

# MAYOR OF LONDON

**Heather Wheeler MP**

**Parliamentary Under Secretary of State for Housing and Homelessness**

Ministry of Housing, Communities and Local Government

2 Marsham Street

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25 JAN 2019

Dear Heather

## **GLA response to MHCLG call for evidence on the case for a Housing Court**

I very much welcome the opportunity to respond on behalf of the Mayor of London to your Ministry's call for evidence on the case for a Housing Court. The Mayor is very concerned that the laws and practices protecting Londoners' rights when it comes to housing are woefully out of date and he believes they are in urgent need of a radical overhaul.

In particular, he believes private renters and leaseholders need far greater protection by the law. Although he has no statutory powers over the private rented sector, the Mayor has used all levers at his disposal to improve standards for renters. For example, he has:

- launched a new Rogue Landlord and Letting Agent Checker in December 2017 to publicly 'name and shame' offenders and help councils with enforcement;
- created a new 'report a rogue landlord or agent' tool on his Checker to allow renters to more easily report bad practice in the private rented sector; and
- set up the first-ever pan-London Private Rented Sector Partnership with all London boroughs to improve and coordinate enforcement to help renters.

Likewise, despite his lack of powers in the leasehold sector, he is taking steps to improve the experience of leaseholders in London, including by producing an online 'How to Lease' guide to improve the quality of advice and support available in the capital.

The Mayor believes private renters and leaseholders are unable to fully exercise their current rights because of barriers such as restricted legal aid, confusing rules, and the complexity of different types of cases being heard in different courts. This view is shared by organisations including the Institute for Public Policy Research, Shelter, and the Residential Landlords' Association, and in some instances, these barriers also affect landlords and freeholders.

The Mayor believes that a single, specialist housing court, combined with related reforms, would be beneficial to Londoners – providing a simpler 'one stop shop' allowing easier and more efficient access to justice. Both the Scottish and Irish Governments have taken the approach of forming a single housing court or tribunal in recent years, linked to much better access to advice and dispute resolution. These examples could offer your officials valuable learning as to how this could be taken forward in England and Wales.

However, the Government must recognise that the creation of a single, streamlined court would not, in and of itself, solve the problems faced by renters and leaseholders. None of the Government's four policy options sufficiently address the serious difficulties that many people, particularly vulnerable renters, experience in accessing justice at present. Just as important as

court reform is ensuring those who need to access justice can do so wherever possible without resorting to the court system at all, by relying instead on improved advice, redress, dispute resolution, and mediation.

In addition, as Citizens Advice and others have argued, there must be much greater, proactive regulation of housing providers, and especially stronger obligations on private landlords to provide a good service up front, to prevent disputes from arising in the first place. The Mayor looks forward to working with the Government on this, building on the groundwork laid by Karen Buck MP's Fitness for Human Habitation Act.

The detail of the Mayor's response is set out in Annex 1. In summary, the Mayor believes that reforms must deliver:

- a clear route to accessing the Housing Court for low income people unable to finance independent legal action, including bringing more housing and benefit cases back within scope of Legal Aid;
- specialist housing judges, to ensure the quickest and best-informed outcome for all parties;
- close links with a comprehensive new system of housing and benefits advice, redress and dispute resolution, ideally all under the same roof or accessed by a single 'front door' to ensure joined-up justice;
- improved physical access to courts – court closures and lack of accessible court buildings currently make it more difficult and more expensive for vulnerable people to attend;
- greater digitisation, automation and streamlining of court proceedings, as well as simplification of court rules;
- significantly faster resolution of cases, particularly those involving possession, and quicker enforcement of court orders;
- good guidance and education on systems and processes for all participants; and
- comprehensive resourcing to deal with existing caseloads, as well as to allow for the substantially increased level of activity reform is likely to generate. At present lack of resources has created a chaotic, slow and unaccountable system.

We are conscious the Government has also recently consulted on strengthening consumer redress in housing, and on overcoming the barriers to longer tenancies in the private rented sector. The Government's proposals across all these areas must form a comprehensive plan to improve the private rented market, backed up by a firm commitment to legislate for wholesale reform.

I would welcome a conversation with you and your officials about the Government's approach to this important area. If you wish to discuss the GLA's response further in the meantime your team are welcome to contact Rhona Brown, Private Rented Sector Programme Manager in the GLA Housing and Land Directorate, at: [rhona.brown@london.gov.uk](mailto:rhona.brown@london.gov.uk).

Yours sincerely



**James Murray**

Deputy Mayor for Housing and Residential Development

## **Annex 1: GLA detailed response to the consultation**

### **1. Introduction**

- 1.1. As most of the detailed consultation questions are directed at users of the court system or are best answered by legal experts (for example, on the form the court should take), our response focuses on key principles of reform, which are set out below.
- 1.2. The Mayor is especially concerned by the difficulties in accessing justice experienced by private renters and leaseholders. Government has recognised that private renters suffer from a particularly acute lack of transparency and accountability, compounded by weak security of tenure. These issues effectively shut many renters, especially those on low incomes, out of access to justice. In addition, there is wide recognition of the complexity of leasehold legislation and how daunting the system can seem for leaseholders seeking a resolution to issues with their landlord or freeholder. In particular, the Mayor recognises the dearth of high-quality sources of information and advice for leaseholders, which can make an already difficult task even more complex.
- 1.3. The Mayor is doing all he can to support private renters and leaseholders with the levers at his disposal. However, he has no statutory powers in this area, and so he is clear Government must step up and take action on these issues.

### **2. Non-court-based redress**

- 2.1. As set out by Citizens Advice and others, the introduction of a specialist housing court alone will not be an adequate solution to the housing issues that vulnerable and low-income people, particularly private renters, experience. Without addressing the underlying structural issues with Section 21 and Section 8, or the inherent power imbalance between landlords and tenants in a court setting, many tenants will remain unable to access justice through the courts in any meaningful way. The Mayor is setting out how he believes structural issues with security of tenure should be addressed through his work to create a 'London Model' of security of tenure. The headlines of this Model are published on the GLA website<sup>1</sup>.
- 2.2. As important as court reform is the need to take pressure off the courts to provide redress unless court intervention is strictly necessary. The best way to achieve this is through substantially improved advice, redress, dispute resolution, and mediation. Channelling more cases through these other forms of regulation of the housing sector would allow a new, specialist court to focus on those cases that genuinely require specialist legal attention. This would function best if all aspects were brought under the wider umbrella of a specialist court to create a 'one stop shop' or at least a single front door for those seeking to address a dispute. Advice should include template letters and notices for various common legal processes and should be available online as well as through a telephone service and in public buildings to ensure digitally excluded people have access. For further detail please see the GLA's response to the MHCLG strengthening consumer redress in housing consultation<sup>2</sup>.

### **3. The case for structural changes to the courts and property tribunal**

- 3.1. Although the Mayor believes there should be much greater access to out-of-court dispute resolution, there is still a need for major reforms to the existing court system to better serve the needs of those who do need to access it.

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<sup>1</sup> [https://www.london.gov.uk/sites/default/files/220818\\_annex\\_2\\_-\\_the\\_london\\_model.pdf](https://www.london.gov.uk/sites/default/files/220818_annex_2_-_the_london_model.pdf)

<sup>2</sup> This response available here: <https://www.london.gov.uk/what-we-do/housing-and-land/housing-and-land-publications/consultation-response-consumer-redress-housing-market>

3.2. The Mayor supports the creation of a specialist housing court. As set out in the consultation document, the fact that some housing cases are currently heard in the county court and others in the First Tier Tribunal – two separate entities with separate rules and procedures – is highly confusing, especially for vulnerable housing consumers as well as for many landlords and freeholders. A single overarching entity, encompassing or closely linked to the advice, mediation and redress processes set out in section 2 would ensure far easier access to justice. Combined with greater access to Legal Aid, as set out in section 4, this could significantly empower consumers, particularly those who are vulnerable, to defend their rights in court where it is necessary to do so.

3.3. Court reform is also essential to the Mayor's 'London Model' of proposed private rented sector tenure reform. The Model calls for Section 21 'no fault' evictions to be abolished – an essential step in allowing private tenants to enforce their rights. However, this can only be achieved without damaging the supply of rental homes if landlords have greater confidence in the processes that allow them to reclaim their properties where they have a legitimate reason to do so, especially in the case of 'tenant fault' evictions such as rent arrears.

3.4. In the call for evidence, the Government suggests that the:

*'median average time taken to progress from a claim to possession by county court bailiff is 16.1 weeks. While the average time taken for private landlords to gain possession is far less than previously thought, we understand that for a minority of landlords it can sometimes take longer than the average and can be burdensome'.*

However, the GLA recognises that 16.1 weeks is already burdensome for many landlords. In London, this could amount to an average of more than £5,000 in lost income where the possession proceedings relate to non-payment of rent. For the small-scale landlords upon whom many private renters are reliant for housing, this is a significant cost, especially if it comes after a 'protracted period of forbearance' as the call for evidence suggests is common.

3.5. The Mayor's London Model will argue that tenants need far greater security of tenure and protection from eviction, but that the corollary must be that landlords acting in good faith can count on significantly improved possession processes. The current delays and inconsistencies within the system do not benefit anyone, least of all vulnerable renters.

3.6. If landlords have access to better processes to pursue legitimate possession claims, tenants must also have access to better processes to challenge spurious possession claims. As set out in section 4 on Legal Aid, the courts themselves are not the only barrier to vulnerable people taking action to defend themselves. However, a reformed, simplified and streamlined court system would certainly benefit such renters if financial support were extended to enable them to secure representation.

3.7. More accessible court buildings are also key to helping vulnerable people access justice. Bringing justice closer to people is vital if Government are to break down the perceptions many people have of the justice system as intimidating and skewed in favour of the wealthy. Successive rounds of court closures have exacerbated this problem, and the cost and difficulty of travelling to court, along with the fact that many buildings are not accessible to people with disabilities, effectively prohibits their use by many vulnerable people. Government should explore the possibility of courts sitting in other civic buildings



such as local town halls, which are easy for people to get to, and which could be hired for the purpose at a low cost to the taxpayer.

3.8. The GLA does not propose to comment on the precise form a new court should take, as this is beyond the Mayor's remit, but has instead set out outcomes it should achieve.

3.9. There have been discussions amongst legal experts in the sector as to whether any new, single entity should be an actual court, or a tribunal-based system. The First Tier Tribunal (Property Chamber) is intended to be a 'lawyer-free' jurisdiction, reducing costs for all applicants, and providing a cheaper, less formal recourse to justice. Clearly, any move towards a single housing court should not be at the expense of accessible redress and resolution. However, there are a number of problems associated with the present use of tribunals for housing cases, and the current tribunal system would not be an appropriate entity to deal with a wider range of housing-related cases.

3.10. The First Tier Tribunal suffers from a range of serious issues, including that:

- tribunal cases are not eligible for legal aid, and so their use reduces access to justice for those on low incomes;
- although tribunals are intended to be 'lawyer free' and low cost, in practice well-resourced applicants and defendants in tribunal cases will always be supported by expert legal advice that is unaffordable to many. This results in a significant advantage in tribunal proceedings accruing to freeholders and private landlords, versus leaseholders and private tenants who are less likely to have access to the same resources;
- those bringing tribunal cases can be required to pay costs at the end of the process if the tribunal deems that the case has no merit – as often happens in employment tribunals. Without access to expensive legal advice it can be difficult to know whether a case has merit, meaning renters and leaseholders could inadvertently incur substantial costs;
- tribunals are not appropriate for the many cases where the involvement of a specialist judge and expert legal representation are vital to ensure the best outcome for all parties – for instance possession cases;
- the jurisdiction of the tribunal is narrow at present – for example if a defendant fails to comply with an order made by the tribunal, the tribunal does not have the power to enforce that order – instead the matter must go to court; and
- the existing tribunal system is already under-resourced, and far greater resources would be needed if the system were to take on a wider range of cases. As legal experts such as Giles Peaker have pointed out, the tribunal system hearing possession cases alone would account for an additional 120,000 cases per year.

3.10. Addressing these wide-ranging issues would be no cheaper or easier than establishing a new, fully-resourced court. If Government wishes to create a new single entity the best route to take would be a full housing court with appropriate measures in place to ensure all renters can access redress and resolution. The Mayor recognises that this would be a significant undertaking requiring cross-departmental action across Government.

3.11. Ahead of a single housing court being established, the Mayor believes in the meantime there is much that could be done to improve existing processes, as others including Shelter and Citizens Advice have recognised. This includes: making courts more physically accessible, including to disabled people and those on low incomes; ensuring services are genuinely contactable by phone and email; and producing much clearer guidance on

systems and processes. It would also benefit from better resourcing of the systems that are in place, including the court bailiff system which causes very significant delays at present. These measures would reduce wait times and improve the current chaotic and unaccountable approach to handling cases.

#### **4. Legal aid**

- 4.1. The GLA agrees with voices from around the sector, including Shelter and the RLA, that any reforms to the court system must include significantly improved access to legal advice and representation in housing and related matters. Since the LASPO Act 2012, and the removal of many housing cases and almost all debt and benefit cases from scope, it is even more important for both defendants and claimants to have access to legal advice and, where necessary, representation. Access to legal advice can often prevent a problem becoming a crisis, and therefore keep cases out of court that can be easily resolved at an early stage. In doing so, overall pressure on the courts is reduced, meaning that the provision of advice and Legal Aid at an early stage, far from representing a drain on public resources, could in fact result in savings for all involved, including the taxpayer<sup>3</sup>.
- 4.2. If Legal Aid were available for benefit and debt cases, many possession proceedings undertaken on the grounds of arrears would be prevented from reaching court stage. This would alleviate the significant pressures on the county court system and minimise the need for cases to be adjourned to allow people time to resolve benefit problems that have caused them to accrue arrears. Pre-LASPO, benefit problems could be resolved before they reached breaking point and put people's homes at risk. As Shelter have reported, their legal services consistently see clients who would not have been in court pre-LASPO, when they had access to Legal Aid. Some of these clients, who have had only last-minute access to the Court Duty scheme, have gone on to lose their home.
- 4.3. The restrictions on Legal Aid not only prevent private tenants from adequately defending themselves in possession proceedings, but also from taking action against their landlords in cases of disrepair. Legal Aid is restricted for cases involving housing disrepair and, according to Citizens Advice, 66 per cent of tenants whose landlords did not complete repairs within a reasonable amount of time did not go to court because of the cost. This was the most common reason they cited.
- 4.4. Legal Aid has strict financial eligibility criteria and the cost of taking private advice and/or representation is prohibitive to many. This, combined with the risk of being liable for the other side's costs, often outweighs the potential benefit to a low-income person of winning their case. As a result, many people who are neither wealthy nor eligible for Legal Aid are currently left without access to justice.
- 4.5. In his Rough Sleeping Plan of Action, published in 2018, the Mayor has already called on Government to restore Legal Aid for housing and debt matters where there is a risk to the home, regardless of whether the risk is immediate. In the context of court reform, this becomes more important still.

#### **5. Specialist housing judges**

- 5.1. As reported by Shelter, there is considerable inconsistency in England and Wales in judges' decision-making in housing cases, often arising from those judges' differing levels of

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<sup>3</sup> *Analysis of the potential effects of early legal advice/intervention*, IPSOS MORI/The Law Society November 2017

experience in this area. This creates the risk that tenants may lose their home even where the law is on their side, as well as making court processes less efficient and contributing toward delays.

5.2. Additionally, inexperienced judges can undermine councils' and the Government's efforts to improve landlord practice and crack down on rogues. For example, the Government has tried to encourage landlords to comply with legislation, such as deposit protection and gas safety checks, by restricting the use of Section 21 notices. This approach only works if it is implemented by the courts, and Shelter's legal services have reported they are not confident that all judges hearing Section 21 possession cases are even aware of the circumstances in which the notice may not be valid. Similarly, members of the GLA's London Borough Private Rented Sector Partnership regularly feedback that tribunal and county court decisions on fines and penalties handed to rogue landlords vary wildly from court to court and judge to judge even for very similar offences, with very similar case details. This results in landlords sometimes being awarded negligible fines even for serious offences.

5.3. Reform should therefore ensure that judges hearing housing cases are specialists in housing law, to promote more consistent and efficient decision-making. A system in which all housing cases went to specialist judges would also help to ensure that those who are unable to obtain legal representation have the best chance of a consistent, fair process. This could also create opportunities for those within the legal profession to build up a housing specialism through training and experience, thereby increasing the pool of specialist housing legal knowledge.

## **6. Resourcing**

6.1. The current courts and tribunals system in England and Wales is already over-stretched and under-resourced, which contributes to the widespread problems within the system. Evidence from other countries suggests that take up of a new single court or tribunal service could be very high, though numbers vary considerably between different countries.

6.2. In Scotland, based on discussions with officers of the Scottish Government, three times the volume of cases originally predicted are being taken to the new Housing and Property Chamber of the Scottish First Tier Tribunal, with reports that the system has been overwhelmed as a result. The Government should learn from the experiences of other countries when considering the resourcing of their own reforms.

6.3. An increased caseload for any new specialist court should be expected and welcomed if the proposed reforms achieve their aim of improving access to justice. However, Government must properly resource any new court to take account of the potential influx of cases.