HOUSING LAW PRACTITIONERS ASSOCIATION

Considering the case for a Housing Court: A Call for Evidence

Consultation response on behalf of the Housing Law Practitioners Association

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Housing Law Practitioners Association
4 Garrett Street
London EC1Y 0TY

Web: www.hlpa.org.uk

Authors:

Tessa Buchanan (Barrister and Vice-Chair of HLPA)

tessab@gclaw.co.uk

Garden Court Chambers

57-60 Lincoln's Inn Fields

London WC2A 3LJ

020 7993 7600

Daniel Clarke (Barrister and Executive Committee member)

d.clarke@doughtystreet.co.uk

Doughty Street Chambers

54 Doughty Street

London

WC1N 2LS

020 7404 1313

About HLPA

1. The Housing Law Practitioners Association (HLPA) is an organisation of solicitors, barristers, advice workers, environmental health officers, academics, and others who work in the field of housing law. Membership is open to all those who use housing law for the benefit of the homeless, tenants and other occupiers of housing. It has members throughout England and Wales.

2. HLPA has existed for over 25 years. Its main function is the holding of regular meetings for members on topics suggested by the membership and led by practitioners particularly experienced in that area, almost invariably members themselves.

3. HLPA is regularly consulted on proposed changes in housing law or on legal changes which may impact on housing law (whether by primary or subordinate legislation or statutory guidance). HLPA's responses are available at www.hlpa.org.uk.

4. Membership of HLPA is on the basis of a commitment to HLPA's objectives. These objectives are:
    - To promote, foster and develop equal access to the legal system.
    - To promote, foster and develop the rights of homeless persons, tenants and others who receive housing services or are disadvantaged in the provision of housing.
    - To foster the role of the legal process in the protection of tenants and other residential occupiers.
    - To foster the role of the legal process in the promotion of higher standards of housing construction, improvement and repair, landlord services to tenants and local authority services to public and private sector tenants, homeless persons and others in need of advice and assistance in housing provision.
    - To promote and develop expertise in the practice of housing law by education and the exchange of information and knowledge.

Introduction

1. HLPA's response to this call for evidence is divided into two parts. The first part contains some general observations on the concept of a specialist Housing Court. The second part addresses the specific questions asked in the call for evidence.

General comments

2. As a preliminary point, HLPA notes that the call for evidence contains very little information as to what is meant by "Housing Court". It is understood that this call for evidence is aimed at finding out whether a case for a specialist Housing Court exists and that it is not concerned, at this point, with consulting on the exact form such a body would take. Nevertheless, it is difficult to answer the question as to whether there is a need for a Housing Court without any clarity as to what this might look like.

The reasons being put forward for a Housing Court

3. One of the main arguments being put forward by proponents of a Housing Court is that the existing system is beset by unacceptable **delays**. This complaint comes in large part from private landlords who are frustrated by the time it takes to regain possession of properties from tenants. As to this, HLPA notes the following:
    a. The evidence indicates that private landlords do not experience significant delays when bringing possession claims. Figures released by the Ministry of Justice in May 2018[1] demonstrate that the median average time between a claim being issued and a possession order being made is 5.3 weeks for accelerated possession claims, 6.9 weeks for other private landlord cases, and 7.3 weeks for social landlord cases.
    b. The perception that delay exists is in part a result of private landlords' lack of experience of the legal system, as research commissioned by the Ministry of Housing, Communities and Local Government from Burns & Co ("the Burns research") found: *"Those (such as lawyers, judges and housing specialist) with wide experience of different types of court case understood how long the legal process can take…However, those with little or no experience of court cases (such as non-professional private landlords and tenants) have no such reference points."*[2]

[1] MoJ, *Mortgage and Landlord Possession Statistics in England and Wales, January to March 2018 (Provisional)*, May 2018
[2] MHCLG, *A qualitative research investigation of the factors influencing the progress, timescales and outcomes of housing cases in county courts*, Burns & Co, November 2018, §§3.1.3.1-3.1.3.2.

c. The simple fact is that due process takes time. As was observed by the Law Commission in their 2008 report considering a possible Housing Court, *"Some of what is complained of (delay as a result of having to comply with technical court requirements) is in fact an essential part of ensuring that people are not unfairly dispossessed"*.[3]

d. The Burns research also noted that the perception of "delay" was sometimes due to private landlords' own postponement of legal action: *"…the decision to seek possession may come after a protracted period of trying to 'sort it out' informally by other means…Therefore, in the landlord's eyes, the situation may already have been going on for some time before making a possession claim"*.[4]

e. If there is systemic delay, it is in the period between an order being made and a warrant being executed. This is partly due to some landlords' ignorance of the need to apply for a warrant,[5] which could be remedied by the courts providing clearer information as to the post-order process. Perhaps the most significant factor is the shortage of bailiffs,[6] to which the answer is simply to recruit more bailiffs. A further cause of tension is that many local housing authorities are still advising tenants to wait for the bailiff before leaving a property, to avoid being found intentionally homeless. Whilst this advice has never been correct, the position has been further clarified by the amendments made by the Homelessness Reduction Act 2017 to the Housing Act 1996 which make clear that a person must be treated as homeless well before this date. [7]

f. It is also clear that private landlords can be frustrated at what they view as unjustified "delay" which is in fact caused by their own mistakes. The process for obtaining possession under section 21 of the Housing Act 1988 (HA 1988) has become ever more complicated, largely due to reforms made by the Housing Act 2004 and the Deregulation Act 2015, with the predictable result that more mistakes

[3] Law Commission, *Housing: Proportionate Dispute Resolution*, Law Com No 309, May 2008, §2.27
[4] MHCLG, *A qualitative research investigation of the factors influencing the progress, timescales and outcomes of housing cases in county courts*, Burns & Co, November 2018, §3.1.1.5.
[5] MHCLG, *A qualitative research investigation of the factors influencing the progress, timescales and outcomes of housing cases in county courts*, Burns & Co, November 2018, §3.2.4.1.
[6] MHCLG, *A qualitative research investigation of the factors influencing the progress, timescales and outcomes of housing cases in county courts*, Burns & Co, November 2018, §3.2.4.5.
[7] Under section 175(5) HA 1996, a person is threatened with homelessness if (a) a valid notice has been given to the person under section 21 of the Housing Act 1988 (orders for possession on expiry or termination of assured shorthold tenancy) in respect of the only accommodation the person has that is available for the person's occupation, and (b) that notice will expire within 56 days.

are being made by landlords when trying to end tenancies or when filling out the necessary paperwork.[8] This can mean that cases are either dismissed or are listed for a hearing. The solution to this would be to simplify primary legislation, not to establish a new forum in which the same mistakes will reoccur.

g. HLPA members' experience is that many private landlords will also view a tenant raising a legitimate defence to a claim as delaying tactics. HLPA notes the comment from a landlord representative stakeholder, quoted in the Burns research, who stated that *"The big brake on possession timescales is whether the tenant receives advice from their local authority or advice services"*.[9] It is important to recognise that a tenant being advised of their rights, and if so advised defending a claim for possession, is not "delay". If a tenant has a defence to a claim then not only are they entitled to bring it, but if they are likely to have to apply as homeless to the local housing authority after eviction then they will be required to bring it as to do otherwise risks a finding of intentional homelessness. It is of course relevant to note that public funding – upon which many, if not most, tenants defending possession proceedings rely – is only available for meritorious defences.[10]

h. A particular issue which arises from the Burns research as a source of grievance for landlords is that the first hearing of a possession claim is often a waste of time because, where a defence is raised, the case will almost invariably be adjourned. HLPA notes that in these circumstances the usual course is for directions to a longer hearing to be made, and therefore the hearing is still effective, albeit not as the final determination sought by the landlord. HLPA also notes that in its experience, private landlords very rarely agree to a consent order being drafted under which the hearing is vacated and directions made, even where it is obvious that the court will not be able to determine the matter. HLPA would welcome guidance being given on this, perhaps in the documentation accompanying the claim form. It is also said that tenants will often raise a defence very late in the day – sometimes only at the hearing itself. HLPA would agree that defences are often raised late. This is often because the vulnerabilities of the tenant have precluded them from seeking help earlier. It is also fair to note that whilst a landlord may bring a claim at their

[8] MHCLG, *A qualitative research investigation of the factors influencing the progress, timescales and outcomes of housing cases in county courts*, Burns & Co, November 2018, §§3.2.3.3-3.2.3.4.
[9] MHCLG, *A qualitative research investigation of the factors influencing the progress, timescales and outcomes of housing cases in county courts*, Burns & Co, November 2018, §3.3.5.3.
[10] Civil Legal Aid (Merits Criteria) Regulations 2013 (as amended).

leisure,[11] the tenant is under an immediate deadline to prepare defence. As noted in the Burns research, *"it can take tenants considerable time to work out what to do, who to go to, and what help is available. Therefore, the two-week period between getting notice of proceedings and the deadline for response does not seem long to them"*.[12] This is exacerbated by the shortage of legal aid providers: many tenants have to go to numerous different agencies and solicitors' firms before finding someone who can assist.

4. HLPA does not dispute that delays – often lengthy - exist in the legal system. However, this is due to the chronic underfunding of the courts, not failings specific to housing law. The courts are understaffed and there are too few judges. HLPA members experience routine difficulties in contacting court staff by phone or email: some courts are known locally to be virtually uncontactable. Access to court offices is now available only by appointment. Case files are routinely lost. Documents filed with the court do not make their way to the correct place. Dozens of courts have been closed, reducing the rooms available for cases to be heard. There are long delays in processing orders – whether made at a hearing or sent in by consent – and applications. Courts operate floating lists which result in many cases being adjourned for months on the day of trial. These are all resource issues which an adequate level of funding would resolve. HLPA does not believe that a Housing Court would provide the answer.

5. A second reason being put forward to justify a Housing Court is that it would save **costs**. HLPA's view is that, firstly, this is unlikely to be the case and that, secondly, in any event it could not be done without causing serious injustice. Legal aid must continue to be available at the very least to its current extent as provided by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO 2012). Tenants who (for example) are facing the loss of their home, or have been unlawfully evicted from their home, or are living in a home in a dangerous state of disrepair, must have access to legal advice. They are likely to be vulnerable and of limited means (else they would simply be able to move elsewhere). The law in all these, and other areas, is complex and many will not be able to understand

[11] This is subject to some exceptions, such as that proceedings under section 21 HA 1988 must be started within four months of the date of the notice: s21(4E) HA 1988.
[12] MHCLG, *A qualitative research investigation of the factors influencing the progress, timescales and outcomes of housing cases in county courts*, Burns & Co, November 2018, §3.1.2.9.

it, or to identify if they have a case, and if they do to put that case forward effectively. Their landlord is likely to be able to afford a lawyer and therefore there will be a serious inequality of arms. No amount of "informality" in the process can protect against these matters. HLPA notes that in the Law Commission's 2008 report on this issue, the availability of public funding was said to be a precondition of reform: *"there should be no change of jurisdictions without legal aid being made available before a tribunal on the same basis as it is currently available before a court"*.[13]

6. The flipside of this is that where there is legal aid, there must be provision for inter partes costs, as otherwise legal aid practices will simply not be sustainable, as was acknowledged by the Supreme Court in *Re appeals by the Governing Body of JFS* [2009] UKSC 1, per Lord Hope at §25:

> *It is one thing for solicitors who do a substantial amount of publicly funded work, and who have to fund the substantial overheads that sustaining a legal practice involves, to take the risk of being paid at lower rates if a publicly funded case turns out to be unsuccessful. It is quite another for them to be unable to recover remuneration at inter partes rates in the event that their case is successful. If that were to become the practice, their businesses would very soon become financially unsustainable. The system of public funding would be gravely disadvantaged in its turn, as it depends upon there being a pool of reputable solicitors who are willing to undertake this work.*

7. Even as things stand, the number of practitioners undertaking legally-aided housing work has already shrunk dramatically, to the extent that there are housing "advice deserts" across large parts of the county.[14] In these circumstances, there is little scope for cutting costs further.

8. A further reason being put forward is that the current system is too **complex**. HLPA considers this complexity to have a number of different causes:
    a. Much of the complexity is a result of the underlying law. This would not be solved by moving cases to a different forum. HLPA has long supported the rationalisation

[13] Law Commission, *Housing: Proportionate Dispute Resolution*, Law Com No 309, May 2008, §5.53.
[14] See e.g. https://www.lawsociety.org.uk/policy-campaigns/campaigns/access-to-justice/end-legal-aid-deserts/

and simplification of housing law proposed by Law Commission in *Renting Homes* (2006).

b. It is also sometimes said that the procedural rules are too complicated for litigants in person to be able to follow. Procedural rules serve an important purpose in ensuring a fair process. However, they are not *"trip wires"* and should not be allowed to become *"the mistress rather than the handmaid of justice"*.[15] Again, though, this does not require the creation of a new court: judges already have the ability – and indeed a duty – to adapt procedural rules to the needs of unrepresented litigants by virtue of CPR 3.1A.[16]

c. Different aspects of "housing law" are dealt with in a number of different fora. To an extent this is simply a question of definition. Many housing lawyers will go through their entire careers without dealing with a case concerning agricultural land or enfranchisement valuation (both of which are listed as matters of housing law under Annex B of the call for evidence). It is not, therefore, a problem that these cases are dealt with in different venues. Equally, a "housing law" case may involve arguments from a range of different legal fields – from contract law to discrimination to public law – and therefore siphoning it off into a different system is unlikely to be sensible. HLPA does however agree that there are areas of crossover – for example, a mobile home occupier may be evicted in the County Court for breach of the Mobile Homes Act 1983 agreement, but the breach itself has to be established in the Tribunal (Property Chamber) ("the Property Tribunal"). Questions of the validity of Enfranchisement notices go to the County Court but questions of valuation and the extent of the rights acquired are determined in the Property Tribunal. This divergent jurisdiction is both confusing for lay people and makes the practice of law more expensive. Part of the answer to this may lie in "double-hatting": all County Court judges are First-tier Tribunal judges[17] and vice

[15] Lord Dyson MR, Eighteenth implementation lecture of the Jackson reforms, 22nd March 2013.

[16] *(1) This rule applies in any proceedings where at least one party is unrepresented. (2) When the court is exercising any powers of case management, it must have regard to the fact that at least one party is unrepresented. (3) Both the parties and the court must, when drafting case management directions in the multi-track and fast track, take as their starting point any relevant standard directions which can be found online at www.justice.gov.uk/courts/procedure-rules/civil and adapt them as appropriate to the circumstances of the case. (4) The court must adopt such procedure at any hearing as it considers appropriate to further the overriding objective. (5) At any hearing where the court is taking evidence this may include—(a) ascertaining from an unrepresented party the matters about which the witness may be able to give evidence or on which the witness ought to be cross-examined; and (b) putting, or causing to be put, to the witness such questions as may appear to the court to be proper.*

[17] Sections 6 and 6A of the Tribunal Courts and Enforcement Act 2007.

versa[18] which means that all County Court judges can hear cases within the jurisdiction of the Tribunal and vice versa. HLPA would support measures to make it easier for claims (which still have to be issued in the correct forum) to be transferred and indeed for this process to be better publicised: many judges have limited awareness of it. HLPA would also welcome amendments to the jurisdiction of the County Court and Property Tribunal to allow matters which presently fall within the jurisdiction of the latter to be raised as a defence or counterclaim in the former and vice versa (provided that legal aid and inter partes costs were then made available for those matters in the Tribunal).

9. HLPA notes that the complexity argument is often raised purportedly on behalf of tenants, in that it is said that a Housing Court would make it easier for tenants to bring cases against their landlords. HLPA is of the view that the main barrier to tenants bringing claims is the limited availability of legal aid, due to the very restrictive means test; the fact that many matters are out of scope; and the fact that legal aid practices are increasingly less viable, leading to legal aid deserts. A more informal process would not enable tenants to understand the underlying law, or afford to obtain expert evidence, or present their arguments most effectively. As has long been recognised *"the inarticulate will be at a disadvantage regardless of the forum"*.[19]

10. A further argument that is made in favour of the Housing Court is that it would be presided over by **specialist judges** with expertise in housing law. HLPA welcomes the idea of specialist judges but does not consider a Housing Court is needed to achieve this. Instead, it could be accomplished far more easily and cost-effectively simply by ticketing judges in the County Court, as is done already for family cases and as has been suggested on a number of occasions previously for housing.[20]

The Tribunal (Property Chamber)

11. As the call for evidence makes clear, one of the proposals under consideration is moving certain housing law-related matters from the County Court to the Property Tribunal. HLPA is strongly opposed to this, for the following reasons.

[18] Section 5 of the County Courts Act 1984 (as amended).
[19] A. Arden, *"A fair hearing? The case for a housing court"*, 2001 JHL 86.
[20] Law Commission, *Housing: Proportionate Dispute Resolution*, Law Com No 309, May 2008, §5.29.

12. First, HLPA considers that all the problems which currently exist or are complained of in respect of the County Court would simply follow the caseload to the Tribunal. HLPA notes the generally positive views of the Tribunal as recorded in the Burns research. This is to be welcomed. However, they must be put in context. The Tribunal currently deals with some 12,000 claims per year. This is simply not comparable with the workload of the County Court, where the number of possession cases brought each year is approximately 144,000.[21] Many of the positive aspects of the Tribunal process are a result of this much lower caseload and would be lost if a wholescale transfer of housing cases took place.

13. Second, HLPA has serious concerns about the inequality of arms in the Tribunal. In the experience of its members, the majority of tenants are unrepresented and the majority of landlords are represented. Legal aid is not available in the Tribunal[22] and many tenants, even if they are leaseholders, cannot afford legal representation. Although nominally a no-costs jurisdiction, in fact virtually all landlords and freeholders are able to recover their costs either through a term of the lease or tenancy or by simply increasing the rent or service charge. The result is a serious imbalance: no matter how informal the process, a party who is legally represented is at an advantage over those who are not. To address this, legal aid will have to be available, which means that inter partes costs will have to be recoverable (for the reasons given above), which will remove – from the landlords' point of view – many of the so-called advantages of this forum.

14. This imbalance carries over into the field of expert evidence. HLPA recognises the value of an expert surveyor sitting as a member of the panel which decides cases. But this cannot, and does not, replace the role of an expert giving evidence. In its members' experience, the landlord will still instruct an expert, whilst the tenant is unable to do so, meaning that the evidence presented is one-sided. Whilst an expert panel has many advantages, their expertise extends (and is limited) to an analysis of the evidence put before it: they cannot help the party to put their case. Again, therefore, adequate funding must be in place to ensure fairness.

[21] Statistics provided by the MoJ at a meeting with HLPA on 26th June 2018.
[22] Unless Exceptional Case Funding is granted, which is extremely rare.

15. Third, HLPA is concerned that the informality of the Property Tribunal could come at the expense of some important procedural safeguards. As was observed by the Association of District Judges in a previous submission to the Law Commission, *"decisions about whether or not a citizen should lose their home are so serious that they should only be decided by a judge sitting in a court"*.[23] As set out above, procedural rules are there to ensure that matters are determined fairly. By way of example, when a person lacks capacity to litigate under the Mental Capacity Act 2005, in the County Court he or she must have a Litigation Friend. This is an important measure to ensure that their interests are properly protected throughout the legal process. Litigation Friends do not appear in the Property Tribunal.

16. Fourth, HLPA notes that the Property Tribunal has certain jurisdictional limits which would make it wholly unsuitable to hear housing cases at present. It cannot enforce its own orders: that must still be done by the County Court.

Proposals for reform

17. HLPA recognises that the system as currently functioning has problems. Courts are understaffed and overburdened. Papers are lost; cases wait months for a hearing date; orders are not processed expeditiously; court offices are unreachable. Courts have closed, leaving people with long, complicated journeys to their local court. People are denied legal aid, because their issue is not in scope, or they do not meet the means test, or there are no providers in their area. The number of litigants in persons has increased, leading to delays and longer hearings. There are too few judges. IT systems are outdated.

18. HLPA does not believe any of these problems would be solved by a Housing Court. Instead, HLPA makes the following proposals for reform:
    a. Cases should be allocated to a particular judge for case management purposes. HLPA notes that, at the County Court at Central London, a particular Circuit Judge has responsibility for the case management of homelessness appeals under the Housing Act 1996. This has led to consistency in directions, meaning that cases are better prepared. A system like this could be replicated in other areas of housing law.

[23] Law Commission, *Housing: Proportionate Dispute Resolution*, Law Com No 309, May 2008, §5.30.

b. Judges with particular expertise in housing law should be ticketed, so that difficult cases are referred to them.
c. More bailiffs should be recruited.
d. There should be a duty benefits adviser at court on possession days, just as there is (in many courts) a duty solicitor. This would enable problems with benefits – the reason behind so many possession claims – to be identified and dealt with more promptly, thus leading to the earlier resolution of claims.
e. Better guidance should be provided with the court papers, for both landlords and tenants. For example, landlords could be advised when issuing their claim that if the matter is disputed then it is unlikely it will be resolved at the first hearing, and that if and when an order is made it will be necessary to apply for a warrant. Tenants could be given more advice about their rights and how and where to seek advice.
f. Local housing authorities should be reminded of their obligation to assist tenants under Part 7 HA 1996 well before any warrant is due to expire.
g. There are inefficiencies in the court system which should be addressed. Currently, a claim for possession under section 21 HA 1988 can only be made on paper: it should be possible to do this online. In respect of PCOL claims, the paperwork which a landlord is required to complete does not reflect what is actually needed by the court to determine the claim. For example, there is no provision for a proper rent statement to be provided, and the landlord is not invited to provide the information required by the Practice Direction to CPR Part 55.
h. The courts which have closed should be re-opened, so that there is more capacity for cases to be heard.

19. HLPA would also repeat its long-standing calls for reforms to the legal aid system, including raising the means threshold and expanding its scope, particularly in respect of welfare benefits.

A Housing Court

20. HLPA is aware that there have been calls for a Housing Court in the past. It notes that the idea was given serious consideration by the Law Commission in 2008, and in their report on the issue they recommended that *"certain modest steps"* should be taken, *"subject to*

testing and evaluation", to explore the arguments in favour of such a tribunal.[24] These included: implementing the recommendations to the substantive law in their Renting Homes report; simplifying the procedure under section 21 HA 1988; considering ticketing judges; and allowing courts to sit with expert surveyor assessors. None of these have happened. HLPA would have serious concerns about proceeding without these measures have been explored.

21. Finally, if there were to be a Housing Court then HLPA considers it would have to have, as a minimum, the following attributes:
    a. Legal aid would have to be available for cases which come before it;
    b. Costs would have to be recoverable inter partes;
    c. It would have to have a sufficient number of judges (whether sitting alone or as part of a panel) with expertise in the field of housing law;
    d. It would have to have procedural rules which protect the interests of justice without forming a barrier to the same;
    e. It would have to be adequately funded, with sufficient staff and resources to deal with its caseload; and
    f. There would have to be enough court buildings so that even the most impoverished and/or vulnerable could attend their local court without excessive difficulty.

22. Ultimately, to create a new Housing Court capable of hearing the large numbers of cases currently heard in the County Court, in a manner consistent with the minimum requirements of justice necessary for cases where an individual's home or other fundamental rights are at stake, would require an investment of resources far exceeding that required to make the improvements identified in HLPA's proposals for reform as set out above.

[24] Law Commission, *Housing: Proportionate Dispute Resolution*, Law Com No 309, May 2008, §5.46.

Questions from the call to evidence paper

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.

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

Both.

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

HLPA members conduct a large number of possession cases each year and its experience of cases is widely varied. Its views on the problems within the court system are set out above.

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

Yes. As set out above, delays do occur within the possession process, although not, in HLPA's view, for the reasons given, or to the extent complained of, by private landlords. HLPA's comments on delay are set out above.

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

In HLPA's experience, delays generally occur in the listing of hearings and in the courts' handling of paperwork. This is due to courts being underfunded and understaffed. HLPA's more detailed comments on delay are set out above.

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

Yes.

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.

N/A.

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

Yes.

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

Other: see general comments.

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

Other: see general comments.

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

Other: see general comments.

QUESTIONS FOR PRIVATE LANDLORDS ONLY

N/A.

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.

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

HLPA considers this process to work reasonably well.

b) High Court enforcement process

HLPA considers that this process is fundamentally flawed, as there is (currently) no requirement that notice be given of the eviction. HLPA strongly recommends that this be changed.

QUESTIONS FOR PRIVATE LANDLORDS

N/A

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: HLPA's members conduct a large number of cases across the full range of housing and property law in the County Court and the tribunal.

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?

See general comments.

Q19. How satisfied were you with the average time taken to resolve the county court cases you have experienced? Please provide further details in the text box below.

See general comments on existence and cause of delay.

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?

See general comments on HLPA's concerns about the First-tier tribunal.

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

See general comments on delay.

Q22. On the whole, the *county court* provides fair access to justice for property cases. Do you agree or disagree with this statement? Please provide reasons for your answer in the text box below.

HLPA agrees.

Q23. On the whole, the *First-tier Tribunal* provides fair access to justice for property cases. Do you agree or disagree with this statement? Please provide reasons for your answer in the text box below.

See general comments for HLPA's concerns with the First-tier tribunal.

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?

HLPA favours options 2 and 3. HLPA's proposals for reforms are set out above in the general comments section.

QUESTIONS ABOUT A HOUSING COURT

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

No.

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.

N/A.

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?

b) improved access to justice?

c) easier access for users?

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

N/A

Please use the text box below to explain your answers

HLPA is concerned that the call for evidence only invites respondents to expand on their answers where they have replied in favour of a Housing Court. This does not give those respondents who are opposed to a Housing Court the opportunity to explain why.

HLPA's concerns about a Housing Court are set out above under general comments.

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. As set out above, HLPA would welcome amendments to the jurisdiction of the County Court and Property Tribunal to allow matters which fall within the jurisdiction of the latter to be raised as a defence or counterclaim in the former and vice versa (provided that legal aid and inter partes costs were then made available for those matters in the Tribunal).

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

No, save for response to question 28.

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.

See general comments.

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

See response to question 28 and general comments.

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.

See response to question 28 and general comments.

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. See general comments.

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. Any structural changes which removed or decreased the ability of tenants to be represented (by, for example, limiting legal aid or the recoverability of inter partes costs) would have serious implications under the Equality Act 2010. Certain groups with protected characteristics, such as people with disabilities, are less able to represent themselves, and would therefore be at a greater disadvantage if they were without legal representation. Similarly, any structural changes which (further) reduced the number of venues would have adverse implications for the disabled, pregnant women, and women with children, both of whom will struggle to travel long distances to court.

<u>About you</u>

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

On behalf of an organisation.

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

N/A.

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.

Other: see *"About HLPA"* section above.

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

See above.

20 January 2019