



**Levelling Up, Housing and Communities Committee:  
Call for Evidence on Reforming the Private Rented  
Sector**

**Consultation Response**

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## Introduction

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible, and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.
2. This paper sets out JUSTICE's response to the Levelling Up, Housing and Communities Committee's Call for Evidence relating to the Government's White Paper on Reforming the Private Rented Sector ('the White Paper').<sup>1</sup> In responding to the consultation paper, JUSTICE has focussed on specific questions that address issues considered by JUSTICE through its [Solving Housing Disputes](#) report.<sup>2</sup>
3. In summary, JUSTICE supports the general spirit of the White Paper. In seeking to "*redress the balance*" between landlords and private renters in England, the changes outlined in the White Paper provide an opportunity to forge greater stability and more sustainable relationships between landlords and tenants. This is especially critical given the uncertain and vulnerable position that many tenants find themselves in following the Covid-19 pandemic and the current soaring cost of living crisis. It also provides the chance to extend protective measures already introduced in social housing, e.g., the social housing pre-action protocol, to those in the private sphere.<sup>3</sup>
4. Nonetheless, JUSTICE considers that the changes set out in the White Paper represent a welcome step forward, rather than a comprehensive solution. For reasons set out below, we consider that the proposals must be monitored closely with safeguards put in place to ensure that they achieve their intended outcomes, leaving no room for loopholes or gaps that allow parties to sidestep their legal responsibilities or unfairly discriminate against tenants. We consider that the Government's desire to improve the situation for renters will need to be met by

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<sup>1</sup> Department for Levelling Up, Housing and Communities, [A Fairer Private Rented Sector](#), 2022

<sup>2</sup> JUSTICE, [Solving Housing Disputes](#) (2020).

<sup>3</sup> See [Foreword from the Secretary of State](#), 16 June 2022 which sets out the intention to explore pre-action arrangements in the light of the Civil Justice Council's report on Pre-Action Protocols. The pre-action protocol for social possession cases requires a housing provider to make good faith inquiries as to why, for example, a tenant is falling into arrears. The premise is good faith dialogue, and constructive discussion on the issues giving rise to problems in the tenancy. In our view, the desire to establish longer term, more sustainable relationships between tenant and landlord in the sector should inspire similar dialogue between private landlords and tenants before possession claims are initiated.

broader changes to the housing dispute resolution system generally, beyond those set out in the White Paper. Housing rights are nominal without an accessible and efficient system to enforce them.

5. JUSTICE, therefore, considers that reforming the private rented sector ('the PRS') provides a unique opportunity for the Government to re-visit how housing disputes should be handled generally, including the role that pre-action protocols, dispute resolution, codes of conduct and multi-professional engagement play in developing a housing dispute system that is fit for purpose. We note that there are some references to these issues in the White Paper but without further detail, it is not clear that the proposals in the White Paper go far enough. In responding to this call for evidence, we set out our recommendations for the PRS and for a fairer, more effective, and sustainable housing dispute system.

### Q1: Will the Government's White Paper Proposals result in a fairer private rented sector?

6. We support the general spirit of the proposals which we consider go some way to improving 'quality', 'affordability', and, most importantly, 'fairness',<sup>4</sup> within the PRS. In attempting to restore the balance between landlords and tenants, many of the proposals reflect, at least in part, recommendations contained in our [Solving Housing Disputes](#) report.

#### *Abolition of Section 21*

7. For example, JUSTICE is pleased to see that the White Paper envisages the abolition, through legislation, of section 21, "no-fault evictions".<sup>5</sup> We support the proposal to do away with section 21, which we understand is currently a leading cause of homelessness in England and Wales and is purportedly used by landlords in ways that are grossly unfair.<sup>6</sup> The proposed change will see tenants being moved on to a single system of periodic tenancies – a move which will bring the position in England more in line with elsewhere in the UK.<sup>7</sup> A tenancy will only end if a tenant ends it or a landlord has a valid reason, as defined in law. Again, JUSTICE welcomes this move which will better protect tenants from arbitrary or retaliatory evictions,<sup>8</sup> whilst affording them greater flexibility to move on from poor-quality housing, without remaining liable for rent. It will also ensure that tenants are not trapped in unaffordable housing, should their circumstances change. This is especially important given the fall-out from the Covid-19 pandemic and rising costs crisis.

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<sup>4</sup> See [Foreword from the Secretary of State](#), 16 June 2022

<sup>5</sup> See Housing Act 1998, section 21

<sup>6</sup> The section 21 process is historically used to evict tenants at short notice for no reason. Poll and Rodgers, '[Getting the House in Order How to improve standards in the private rented sector](#)' (Citizens Advice, 2019)

<sup>7</sup> For example, we understand that short-assured tenancies are being phased out in Scotland and conversations between JUSTICE and stakeholders in Scotland, suggest positive outcomes as a result.

<sup>8</sup> A Citizen's Advice survey revealed that section 21 of the Housing Act 1988 has frequently been deployed for retaliatory evictions. Ibid.

8. Nonetheless, JUSTICE understands that compensatory grounds for possession will be added into section 8 of the Housing Act 1998 to ensure fairness to landlords. We await more detail on what these grounds will be but highlight that care must be taken to ensure that such grounds do not undermine the protections afforded to tenants by the abolition of section 21. In other words, compensatory grounds should not function as “section 21, by the back door”.

### *Preventing discrimination*

9. We strongly support changes in the White Paper that will prevent landlords from refusing to rent their properties to tenants who have children or who are in receipt of housing benefits or Universal Credit. Our report found that private landlords were becoming increasingly reluctant to rent to those on universal credit.<sup>9</sup> Recent case law also confirms the discriminatory nature of “No DSS” policies,<sup>10</sup> which put women and disabled people at a particular disadvantage. Whilst a very positive step forward that goes to the heart of ensuring fairness in the PRS, JUSTICE again draws attention to the need for careful monitoring and engagement with relevant frontline stakeholders, to ensure that such measures are effective in practice.<sup>11</sup>

### *Holding landlords to account*

10. The White Paper states that landlords in the PRS will be legally required to comply with the Decent Homes Standard, which sets the minimum standard that properties need to comply with.<sup>12</sup> JUSTICE welcomes this development. As discussed in our report, many tenants find themselves in poor-quality housing and struggling to arrange repairs to be carried out by landlords.<sup>13</sup> JUSTICE is concerned that the current economic climate will only intensify this problem. Not only will these measures improve the accountability of landlords, but it is hoped that the codification of standards will help increase tenants’ understanding of their rights too. As discussed elsewhere in this response, all too often tenants are left disillusioned and disenfranchised, not knowing what their rights are, nor how to enforce them. We note the intention, set out in the White Paper, to create a landlord’s register and portal through which guidance and regulations will be shared with landlords. We welcome these measures, which we hope will ensure that landlords better understand their obligations. However, unilateral education of landlords around housing rights and standards may only serve to reinforce the power imbalance that exists between landlords and tenants. Instead, and as discussed in response to Q2 below, we suggest the creation of a “one-stop shop” portal that is accessible to both landlords and tenants. The portal should serve as a gateway to the redress and courts system whilst making guidance and regulations available to both parties.

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<sup>9</sup>JUSTICE, (n.2), para. 1.3

<sup>10</sup>See [‘No DSS Discrimination Ruled Unlawful for Second Time’](#), (Inside Housing, 2020).

<sup>11</sup>See, for example, concerns raised by Shelter Scotland about landlords side-stepping such prohibitions by advertising for “professionals only”: Hinds, A, 2020 [‘Charities Warn of Landlords Dirty Tricks to Block Tenants on Benefits’](#), *The Sunday Post*, 12 October.

<sup>12</sup> Department for Levelling Up, Housing and Communities, (n.1), para 2.1

<sup>13</sup>A recent report suggested that 60% of tenants experience disrepair, and of these 20% do not have the problem completely resolved within a reasonable amount of time. 22% of tenants experiencing disrepair end up spending their own time or money fixing the problem.

Q2: Does the PRS need its own Ombudsman? If so, what powers should it have?

11. As stated above, JUSTICE recommends the introduction of a single, one-stop-shop, via which tenants and landlords can seek redress. This is motivated by the requirement that all parties to a housing agreement or dispute, understand their rights, and responsibilities and know where to go to enforce them. Current redress provision lacks coherence: there is the Property Redress Scheme, the Housing Ombudsman, the Local Government and Social Care Ombudsmen, the Property Ombudsman, the Tenancy Deposit Scheme, the Deposit Protection Scheme, and MyDeposits. All have distinct processes and entry points for disputes initiated by a tenant against a landlord.
12. Whilst we support any proposal that makes it easier for private tenants to raise complaints and access support, we are concerned that the creation of a new Ombudsman for the private rented sector may only worsen an already disaggregated and confusing system. All too often, tenants who are engaged in seeking help and finding solutions, become disillusioned and distance themselves from the process due to experiencing difficulties, confusion, and feeling that they are being “passed from pillar and post” by redress schemes, support services, and professionals. This incoherence is not unique to redress providers but to courts and tribunals too. The bifurcation of housing disputes between courts and tribunals continues to cause confusion, particularly where the jurisdiction to decide a case lies with both the County Court and the First-tier Tribunal (Property Chamber). Whilst the cross ticketing of judges, whereby judges exercise a Tribunal and court jurisdiction at the same hearing, has gone some way towards de facto rationalisation,<sup>14</sup> it is questionable to what extent this simplifies the process for the lay user. For this reason, we recommend the creation of a single point of entry portal for all redress providers, courts, tribunals and tenancy deposit schemes, as set out in our report.<sup>15</sup> Such a portal, through which all housing disputes might pass, would have automatic triaging and signposting of disputes to the appropriate forum, removing the need for users to grapple with and choose between a bewildering array of dispute resolution services. It could build on earlier Government proposals for a Housing Complaints Resolution Service.<sup>16</sup> Such a portal would allow for a broader understanding of problems in housing, as more data on dispute type could be gleaned through a single doorway in order to identify and flag systemic issues emerging in housing.

Q3: Will the proposals result in more disputes ending up in the courts? If so, will the proposals speeding up the court service suffice?

13. It is not currently possible to predict whether the proposals outlined in the White Paper will lead to an increase or decrease in disputes ending up in the courts, not least because further detail is required to understand how the proposals will be implemented. Nonetheless, the White Paper expresses a desire to rethink the

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<sup>14</sup> Chris Hodges, ‘Resolving Housing and Property Disputes’ (2021).

<sup>15</sup> JUSTICE, [Solving Housing Disputes](#) (2020), para. 4.13

<sup>16</sup> See Department for Levelling Up, Housing and Communities, [Strengthening Consumer Redress in the Housing Market](#), (2018)

process by which landlords and tenants resolve disputes, including via the courts.<sup>17</sup> We are pleased that the White Paper recognises that the court process is not always the most appropriate vehicle through which to resolve housing disputes. In particular, we agree with the statements made in the White Paper that the adversarial process can escalate disputes, contribute to the breakdown of tenant-landlord relationship and moreover, prove challenging and intimidating for both tenants and landlords to navigate.

14. We consider that the proposals set out in the White Paper provide an opportunity to fundamentally reconsider how private landlords and tenants engage, prior to the initiation of a housing dispute in court. In particular, we are encouraged by the commitments in the White Paper to “*mainstream early, effective, and efficient dispute resolution throughout the PRS*”<sup>18</sup>.
15. JUSTICE agrees that greater investment in dispute resolution at an early stage of a dispute can help prevent the risk of problems escalating and ending up in court.”<sup>19</sup> Our report found that Alternative Dispute Resolution (‘ADR’) affords the opportunity to holistically investigate all underlying causes of a dispute, including issues around mental health, benefits, and employment, which may otherwise go unaddressed during a court procedure. By supporting tenants and landlords to work together to identify and address the underlying causes of housing disputes, lasting solutions are more likely to be found. Otherwise, without investigating and resolving the underlying problems, evictions via court action may only lead to the problem being pushed from one landlord to the next.
16. Nonetheless, greater attention needs to be placed on the timing of ADR. Recent ADR pilots<sup>20</sup> evidence that parties are more likely to engage with ADR where they are not yet engaged in the court process.<sup>21</sup> This could be due to the fact that once parties are engaged in court proceedings, the relationship is likely to be damaged. Early ADR provides the greatest chance of sustaining a tenant-landlord relationship before it becomes overly adversarial. As set out in our report,<sup>22</sup> the use of pre-action protocols plays an important role in encouraging the early identification and resolution of problems. However, in order for protocols to be helpful, engagement from parties must be meaningful, rather than a tick-box exercise. We draw attention to our responses to the Ministry of Justice’s consultation on dispute resolution and to the Civil Justice Council’s call for evidence on pre-action protocols.<sup>23</sup> We encourage the Government to work closely with both the Ministry of Justice and the Civil Justice Council, as well as stakeholders, on proposals relating to ADR.

### *Access to Legal Aid*

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<sup>17</sup> Department for Levelling Up, Housing and Communities, (n.1), chapter 4

<sup>18</sup> *Ibid.*

<sup>19</sup> Department for Levelling Up, Housing and Communities, (n.1), p.7

<sup>20</sup> See [TDS Resolution Service](#) provided by the National Residential Landlords Association and the Tenancy Deposit Scheme, as well as the Ministry of Justice and Ministry of Housing, Communities and Local Government [Mediation Pilot for Possession Hearings](#).

<sup>21</sup> The TDS Resolution Service was relaunched in April 2021 and changed its focus from redirecting cases that were already in the court queue to instead reach parties at an earlier stage in their dispute.

<sup>22</sup> JUSTICE, (n.2), para. 3.35

<sup>23</sup> JUSTICE, [Response to Ministry of Justice Consultation on Dispute Resolution in England and Wales](#), 2021

17. Whilst we welcome the increased use of ADR, we do not feel that ADR initiatives alone will improve the efficiency of the housing dispute system, nor lead to fewer cases reaching court, without further investment in legal aid. ADR should naturally empower parties to resolve their disputes in a manner that is appropriate and beneficial to them. Parties will only feel empowered if they have choices. This includes choices about how to progress their dispute and choices on how to settle. To understand their choices, parties must understand their legal position and know their rights. Expecting parties in the private sphere to understand complex laws and legal rights, without access to a legal advisor to appraise them of their position, is unrealistic and may produce unfair results.
18. Huge swathes of the country are subject to “advice deserts,” leaving many with nowhere to go when facing a housing problem. The introduction of court closures to part-fund Her Majesty’s Court and Tribunal Services (HMCTS) Reform Programme (Reform Programme) has further frustrated access to justice, reducing attendance rates of respondents because many parties to a housing dispute simply cannot afford to attend possession hearings in courts located outside their own towns.<sup>24</sup> There is now a growing body of evidence that shows that the earlier housing issues (including associated clustered issues) are explored and advised upon – the more likely it is that the issues will be resolved amicably, sustainably, and without needing to go to court.<sup>25</sup> It is therefore imperative that if the housing dispute landscape and the private rented sector is to be changed for the better, such proposals must be accompanied by increased legal aid provision – across the country.
19. Whilst the White Paper refers to changes in legal aid provision – including changes to increase the scope of legal issues explored via the Housing Possession Court Duty Scheme (‘HPCDS’) (soon to be the Housing Loss Prevention Advice Service), these do not go far enough. In our response to the Ministry of Justice’s consultation on reforming the HPCDS, we support the Government’s commitment to reviewing sustainable legal aid funding for possession cases.<sup>26</sup> We are also encouraged by proposals to widen the scope of early legal help. Nonetheless, JUSTICE considers that if the proposals set out by the Ministry of Justice in that consultation are to achieve their intended outcomes, more focus and funding must be made available at an earlier, pre-action stage. This includes ensuring that those subject to a housing dispute or possession claim, can access advice and ADR prior to the notice of possession hearing being issued. To that end, and as set out in our [Solving Housing Disputes](#) report, the definition of “legal help” under legal aid contracts for housing must be changed to capture and remunerate acting and advising through the pre-action ADR process.
20. We also call upon the Government to review the provision of legal aid in housing, across the piece and not simply for possession cases alone. Private tenants,

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<sup>24</sup> JUSTICE, (n.2), para 1.4

<sup>25</sup> Ipsos MORI, ‘[Analysis of the potential effects of early advice/intervention using data from the Survey of Legal Needs](#)’, (The Law Society, 2017), p. 6. The report found that early advice had a significant impact on getting issues resolved. “Participants in the survey who did not receive early advice were, on average, 20% less likely to have resolved their issue at a particular point in time (compared to those who did receive early advice).”

<sup>26</sup> JUSTICE, ‘[Response to Ministry of Justice Consultation on Housing Legal Aid: the way forward](#)’, 2022. Para 5

particularly those in vulnerable positions, require access to legal advice in relation to other areas affecting the landlord-tenant relationship, including housing disrepair. This is particularly important given the current cost of living crisis and the increased financial demands upon both tenants and landlords – where tenants have less bargaining power and the landlord may feel less inclined to spend money on repairing their properties.

### *Legal aid be expanded to cover advising on clustered legal problems*

We are encouraged by the Ministry of Justice’s pledge to widen the scope of legal aid provision for the Housing Loss Prevention Advice Service (‘HLPAS’) to offer advice on social welfare law.<sup>27</sup> Our [Solving Housing Disputes](#) report emphasised the need for legal aid-funded advice to cover the many inter-related causes of housing disputes. Disputes are usually the result of a combination of inter-related or ‘clustered’ problems. In particular, research has found that housing, benefits, debt, and relationship breakdowns are commonly associated with one another.<sup>28</sup> The cost-of-living crisis is likely only to exacerbate this. Without supporting tenants to access support to address these underlying causes of rent arrears, evictions will only lead to the problem being pushed from one landlord to the next. Whilst we welcome the proposals in the White Paper to increase notice periods for mandatory possession, this alone will not provide a lasting resolution or impact upon the volume of possession cases coming before the court. Only when advice providers are able to investigate and provide advice to tackle these underlying causes, will early legal advice be successful in achieving sustainable solutions and lead to a downturn in preventable possession cases.

21. Whilst JUSTICE supports HLPAS being expanded to advise on the full range of clustered issues set out above, this needs to be accompanied by investment to address the current deficit of providers in these areas. Legal aid cuts since 2012 have led to a significant shortage of available advisors in these areas and attempts must be made to resolve this. Without investment, it is difficult to see how proposals to offer welfare benefits advice via HLPAS, can be realistically achieved.

### *The Housing Disputes Service*

22. As set out above, we consider that the reforms to the PRS provide a unique opportunity to build upon existing proposals and developments relating to early legal advice, ADR, and the provision of guidance and regulation. We consider that the time is ripe to explore what an effective, efficient, and fit-for-purpose housing dispute system should look like. In particular, we draw attention to our recommendation for the creation of a new, holistic, and fully integrated model of alternative dispute resolution, the ‘Housing Disputes Service’ (the ‘HDS’).<sup>29</sup> Pulling together professionals from across the legal sector and beyond, the HDS provides a “one-stop shop” for all housing disputes and complaints. The HDS seeks to intervene early in a housing dispute, investigate the underlying issues that give rise to the claim (e.g., welfare and benefits issues, debt issues, and mental health needs) and provide both legal and non-legal support to bring about a lasting solution.

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<sup>27</sup> Department for Levelling Up, Housing and Communities, (n.1), p.42

<sup>28</sup> R Moorhead and M Robinson, [A trouble shared – legal problems clusters in solicitors’ and advice agencies](#) (Department for Constitutional Affairs, 2006).

<sup>29</sup> See JUSTICE (n.2), pt.1



23. Adopting this early interventionist approach means that issues (and their causes) are identified and solutions suggested before the problem escalates and before relationships are irreparably damaged. The HDS would fully integrate the model of dispute resolution by replacing the role of the First-tier Tribunal (PC), the County Court, and Magistrates Court in housing disputes, and taking on the dispute resolution function from redress providers and tenancy deposit schemes. The HDS would therefore provide a single point of access for all those wishing to resolve a dispute, with Parties' right to progress their claim in the way they see fit retained through the right of appeal from the HDS to a court or tribunal for a final determination. Creating this kind of gateway for housing disputes would eliminate confusion for lay users and facilitate early intervention, by acting as a mandatory first stage in a pathway towards resolution. We strongly consider that a more coherent, accessible, and holistic approach to resolving housing disputes will lead to a more fair and effective system for both landlords and tenants alike.

**JUSTICE**  
**23 August 2022**