 1996) are reformed to protect leaseholders in instances where possession would be a disproportionate response.²

4. Structural Changes to the County Courts and Property Tribunals

- 4.1. Just over three quarters of CILEx members responding to our survey had most experience dealing with property disputes within the county courts; although 16.13% described their experiences as relating to both the county courts and first-tier tribunal.
 - 4.1.1. The nature of disputes (of which survey respondents had experience), included: 1). Boundary disputes, 2) Breaches of Tenancy, 3). Rent arrears, 4). Landlord possession claims, 5). Charging orders, 6). Evictions, 7). Enfranchisement matters, 8). Service charge disputes, 9). Anti-social behaviour, 10). Neighbour nuisance, 11). Squatters, 12). Trespass, 13). Housing injunctions, 14). Succession, 15). Abandonment, 16). Stays of enforcement, 17). Money claims, 18). Social housing, 19). Mortgage repossession claims, 20). Sublet, 21). Fraud, 22). Dilapidation/disrepair.
- 4.2. CILEx welcomes proposals for a new integrated Housing Court with all survey respondents ranking this proposal as either their first or second choice in comparison to the following proposals a). increasing the tribunal's jurisdiction, b) increasing the county court's jurisdiction and c). providing additional guidance as to court processes.

² Please see: CILEx Submission, *Ministry of Housing Communities and Local Government Committee: Leasehold Reform Inquiry*, (September 2018), para 4.1; CILEx Consultation Response, *Tackling Unfair Practices in the Leasehold Market*, (2017)
https://www.cilex.org.uk/~/_media/pdf_documents/main_cilex/policy_and_governance/consultation_responses/cilex_submission_-_leasehold_reform_consultation_-_final.pdf?la=en

- 4.2.1. By simplifying the current framework and streamlining processes, it is anticipated that the new court shall be an improvement to the current system which 55.88% of respondents found to be complicated and 67.64% identified as difficult for consumers to understand. Member comments expressed difficulties in trying to explain to clients why there are such discrepancies within the court structure and why procedures for resolving property disputes take so long.³
- 4.2.2. Member comments additionally expressed mixed feelings towards systems such as Possession Claim Online, with some members finding that this may have mitigated some difficulties and others stating that it is not fit for purpose.
- 4.3. CILEx nevertheless encourages that the establishment of a new Housing Court should be supplemented with increased guidance (ranked the second most favourable option out of the four options for reform). This is in light of survey comments which suggested that the general absence of clear guidance, alongside frequently changing rules and forms, are problematic for both practitioners and litigants alike.
- 4.3.1.1. Survey results recommended that additional guidance should encompass: a). contact information for local advice providers, b). basic advice for litigants on the availability of legal aid, c). information on court fees, d). information on time scales for having your case heard, e). how and when to make certain applications, f). guidance on the court process and which court to use, g). guidance on making a claim list, h). guidance on how to serve applications and notices, i). guidance on evidence, j). explanations of the different types of tenancy agreements, k). basic information on the rights and consequences of breach of tenancy, l). guidance on how to defend proceedings.
- 4.3.1.2. Survey respondents suggested that such guidance could be disseminated alongside claim forms and other court documents, as well as provided electronically via online Government approved websites and even social media.
- 4.4. CILEx hopes that a new Housing Court shall help to expedite the current system by providing a straightforward route for resolving disputes.⁴ Delays in handling property disputes was a common concern voiced amongst survey results with 62.86% of respondents describing the current court structure as time consuming, owing to its highly fragmented nature with differences in administrative and hearing procedures, along with the inter-reliance between county courts and first-tier tribunals for resolving a case.⁵ (Although member comments did suggest that the level to which the current system is time consuming can depend heavily on location).
- 4.4.1. Nevertheless, CILEx emphasises that the complex court structure is not the sole cause of delays within the current system, with a general lack of staff and resources further contributing to the problem. Member comments repeatedly

³ Member comments included: “[Clients] cannot follow why this does not have an easy resolution”; “Despite us trying to explain how the system works clients cannot understand why things take so long.”; “Any system which is more complicated than it needs to be, without adequate explanation of the reasoning behind allocation to a particular tribunal/hearing venue, is going to be confusing for “consumers”.”

⁴ 61.54% of survey respondents agreed or strongly agreed that if a new specialist Housing Court was established it may resolve disputes quicker, as well as help to reduce costs in bringing a case.

⁵ It was commented that: “Both courts operate slightly differently, and that takes time. It becomes more of an issue when an element of a county court case has to go to the F[irst] T[ier] T[ribunal] for decision before the county court case can be resolved.”

raised the issue of staff shortages and under resourcing throughout the survey, particularly in the context of county courts where delays were identified as marginally more problematic.⁶ CILEx therefore stresses the importance of appropriately resourcing the creation of a new Housing Court to ensure that there is adequate staff and distribution of courts to provide litigants with access to the courtroom.

4.4.2. This issue of court resources was additionally raised as a barrier to access to justice, with member comments suggesting that the lack of court time and specialist judges has negatively impacted on the ability for the system to effectively resolve property disputes. One member commented: *“Fair access is granted, but there is no guarantee that you will get a judge with a housing background which can make it difficult because you have to explain the law as well as the case sometimes. A housing court populated with housing judges would be ideal!”*

4.5. CILEx views the creation of a new Housing Court as an ideal opportunity to improve access to justice for property related disputes.

4.5.1. Just under half of all survey respondents agreed or strongly agreed that the county court provides fair access to justice for property cases, whilst a majority of respondents neither agreed nor disagreed that the first-tier tribunal did.⁷ In both cases this is an unsatisfactory state of affairs. In addition, trends amongst survey comments highlighted issues for litigants in ensuring that their case is heard.⁸

4.5.2. Barriers of access were identified to include both the complex court structure and aforementioned lack of guidance (particularly for procedural requirements such as witness statements). CILEx hopes that a new integrated Housing Court supplemented with additional guidance should help to remedy both such issues.

4.5.2.1. With specific regard to the first-tier tribunal, a lack of public awareness around tribunals and the rights that litigants have within tribunal processes were identified as additional barriers of access.

4.5.3. However, prohibitively high court fees were also acknowledged to create barriers, acting as a deterrent for litigants in pursuing their claims. 76.47% of survey respondents felt that the current system was costly with different fee scales to navigate and cumbersome procedures that increased costs of counsel.⁹ CILEx hopes that in establishing a new Housing Court, the level of court fees attached to property-related claims may be re-evaluated to remedy this issue.

⁶ 25% of respondents considered the time taken to resolve cases in the county courts as ‘very lengthy’ and an added 59.38% found it to be ‘lengthy.’ In comparison, there were no survey respondents who described the time taken to resolve cases in the first-tier tribunal as ‘very lengthy’, although 73.68% did still find it to be ‘lengthy.’

⁷ 48.58% of survey respondents agreed or strongly agreed that the county courts provide fair access to justice for property disputes, and 61.76% neither agreed nor disagreed the same in the context of first-tier tribunals.

⁸ Member comments included: *“Slot of disputes don’t even get to court level because vulnerable people don’t have the ability to get heard. Only those with the ability to get heard seem to get as far as court.”*; *“You need to know your way round the legal system to be heard. Jo blogs isn’t likely to know how to do this or how to approach a case.”*; *“The system is complex and costly, those without money don’t get heard.”*

⁹ Member comments included: *“In every case it involves a lot of chasing to get paperwork dealt with and that increases the costs for the clients significantly.”*; *“Court users do not get value for money and have to jump through hoops if ancillary applications need to be made”*; *“Court fees have increased and there are the costs of counsel for interlocutory hearings, trial, advice etc”*; *Court fees [are] disproportionate to the value of claims.”*

4.5.4. With all the above in mind, CILEx strongly encourages that issues relating to court fees, a lack of guidance, and shortage in court resources are addressed to secure access to justice within the new Housing Court.

4.5.4.1. 60% of survey respondents felt that where this is achieved, the new court could help to improve access to justice, and 65.39% felt it would additionally provide for better consumer experience whilst removing the stigma of having to attend a general court.

5. Private Landlord Possession Action Process: County Court

5.1. There was a general consensus amongst survey respondents¹⁰ that each of the individual stages of the possession action process are susceptible to delay. A running theme within member opinion was that these delays can be attributed to the under resourcing of Courts (and for the later stages, a lack of county court bailiffs).¹¹

5.1.1. Three quarters of survey respondents agreed or strongly agreed that the filing process for landlord possession claims are susceptible to delay. Administrative difficulties within court listing and timetabling (especially where there is a defence), and issues where pleadings and notices had been submitted by non-qualified persons were identified as additional reasons for these delays.

5.1.1.1. Survey respondents suggested that standardising the particulars of claims and standards of evidence, alongside better communication with the courts and improvements to court listing procedures, are areas for improvement within this stage of the process.

5.1.2. 65% of survey respondents agreed or strongly agreed that the stage of issuing court orders was susceptible to delays. The main emphasis here was on problems relating to staff shortages within courts. Survey respondents suggested that problems in obtaining possession orders are less apparent where undefended, and that the problem of agreed trial windows being vacated due to shortages in court rooms or judges needs to be resolved.

5.1.2.1. The knock-on impact of these delays was further noted to have aggravated procedural requirements; one member commented: *“Very often where a 14-day possession order is made it does not get sent out until after the 14 days has expired.”*

5.1.3. 65% of survey respondents also agreed or strongly agreed that issuing warrants for eviction was susceptible to delays, and 75% agreed the same with regards to the process of seeking possession by county court bailiffs. Survey comments suggested that even where the Warrant for Possession is issued quickly, there can be added delays with appointment owing to a shortage of

¹⁰ A majority of respondents surveyed on the issue of the landlord possession action process (68.42%) shared their experiences of possessions sought under both section 8 and section 21 of the Housing Act 1988. Only 10.53% were responding purely on the basis of section 8 claims and 21.05% solely on the basis of section 21 claims.

¹¹ Member comments included: *“[there is] overwork of the Courts”*; *“County Courts hav[e] a backlog of applications to process.”*; *“Lack of court time”*; *“Lack of staff to process the warrant can add on weeks of delay before it gets to a bailiff date.”*; *“Court bailiffs have been cut and are covering vast areas and so the delays can be 8 weeks plus.”*; *“[there is] Not enough bailiffs and too much work!”*

bailiffs. As a result, anecdotal evidence suggested that evictions could take up to 12 weeks.¹²

5.1.3.1. Majority of survey respondents (47.05%) indicated that enforcement of possession orders was satisfactory in the county courts. However, 84.62% of respondents neither agreed nor disagreed about the satisfactoriness within the First Tier Tribunal (Property Chamber).

5.1.3.2. Survey comments nonetheless identified the following problem areas relating to enforcement: 1). Absence of clear information for both parties on the steps they need to take, 2). Lack of public understanding and awareness of this process, 3). Non-standardised approaches to the exercise of discretion, 4). Lengthy timeframes, 5). Lack of bailiffs, 6). Insufficient powers of enforcement by county court bailiffs, 7). Issues of unnecessary adjournments.

5.1.3.3. We acknowledge the open call for evidence from the Ministry of Justice on enforcement agent (bailiff) reforms. If there is increased regulation of bailiffs then allowing for flexible deployment of Enforcement Agents in possession cases may help to address the issue of shortages. However, CILEx is very cautious given the seriousness in repossessing homes that this solution should only be utilised where there is a requisite level of regulation to prevent abuse and ensure that the conduct of enforcement agents remains proportional.

5.2. Mirroring above concerns,¹³ half of all survey respondents additionally felt that the stages of the possession action process were often or very often difficult for clients to understand, especially: requirements for pleading cases; requirements as to notice; adjournments and general timetabling/time limits.

5.2.1. One member commented: *“In my experience (37 years) most clients understand the process to the extent they need to; however I have acted for landlords more often than for tenants and I can well envisage that tenants, facing the possibility of losing their home, with the worry that this must engender, may struggle to understand how the process operates and may be disadvantaged by failing to understand what they need to do at particular stages thereof.”*

5.2.2. One again CILEx recommends that greater efforts are invested into improving guidance for the public to navigate this process, especially with the rise of unrepresented parties following legal aid cuts.

For further details

Should you
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¹² One surveyed member suggested that the current procedural timelines for enforcing possession orders are too long: *“This takes too long. [It is] accepted that the defendant needs some time to pack and make arrangements but if you get possession in 28 days that should be when the eviction takes place, not when you are able to apply for a warrant and then have to wait some more until eviction day. The witnesses in the case have to live next door for all that time and also it leads to greater arrears levels that are unlikely to be recovered.”*

¹³ See para 4.2.1, 4.4.