

Part 1: The private landlord possession action process in the county court

QUESTIONS FOR ALL RESPONDENTS

Q1. Have you had experience of possession cases in the county court?

Yes- *please go to Q2*

No- *please go to Q6*

Q2. If you answered yes to Q1, was possession sought under section 8 or section 21 of the Housing Act 1988?

Section 8 process

Section 21

Both

Don't know

Q3. If you answered yes to Q1, what were your experiences of these cases? Please provide details in the text box below.

It is not applicable for ARLA Propertymark to respond to this question.

Q4. If you answered yes to Q1, are there any particular stages within the possession process where you have experienced delays?

Yes- *please go to Q5*

No- *please go to Q6*

Q5. At which stage of the possession action process through the court did you experience delays?

Please tick one or more of the options below, and in the textbox explain what, from your understanding, were the reasons why these delays occurred.

Landlord claim process

- Court order issued
- Warrant for eviction
- Possession by county court bailiff

ARLA Propertymark members cite delays at every stage of the possession action process in the County Court, this begins from the initial claim up to the eventual possession by a County Court Bailiff (CCB) and is the product of many contributing factors. These factors are: Administration of Possession Orders; Role of tenants; Obtaining a Possession Order; Enforcement; Inconsistent Judgments; and the Role of Local Authorities.

Administration of Possession Orders

During the landlord claim process applying for a Possession Order, bureaucracy within County Court administration such as small, yet easily amended, mistakes on terms made by the landlord can result in the case being thrown out of court. An example of this could be a tenant's surname being misspelt in the claim, which is easy enough to be amended, but relies on a level of communication between the Court and the claimant. In order to limit cost, landlords and agents often act as litigants in person and conduct their own legal proceedings, but in doing this they can face further complications where they are not fully aware of issues they could face and the associated costs.

Role of tenants

Tenants who play the system before their notice period runs out cause further delay for landlords. Prior to a Court hearing, where Ground 8 of a Section 8 eviction notice has been used, it is known that some tenants will pay enough money owed to remove the mandatory ground for rent arrears before the hearing, which result in the Judge dismissing the case as the mandatory ground for eviction no longer stands. Whilst it can be a positive that landlords are paid money owed and the tenant can stay in the property, some tenants use this as a means to remain in the home without any intention of paying any further rent. This does not provide security for further rent payments. Further rent defaults could result in the landlord having to begin the process for another Possession Order in the County Court. In this instance, less experienced landlords and agents are likely to be impacted where they lack the professional guidance needed and are acting as litigants in person.

Obtaining a Possession Order

Our members report delays in Possession Orders being processed by the Court. Even under the Accelerated Possession procedure which does not typically require a Court hearing and is decided on paper, where the matter is not defended it can take around two to three months to obtain a Possession Order.¹ Further delays occur once a Possession Order has been agreed by the County Court and the time limit has passed (usually two to four weeks), with landlords having to wait a further four to six weeks for CCBs to execute the warrant,² although other statistics indicate up to six months' passing before Enforcement.³ Delay for landlords and agents also occurs where the Judge allows

¹ https://www.franciswilksandjones.co.uk/site/our_services/property/landlord-services/eviction-services/possession-proceedings/further-information-possession-p/how-long-does-it-take-to-get-a-possession-order.html

² <https://www.blakemorgan.co.uk/training-knowledge/features-and-articles/time-change-speed-enforcement-possession-orders/>

³ <http://fresh-move.co.uk/wp-content/uploads/2015/12/Guide-to-evicting-tenants-and-recovering-rent-arrears-The-Sheriffs-Office.pdf>

exceptional cases up to 42 days to leave the property following the issue of a Possession Order, as this results in more time taken to vacate the property; all the while rent arrears continue to build.

Enforcement

Enforcement timings can drastically differ from region to region, taking around two to three weeks in Nottingham, but around three months in Birmingham.⁴ All time associated with the eviction proceedings often results in further loss of rental income for the landlord, and the timing associated with each stage adds further frustration. Research conducted by StudentTenant.com in 2017, showed that when using High Court Enforcement Officers (known to execute a Possession Order notably quicker than through CCBs) landlords pay around £1,981 and wait around nine months to evict a tenant,⁵ this figure is not inclusive of lost rent payments. Average rent across the UK currently stands at £926 a month,⁶ if a landlord was hypothetically losing this amount of rent for nine months this would be £8,307 not including added interest – totalling £10,288 including Court costs.

Inconsistent Judgments

ARLA Propertymark members report frustration with inconsistencies for criteria needed for their Possession Order to be transferred from the County Court to the High Court. Landlords and agents must obtain leave from the County Court under Section 42(2) of the County Courts Act 1984⁷ if they wish for their Possession Order to be enforced by an HCEO (this includes for cases involving rent arrears under the provision that the landlord is claiming more than £600 including court costs). However, Judges are advised by superiors against doing this, thus this relies on the County Court Judge to be given enough reason to grant permission – for example the time taken for a County Court Bailiff (CCB) to enforce the Possession Order and the landlord needing urgency to evict their tenants in order to sell their property. Issues arise where the County Court refuses to transfer the Possession Order to HCEOs, either due to the claimant not reaching the criteria or through the Judge's own discretion. Regarding discretion, one Judge in a County Court in London may have a different outlook to a Judge in South Wales, which contributes to a lack of a common standard across the Courts system. Due to discretion and Judges advised against transferring a Possession Order to the High Court, there are inconsistencies in decisions, particularly in County Court areas with long waiting times.

Role of Local Authorities

Additionally, it is particularly unhelpful that some Local Authority staff advise tenants to remain in the private rented properties after being issued with a Section 21, and further Notices to Leave until they are forcibly evicted by either a CCB or an HCEO. This is despite the Statutory Homeless Code of Guidance for Local Authorities⁸ stating that tenants in private rented homes should not be advised to remain in the property when they have been issued with a Section 21. Local Authorities make it clear to tenants with an eviction notice

⁴

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/755025/Factors_influencing_housing_case_progress_and_outcomes_in_county_courts_research_report.pdf

⁵<https://www.studenttenant.com/news/tenant-evictions-2000-eviction-fees>

⁶<https://www.bbc.co.uk/news/business-44046392>

⁷<https://www.legislation.gov.uk/ukpga/1984/28/contents>

⁸https://assets.publishing.service.gov.uk/media/5a969da940f0b67aa5087b93/Homelessness_code_of_guidance.pdf

that if they vacate the property before being forcibly removed by either a CCB or an HCEO, their housing status will be classified as “intentionally homeless”.⁹ This creates frustration for both the landlord and the tenant, as more than often a tenant would like to leave the property during this time – but by making themselves intentionally homeless they will not be able to receive any assistance with housing from the Local Authority. Many tenants may rely on Local Authority assistance with social housing as they do not have the means to put down a deposit and rent on another property in the private rented sector, these tenants are often amongst the most vulnerable. These practices only frustrate the eviction process for landlords and agents further and can directly result to a further loss in rental income where a tenant continues to default on their rent payment during this time.

Q6: Do you understand how each stage of the possession action process works (a summary of the process is provided at Annex A)?

Yes- *please go to Q8*

No- *please go to Q7*

Q7. If you answered no to Question 6, please provide more information on the stage or stages of the possession action processes which you do not understand, and why, in the textbox below.

It is not applicable for ARLA PropertyMark to respond to this question.

Q8. Are improvements to the county court possession action processes needed?

Yes- *please go to Q9*

No- *please go to Q10 (landlords only) or Part 2 (other respondents)*

Q9. If you answered yes to Q8, what are the main issues at each stage of the current process? Please provide details in the text box below.

a) From application to first Court Hearing date

Too complex

Too confusing

Takes too long

Other

⁹ https://england.shelter.org.uk/housing_advice/homelessness/rules/intentionally_homeless

Improvements to the County Court Possession action processes are needed because from application to first Court Hearing date, letting agents who are members of ARLA Propertymark find the process too complex, too confusing and it takes too long. Moreover, members witness a lack of consistency across various County Courts and receive inadequate responses from County Court staff in regard to their Hearing.

Complexities

Members report that forms to initiate an eviction and the process and procedure in which they must be completed are getting more complex. Standard Possession Order forms remain complex and confusing, and in order for a claimant to apply for a Court Hearing via this route, a total of three forms must be filled in either online or in hard copy. This includes: Form N5 (Make a claim for possession of property);¹⁰ Form N119 (Give details of a claim to gain possession of a rented residential property);¹¹ and Form N215 (Certificate of Service).¹² However, members have indicated that the ability to fill in these forms online provides better access to the procedure, as this makes the forms available 24/7 for 365 days of the year.

Confusion

Additionally, the process of applying for an Accelerated Possession Order also brings confusion, as Form N5B (Claim possession of a property located wholly in England/Wales)¹³ must be used, as well as Form N215 but not a form to give details of a claim, due to a Section 21 eviction not needing grounds for eviction. This is despite Accelerated Possession Orders being decided on paper, unless there are issues or mistakes within the application which can result in the County Court calling for a Hearing. This means that the timings of the claim will replicate that of a Standard Possession Order or could result in the claim being thrown out of Court. Accelerated Possession orders are much more attractive to landlords and agents, as decisions are made on paper without the need for a Court Hearing – the process should be much quicker than through a Standard Possession Order.

Members report confusion in the application process for Possession Orders where the defendant owes rent arrears. In a Standard Possession Order both the possession and monies owed can be applied for in Court. However, with an Accelerated Possession Order, monies owed, and possession must be applied for separately. Confusions arises with the two different routes for making a claim involving money owed. For a Standard Possession Order, claimants must use a N1 claim form¹⁴ in tandem with the claim for possession. Whereas claimants using an Accelerated Possession Order must chase owed monies through Money Claim Online (MCOL) separately to the Possession Order.¹⁵ In order to limit confusion faced by litigants in person, it would make more sense to standardise the procedure to reclaim owed monies. Further, to improve the operability of the MCOL website, it should be updated in line with other .gov websites that are currently in beta development.

¹⁰ <https://www.gov.uk/government/publications/form-n5-claim-form-for-possession-of-property>

¹¹ <https://www.gov.uk/government/publications/form-n119-particulars-of-claim-for-possession>

¹² <https://www.gov.uk/government/publications/form-n215-certificate-of-service>

¹³ <https://www.gov.uk/government/publications/form-n5b-england-claim-form-for-possession-of-a-property-located-wholly-in-england-accelerated-procedure>

¹⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/688390/n1-eng.pdf

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

Time

As with all stages of Possession, ARLA Propertymark members report that receiving a first Court Hearing date can take too long. This can be inconsistent across the Court system depending on demand in the local County Court. In addition, a defendant, where possession is being sought on a mandatory ground, can ask for the Court to adjourn the case before hearing evidence. This can significantly delay the process when the landlord has sufficient evidence to regain their property. Where a tenant is persistently defaulting on rent, the landlord or agent can be anxious to regain the property in order to re-let. The longer it takes for the tenant to be evicted, the longer it will be until the home will be re-let with the landlord then receiving rent. As discussed in Q5, any time taken during the Court process for Possession amounts to added cost for the landlord or agent. This may just be in court costs but is also likely to be impacted by unpaid rent from the tenant where Ground 8, 10 or 11 apply. This void period can create substantial financial losses to the owner of the property and lost rent is often unlikely to be recouped. Thus, the time taken just to initiate proceedings can be costly for the claimant.

Many agents and landlords act as litigants in person in order to limit costs during the Possession process. Consequently, poor guidance provided to these landlords often results in complications arising in their case which in turn makes the process even longer. When conducting an online search, it is guides created by third parties that offer a comprehensive 'how to' for landlords and agents initiating an eviction, rather than an official provision created by the Government. For example, the Government provides Form N5B¹⁶ for Accelerated Possession Orders to download and fill in but does not offer any explanatory notes to guide the user through the process. The form is long and complex and not easily understandable in plain English. Thus, without any guidance a litigant in person could easily face issues when filling out confusing forms. As aforementioned, a consequence of this could see the claim being thrown out of Court or moved onto the Standard Possession Order pathway, which takes more time.

Standards

ARLA Propertymark members face issues during this stage in a lack of consistent standards across the County Courts in England and Wales. This is largely down to two factors. Firstly, members report some County Courts can be exceptionally hard to communicate with and/or receive answers to queries. Secondly, in Accelerated Possession cases where letting agents have acted as the signatory on behalf of the landlord on Section 21 forms, some Courts will accept these signatures and others will not, resulting in a claim being thrown out of Court.¹⁷ Advice from Court staff can be largely inaccessible depending on how busy a Court is. This means that across the Court system, depending on where it is in the country, claimants and defendants may have a very different experience of correspondence with the County Court. Some argue that this is also a result of staff shortages. This can contribute to litigants in person receiving inadequate advice or having issues remedied at a slower pace than could be achieved. Users find that responsiveness can be inadequate via phone

¹⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/733444/N5B_ENGLAND_web_0718_save.pdf

¹⁷ <http://www.arla.co.uk/news/june-2018/section-21-notices-who-can-sign-a-notice.aspx>

and by email, meaning that in order to gain a response, users have been known to physically visit the Court. In the Ministry of Housing, Communities and Local Government's qualitative analysis of user experience of housing cases in the County Courts, one participant indicated that one particular County Court may take six weeks to open post.¹⁸ This not only highlights a lack of standards, but also how it feeds in to delays in the Possession Order process.

ARLA Propertymark was made aware of at least three applications for Accelerated Possession Orders being thrown out by the courts due to "technical flaws" in relation to Section 44 of the Companies Act 2003, and who is entitled to sign a Section 21 notice.¹⁹ The Act requires that where a company is signing on behalf of a third party (in this instance the landlord), the notice will need to be endorsed by two directors, or a director and company secretary or a director and a witness. Many letting agents operating within a business had been signing Section 21 notices or having other staff members endorse their names. Only in 2018 were agents made aware of the discrepancy when District Judges in Cardiff and Hastings ruled these notices as invalid. This has created an issue where certain practices are now being advised against, as even where it is not yet precedent across England and Wales, agents should safeguard against Section 21 notices being thrown out of court.

b) From first Court Hearing date – To obtaining a Possession Order

- Too complex
- Too confusing
- Takes too long
- Other

In the stage from first Court Hearing date to obtaining a Possession Order, ARLA Propertymark members find that a lack of standards across County Courts adds complexity, that it can be confusing for those acting as a litigant in person and that delays cause the process to take too long. On the other hand, member's report that hearings are often too short meaning that they feel their case is often not heard substantially.

Complexities

Our members report complexities with the lack of standards across County Courts in England and Wales. This is a culmination of two factors. Firstly, responsiveness from the Court can depend entirely on how busy it is with cases. Secondly, some Judges have more specialist knowledge than others. Those without legal knowledge may find themselves in a situation where they cannot get advice from the Court until the day of the hearing, leaving them little time to prepare for the Hearing. This can contribute to the claimant losing their case where they have not been adequately advised on procedures of the Court. In regard to Judges knowledge, legal representatives have reported that sometimes they have found themselves on occasion having to explain legal positions to the Judge. A direct result of this is the amount of inconsistencies across possession cases in England and Wales.

Confusion

¹⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/755025/Factors_influencing_housing_case_progress_and_outcomes_in_county_courts_research_report.pdf

¹⁹ https://i.emlfiles4.com/cmpdoc/6/9/5/5/4/files/504839_who-can-sign-a-notice.pdf

In addition to inadequate advice from the Court, many litigants in person face confusion during this stage due to the poor guidance provided by the Government to understand Court procedures. As a result of this, those who have received sound legal advice and guidance will often have the upper hand in the court proceedings. Further, as discussed in Q9, poor guidance can often lead to cases being thrown out before they have even reached court, resulting in repeat occurrences of the process.

Time

During this stage, many factors can cause the process to take a considerable amount of time. This can be particularly frustrating for landlords wanting their property to become vacant as soon as possible. In general, less busy County Courts will often resolve possession cases much quicker than those in high demand. For example, a landlord may regain possession of a property far quicker in a small town than they would in Central London. This stage can be extended through delays, adjournments, and through the actions of the defendant – either by making vexatious claims or through playing the court system by making payments at the court in order to remove the mandatory ground for possession for rent arrears, via Ground 8. Further, where possession has been sought on discretionary grounds, the Judge may adjourn the application for possession where the defendant claims hardship. This can last for either a fixed period of time or indefinitely, providing that the defendant pays their rent and makes regular contribution towards existing arrears, if the tenant defaults again, the landlord or agent will have to wait more time to go to Court and request another Possession Order.

Where defendants contest the case or raise counterclaims, ARLA Propertymark members find that despite the long process for eviction, hearing times can be too short (typically around five to ten minutes). The result of this is that the case cannot often be heard in the five to ten minutes it has been allocated and the case is postponed to a later date to be heard again. Postponements add time, which in turn costs landlord's money both in court costs (particularly where they have instructed a legal representative), and in rent arrears where the case applies to Ground 8, 10 or 11 of a Standard Possession Order. Contrastingly, where the claim is not being contested by the defendant, five to ten minutes per hearing is too long, dragging out the process even further by requiring for the claimant to wait for the Court Hearing, when it could be decided on paper due to mandatory grounds being met.

c) From obtaining a Possession Order – to Enforcement (getting possession of the property)

- Too complex
- Too confusing
- Takes too long
- Other

In the stage from obtaining a Possession Order to Enforcement, ARLA Propertymark members face complexities in getting permission from the County Court to transfer the Enforcement to an High Court Enforcement Officer (HCEO). Local Authorities going against Government guidance regarding Section 21 results in confusion from landlords and agents,

who are trying to regain their property. Finally, the process of Enforcement by a County Court Bailiff (CCB) takes far too long.

Complexities

Firstly, claimants have difficulty in having Enforcement transferred to the High Court where the discretion of a County Court Judge is relied upon in order to achieve this. As previously mentioned, Judges are advised against transferring cases but in particularly busy County Courts – some Judges will often grant a transfer where a landlord is under a strict time constraint for the property to be vacated. These complexities mean that landlords and agents could have completely different experiences of the County Court regarding possession. Where Enforcement has been transferred to the High Court, due to insufficient guidance some landlords do not realise that they then need to apply and be accepted for a Writ of Possession by the High Court in order to execute the eviction.

Confusion

It can be confusing for landlords and agents where Local Authorities advise tenants to remain in the property unless forcibly evicted from the property by a CCB or an HCEO. This can be distressing for both involved parties. Many tenants would opt to leave the property before court proceedings are initiated. However, Local Authorities inform many tenants that if they leave a private rented property before being forcibly evicted by either a CCB or an HCEO, as they will be classed as “intentionally homeless”.²⁰ As the size of the private rented sector has increased, so too have the number of low-income households living in it. On occasion, many private tenants do not have the capital to move frequently within the private rented sector and where they are being evicted from their home, they may need the aid of the Local Authority to be housed in the social rented sector. The outcome of this is that many tenants feel that they have no other alternative than to stay in the property until they are forcibly evicted, even where they do not have a hostile relationship with their landlord, as they do not have the finances to find another home in the private rented sector. This can be a confusing time for both landlords and their tenants, as the defendant may want to leave the property, but without Local Authority help, they do not have the means to do so.

Time

A lack of CCBs in many areas attributes to delays in enforcing a Possession Order, for example it has been reported that there are only four CCBs employed by Central London County Court.²¹ This contributes to landlords having to wait upwards of four weeks for the CCBs to evict the tenants.²² Consequently, a lack of availability for bailiffs results in a delay for the issue of warrants – which cannot be issued until a date has been set for the bailiffs to visit the property. Often delays equal a loss of rent and a loss of income for the landlord. At this stage, many agents or landlords would request that Enforcement be transferred to the High Court, however as discussed above this relies on the Judges discretion, and where

²⁰ https://england.shelter.org.uk/housing_advice/homelessness/rules/intentionally_homeless

²¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/755025/Factors_influencing_housing_case_progress_and_outcomes_in_county_courts_research_report.pdf

²² [Ibid](#)

permission is not granted the claimant will have to wait until a time where a CCB can execute the warrant for Possession.

QUESTION FOR PRIVATE LANDLORDS ONLY

Q10. As a private landlord, how satisfied are you with the time taken to complete possession cases?

- Not satisfied
- Neither satisfied nor dissatisfied
- Fairly satisfied
- Satisfied
- Very satisfied

Please explain your choice in the text box below.

ARLA Propertymark members are not satisfied with the time taken to complete possession cases. Firstly, the Accelerated Possession process are not prompt enough when a property needs to be vacated. Secondly, the full eviction process from notice to eviction takes on average seven to eight months. Finally, Judges discretion to transfer Enforcement to the High Court is relied upon to speed up the process.

Possession cases can be extremely lengthy without a clear route for speeding up the process, even when considering Accelerated Possession Orders. Figures supplied by the Ministry of Housing, Communities and Local Government (MHCLG) indicate that the median figure for possessions by a County Court Bailiff (CCB) under the Accelerated Possession process in 2017 was 16.1 weeks, however the mean average was substantially higher at 22 weeks. Both figures have been increasing year on year since 2013.²³ Where an Accelerated Possession Order applies, claimants expect prompt eviction, especially where rent arrears and costs are involved. In comparison with other litigation cases, Possession Orders are prompt – but where a landlord or agent urgently needs or wants a tenant out of a property, and they are losing rent during this time, the time taken can be detrimental to the landlord where bills associated with the property need to be paid, including mortgage repayments.

Shelter reports that the full eviction process for a private tenant takes on average seven to eight months, or 28-32 weeks.²⁴ Where a landlord or agent issues a tenant with a Section 21 notice, this begins the process and lasts for two months, if the tenant stays beyond this time the landlord will apply for a Court Order which takes around an additional two months for the court to issue a Possession Order. Where the tenant still does not vacate the property, it takes roughly two months for the court to agree for the landlord to use bailiffs to

²³ <https://www.theyworkforyou.com/wrans/?id=2018-11-28.196734.h>

²⁴ https://england.shelter.org.uk/housing_advice/eviction/section_21_eviction/how_long_a_section_21_eviction_takes

evict the tenant. Finally, where the landlord uses CCBs it takes on average a further two months for the tenant to be evicted by the Bailiff.²⁵ Which, as discussed, is further aggravated by the advice given to tenants by Local Authorities to remain in their homes until forcibly evicted.

The process can be sped up if the court agrees for the landlord or agent to have their case transferred to the High Court, in order to use an High Court Enforcement Officer (HCEO) for enforcement. However as discussed in Q5, this relies on the County Court agreeing for the landlord to have their Possession Order transferred for HCEO enforcement upon application and this can be refused, as the Judge may not see enough evidence as a reason for it to be transferred, they are advised against doing this, but the decision is ultimately at the discretion of the Judge.

Part 2: Enforcing a possession order

QUESTIONS FOR ALL RESPONDENTS

Q11. Do you have experience of the enforcement stage of a possession order in the county court?

Yes- *please go to Q12*

No- *please go to the next section (Access to justice and the experience of court and tribunal users)*

Q12. If you answered yes to Q11, how satisfied were you with the enforcement process in a) the county court (warrant for possession) or b) the High Court (writ of possession).

a) County court enforcement process

Not satisfied

Neither satisfied nor dissatisfied

Fairly satisfied

Satisfied

Very satisfied

I have not experienced the county court enforcement process before

Answering on behalf of ARLA Propertymark members, they are not satisfied with the County Court enforcement process. For reasons cited in Q5 and Q11, members find the process frustrating, they experience delays in getting Bailiffs to enforce a Possession Order and receive poor service from County Court staff. Overall, this results in an unclear route to evict tenants and can be costly without direct and efficient action taken.

b) High Court enforcement process

Not satisfied

Neither satisfied nor dissatisfied

Fairly satisfied

Satisfied

Very satisfied

I have not experienced the High Court enforcement process before

Answering on behalf of ARLA Propertymark members, they indicate that they are very satisfied with the High Court enforcement process, due to the speed and efficiency in regaining their property through the use of High Court Enforcement Officers (HCEOs). Our members report that they are pleased with the service when using HCEOs, despite the associated cost, as the loss of rent far outweighs the fees for using HCEOs to regain their property in a timely manner.

QUESTIONS FOR PRIVATE LANDLORDS ONLY

Q13. As a private landlord, were you aware of the need to apply for a warrant or writ from the court before a bailiff / High Court Enforcement Officer would be instructed to take possession?

Yes

No

Q14. Was there an application to suspend the warrant or writ made in your case?

Yes- please go to Q15

No- please go to Q16

Q15. If you answered yes to Q14, what were your experiences of the timeliness and processing of the application to suspend the warrant or writ? Please explain in the text box below.

ARLA Propertymark members believe that applications to suspend the warrant or writ are largely used as a final delaying tactic by tenants to prevent possession. Whilst not a standard across all cases, some may agree to pay outstanding arrears during this time but continue to default on rent. During this time period it is likely that landlords will not be receiving rent, leaving them out of pocket. This is particularly concerning where the property is subject to a Buy to Let mortgage, if the landlord cannot keep up with the mortgage repayments due to lack of rental income, the defaulting rent and consequently default mortgage repayments could result in the property being repossessed by the lender.

Q16. What, if anything, do you think could be improved about the process for enforcing possession orders in:

a) the county court? Please explain in the text box below.

ARLA Propertymark believes there are three solutions to improve the process for enforcing possession orders in the County Court. Firstly, ensuring that court staff are more responsive to queries. Secondly, through a digitisation process to bring the system online. Thirdly, landlords should have an automatic right to an High Court Enforcement Officer (HCEO) without the need for a Court Order.

Responsive Court staff

Through ensuring that Court staff are more responsive to consumer queries, applicants will gain more faith in the County Court process. Many landlords report a lack of correspondence from staff when making enquires with the Court. This includes not responding to emails or letters and also a lack of consistency with answering telephone queries, or even picking the phone up at all. Considering that many agents and landlords act as litigants in person, it is unacceptable that a minor issue that could be addressed over the phone or by email is often left for an extended period of time due to the lack of response from the Court. We are aware of a landlord that had to travel hundreds of miles across the country to speak to County Court staff face-to-face after not receiving any response from the County Court in any format before the hearing.

Digitise the system

We believe that the County Court process for enforcing Possession Orders could be improved through digitisation in further areas than those on Possession Claim Online²⁶

²⁶ <https://www.possessionclaim.gov.uk/pcol/>

(PCOL) currently. For this reason, Section 21 notices should be integrated into the PCOL system. This would not only make the process simpler for the user, but arguably would be more cost effective, due to online systems taking away responsibilities of the County Court workforce through the application being processed through PCOL rather than manually. Further, the court issue fee when using PCOL is cheaper, and the service is generally more accessible than traditionally making a claim at the County Court, as it can be accessed on any day at any time.

As discussed in Q.9a, MCOL operability would be improved by being updated. The existing MCOL website presents itself as outdated. The linked user guide²⁷ looks contrastingly modern in comparison, and certain hyperlinks are defunct, such as the link to HM Courts and Tribunals Service homepage. Other links can't be directly clicked through, and the website is generally not fit for purpose in its current format. Currently, many .gov websites are undergoing an update in beta development, MCOL should be integrated into this to ensure an improved user experience.

Automatic right to a HCEO

Providing landlords with an automatic right for an HCEO to enforce County Court Possession Orders, would speed up the possession process for landlords attempting to regain possession of their property. Possession Orders issued by the County Court are enforced by County Court Bailiffs (CCBs) and can only be enforced by HCEOs if leave is granted by the County Court, which Judges are advised against doing. When and if leave is granted, the landlord will need to apply to the High Court for permission to issue a 'writ of possession', which will then be executed by the HCEO and the landlord will regain their property. Ultimately, possession proceedings being escalated to the High Court are at the discretion of County Court Judges, and permission is not always given; creating inconsistencies across the country on how Judges deal with these applications. This can cause significant hardship for landlords and letting agents, particularly financially with the loss of rental income during this time. Given that the time endured for a County Court Bailiff to attempt eviction can take weeks, allowing an automatic right to an HCEO would result in landlords' properties being returned to them much sooner. ARLA PropertyMark members report that landlords would prefer having easier access to HCEOs, despite the associated costs, as ultimately this cost will be much lower than the losses accrued through rent arrears, with the tenant being unlikely to pay their rent during the eviction process.

b) the High Court? Please explain in the text box below.

Following the suggestion that High Court Enforcement Officers (HCEOs) should have an automatic right to enforce County Court Possession Orders in Q.16a, ARLA PropertyMark does not have any further comments on improving the process for enforcing Possession Orders in the High Court. Member feedback shows that the process already works timely and effectively.

²⁷ <https://www.gov.uk/make-court-claim-for-money>

Part 3: Access to justice and the experience of court and tribunal users

QUESTIONS FOR ALL RESPONDENTS

Q17. Have you had recent experience of property cases in the county court or the tribunal? If yes, please provide details of the types of property cases of which you have had experience in the text box below.

- Yes, I have had experience of county court cases- *please provide further details in the text box below, then go to Q18*
- Yes, I have experience of property tribunal cases-*please provide further details in the text box below, then go to Q20*
- No, I have no experience of county court or property tribunal cases- *please go to Q22*

It is not applicable for ARLA Propertymark to respond to this question; however, the following questions will be answered from the perspective of our members feedback.

Q18. From your experience what could be made better or easier in the *court* processes to provide users with better access to justice in housing cases?

Please provide details of the improvements you think need to be made in the text box below:

Accounting for the feedback of ARLA Propertymark members, we believe that there are three solutions to providing users with better access to justice in housing cases. Firstly, through the creation of simpler processes. Secondly, through the provision of faster justice from trained experts. Finally, through making forms easier and more accessible to complete.

By simplifying processes, users will find justice much more accessible through the Court system. Confusing procedures can be intimidating to those with little or no legal knowledge, so taking less complicated procedures online or allowing paper decisions for more cases will empower Court users. Further, by streamlining claims that are uncontested, processes could be sped up; saving claimants money in court costs (and rent arrears where applicable). Additionally, simplifying Court processes will benefit Court staff, as where processes are digitised this could alleviate the workload of Court staff responding to claims and issuing Hearing dates.

Trained experts in the field of housing would ensure faster justice for users of the Court in housing cases. This could be achieved through replicating the panel used to administer proceedings in the First-tier Tribunal (Property Chamber). The First-tier Tribunal (Property Chamber) panel typically consists of three people: a lawyer (usually appointed as the chairman), a surveyor or valuer (who could also be the chairman) and a lay person.²⁸ The result of this is that litigants benefit from a level playing field where their case is being considered. Further, a specialist housing panel would result in an eradication of inconsistencies in jurisdiction throughout the Court system in England and Wales. This measure would go some way in restoring user faith in the Court system and speed up decisions where specialists in the field can make quick and considered decisions with adequate legal knowledge.

As discussed in Q16a, simplifying forms and taking them online would make the Court system more accessible to users. This would allow 24/7 access for claimants and defendants. This should be complemented with clear and concise guidance documents for various Court users. We would recommend a landlord as claimant (or those acting on their behalf, such as letting agents) specific guide, and a tenant as claimant and as defendant guides.

Q19. How satisfied were you with the average time taken to resolve the *county court* cases you have experienced?

- Not satisfied
- Neither satisfied nor dissatisfied
- Fairly satisfied
- Satisfied
- Very satisfied

Please provide further details in the text box below.

²⁸ <https://www.lease-advice.org/advice-guide/application-first-tier-tribunal-property-chamber/>

As iterated throughout this responses, ARLA Propertymark members are not satisfied with the average time taken to resolve County Court cases. On average a Section 21 on an Accelerated Possession Order takes seven to eight months to evict a tenant.²⁹ Whilst we accept that possession cases are much shorter than most forms of civil litigation, it must be factored in that in many cases landlords will not be receiving rent during this time; bringing acute financial detriment to the landlord and casting doubt on the proficiency of this litigation. Subsequently, if landlords have properties with Buy to Let mortgages, the length of time the court process takes could put landlords in a position of having their property repossessed by their Buy to Let lender as lenders require only two months' mortgage repayment arrears to issue repossession proceedings.³⁰

Q20. From your experience (if applicable - please go to Q22 if you have not had experience of the First-tier tribunal) what could be made better or easier in the tribunal processes to provide users with better access to justice in housing cases?

Please provide details of the improvements you think need to be made in the text box below:

It is not applicable for ARLA Propertymark to respond to this question.

Q21. How satisfied were you with the average time taken to resolve the cases you have experienced?

- 1 -Not satisfied
- 2 -Fairly satisfied
- 3 -Satisfied
- 4 -Very satisfied

Please provide further details in the text box below.

It is not applicable for ARLA Propertymark to respond to this question.

Q22. On the whole, the county court provide fair access to justice for property cases. Do you agree or disagree with this statement?

- Yes, I agree

²⁹ https://england.shelter.org.uk/housing_advice/eviction/section_21_eviction/how_long_a_section_21_eviction_takes

³⁰ <https://www.telegraph.co.uk/finance/personalfinance/2794862/Buy-to-let-landlords-how-to-avoid-repossession.html>

- No, I disagree
- Neither agree nor disagree

Please provide reasons for your answer in the text box below.

ARLA Propertymark cannot either agree or disagree that the County Court provides fair access to justice for property cases. Although it is unquestionable that the County Court provides fair access to justice for property cases, problems arise with the time taken and minor complications that can then frustrate the process.

Q23. On the whole, the *First-tier Tribunal* provides fair access to justice for property cases. Do you agree or disagree with this statement?

- Yes, I agree
- No, I disagree
- Neither agree nor disagree

Please provide reasons for your answer in the text box below.

ARLA Propertymark members do not report using the First-tier Tribunal regularly. Consequently, we do not have sufficient evidence to make informed comment on this matter.

Part 4: The case for structural changes to the courts and the property tribunal

QUESTIONS FOR ALL RESPONDENTS

Q24. Which of the following policy options for reform would be your preference?

- Establish a new, specialist Housing Court
- Make structural changes to the existing courts and property tribunals
- Make changes to the enforcement process in the county court

- No changes ('do nothing' option) but strengthen guidance to help users navigate the court and tribunal process.

QUESTIONS ABOUT A HOUSING COURT

Q25. Do you think there is a case for a specialist Housing Court?

- Yes- *please go to Q26*
- No- *please go to Q28*

Q26. If you answered yes to Q25, what do you think a Housing Court should be able to do? Please give details and evidence in the text box below.

Yes, ARLA Propertymark believes that a specialist Housing Court with a single cost structure and procedural rules will simplify the situation for all involved. The Housing Court should be given the existing powers of both the County Court and First-tier Tribunal (Property Chamber) to ensure that wherever possible persons bringing proceedings (whether before Court or Tribunal) should be able to have their matters dealt with in a single process. Appeals could then go to the Upper Tribunal and then the Court of Appeal. We believe that a specialist Housing Court would allow for an easier and streamlined process for housing claims, which will subsequently provide faster justice, and make the process more cost effective.

Q27. If you answered yes to Q25, do you think a specialist Housing Court would provide benefits in terms of:

a) a reduction in costs for those bringing cases?

- Yes
- No

b) improved access to justice?

- Yes
- No

c) Easier access for users?

- Yes

No

d) improvements to the timeliness of property cases (please specify which types of cases in the text box below)

Yes

No

Please use the text box below to explain your answers.

A specialist Housing Court would be beneficial in three ways. Firstly, it would make the process for housing claims easier and simpler as specialist judges will be better trained and more experienced. Secondly, it has the potential to be a cheaper process than those in existence. Finally, it would incentivise landlords to take on longer-term tenancies, providing greater security for tenants, landlords and letting agents.

Specialist Judges

In a Housing Court, Specialist Judges will be appointed for their knowledge and expertise in the field, as has been witnessed with the First-tier Tribunal (Property Chamber). This will allow judges to expedite cases, as experts in their field they will easily eliminate vexatious claims, and correct minor errors made by landlords during the process. A consequence of this is that both Court time and resources will be used effectively and efficiently, and ultimately this will provide a consistent standard of judgments across the Court system.

Improved costs

Through the creation of a specialist Housing Court, there is potential for housing cases to come at a lesser cost to the claimant. A Housing Court should also have fewer stages in the process of a case. This would not only cost less than existing processes but it could also ensure that Enforcement is completed sooner. Where contested cases are not allocated sufficient time in the County Court, due to its specialist nature, the Housing Court could allocate time more effectively to housing cases to ensure that where necessary cases can be heard in one hearing. This will provide ease to landlords and agents during Possession cases where they have evidence they wish to present, as well as the argument from the defendant. This would also allow for counterclaims (vexatious or otherwise) to be heard in a timely manner, rather than putting the process on hold for significant periods of time. We would also argue that this would provide improved access to justice, as current timescales in the County Court can deter claimants from pursuing lesser claims and using the eviction grounds under Section 8 rather than the Section 21 'no fault eviction'.

Longer-term tenancies

The creation of a Housing Court would act as an incentive for landlords to take on longer tenancies. A direct consequence of the slow and enduring eviction process is a reluctance

for landlords to offer long-term tenancies where they are faced with the threat of needing to reclaim their properties. The Government is currently looking into encouraging long-term tenancies, however for many landlords it does not prove viable due to current procedures. Looking forward, there could be further issues when the ban on tenant fees comes into force on 1 June 2019, as agents and landlords will not be able to charge tenants a security deposits for the property exceeding the amount of five weeks' rent.³¹ Letting agents want well-maintained tenancies as void periods and renewals reduce agent's fees. Where landlords use a letting agent, landlords will either pay a flat-fee upfront or a percentage of the rent each month for the agent to manage the tenancy. Where a flat-fee is paid upfront it is in the letting agents' interest to ensure the tenancy is well-maintained over a long period time because they are not receiving a monthly income from managing the property.³² For this reason, we would advocate that a Housing Court is essential for encouraging longer-term tenancies. This would benefit landlords as they would have fewer void periods, letting agents for the reasons stated above and ultimately tenants who have a secure home. Without a specialist Housing Court to deal effectively with evictions, it is highly unlikely that landlords will feel able to offer long-term tenancies.

QUESTIONS ABOUT STRUCTURAL CHANGE TO THE EXISTING COURTS AND PROPERTY TRIBUNALS

Q28. Do you think there is a need for changes to be made to the types of cases currently considered by the courts and property tribunals?

- Yes- please go to Q29
- No- please go to Q33

Q29. Do you think there is a need to transfer property cases from the courts to the First-tier Tribunal or vice-versa?

- Yes- please go to Q31
- No- please go to Q30

Q30. If you answered no to Q29, why do you *not* think there is a case for transferring property cases between the courts and the First-tier Tribunal? Please provide details and evidence in the text box below, then go to Q33.

It is not applicable for ARLA PropertyMark to respond to this question.

Q31. If you answered yes to Q29, please indicate, using Annex B as a reference, which types of property and housing cases, if any, you think could be transferred

³¹ <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0152/18152.pdf>

³² <http://www.arla.co.uk/media/1047267/overcoming-barriers-to-longer-term-tenancies.pdf>

FROM the courts TO the Property Chamber in the First-tier Tribunal? (Tick all that apply)

- Claims for other remedies
- Appeals
- Other Disputes
- Ownership
- I do not want cases to be transferred from the courts to the Property Chamber of the First-tier tribunal

Please use the text box to give further details of what you would consider the benefits to be of transferring these cases, in terms of both judicial processes and timescales.

It is not applicable for ARLA Propertymark to respond to this question.

Q32. If you answered yes to Q28, please indicate, using Annex B as a reference, which types of property and housing cases, if any, you think could be transferred FROM the Property Chamber of the First-tier Tribunal TO the courts.

- Leasehold
- Housing
- Rents
- Park homes disputes
- Land Registration
- Agricultural land and drainage
- Appeals against decisions made by government regulatory bodies
- I do not want cases to be transferred from the Property Chamber of the First-tier Tribunal to the courts.

Please use the text box to give further details of what you would consider the benefits to be of transferring these cases, in terms of both judicial processes and timescales.

It is not applicable for ARLA Propertymark to respond to this question.

QUESTIONS ABOUT IMPROVED GUIDANCE

Q33. Do you think that further guidance is needed to help users navigate the court and tribunal process? If yes, please provide details on what guidance you think is needed on which parts of the court and tribunal process in the text box below.

Yes

No

Yes, ARLA Propertymark believes that further guidance is needed to help users navigate all areas of the court and tribunal process, particularly to aid those acting as litigants in person. This can be achieved in two ways, firstly through the provision of explanatory documents (hard and digital copies) for both landlords/agents and tenants. Secondly, through digitising Section 21 claims and moving them online, complemented with online enforcement processes.

Explanatory documents

Creating Government Guidance documents for both landlords and tenants will ensure a higher level of understanding for landlords and tenants navigating the Court and Tribunal process than currently exists. The Guidance should explain the varying levels of the Court system related to housing issues. To make the Guidance universal, the Government should provide hard copies available from the Courts and also an accessible digital copy on the gov.uk website. This provision will aid litigants in person by making the process more understandable, ensuring that the Court and Tribunal process is more accessible and cost effective for landlords, agents and their tenants.

Digitise Section 21

Taking Section 21 claims online will make the process more straightforward to claimants and tenants due to the current complexities involved in going to the County Court to make a claim. Accelerated Possession Orders should not require a hearing, and if there have been no issues with the application a decision is typically made on paper – thus, it makes sense to bring this procedure online. As discussed in Q16, digitising Section 21 would be beneficial for all involved parties. During the online process, digital explanatory notes could be provided alongside the completed form to guide both the claimant and tenant through the eviction process, and, as with PCOL, claims software should ensure that an application cannot move forward unless all required fields of information have been entered. Since the Deregulation Act 2015,³³ the Section 21 process has become much more complex when taking into account the requirements and stipulations of serving a Section 21. In October 2018, the Act came into full force, with all Assured Shorthold Tenancies (ASTs) irrespective of the start date are now subject to specified rules on how and when a Section 21 can be issued.

To issue a Section 21 the landlord or agent must initiate the process after a fixed-term contract ends where there is a written contract, or during a tenancy with no fixed end date

³³ <http://www.legislation.gov.uk/ukpga/2015/20/contents/enacted>

(periodic tenancy). The landlord or agent must have given tenants copies of the property's Energy Performance Certificate (EPC), the current gas safety record for the property and the latest 'How to Rent' guide.³⁴ The notice cannot be issued unless the first six months' of the tenancy have passed; where the property requires an HMO licence and does not have one; where an improvement notice has been placed on the property or if the council has served a notice to do emergency works on the property within the last six months'; and finally where the tenancy started after April 2007 and the landlord or agents has failed to protect the tenant's deposit in a Government approved deposit protection scheme. In initiating the eviction process through Section 21, the claimant must complete and deliver Form 6a³⁵ to the tenant(s). Form 6a combines the two previous types of notices: s.21 (1)(b) and s.21 (4)(a), as a single notice for periodic and fixed-term tenancies. Due to the simplification of initiating an eviction via Section 21 and the paper response of an Accelerated Possession Order, it is viable to take the process online in order to provide further ease to claimants and tenants and also aid time allocation of court staff.

Q34. Do you consider that any of the structural changes suggested above (options 1, 2 and 3) would impact on people who share a protected characteristic, as defined under the Equalities Act 2010 (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex or sexual orientation), differently from people who do not share it? If yes, please provide details.

Yes

No

ARLA Propertymark believes that the structural changes will positively impact those with a protected characteristic, as they will make the process easier for all people.

About you

Q35. in which capacity are you completing these questions? (please tick all that apply)

A tenant

A landlord

A homeowner

On behalf of an organisation

³⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/723773/How_to_Rent_Jul18.pdf

³⁵

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/515658/Form_6A_INTERACTIVE_FINAL_Possession_property.pdf

- A member of the judiciary (please state which office you hold in the text box below)
- Other (please specify below)

Q36. If you are replying as a landlord, how many rental properties do you own?

- 1
- 2
- 3
- 4
- 5-9
- 10-24
- 25-100
- More than 100

Q37. If you are replying on behalf of an organisation, which of the following best describes you? Please leave blank if you are answering as an individual.

- Landlord organisation
- Judiciary membership body or organisation
- Property or letting agent
- Advice provider
- Tenant representative body
- Charity dealing with housing issues
- Other (please provide details below)

Q38. Please provide your contact details in case we need to contact you about your responses to these questions

Refer to Annex C for an explanation of your rights and the information you are entitled to under the Data Protection Act 2018. (see also Annex D).

Emily Carter
ARLA Propertymark
Policy and Campaigns Officer
emilycarter@propertymark.co.uk
01926 417778

