



Response to the Commission on Justice in Wales

4th June 2018

Our vision

Everyone in Wales should have a decent and affordable home: it is the foundation for the health and well-being of people and communities.

Mission

Shelter Cymru's mission is to improve people's lives through our advice and support services and through training, education and information work. Through our policy, research, campaigning and lobbying, we will help overcome the barriers that stand in the way of people in Wales having a decent affordable home.

Values

- Be independent and not compromised in any aspect of our work with people in housing need.
- Work as equals with people in housing need, respect their needs, and help them to take control of their lives.
- Constructively challenge to ensure people are properly assisted and to improve good practice.

Introduction

Shelter Cymru welcomes the opportunity to provide evidence to this Commission. As Wales' leading housing advice charity we work with housing law on a daily basis and we have numerous suggestions to make on how the justice system can be improved.

A Specialist Housing Court for Wales

For some years now we have been highlighting the need for a specialist housing court. Demand on the county court is high, and a lack of specialist housing knowledge among District Judges can result in cases taking longer than necessary due to adjournments. In our view a specialist housing court would help to expedite proceedings both to the benefit of tenants and landlords.

One of our [key campaigning priorities](#) is to improve security of tenure in the private rented sector (PRS) by ending the use of 'no fault' section 21 possession notices. We firmly believe that everyone has the right to secure and stable housing in the knowledge that you cannot be evicted without fair reason. Unfortunately for people living in the PRS, the power that landlords have to issue a 'no fault' eviction notice undermines tenant security and stability.

There's a growing feeling among policymakers that PRS security of tenure is in need of reform. However one barrier to this is the potential additional burden on the courts from a higher number of possession hearings.

Currently many section 21 possessions take place via the accelerated procedure, without a court hearing. If every possession claim led to a hearing this would create additional burdens on the courts.

Shelter Cymru, the Residential Landlords' Association and other agencies have long been calling for a specialist housing court for Wales, similar to the Housing and Property Chamber of the First-Tier Tribunal in Scotland.

It would be vital that this tribunal has enforcement powers and that there is funding for people to have good quality legal representation at possession hearings, either via Legal Aid or other sources. This is because tenants need advice and advocacy to ensure their voice is heard alongside landlords' well-paid lawyers.

Devolution of responsibility for Legal Aid

Cuts in Legal Aid over recent years have worked against Welsh Government priority areas such as homelessness prevention and tackling domestic abuse. We would recommend devolved powers over the administration of Legal Aid as in Scotland to ensure it complements areas of priority. For example, Legal Aid is currently generally only available to people once they reach crisis point. Welsh Government has succeeded in securing funds for housing advice that people can access prior to crisis but this needs to be expanded to reflect the aims of the homelessness prevention agenda.

Devolution of responsibility for civil procedure rules

In the era of devolution where Wales has devolved powers over housing and homelessness legislation, the lack of devolved responsibility over civil procedure rules is frustrating. One practical example of where this is problematic is the hurdle to improve and develop pre action protocols.

The aim of the Pre Action Protocol for Possession Claims by Social Landlords is to avoid unnecessary litigation and, where litigation is unavoidable, to make it more efficient by encouraging communication at an early stage between social landlords and tenants who may be in rent arrears.

The Protocol is meant to form a minimum standard for how social landlords engage with tenants in rent arrears. It does not govern the entire relationship – and many social landlords in Wales have their own policies that go over and above the Protocol.

Currently the protocol is a list that the landlord confirms by ticking a series of statements that all required actions have been undertaken. The landlord should send a copy of the Protocol to the tenant *after* the service of a Notice Seeking Possession but *before* the issue of court proceedings. Having done this, the landlord should then provide written confirmation to the court that the Protocol has been followed.

There is no requirement for the landlord to provide evidence or further detail of these actions. This means that, in cases where the landlord may not have followed the Protocol, it can be challenging for the tenant to evidence this.

Moreover – and this is where the Protocol's greatest weakness lies – even if the landlord hasn't followed the Protocol, and the tenant is able to demonstrate this to the court, this doesn't protect the tenant from losing their home. At best, the court makes cost sanctions against the landlord but more often than not, the transgression is excused.

There are a number of issues with the way in which the protocol is currently used, evidenced and considered in the eviction process. We have developed some recommendations to improve this process. There are two key improvements that could be made. The first is to give the Protocol more teeth by replacing it with pre-action *requirements*. The second is to revise it to introduce new measures that are more in tune with the Welsh policy focus on homelessness prevention and the wellbeing of future generations.

The Pre Action Protocol forms part of Civil Procedure Rule 55 (CPR 55), covering England and Wales. The Civil Procedure Rules are non-devolved, and are governed by the Civil Procedure Rule Committee which is sponsored by the Ministry of Justice.

The Renting Homes (Wales) Act 2016 means that some aspects of CPR 55 must be revised and so the CPR Committee has granted permission for Welsh Government to create a new, Welsh CPR 55. It may be possible for further changes to be made to the Welsh CPR 55 in order to introduce Pre Action Requirements, or other measures in line with the policy focus on homelessness prevention. However, this would depend entirely on the willingness of the Civil Procedure Rule Committee to approve any changes.

Devolving the responsibility over civil procedure rules would result in a more responsive legislative system that reflects the Welsh Government's agenda and principles.

Devolved powers over policing, prisons and probation services

The Housing (Wales) Act 2014 saw a definite shift from Welsh Government towards a more preventative and person-focussed approach to homelessness. Recent research that we have carried out looking at rough sleeping has highlighted the fact that police approaches are not supporting that aim. We have heard evidence of increasingly punitive and intolerant measures used against people sleeping rough which undermine the general principles and aims of a number of Welsh policies.

Furthermore, we routinely hear from caseworkers their frustrations of police refusing to intervene in illegal evictions. They claim it is a civil matter (it is actually both) and there are examples where they stand to one side and observe while people are having their possessions thrown out, in essence facilitating the landlord to illegally evict. During an illegal eviction a number of criminal offences may take place including assault or criminal damage, but rarely is action taken against the landlord. Local authorities rarely have resources to pursue a claim for illegal evictions, meaning that landlords' illegal activities are going unchallenged. We would like to see both civil and criminal proceedings considered as a matter of course.

Some of the recent increase in the numbers of people sleeping rough can be attributed to the removal of priority need status for prison leavers. This is coupled with the fact that the Welsh Government's prisoner pathway is not being followed or implemented effectively by the non-devolved services that are responsible for delivering it, such as the probation service.

This is a frustrating and costly issue for Welsh Government and other services that then have to respond to the unmet needs of people caused by the failures of services that Wales has little control over.

If policing were a devolved matter there would be opportunity to develop a more joined up way of working. There is potential to ensure that policing activities and processes reflect Government agendas and priorities. Furthermore, there would be

some ability to develop responsive approaches to localised and emerging issues rather than adopting a universal approach that doesn't necessarily reflect the local context.

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