

JUSTICE launches “Solving Housing Disputes” report



On 5th March 2020, JUSTICE launches its latest working party report, ***Solving Housing Disputes***, chaired by Andrew Arden QC.

Too many people in England and Wales find it difficult to enforce access to housing or other housing rights. Over the past decade, homelessness has more than doubled and early legal advice and intervention to address housing problems, homelessness and associated or underlying issues has been greatly attenuated by cuts to civil legal aid. This has caused large parts of the housing advice sector to collapse, resulting in “advice deserts”, while local authorities are struggling under the demand for homelessness assistance. Beyond this context, housing dispute resolution suffers from disaggregation: there are too many places a person might go to resolve a dispute, with adversarial processes that can be difficult to access, navigate and understand for lay people. There is also lack of coherence in regulatory application and oversight and a need for greater emphasis on early resolution and conciliatory measures.

This Working Party reviewed the current system and presented proposals to create a more unified and accessible housing dispute system. Key to our recommendations are greater coherence, access to legal advice and information, and conciliatory methods to resolve disputes.

The report features 54 recommendations and is set out in two parts, making the case:

- First, for a future model of dispute resolution, the **Housing Dispute Service (HDS)**
- Second, irrespective of whether the HDS is introduced, for essential reforms to the current system.

The HDS would be an entirely new and distinct model for dispute resolution. It would fuse elements of problem-solving, investigative, holistic and mediative models utilised elsewhere in the justice system. The proposal offers a new approach premised not just on dealing with individual disputes, but rather on remedying underlying issues that give rise to housing claims and sustaining tenant-landlord relationships beyond the life of the dispute. We propose that should the HDS take off beyond a pilot phase, it would be a national service funded by subscription from housing providers.

However, the proposal for a fully formed HDS is bold, ambitious and will require significant time and investment. It will have to be tested and rigorously evaluated through a pilot phase. If the pilot shows positive results, in the longer term the HDS will need to be integrated with and replace elements of the current system.

The HDS is not an idea accepted by all our members and was opposed by the tenant lawyers we consulted. It is controversial and for many, the solution to current problems is to remedy austerity era policies. Nevertheless, the majority of the Working Party consider that the HDS could offer a better outcome for all parties to housing disputes than the current system and is worth exploring – carefully, in limited scope, against relevant criteria and with advisory input from all relevant professional groups.

Andrew Arden QC, Chair of the Working Party, said:

The report looks broadly at housing disputes and makes a range of recommendations aimed at improving the current system and establishing a

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single point of entry for all disputes. However, there is no doubt that the headline point is the proposal for the piloting of a new Housing Disputes Service. I believe passionately that only something like the HDS can actually alleviate the strain of disputes with their landlords for tenants, promise something more hopeful to the homeless and advance housing conditions through a wider consensus.

The second part to this report sets out recommendations which we consider necessary to improve access to and navigation through the current system. Building upon the Government's proposed Housing Complaints Resolution Service, these promote improvements in:

- access to early legal help, making use of the Government's Legal Action Plan;
- more accessible court and tribunal architecture through a single point of entry for all types of housing dispute;
- changes to how local authorities deal with people facing homelessness, to ensure people can access assistance in times of need; and
- assisted online services and, where face-to-face alternatives are needed for people who cannot engage online, flexible deployment of physical hearing venues so that people can reach the courts and tribunals that will decide upon whether they can keep their home.

Once proceedings commence, our proposals are for:

- alternative dispute resolution to be embedded pre-action and more strongly encouraged throughout the court and tribunal process;
- case management to engage case workers who can assist in the triaging of disputes to the correct resolution method; and
- cross-ticketed, specialist housing judges who can sit for both court and tribunal jurisdictions.

Andrea Coomber, Director of JUSTICE, said:

Our report sets out a range of recommendations to improve the circumstances of people facing housing disputes and homelessness. Key to this is more widely available legal advice for people with housing problems, rationalising the landscape to establish a single point of entry for disputes, ensuring people can get assistance when facing homelessness, judicial specialism and flexibility in the conduct of hearings to respond to court closures. The proposal for the HDS comes within the context of the Government pitching a "new deal" for tenant-landlord relations. Within that context, we think a new approach to disputes, based on conciliatory methods, transparency and exploration of underlying problems should be explored.

Notes for editors

1. JUSTICE has a long history of using Working Parties of its membership to effect systemic changes within the legal system. For example, the Ombudsman system and Criminal Injuries Compensation Board were set up on the recommendation of previous JUSTICE Working Parties.
2. This Working Party was generously supported by Howard Kennedy and Charles Russell Speechlys.
3. This Working Party, set up and supported by JUSTICE and drawn from its membership, included experts from the legal profession. The Working Party was chaired by Andrew Arden QC and its members were: Nick Billingham (Partner at Devonshires), Suzanne Burn, (Deputy District Judge and retired District Judge), Professor Martin Partington CBE (University of Bristol), Professor Helen Carr (University of Kent, part time First-tier Tribunal judge), Daniel Clarke (Barrister at Doughty Street Chambers, Housing Law Practitioners Association nominee), Tessa Buchanan (Barrister at Garden Court

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Chambers, Housing Law Practitioners Association nominee), Professor Caroline Hunter, (York Law School, part time First-tier Tribunal judge), Tim Powell, (Regional Judge for London for the First-tier Tribunal (Property Chamber)), Alexandra Carr, Senior Associate at Howard Kennedy, Justin Bates, Barrister at Landmark Chambers, Alan Evans and Steven Chapman (Her Majesty's Court and Tribunal Services, Observers)

4. Professor Carr, Daniel Clarke and Tessa Buchanan dissented to the proposal for the Housing Disputes Service. The reasons for the dissent are set out as an Annexure to the report.

5. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system in the United Kingdom. For more information, please visit www.justice.org.uk.

6. Please direct queries to Jodie Blackstock, Legal Director on jblackstock@justice.org.uk.