

Scottish Civil Courts Review: A Consultation Paper – SCSH Response

Introduction and Format of Response

The Scottish Council for Single Homeless (SCSH) is the national membership body in Scotland for organisations and individuals tackling homelessness. Our members include voluntary sector providers, housing associations, local authorities (LAs), academics and other professionals involved in homelessness prevention and alleviation.

SCSH is grateful for the opportunity to comment on the Scottish Civil Courts Review: A Consultation Paper. Rather than using the set questionnaire template, we have commented on sections of the paper relevant to our organisation's concerns which are outlined below.

Accessibility and Costs

SCSH is concerned that people on low (or no) incomes can access suitable advocacy and justice. As a result of the 'income qualifications' which exist around legal aid, those who are working but are not 'well' paid can often find accessing appropriate legal redress (and the use of the court system) far too expensive. For example, someone who becomes homeless due to avoiding their abusive partner is very unlikely to have the funds available to access civil courts to seek protective orders.

SCSH is also aware of situations where individuals cannot access the appropriate avenues of legal redress due to the lack of specialist help/expertise (i.e. legal aid practices and solicitors) being available locally. It is important that the necessary legal support is accessible for those in more rural areas and not just in the main cities.

Time and Resolution of Dispute

SCSH is aware that in some circumstances the individual must wait an extraordinary amount of time for an individual case to achieve final resolution. Any changes that are to be made to the processing of cases through the civil courts, following this review, should seek to ensure that they reach a final decision on the outcome much faster than before. Delays in reaching decisions can lead individuals to abandoning their cases, and knowledge of this, can put off other deserving individuals from using the civil courts process.

Eviction and Rent Arrears

SCSH would support the Legal Services Agency proposals to ban cases for eviction from properties if the rent arrears are less than £1000. With these cases taking up approximately one quarter of the workload of civil courts, SCSH believes there would be more appropriate alternatives to deal with these cases such as the using an expanded version of the Private Rented Housing Panel (PRHP) or a housing tribunal.

In general the courts should not be used as a means of small debt control, but be reserved for the more significant cases. Landlords should be required to prove that they have exhausted means of engaging with tenants to control debt before lodging such cases in court.

Mechanisms to Provide Advocacy

During the passage of the Housing (Scotland) Act 2006, SCSH along with other key housing and homelessness organisations campaigned for the introduction of an expanded PRHP which would deal with disputes relating to ‘management’ aspects of a private rented housing tenancy. Currently, the PRHP only resolves disputes pertaining to the physical standards of the property (outlined in the Repairing Standard provisions of the Act) and does not deal with any disputes relating to management practices of the tenancy.

SCSH believes that an expanded PRHP would provide an ideal mechanism to manage disputes over tenancy evictions, rights and practices in relation to the private rented sector. This would avoid overloading the civil courts with largely inconsequential tenancy concerns and could deliver a much more efficient, fairer and ‘personal’ approach to dealing with tenants problems. An expanded PRHP could be set up to avoid the costs for those seeking legal redress on low incomes and would potentially offer better access to the more vulnerable people in society. The PRHP currently deals with disputes via a Committee (PRHC) but such dispute resolution processes could be backed up by mediation – if it is deemed necessary.

SCSH understands, however, that the expanded PRHP would need to be accessible for those living in both rural and urban areas. It would also need to ensure that where cases cannot be resolved through the PRHC and mediation, individuals would still have access to civil courts and any specialist help through sheriffs trained in aspects of housing law.

SCSH is happy to elaborate on any of the points raised and are happy for the contents of this report to be made publicly available.

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