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Local Government

A qualitative research investigation of the factors influencing the progress, timescales and outcomes of housing cases in county courts

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Burns and Company Ltd

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The findings and recommendations in this report are those of the authors and do not necessarily represent the views of the Ministry of Housing Communities and Local Government. Nor are they a statement of policy.

Contents

1 Executive Summary

1.1 Background 4

1.2 Private landlord housing possession cases in county courts 5

1.3 Non-possession housing cases 7

2 Introduction 9

2.1 Background 9

2.2 Research objectives 10

2.3 Methodology and sample 11

3 Findings for Objective 1 – private landlord possession cases 14

3.1. Context: Motivations and perceptions of private landlords and tenants 14

3.2 Factors influencing the timeliness of accelerated possession cases in county courts 20

3.3 Factors influencing the timeliness of other private landlord possession cases in county courts 32

4 Findings for Objective 2 - non-possession cases 42

4.1 Context for non-possession claims 42

4.2 Factors influencing the progress of non-possession cases in county courts 45

4.3 Perceptions of the First Tier Tribunal (Property Chamber) 52

5 Conclusions 55

5.1 Conclusions for Objective 1 – Private landlord possession claims 55

5.2 Conclusions for Objective 2 – Non-possession cases 59

5.3 Summary of the conclusions 62

6 Appendix A: Discussion guide 64

1 Executive Summary

1.1 Background and objectives

1.1.1 In October 2017, the Secretary of State for Housing, Communities and Local Government announced a package of measures intended to address ministerial priorities in the private rented sector (PRS): namely, to improve consumer rights for private tenants, and to remove potential barriers to landlords granting longer tenancies.

1.1.2 This report outlines the findings of a qualitative research study that was undertaken in order to understand tenants' and landlords' experience of the county courts and First Tier Tribunal (Property Chamber) and to identify issues that may be deterring them from exercising their rights effectively. The research consisted of individual depth interviews with stakeholders from the judiciary, legal profession, advice providers, legal aid/pro bono providers, landlord representatives and tenant representatives and individual private landlord and tenant interviews.

1.1.3 These two key objectives were to investigate the factors influencing timescales for private landlord possession cases in the county courts, and to explore the factors influencing timescales, accessibility and ease of use in non-possession housing cases in the county courts and the First Tier Tribunal (Property Chamber) (FTT).

1.1.4 It should be noted that the processes involved differ by the types of case. Possession related cases will have set stages and timescales, whereas non-possession/FTT cases will be determined in the same way as any other cases coming to the county court or tribunal.

1.2 Private landlord housing possession cases in county courts

1.2.1 Accelerated possession

1.2.1.1 Some landlords reported that they prefer to use the 'no fault' Section 21 (S.21) / accelerated possession process to regain possession rather than Section 8 (S.8), even if there are sufficient grounds, such as rent arrears, for using the latter.[1]

[1] See https://www.gov.uk/evicting-tenants for background, or the Housing Act 1988 https://www.legislation.gov.uk/ukpga/1988/50/contents

Accelerated possession appears to operate relatively well, at least up to 'possession order' stage. From claim to possession order stage, it offers a streamlined process designed for possession cases. Ministry of Justice (MoJ) statistics support this, with the median average duration being 5.3 weeks from claim to order in Q1 2018.[2]

1.2.1.2 Nevertheless, some landlords perceive it to take too long to get to possession order stage because even if landlords use a S.21 notice, there is often an underlying reason for wanting possession (such as rent arrears, damage, or anti-social behaviour (ASB)). Landlords may have taken legal action only after a period of trying to sort the problem out informally. However, landlords also make errors in the application, leading to cases being delayed. Mistakes have become more common because of the need to demonstrate compliance with tenant protection regulations (e.g. regarding deposit protection and gas safety).

1.2.1.3 Another perceived 'delay' factor was the advice and involvement of tenant support services. Most claims proceed without a response from tenants. However, if tenants receive advice at an early enough stage, the complexity of the application gives more scope for tenants and advisors to challenge the facts of a claim. If issues are raised regarding the application, this prompts judges to list cases for a hearing rather than making decisions based on the paperwork.

1.2.1.4 Finally, our research found some backlogs and bottlenecks in court administrative procedures. Some stakeholders believed that the pressure on court resources caused by lack of staff, closure of courts, a high workload and outdated IT led to delays in processing paperwork.

1.2.2 Other private landlord possession cases

1.2.2.1 Other private landlord possession cases that require a hearing also operate reasonably well up to possession order stage. However, there can be considerable variations in the workload by area, as cases must be dealt with locally. In uncontested cases, landlords can feel frustrated that they have waited 6 to 8 weeks for a hearing unnecessarily. They feel that 'undefended' claims could be screened out earlier and dealt with more promptly. Landlords also expressed concerns that further delays arise if the issues cannot be resolved at first hearing if the tenant produces a defence (perhaps at the last minute, in the hearing). A second hearing can also result from mistakes in the initial application by the landlord (which judges report is common) or where litigants in person have

[2] Ministry of Justice (MOJ) Mortgage and Landlord possession statistics are published quarterly. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705598/mortgage-landlord-possession-statistics-jan-mar-2018.pdf
Some caution should be exercised regarding the 5.3 weeks figure as it may include some social landlords.

not provided the necessary information in the right way. In these cases, judges adjourn with directions for another hearing which could be 4 to 6 weeks away

1.2.3 Enforcement

1.2.3.1 The main delays in the process relate to enforcement. MoJ statistics (Q1 2018) support this view, showing that from the possession order being granted, it takes a further 10 weeks to gain possession, with 6.8 of these weeks coming after the issuing of the warrant.[3] For accelerated possession cases, the wait is longer, with 8 weeks (median average) between warrant and possession.

1.2.3.2 The reasons for these delays include some non-professional landlords being slow to understand that they need to apply for a warrant, and a lack of court resources, specifically a lack of bailiffs to handle the workload. It also appears that some Local Authorities (LAs) have been advising tenants to stay in the property until the bailiffs arrive. This encourages tenants to ignore the proceedings and forces landlords to take enforcement action.

1.3 Non-possession housing cases

1.3.1 Perceptions of non-possession cases in county courts

1.3.1.1 There are considerable barriers to tenants taking legal action against landlords. These include lack of knowledge and understanding about the legal options available, fear of having to attend court, limited access to legal advice and support, fears of the costs of taking legal action, the limited availability of Legal Aid or pro bono providers, and the reluctance of Legal Aid firms to take on cases if they are not confident of recovering costs. Tenants can also be inhibited by fears of the landlord's reaction, especially if they want to continue living in the property. There was some evidence of retaliatory eviction in the sample for this study. Current protection against retaliatory eviction does not seem to be effective because it relies on action by the Local Authority.

1.3.1.2 Some stakeholders commented that some judges in county courts lacked 'specialist' experience of housing cases. Legal representatives found that, occasionally, they needed to explain the legal position to judges, particularly newer deputy district judges who, perhaps, had specialised in other areas of law.

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[3] MOJ Mortgage and Landlord possession statistics: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705598/mortgage-landlord-possession-statistics-jan-mar-2018.pdf

These stakeholders felt that county court judgments were sometimes inconsistent as a result.

1.3.1.3 Where cases are pursued, tenants tend to be supported and funded by legal support services. As a result, actions are more likely to be against large social landlords (who are more likely to be able to pay up, if compensation is agreed), or large private landlords with significant assets, rather than small private landlords. Commonly, non-possession claims are made as counter claims in a possession case, to offset rent arrears or challenge possession orders.

1.3.1.4 When there are proceedings, these are handled in the same way as other county court litigation. Unlike possession, these cases are not always treated with a 'special' track or priority time limits. The overall perception was that 'non-possession' cases can take 9 to 12 months – rather longer than possession cases. However, this is a function of the litigation process with its rigorous evidence requirements, the need to examine cases from both sides, and the need for time to prepare cases. Legal professionals felt that they would usually need a minimum of 5 to 6 months from claim to hearing just to have time to prepare the evidence and witness statements.

1.3.1.5 Stakeholders also claimed that changes to Legal Aid mean that disrepair cases are harder for tenants to bring to court. Solicitors are reluctant to take such cases on unless they are confident of being able to recover costs against the landlord.

1.3.2 Perceptions of the First Tier Tribunal (Property Chamber)

1.3.2.1 The First Tier Tribunal (Property Chamber) (FTT) was very well regarded by stakeholders and users. It was seen as relatively quick and efficient, with good case management procedures. Users praised the accessibility provided through named case managers, as well as efficient email and telephone communications. Users appreciated the relatively informal approach used in tribunals, which was found helpful for litigants in person. A key perceived benefit of the tribunal was the practice of having independent experts (e.g. surveyors) on the panel, which reduces the need for expert witnesses. Tribunal judges were perceived as specialists who can understand the complex technical issues that come before them. The 'front loaded' evidence procedures mean that decisions tend to be made at the first hearing, which reduces timescales for delivering decisions.

2 Introduction

2.1 Background

2.1.1 In October 2017, the Secretary of State for Housing, Communities and Local Government announced a package of measures intended to address ministerial priorities in the private rented sector (PRS): namely, to improve consumer rights for private tenants, and to remove potential barriers to landlords granting longer tenancies. One of the proposed measures was the development of a specialist Housing Court which, it was intended, would, amongst other benefits, lead to a more efficient and timely process by which landlords could recover possession and tenants could enforce their rights.

2.1.2 In order to ensure that any potential Housing Court policy delivers the required improvements, the Ministry of Housing, Communities and Local Government (MHCLG) worked with the Ministry of Justice (MoJ) and HM Courts and Tribunals Service (HMCTS) to develop the evidence base. As attention had been drawn by some stakeholders to the time it takes for private landlords to recover possession through the county courts, the factors influencing the timescales for private landlord possession cases were of particular interest.

2.1.3 In order to understand these issues and inform their thinking on next steps, the Housing Court Project Board commissioned a qualitative research study from Burns & Company. The overall purpose was to understand tenants' and landlords' experience of housing cases in the county court and First Tier Tribunal (Property Chamber) and to identify issues that may be deterring tenants and landlords from exercising their rights effectively in either system.

2.2 Research objectives

2.2.1 The project brief was to understand user experiences and outcomes of housing cases in the courts and tribunals and the reasons for perceived delays. There were two main objectives for the research:

2.2.2 Objective 1: (for the private rented sector only):

I. To investigate users' experiences of and satisfaction with the time it takes to initiate, progress and conclude housing possession cases in the county court;

II. To identify whether the drivers behind timelines are primarily due to the operation of the court or other reasons such as landlord behaviour (whether intentional or otherwise);

III. To understand the additional time taken to deal with issues arising in possession cases.

2.2.3 Objective 2: (for private and social rented sectors):

I. To explore the factors influencing timescales, accessibility and ease of use in non-possession housing cases in the county courts and the First Tier Tribunal (Property Chamber) (FTT);

II. To establish whether there are issues around speed, accessibility, and ease of use in other (non-possession) housing cases in the county court;

III. To understand what types of housing cases may be affected;

IV. To establish evidence on the impact of these issues for tenants and landlords, including understanding users' experiences of such cases, and whether satisfactory outcomes are being reached;

V. To understand whether these issues are less prevalent in the First Tier Tribunal (Property Chamber).

2.2.4 The kinds of cases considered in this objective included:

i) (In the courts) claims for compensation for unprotected or non-returned deposits, harassment, unlawful eviction, disrepair and other tenancy breaches;

ii) and (in the tribunals) cases relating to service charges, appointment of new managers, and enforcement of minimum housing standards.

2.3 Methodology and sample

2.3.1 Overview

2.3.1.1 The qualitative research was conducted by Alastair Burns and Teresa Hadfield of Burns & Company across England during June and July 2018. The fieldwork consisted of two main components:

- Individual interviews with stakeholders

- Individual interviews with landlords and tenants.

2.3.2 Stakeholder interviews

2.3.2.1 Qualitative individual depth interviews were conducted with 23 stakeholders identified by MHCLG as having a view on the process of housing-related court and tribunal cases. This included members of the judiciary, the legal profession, advice providers, legal aid providers, pro bono providers, landlord representatives and tenant representatives. Twelve of these interviews were conducted face to face and lasted 60 minutes. The remainder were conducted by telephone and lasted 40 – 60 minutes.

2.3.2.2 Discussion guides were developed for these interviews, covering the two objectives. Some of these interviews led with views on private landlord possession cases, others (as appropriate to the stakeholder's interest area) mainly addressed non-possession cases.

2.3.2.3 The sampling and recruitment processes were as follows. MHCLG identified a mix of stakeholders to represent a wide range of views on the topic. These were drawn from across the judiciary, the legal profession, advice providers, legal aid and pro bono legal providers, national and regional landlord representative organisations, national and local tenant representative organisations and charities. Stakeholders were approached by MHCLG to ascertain their willingness to participate and to obtain permission to pass on their contact details. Once stakeholders had confirmed their willingness, these details were passed to the research agency. Burns & Company then selected which to contact using guidance on prioritisation provided by MHCLG. Those selected were contacted to arrange face to face or telephone interviews. The face to face stakeholder interviews took place in the London area. Telephone interviews were conducted with stakeholders in London, Birmingham, Nottingham, Manchester, Brighton, Liverpool, Sheffield and Bristol.

2.3.2.4 Where possible, verbatim quotes have been attributed to a broad category of stakeholder. These are 'tenant representatives' (which includes advice providers), 'landlord representatives', and 'legal professionals'. There were overlaps: tenant representatives may also be legal advisors. Locations have not been given for stakeholder interviews in order to preserve anonymity.

2.3.3 Landlord and tenant interviews

2.3.3.1 In total, there were 16 individual depth interviews lasting 40 – 60 minutes with landlords and tenants, of which 4 were conducted by telephone and 12 were face

to face. These interviews were split as follows:

- For ‘objective 1’ interviews took place with four private landlords and four private rental tenants who had had recent (in the last 2 years) experience of a housing possession case in the county courts.

- For ‘objective 2’ interviews took place with four private landlords and four rental tenants (from a mix of private and social housing). All were recruited to have experience of ‘non-possession’ housing cases in the county courts.

2.3.3.2 Landlords and tenants were ‘free found’ by a specialist qualitative research recruitment agency to a specification provided by Burns & Company. Consumer research respondent online panels were used to find private landlords and tenants who had recent experience of housing cases in the county courts. Given the sensitivity of the subject, the approach used was to put out a message on the online research panel asking landlords and tenants with relevant experience to get in touch and provide their contact details, if they were interested in participating. Those that came forward were then contacted by the recruitment agency who used a screening questionnaire to ascertain whether the candidate met the criteria for participation. If so, they were recruited to attend a face to face depth interview or telephone depth interview, as required to meet the target sample design. Face to face depth interviews were conducted in London and Manchester. Telephone interviews were drawn from the Birmingham area.

2.3.3.3 Interviews were conducted using discussion guides with standardised questions designed specifically to be relevant to each interviewee group to explore their experiences of the housing possession and ‘non-possession’ cases in the county courts. Permission was sought to digitally record all interviews for post-interview transcription to ensure data was captured exactly, in line with best practice.

2.3.4 Qualitative Analysis

2.3.4.1 The qualitative data collected was analysed using a framework methodology. This is a systematic approach to managing and analysing qualitative data. Data from each respondent is classified, organised and structurally analysed by theme. This approach enables researchers to draw out a range of experiences and views and identify the common themes and differences across respondents.

2.3.4.2 Emerging themes were initially identified through regular researcher debrief sessions. These were structured around the objectives of the research and themes were refined and further developed following the review of interview transcriptions. The themes identified through both the debrief sessions and transcript reviews were used to develop a thematic framework and interrogated

by both the theme of interest and participant profiles (e.g. landlord or tenant). This framework evolved in line with the data being reviewed in the debrief sessions. The analysis of the qualitative data sought to compare and contrast the experiences of the housing courts for both possession and ‘non-possession’ cases for stakeholders, landlords and tenants.

3 Findings for Objective 1- private landlord possession cases

3.1 Context: Motivations and perceptions of private landlords and tenants.

3.1.1 Private landlords

3.1.1.1 Before examining the process of taking cases through the courts, it is worth noting that landlords' attitudes to gaining possession and to the court process can be influenced by factors that take effect well before they make an application to court.

3.1.1.2 As a general point, private landlords claimed that – in an ideal world - they hoped to have good tenants who stay for longer periods because this reduces their costs and the hassle associated with changes of tenancy. In principle, provided that the tenants pay the agreed rent and respect the property and neighbours, they were open to the idea of longer tenancies as being mutually beneficial.

3.1.1.3 Private landlords also felt that, where they did seek to recover possession, there was a reason: usually, they argued, something has gone wrong, such as rent arrears, irregular payment, anti-social behaviour (ASB), or tenants failing to look after the property and otherwise breaching the tenancy agreement.

"It's not the case that landlords are jumping to possession for no reason or just to put up rent. There usually is a reason. In 8/10 cases, it's because of rent arrears, or ASB, or they want to sell the property." (Landlord representative stakeholder)

3.1.1.4 Stakeholders and tenants mentioned other reasons that, in their experience, prompt private landlords to seek possession:

- the landlord may wish to sell or redevelop/upgrade the property;
- landlords may want to live there themselves (e.g. where they have rented the property out whilst working abroad);
- in some cases, there may be a desire to re-market the property for a higher rent;

- and, at the lower end of the market, there was some evidence amongst our small sample of tenants of 'retaliatory eviction'. Some tenants felt that their landlord had started possession proceedings because they had complained about dilapidation or the need for repairs.

3.1.1.5 On the private landlord's part, the decision to seek possession may come after a protracted period of trying to 'sort it out' informally by other means. This might involve communicating with the tenant in an effort to get them to pay the rent or amend their behaviour. Therefore, in the landlord's eyes, the situation may already have been going on for some time before making a possession claim and, often, rent arrears were mounting up. In addition, landlords (particularly non-professional landlords) were reluctant to resort to the legal process, in part because of the expected cost and hassle.

"Landlords are reticent about going to court. It's costly and uncertain" (Landlord representative stakeholder).

"You don't want to do it" (Private Landlord, Midlands).

"You don't want to go to court because it's hard to find good tenants" (Private Landlord, Midlands).

3.1.1.6 Levels of knowledge and understanding of the requirements for gaining possession varied greatly amongst landlords. The more experienced and professional private landlords were better informed about the options open to them and they may well have experience of similar cases. Therefore, they understood the process better and were better prepared to act promptly.

3.1.1.7 However, many private landlords are relatively inexperienced non-professionals, with a small portfolio. For some, problems with tenants may be a new situation for them. They may not be knowledgeable about what to do, so it takes considerable time and effort to seek advice and research the options available. This can lead to considerable delay before they act, during which time the problem may have got worse and the arrears have mounted alarmingly.

3.1.2 Private tenants

3.1.2.1 For private tenants faced with possession proceedings, this can be a very stressful and anxious time.

"It was quite traumatic…There was a knock at the door and it was one of the secretaries from the Landlord. She actually handed me a section 21 and that's when I panicked" (Tenant, Midlands).

3.1.2.2 Many tenants leave when given notice but, if they do not, there is usually an underlying reason, often related to the reason the landlord is seeking possession. This includes:

- the tenant having no money, therefore no flexibility to rent elsewhere;
- the tenant's lack of confidence that they will find somewhere else to live (for example because of a lack of available social housing);
- the tenant might be going through a personal crisis;
- the tenant may feel their situation is a temporary but surmountable problem (for example, a temporary issue with Universal Credit payments, which should get sorted out);
- they may feel aggrieved against the landlord for seeking possession (for example, if they feel the landlord is doing this in retaliation for the tenant making a complaint).

"I told the landlord that I was under the doctor for depression, but they said they'd had tenants who had committed suicide, so it didn't really matter – it really made me bad" (Tenant, North West).

"They didn't say why it was. I think it was because I'd been in contact with a solicitor about the disrepair in the property and I was refusing to pay any more rent until the damp was sorted" (Tenant, Midlands).

"I just wanted to make it as hard for him as possible because of the way he had treated me" (Tenant, South).

3.1.2.3 Some tenants reported that it was a shock to receive court papers, which they felt had arrived 'out of the blue'. Tenant representative stakeholders explained that this can be because tenants have not understood the significance of earlier correspondence informing them of the landlord's intentions, or because they may have buried their heads in the sand and hoped it would be sorted out. In addition, there was some confusion in tenants' minds about the nature of the cases: some did not seem to distinguish between the civil and criminal courts (e.g. referring to the court papers as "I received a court summons').

3.1.2.4 In our sample, tenants receiving notice of possession proceedings were not – at that point - knowledgeable and informed about their rights and what to do. They felt that they received little or no information with the court papers to help them understand what they should do. Tenant representative stakeholders also explained that, in their experience, many tenants assume that 'what the landlord says, goes' and that they do not expect to be able to challenge it. Some stakeholders felt that it would be helpful if more information was provided with court papers, to guide tenants and landlords on next steps.

3.1.2.5 For tenants who were concerned about finding somewhere to live if they were evicted, the first port of call tended to be their Local Authority, as a potential provider of alternative social housing. However, tenants and stakeholders in our sample commented that, at this early stage in the eviction process, Local Authorities sometimes adopted a non-active, holding position. Their role was mainly to signpost tenants to other organisations that might provide advice, such as Citizen's Advice, Shelter, local charities, or Legal Aid firms.

3.1.2.6 Tenants, landlords and stakeholders also claimed that many Local Authorities try to forestall and delay evictions because of the pressure on their resources and the lack of alternative social housing. Tenants were advised to stay put until they have been issued with an eviction warrant or, even, until the bailiffs arrive. The reason given to tenants was that, if they leave before they are forced to, they will be regarded as 'voluntarily homeless' and, therefore, will not be given priority. This approach by Local Authorities has incentivised tenants to ignore court proceedings and forced landlords to follow through the enforcement process (even if the tenant would prefer to move out well before this stage).

The council said, "it's only a section 21…there's loads of time yet" (Tenant, North West).

"They (Local Authority Housing) wouldn't help me until I got the eviction notice" (Tenant, Midlands).

3.1.2.7 Some Local Authorities have taken this approach in the past because of the pressure on them to find housing and the lack of available social housing to meet demand. Therefore, speeding up the possession enforcement process may have the unintended consequence of exacerbating the difficulties Local Authorities face in preventing homelessness. However, the Homelessness Reduction Act, which came into force in April 2018, will to some extent address this issue: Local Authorities should be able to intervene earlier to support tenants threatened with homelessness. This should mean that, in future, Local Authorities will no longer advise tenants to stay as long as possible

3.1.2.8 Tenants in this situation find that other sources of tailored advice and help are hard to come by. The advice providers (such as Citizen's Advice and Shelter) are overburdened with work, which can result in long queues to be seen. Tenants seeking advice may have to take time off work, or find carers for children, which can be a challenge and an expense. Legal advice organisations have to be selective about what cases they take on, because of their limited capacity and the constraints of Legal Aid provision. Advice services cannot help all who ask for it.

"Advice is hard to get. There are only two organisations in X that do it. We have to turn 75% away because we don't have the capacity to see them" (Tenant representative stakeholder).

"I had to miss a couple of days off work to do that (see the advice service). So, you're out of pocket in other ways then" (Tenant, Midlands).

3.1.2.9 In this context, internet-based advice is the crucial fall back. Tenants and landlords valued the guidance and information provided on websites such as those of Shelter, gov.uk and Citizen's Advice. However, 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.

3.1.2.10 In the absence of advice or support, many tenants do nothing. Stakeholders found that, in their experience, in most cases, the tenants do not submit a defence or attend the hearing. Many 'bury their head in the sand' and hope that their situation will 'get sorted out'. Only the most determined (and perhaps the most annoyed or aggrieved) challenge the proceedings.

3.1.2.11 In practice, few tenants have easy access to advice and legal input. Tenants may therefore not be aware until late in the process that there is any way to challenge possession or put in a defence. In cases where there is a court hearing, the tenant's first access to advice can be the duty solicitor in court (if one is available). Duty solicitors provide a vital back stop but, if their first encounter with the tenant is immediately prior to a hearing, they have little time to consider the case and assess whether there are grounds for a challenge. The default, therefore, can be to seek adjournment to prepare a defence. However, in 'accelerated' claims, there is usually no hearing and so this opportunity for interaction with a duty solicitor does not arise.

"It may be the first time they get advice, when they turn up at court" (Tenant representative stakeholder).

"The client usually doesn't seek or get help before the hearing. It's the first opportunity to get help, so it's unrealistic to expect them to respond before the hearing" (Tenant representative stakeholder).

"Duty solicitors are vital. If we didn't have duty solicitors, we couldn't deal with the cases in 5 to 10 minutes" (Legal professional stakeholder).

3.1.2.12 There is a need to signpost advice and legal help at an early stage of the process, to inform tenants and landlords of their rights and how to access advice

and help.

"This will speed up the process and ensure that people can enforce their rights" (Tenant representative stakeholder).

"Early advice is hugely important. We don't want the courts clogged up with cases where things have gone wrong or parties didn't have access to proper advice" (Legal professional stakeholder).

3.1.3 Perceptions of timescales

3.1.3.1 There was some disparity in the views on timescales for possession cases between the 'legal professionals' who work in the court system and the 'claimants' (i.e. private landlords). Perceptions depended in part on the reference point. Those (such as lawyers, judges and housing specialists) with wide experience of different types of court case understood how long the legal process can take. In the context of the wider legal system and an understanding of court procedures, the timescales for housing cases do not seem unusually long.

"There aren't really any delays in the court process. There isn't a problem" (Legal professional stakeholder).

"This is more a perception than a reality" (Legal professional stakeholder).

"There is a perceived issue of timeliness. There is room for improvement, but it's a non-issue. Overall, the system works well" (Legal professional stakeholder).

3.1.3.2 However, those with little or no experience of court cases (such as non-professional private landlords and tenants) have no such reference points. They expect matters to proceed more quickly and are dismayed at how long the process takes, with periods when apparently nothing seems to be happening and they get little information.

"It's very cumbersome. It doesn't help anyone" (Landlord, South).

"Landlords' experience is that it's a long drawn out process that could take six to eight months" (Landlord representative stakeholder).

"It takes too long to get a hearing" (Landlord representative stakeholder).

"We thought it would take about a month to get him out because he paid the rent

on a monthly basis" (Landlord, North West).

3.1.3.3 Added to this, as already described, time is money to landlords. If they are seeking possession because of rent arrears (whether using this as grounds or not), these have already built up before they decide to act. The possession process means that arrears mount up even more (well beyond the 2 months required for mandatory possession under Section 8). In their eyes, the perceived slowness of the court system costs them more money and makes it less likely that the tenant will be able to clear their debt. This adds to their disgruntlement with the court system, even if it is running as smoothly as it can.

"It's about loss of rent, more than time. If it takes a long time to sort out, the tenant isn't paying rent, and the arrears quickly mount up" (Landlord, South).

"With tenants, you have rent arrears for 8 weeks, then you can take them to court – which is far too long" (Landlord, Midlands).

3.2 Factors influencing the timeliness of accelerated possession cases in county courts

3.2.1 Motivations for using accelerated possession

3.2.1.1 Private landlords who decide to seek possession choose the route that they perceive to be the quickest, easiest, cheapest, and most certain. For this reason, the Section 21 / accelerated possession route is preferred by many private landlords, even if they have grounds for seeking mandatory possession using Section 8 (S.8), such as 2 months' rent arrears. Indeed, it seems that landlords are often advised to use this option rather than S.8 by legal advisors and others, despite the requirement to give 2 months' notice to tenants, as opposed to the 2 weeks' notice required for a S.8 claim. This also means that, if there are rent arrears, these cannot be claimed by this route. However, landlords and stakeholders reported that most landlords take the view that the main priority is to gain possession, to minimise rent losses or damage or disturbance to neighbours. Landlords are also advised that the chances of recouping rent arrears and costs from tenants without money are in any case minimal.

"Ideally they should use Section 8, but we advise them to use Section 21 in case the tenant turns up with some rent" (Landlord representative stakeholder).

"Mostly, landlords use accelerated procedure not Section 8 because they don't have to prove anything and there's less paperwork" (Legal professional

stakeholder).

3.2.1.2 S.21 / accelerated possession was preferred for several reasons:

- it appeals to landlords because there should be no need to appear in court;
- landlords believe a paper exercise should be relatively simple and straightforward, so they should be able to carry it out themselves, without a legal representative;
- therefore, they expect this to be a cheaper option (in terms of legal advice, if not court fees);
- they also expect it to be simpler and easier, because no evidence of fault required;
- as it is 'mandatory', this means that it should be a more certain route to possession and hard for tenants to defend. The District Judge has no discretion, if the conditions are met, so there is more <u>certainty</u> of possession at the end of it (if they tick the boxes);
- they expected it to be quicker, because no hearing is required, and, after all, it is called 'accelerated'.

"Section 21 is being used in lieu of Section 8 because of the length of time it takes to get possession" (Landlord representative stakeholder).

3.2.1.3 As a result, stakeholders felt that s.21/accelerated possession has become a 'catch all', used by private landlords even if they could use s.8 grounds. This disguises fact there is usually an underlying reason for seeking possession (such as rent arrears, ASB etc):

"Section 21 seems to be no fault, but there's usually a reason" (Landlord representative stakeholder).

"Section 21 is often used for possession because the landlord doesn't want a court hearing" (Landlord, South).

"Landlords use s.21 because it's quicker and cheaper and because no representation is needed. There's one fee to pay and they get their property back. What's not to like?" (Tenant representative stakeholder).

"It's more certain for the landlord" (Legal professional stakeholder).

"Section 21 because I just wanted her out" (Landlord, North West).

3.2.1.4 Some private landlords will make a separate claim for the money, but with low expectations of being able to recoup their losses. They are advised that money claims are rarely successful against tenants who do not pay. This feeds the tendency to use s.21 if possible, rather than face the additional time and cost of using s.8 or a money claim.

"Usually landlords use Section 21 because there's no prospect of getting back their arrears. It's a more realistic view" (Legal professional stakeholder).

3.2.2 Timescales to Possession Order stage in accelerated possession

3.2.2.1 In many cases, s.21 /accelerated possession claims appear to proceed smoothly for private landlords. Participants reported that courts and judges give possession cases priority in their box work and a Possession Order is normally granted promptly, with 14 days' notice given to the tenant to leave. This means that a private landlord could have a Possession Order in 4 to 6 weeks of making a claim.

"The process is as quick as it can be. The tenant has to have time to make representations" (Landlord, South).

"They are given priority by the county court, so there's no delay in that at all" (Tenant representative stakeholder).

"It's always dealt with as an urgent matter because of the Civil Procedure Rules (CPR) timeframe" (Legal professional stakeholder).

"There aren't any delays in the court process, there isn't a problem" (Legal professional stakeholder).

"It works quite efficiently, in the main" (Legal professional stakeholder).

3.2.2.2 The MoJ statistics suggest that the median average timescale from claim to order for accelerated possession (1st Q 2018) was 5.3 weeks. This supports the view that this part of the process works well. These figures will largely reflect private landlord possessions as relatively few social landlords would use this s.21 /

accelerated route.[4]

3.2.2.3 Stakeholders believed that, in their experience, most tenants do not respond within the 14-day period allowed for representations after a claim has been submitted by the landlord. If the tenant seeks advice as soon as they receive the papers, advice providers may have the opportunity to look at their case. However, advice provider stakeholders believed that they do not see the bulk of s.21 / accelerated cases because they are conducted as paperwork exercises with no hearing.

"You look to see if a defence is filed by the tenant, but very few are defended at this stage" (Legal professional stakeholder).

"The problem with Section 21 is that tenants don't get any advice and have to file a defence in 14 days. If they are not advised, they just accept it and there's no hearing to sort it out" (Tenant representative stakeholder).

3.2.2.4 In some cases, if they are aware of the possibility or receive advice, tenants request a longer notice period because of 'exceptional hardship'. Judges have discretion to give a notice period between 14 to 42 days. Applications for extended notice for hardship do not delay the process unduly as such cases are listed for urgent short hearings, if possible within the 14-day notice period. It is unclear as to what proportion of accelerated cases are granted an extended notice period, as this will have an impact on the MoJ's statistics measuring the timescale between order and possession.

3.2.3 Factors influencing the timeliness of accelerated claims to Possession Order stage

3.2.3.1 Although interviewees said that courts give priority to accelerated possession cases, some landlords felt that the timescales are still rather long for an 'accelerated claim'. This is because, in some cases, there can be considerable delays caused by several factors – some to do with the court process, some to do with tenants, and some to do with landlords.

3.2.3.2 Part of the issue is that, even though a 'no fault' procedure is being used, the

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[4] The latest information on housing possession cases can be found in the MoJ statistical bulletin: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705598/mortgage-landlord-possession-statistics-jan-mar-2018.pdf

possession claim may in fact be prompted by rent arrears or other issues. The four to six-week timescale to receive a Possession Order may therefore come on top of two months' notice and possibly even longer arrears. It is the mounting cost, as much as the time that is landlords' concern.

"It's not accelerated, it's simplified" (Landlord, South).

3.2.3.3 Judges reported that 'accelerated' cases are often listed for a hearing or dismissed because landlords make errors in the application. Mistakes have become more common because of the need to demonstrate compliance with tenant protection regulations (such as valid s.21 service, deposit protection and gas safety) which makes the paper form more complicated, errors are more prevalent from inexperienced or unwary landlords (who may not have the requisite compliance documentation).

3.2.3.4 The accelerated procedure was expected by landlords to be a simple and straightforward paperwork exercise. As such, they felt that it should be something that they can complete themselves, without the expense of legal advisors. Therefore, non-professional landlords (or letting agents) attempt to make the application themselves, without taking legal advice, which makes mistakes more likely.

"The only problem is because landlords are not following the procedure. They should take legal advice at modest cost" (Legal professional stakeholder).

"A lot of landlords don't get it right. Sensible ones belong to an association and get advice, others are DIY amateurs who cock it up" (Landlord, South).

"The biggest problem is that private landlords get it wrong – and letting agents are no better" (Legal professional stakeholder).

But landlords felt frustrated that what, in their eyes, should be a simple and straightforward paperwork exercise, has become a more complex, time-consuming and perilous process that can lead to their possession claim being challenged or delayed on what they see as 'technical' grounds.

"The forms are very complicated….. It's easy to make mistakes, particularly amateur landlords doing it for the first time" (Legal professional stakeholder).

"Section 21 is supposed to be a formality, but the judge is questioning it. It's becoming less certain" (Landlord representative stakeholder).

"Section 21 should be clear. There shouldn't be all these deliberate hurdles." (Landlord, South).

"It's complicated. If you look on the internet to try and do it yourself it's daunting" (Landlord, North West).

"Just the documents alone! You think, oh my god, every little detail has got to be correct even down to your gas certificate" (Landlord, North West).

3.2.3.5 Stakeholders (and landlords) reported that some private landlords are deciding not to take deposits, to reduce the burden of compliance and the risk of being refused possession.

"A lot choose not to take a deposit now, so they don't have to protect them. Lots of landlords got hit because the regulations are so punitive" (Legal professional stakeholder).

3.2.3.6 As landlords become used to this new regime, the incidence of mistakes (or poor compliance with the regulations) should improve over time. However, a spike in rejected claims might be expected from October 2018 when deposit protection and other regulations are applied to older tenancies.

3.2.3.7 District Judges pick up these mistakes in their box work and reject the applications or list them for a hearing. This can create substantial delay in the process (from the landlords' point of view). If the application is dismissed, the landlord may have to start again, or use a different approach to obtaining possession. If the application is listed for a hearing, then this 'accelerated' case will be mixed in with 'normal' possession cases, on the same timescales as for possession cases based on fault grounds. This will have an impact on the MoJ's reported timescales for possession cases, however the data on what proportion of accelerated cases are dismissed or listed for hearings is not recorded.

"We have to dismiss claims because they are so wrong" (Legal professional stakeholder).

"Most District Judges have a red pen and see lots of mistakes and rejected forms" (Legal professional stakeholder).

"Cases are struck out because of the wrong paperwork or they failed to give proper notice and the landlord has to start again. If the landlord took the trouble to get it right in the first place, they are culpable for delays." (Legal professional stakeholder).

3.2.3.8 Stakeholders reported that a common mistake resulted from applications not being signed by a solicitor or landlord, but by an agent.

"The main reason for bouncing Section 21 applications is that they are not signed by a solicitor or landlord" (Legal professional stakeholder).

3.2.3.9 Another issue is the paper application form. Unlike the 'normal' application for possession on s.8 grounds, which can be completed online, the accelerated procedure requires a paper application. This takes longer to complete and is more complicated, harder to send and easier to get wrong than an online application (which would, for example, have automated edit checks to ensure that they have filled in all the relevant sections). Landlords and stakeholders felt that the process could be improved and streamlined by introducing an online application process. If this included checking software, this could also reduce the volume of mistakes.

"You have to fill in a paper form. They should change it to online. It's a waste of money and time" (Landlord, South).

"A lot could be done in perfecting the forms so that more can be done online. More user-friendly systems will lead to fewer mistakes and rejection on technical grounds" (Legal professional stakeholder)

3.2.3.10 Challenges to the accelerated possession claim. In some cases, the tenant may challenge the facts (for example by claiming that they did not receive the original s.21 notice). These cases will also be listed for a hearing along with other housing possession cases, which will result in timescales being as for the 'normal' possession track using Section 8 grounds.

3.2.3.11 Landlords are finding that the certainty of Section 21 / accelerated possession is being undermined because, in their view, the increase in regulations and requirements means that tenants (and their advisors) have more opportunities to challenge the application. This depends on whether the tenant receives advice on receiving a s.21 notice. Without advice, tenants are much less likely to be aware that they can challenge a s.21 notice. However, advice stakeholders reported that, if a case is referred to them, they now look to challenge accelerated possession claims by examining the s.21 notice and the application in great detail, because they sometimes find mistakes or issues that can lead to the application being dismissed or delayed.

3.2.3.12 This was another factor in landlords' perception that s.21 / accelerated possession has become less certain and less straightforward. They believed that it is being increasingly 'undermined' by challenges on technical grounds by

tenants and advice organisations.

"When the tenant goes to a law centre, they ask if the landlord took a deposit or is there any disrepair? That's why cases are disputed, and it can put it back for months" (Landlord, London).

"There are lots of organisations encouraging tenants to oppose a Section 21. If they had their way, landlords couldn't get possession at all." (Landlord, South).

"XXXX's job is to prevent possession and they'll ask if the landlord has evidence of the EPC, Gas Safety etc. If there's no evidence, they can't prove it, so what should be a legitimate Section 21 application is challenged" (Landlord representative stakeholder).

3.2.3.13 Delays to Possession Order stage for all types of possession claim can also be caused by backlogs and bottlenecks in court administration. The impact of funding and staff cuts on courts was a recurrent theme in this research. Stakeholders and landlords believed that court 'back offices' were over-burdened and under-resourced. They saw evidence of this in:

- The closure of courts;
- The restrictions of access to court offices, which have been closed to visitors without prior appointments;
- The difficulties experienced by court users in getting hold of court staff by phone or email;
- The outdated IT systems used by courts (or lack of IT);
- The perception that busy county courts had long backlogs in dealing with paperwork;
- Stories of paperwork going missing and not being available at hearings;
- Stories of mistakes in paperwork;
- Stories of delays in processing orders and notices, so that they can arrive after the deadlines set by the judge.

"Court administration has got worse. It's falling apart because of the staff cuts. They got rid of experienced staff and have agency staff, so court officers get things wrong in the paperwork and lose papers. It happens a lot. It's not all about procedures" (Tenant representative stakeholder).

“There are errors typing up orders, they aren’t quality controlled” (Landlord representative stakeholder).

“If I call X County Court, there’s a six-week delay in them opening the post, before they’ve even looked at what I’ve sent them, let alone have a judge look at it. If it’s a non-routine application, it’s even worse” (Landlord representative stakeholder).

“The judge gives a 14-day possession order, but when the 14 days are up, the court still hasn’t issued the order to the tenants. That doesn’t get done for 3 to 4 weeks” (Landlord, South).

“There’s a lack of staff and resources in courts. Orders might take a few days” (Legal professional stakeholder).

3.2.3.14 There was also a perception amongst some stakeholders that there were too few judges to cope with the volume of box work (although judges disagreed that this was an issue for accelerated possession).

“The complaint is that it takes too long even for accelerated claims. It’s purely a funding issue for the courts. It’s not a procedural glitch, there are not enough judges to do the box work” (Tenant representative stakeholder).

3.2.3.15 A general view of the timescales for possession cases is difficult to achieve because there are big regional variations between busy areas and the rest in terms of the volume of cases that need to be processed, leading to differences in the time taken to Possession Order stage.

3.2.3.16 Housing cases are unlike some other types of case in that they must be heard locally: tenants cannot be asked to travel long distances to court when they may have no money, no transport, find it difficult to get time off, or have childcare issues. Therefore, there is greater potential for variation between busy and less busy areas, because workload cannot easily be spread.

3.2.3.17 However, stakeholders reported that county courts do their best to flex their allocations to accommodate this variation. For example, busy courts put on extra ‘possession days’ if necessary to cope with demand. They also split out mortgage, private and social landlord possession lists to maximise the efficiency of dealing with these different types of case.

3.2.4 Issues with the timeliness of enforcement

3.2.4.1 Another factor in the timescales for private landlord possession is that less experienced landlords may not realise that, having received a Possession Order, they must apply for enforcement (once the 14 to 42-day notice has expired). Although the MoJ does not collect statistics to assess the extent of this as an issue, evidence from judges and other stakeholders suggests that this might be common for non-professional, private landlords.

"A common landlord error is that they have to apply for enforcement. It's not automatic. Some private landlords are not onto it that quickly, so there's a delay in requesting a warrant" (Legal professional stakeholder).

3.2.4.2 The report has so far described the process up to the granting (or not) of a Possession Order and Warrant. Although landlords would like it to be quicker and more efficient, and the many factors which can cause delay in some cases have been outlined, timescales up to this point were broadly acceptable (for most accelerated and other un-defended possession cases).

3.2.4.3 However, landlords and stakeholders argued that there can be major delays after a Possession Order has been granted, if landlords need to enforce possession. Having got a Possession Order, private landlords were frustrated that it can take so long to get actual possession. It does take longer, on average, to get possession after receiving a warrant than it does to get a Possession Order.[5]

3.2.4.4 Whilst this was unsatisfactory for landlords, the uncertainty of this period was also stressful for some tenants. They could find themselves in a 'limbo', unsure about how long they will be able to stay in the property and unable to resolve their subsequent housing situation (because Local Authorities have told them to stay until they are evicted).

"All they (the Local Authority) say to you is stay put until the bailiffs come…but when you've not been through anything like that before…it's awful" (Tenant, North West).

3.2.4.5 The key driver for these delays was the lack of availability of county court bailiffs. Stakeholders and landlords believed that there were too few bailiffs to handle the volume of work. Long waits were experienced in getting appointments, with landlords having to wait four to six weeks (sometimes even longer) before bailiffs can evict tenants.

[5] The MoJ statistics for mortgage and landlord possession support this: the median average time between warrant and possession for private landlord cases in Q1 2018 was 6.8 weeks (or 8.7 weeks for accelerated possession, but this will include some social landlords).

3.2.4.6 Stakeholders reported big differences between areas. In some areas (e.g. Nottingham) the timescales were shorter than in particularly busy regions such as London,West Midlands and North West, where the timescales can be particularly long.

3.2.4.7 Some stakeholders reported that the lack of availability of bailiffs can have a knock-on effect of delaying the issue of warrants. This is because the courts cannot issue a warrant until they have a date for the bailiffs to visit.

"There are dramatic variations in the availability of bailiffs. London is much worse – it's 10 weeks. There are only 4 bailiffs for the whole of London" (Landlord representative stakeholder).

"It's only 2-3 weeks in Nottingham. It's quite quick" (Tenant representative stakeholder).

"You wait 4 – 5 weeks for a bailiff currently. That's unacceptable." (Landlord, South).

"It takes a long time to get a warrant because of the lack of bailiffs. It can be 3 months to get an eviction date in Birmingham" (Tenant representative stakeholder).

"There's a chronic shortage of bailiffs. Waiting times are unacceptably long. That's down to the government and MoJ. If they wanted to tackle delays, they would invest in ensuring that there are enough bailiffs. That would reduce the waiting time for actual possession significantly" (Legal professional stakeholder).

3.2.4.8 Some stakeholders claimed that one effect of this delay is that more private landlords are seeking to transfer their cases to High Court and use High Court Enforcement Officers (HCEOs) to enforce their Possession Orders. Some are advised to do this by legal advisors (despite the additional cost involved). Landlords have to receive permission to do this from the District Judge. HCEOs were regarded as providing a more efficient, quicker service than county court bailiffs. Stakeholders attributed this to the fact that HCEOs are private sector bailiffs who are paid by the case and are therefore incentivised to act more quickly and efficiently. A case referred to HCEO's for enforcement could expect to have an eviction within 2 weeks. However, a major negative of this approach for tenants, and a primary reason for these requests being refused by judges, is that HCEOs do not give any notice. Their unexpected and unannounced arrival

and the resulting eviction can result in great distress.

3.2.4.9 The extent of this behaviour is unclear as MoJ statistics do not monitor it, but guidelines ask judges not to grant transfers to HCEOs. The district judges in this study's sample were clear that they refused such requests. However, being aware of long delays in the county court enforcement system, it seems that some are more willing to allow this.

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"We see a lot of requests for transferring to the High Court Enforcement Officers. We're wary about allowing that because they turn up unannounced. It's a real concern" (Legal professional stakeholder).

"Anything worth over £700 we would transfer to the High Court. It costs £60 extra, but at least they crack on with it. It's difficult to transfer possession to the High Court though" (Landlord representative stakeholder).

"Private landlords go to the High Court because Enforcement Officers are less busy. The cognoscenti make an immediate application for the High Court and won't use County Court bailiffs" (Landlord representative stakeholder).

"In my experience judges are happy to let that go on because they know their own county court bailiffs are rubbish. They know they shouldn't, but they do it because they know the delays are so great" (Legal professional stakeholder).

3.2.4.10 The delays in enforcement of Possession Orders are exacerbated by the approach adopted by some Local Authorities. Tenants are advised by Local Authorities (who might require their support with housing if made homeless) to stay until they receive an eviction warrant, or the bailiffs arrive, in order to avoid being classed as 'voluntarily / intentionally homeless'. However, it contributes to the long timescales for private landlords to regain possession because it encourages tenants to ignore court orders and forces landlords to take enforcement action.

"Local Authorities drag their feet and string the whole thing out as long as they can because there is such a shortage of housing" (Legal professional stakeholder).

"Local Authorities advise tenants to stay put. They won't make them a priority unless they have an eviction notice" (Tenant representative stakeholder).

"Some tenants would love to move out earlier, but they can't because their only option is the local authority and they won't get priority without a possession

order" (Tenant representative stakeholder).

"It would avoid the cost and time of issuing a warrant if the tenant left earlier, but the local authority tells them to come back when a warrant has been issued" (Tenant representative stakeholder).

3.2.4.11 Stakeholders and MHCLG anticipate that the Homelessness Reduction Act, which came into force in April 2018, will change this situation. The Act brought in a new prevention duty which extended the period an applicant is 'threatened with homelessness' from 28 days to 56 days. This will ensure that those served with a valid section 21 notice that is due to expire will be classed as 'threatened with homelessness' and supported until their situation is resolved, if they have nowhere else to go.

3.3 Factors influencing the timeliness of other private landlord possession cases in county courts

3.3.1 Introduction

3.3.1.1 Gaining possession using a Section 8 (s.8) notice is perceived by private landlords to be more problematic and time consuming than the s.21 accelerated process, for several reasons:

- They may have to attend court, which would require them to take time off work;
- They will have to provide evidence of the fault;
- There is greater potential for tenants to use, as landlords see it, 'delaying tactics', or challenge the claim;
- If the case is contested, it can take much longer to get possession;
- Landlords were more likely to feel they should be represented in court (which increases costs).

3.3.1.2 Stakeholders and landlords observed that s.8 tends to be used where there are clear, mandatory grounds (such as rent arrears of more than 2 months) and where the landlord could not wait until the end of a fixed term to address the

situation. Landlords and stakeholders in our sampe indicated that this route was less likely to be used for discretionary grounds except by some more experienced, larger landlords.

3.3.2 The application

3.3.2.1 Possession Claims Online (PCOL) provides a method of submitting a possession claim based on rent arrears using an online form (although a paper form also exists). This was the preferred option for private landlords making a claim for possession based on rent arrears. The online format was considered quicker and more efficient than the paper form, with the advantage that the system will not allow applicants to proceed until each section has been completed (which helps to minimise mistakes).

"The claim is very easy and it won't allow you to proceed until you answer the question. You can use the paper version, but that takes weeks, more time and money" (Landlord, South).

"PCOL makes it easier to file a straight rent arrears claim" (Landlord representative stakeholder).

3.3.2.2 However, there were some criticisms of PCOL that its software is somewhat outdated and could benefit from modernising and streamlining, along the lines of the new version of Money Claims Online (MCOL).

"The online system is rather old and doesn't work well. The forms are not well designed and it doesn't flow clearly" (Landlord representative stakeholder).

3.3.2.3 The paper application form was used for grounds other than a money claim. Those who had used it found the form much simpler and easier than the accelerated possession form. However, there was less experience of this form across our sample as private landlords were less likely to use discretionary grounds.

"The ordinary possession form is much simpler (than the accelerated possession form). The advantage of this route is that it gives a fixed hearing date automatically" (Legal professional stakeholder).

3.3.3 Hearings

3.3.3.1 Private landlords expected a wait of four to eight weeks for a hearing (which fits with the requirement of the Civil Procedure Rules (CPR) that, in housing possession cases, a hearing must be held within eight weeks of the application being submitted).[6] However, participants reported that, in busy areas in the South East, the wait can be longer.

"The timescales depend where you are in the country. In low demand areas, it might meet the guidelines of 2 months. In high demand areas, that's not met" (Landlord representative stakeholder).

3.3.3.2 This level of wait for a hearing (4 to 8 weeks) was seen as broadly acceptable by legal insiders, who understand the 'normal' pace of litigation. Some legal professionals took the view that – as long as the process meets the CPR guidelines – then the timescales were acceptable.

"A hearing in 2 months is pretty good in comparison with other forms of litigation" (Legal professional stakeholder).

3.3.3.3 However, small, non-professional landlords, who rarely deal with the courts, do not have this wider perspective and would like the process to be faster. A two-month wait for a hearing can seem unnecessarily slow for small private landlords who are also watching the rent arrears mount further. By the time of the hearing, they could be looking at arrears of over 3 months.

3.3.3.4 Court stakeholders commented that private landlord possession claims are a relatively small proportion of the work of county courts, in comparison with the volume of business accounted for by mortgage and social landlord possession cases. At one court, there was typically a list of two to five private landlord cases out of a total list of 35 possession cases seen on a hearing day. This is confirmed by MoJ statistics, which show that, in January-March 2018, there were 24,748 mortgage possession and social landlord possession claims, in comparison with 5,704 private landlord claims.[7] In addition, there were 5,878 'accelerated' possession claims, most of which would not have required a hearing.

"They are relatively small beer" (Legal professional stakeholder).

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[6] CPR Part 55: https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part55

[7] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705598/mortgage-landlord-possession-statistics-jan-mar-2018.pdf

"Only two cases out of a list of 30 are private landlord possession. The majority are social landlords and mortgage possession" (Legal professional stakeholder).

3.3.3.5 Cases that are not settled and do require a hearing are listed on 'possession days' in which, typically, cases are allocated five to ten-minute slots. Urgent applications, such as for injunctions or illegal evictions, are called first. Parties could therefore be waiting for more than an hour to be called for a 5 to 10-minute meeting. Helpfully, some courts give private landlord possession hearings a slightly longer time slot (e.g. 15 mins rather than 5). This is to allow for the relative lack of experience of private landlords and tenants, who tend to litigate in person. It also provides the judge with a little more time to deal with issues that arise in the hearing, such as mistakes made in the paperwork or clarification of the facts of the case.

3.3.3.6 Stakeholders and professional landlords said that, in their experience, tenants tend not to contest the claim or appear at the hearing. In that event, the short hearing time of 5 to 10 minutes is enough to get a judgement.

"Most tenants don't turn up unless they have a defence or want a suspended order" (Landlord, South).

3.3.3.7 Although this situation results in the landlord receiving the desired Possession Order, this does not necessarily improve landlords' perceptions of the timeliness of possession cases. Some landlords (and stakeholders) felt that such uncontested hearings were a waste of time and money (for them, the tenants and the courts).

"If it's undefended, the wait is unacceptable. We lose money and they have no defence. It clogs up the courts. The delay is unnecessary as most cases could be dealt with without a hearing" (Landlord, South).

"I'm not satisfied with a 4 to 5 week wait for a hearing because most tenants don't turn up" (Landlord, South).

"We have to pay an advocate to turn up but in 90% of possession cases the tenant doesn't show up and we sit before a judge for 10 minutes. It's all unnecessary" (Landlord, South).

3.3.3.8 Landlords argued that these claims could be resolved on paper (as for accelerated possession). In their view, this would have the benefit that only defended claims, which need a hearing, would then be listed (with a longer time

slot to ensure that the matters can be dealt with in a single hearing).

"We should filter those out and deal with them digitally or on paper, and allow more time for those that need it" (Landlord representative stakeholder).

"A 5-minute hearing is a false economy. Many are no contest, but a substantial proportion are adjourned because five minutes is too short. They should pre-identify those that need a longer hearing and deal with these separately on paper" (Landlord representative stakeholder).

3.3.3.9 However, the bigger issue (and greater delay) comes where a claim is contested. That is because, then, the first hearing of 10 or even 15 minutes is rarely sufficient to deal with the case.

"It's at the hearing when the mistakes appear. If something comes up, we adjourn it" (Legal professional stakeholder).

"Probably three out of five private landlord cases get done on the first hearing" (Legal professional stakeholder).

"If there is a hint of a dispute over facts or a defence, it's adjourned. This first hearing is cursory: it can't resolve a dispute" (Tenant representative stakeholder).

"A bit more time would help to resolve more cases on the day" (Landlord representative stakeholder).

3.3.3.10 This results in having to wait for a further hearing date, which could be another 4 to 6 weeks away. This could stretch out the process of obtaining a valid Possession Order to, potentially, 12 to 14 weeks after the claim. The unpredictability of the timescales involved in court hearings was a major reason that landlords tried to avoid this 'fault' route if possible.

"If anything can't be resolved in 5 to 10 minutes, it's adjourned, and then it's months to find a new hearing date" (Landlord representative stakeholder).

"For a new court user that can be frustrating. Court users always are frustrated. But, actually, housing cases are relatively quick vs other cases in courts, where I'd expect a final hearing within six months of the original claim" (Legal professional stakeholder).

"If it's not resolved at the first hearing, then it's months. This is a barrier to landlords using the fault route" (Landlord representative stakeholder).

3.3.3.11 Landlords accepted that, if a case is defended, then a full hearing is necessary and fair. They also appreciated that time is needed for both parties to gather evidence. However, landlords felt that the nature of the case, and whether it would be contested, should be apparent at an earlier stage. If this was known in advance, for example through a triage system, then the initial hearing could be used more efficiently to resolve the issues. As it is, if any issue at all comes up at the first very short hearing, it is likely to require adjournment and a substantial further delay.

3.3.3.12 MoJ statistics do not capture what proportion of cases are adjourned to second or further hearings, so the extent of this issue is not clear. However, landlords and stakeholders indicated that it is a significant factor in perceptions of the long timescales associated with housing possession cases.

"If there's an issue, it needs a hearing. Like any other trial, this can take a long time. But this is only 5% of cases, and it blows the stats for the other 95%" (Legal professional stakeholder).

"They should identify which cases need more than a five-minute hearing in advance. It would free up courts to deal with cases that do need it" (Landlord, South).

3.3.4 Litigants in person

3.3.4.1 Another factor that influences the timescales of private landlord possession cases is the higher proportion of litigants in person (whether landlords or tenants) in these types of case. (This is according to stakeholders, as MoJ statistics do not capture this information). Stakeholders reported that the lack of experience and expertise of private landlords and tenants who represent themselves can lead to delays and longer hearings. Claimants or defendants may not understand or fulfil the judge's directions; they may not produce materials in time or in the correct format; or there may be mistakes in the paperwork. This leads to cases being adjourned to allow more time to produce evidence or correct mistakes. It also requires more time in hearings for judges to explain the process to either or both parties.

"The ones that have hiccups are the ones that turn up in person and don't know what they are doing and are not aware of the pitfalls. Some of the housing law is impenetrable and even lawyers struggle" (Legal professional stakeholder).

"There's a huge sigh of relief when we see it has been prepared by a solicitor" (Legal professional stakeholder).

3.3.4.2 Legal professionals also claimed that landlords' paperwork in s.8 proceedings is often wrong (as for s.21/accelerated possession). Mistakes are made in applications because landlords have not sought legal advice and expertise or because letting agents make errors. Judges may allow adjournment for amendments and corrections but, when the errors are too great, they may dismiss the case, which means that the landlord will have to start the process again.

"Because landlords get the paperwork wrong and judges have to explain what's wrong and adjourn to amend it" (Tenant representative stakeholder).

"It's a difficult task for district judges because these are lay people engaged in a complex legal process without taking advice" (Legal professional stakeholder).

"Invariably the paperwork is wrong. It amazes us that private landlords spend big sums on a property but will not spend money on professional advice to deal with the formalities of a court case. Landlords shouldn't have a problem if they did it properly" (Legal professional stakeholder).

"Very often the landlord gets it wrong in the paperwork and the case is adjourned or struck out" (Tenant representative stakeholder).

3.3.5 **Challenges by tenants**

3.3.5.1 For private landlords, part of their frustration with the process was that – in their view – tenants are able to delay proceedings by failing to respond on time, by failing to comply with instructions or by submitting trivial defences. This contrasted with the more rigid requirements of them as landlords to meet the strict deadlines and provide accurate paperwork, or risk their case being dismissed. Stakeholders and landlords described examples of tenant behaviour which can create delay, e.g:

- sometimes, tenants provide defences which landlords feel should be dismissed at an earlier stage (such as a trivial complaint against the landlord);

- defences can be produced by tenants at the last minute, at the hearing. This results in adjournment;

- landlords were wary about tenants 'playing the system' by bringing arrears just below the (2-month) threshold for mandatory possession just before the

hearing.

3.3.5.2 The greater opportunity for tenants to use ‘delaying tactics’ (as landlords see it) was one of the barriers to landlords using the s.8 ‘fault’ process. It was also why they preferred to use the ‘no fault’ paper process of accelerated possession if possible.

“Some tenants are very clever and try to reduce the arrears to under two months to make it discretionary” (Landlord, South).

“Tenants can first present a defence at the hearing, even if they’ve missed the window for filing a defence earlier. They are entitled to do this, but it enrages landlords because then the case is adjourned” (Tenant representative stakeholder).

“Tenants failed to comply with directions or orders and witness statements, so it took even longer. The court should apply stronger case management and strike out cases that don’t comply” (Landlord representative stakeholder).

“Tenants don’t care about responding….they dig in their heels and hope they will get rehoused” (Landlord, South).

3.3.5.3 This perception that tenants deliberately cause delay was exacerbated by the role of tenant advisors. Some tenant advisors regarded it as their duty to ensure that cases are adjourned at the first hearing, to give time for preparation of a defence.

“If we see a tenant as a duty solicitor, we will ask for an adjournment, so we can prepare a defence” (Legal professional stakeholder).

“Their (the legal advice organisation’s) job is to prevent possessions” (Landlord representative stakeholder).

“They bring in obstacles. If they had their way, landlords couldn’t get possession” (Landlord, South).

“Advice Centres run anything. They should differentiate genuine cases” (Landlord, South).

“The big brake on possession timescales is whether the tenant receives advice

from their local authority or advice services" (Landlord representative stakeholder).

3.3.5.4 Private landlords were therefore frustrated that what – to them – seemed straightforward, mandatory cases of rent arrears can take months to resolve. They perceived tenants (and their advisors) to be using the system to obstruct them and gain more time (at the landlord's expense).

"It aggrieves some landlords that some judges are too ready to agree to what a tenant claims. They think the tenant is pernicious. These cases do take a long time to resolve" (Legal professional stakeholder).

"Miscreant tenants can cause havoc if they run a specious argument" (Legal professional stakeholder).

3.3.6 Pressure on court resources

3.3.6.1 The pressures on court administration and the lack of resources described in section 3.2.3 applied to all cases. Users felt that court back offices are overburdened and struggle to keep up with the volume of work. This was manifest in the perceived delay in finding time for hearings.

"The main driver of delay is the lack of capacity of judges and courts to handle the volume of claims" (Tenant representative stakeholder).

3.3.6.2 There were reports from court users of other resource problems and delays, such as:

- documents being lost, or not making it into the bundle for hearings. Participants reported that judges often ask parties to bring extra copies of bundles to hearings, just in case;
- users finding it hard to contact courts to get information about how a case is progressing, because calls or emails are not answered;
- some county courts have closed, which makes it harder for some tenants to make it to hearings;
- there may be delays in processing Orders and sending them to the parties, so that they arrive after the deadlines set out in the court order and have to be re-issued;

- users reported that orders can contain mistakes and have to be re-issued.

"There are delays in the handling of paperwork and stuff gets lost. It's common for judges to say bring an extra copy because it won't have made it onto their file. Judges make jokes about it" (Landlord representative stakeholder).

"Courts are in the dark ages and move at a glacial pace. Some courts have email, others don't, some don't monitor their email" (Landlord, South).

"Judges are slowed down by not having the information available in court" (Landlord representative stakeholder).

3.3.7 **Issues with benefits**

3.3.7.1 Landlords and tenants identified problems with benefits as a driver for rent arrears and possession claims. The transition to Universal Credit (UC) from Housing Benefit had caused issues for some tenants, in part because the benefit could now be paid to the tenant and not directly to the landlords. If problems with benefits emerge as a primary reason for non-payment of rent, then the need to sort this situation out can introduce a delay in the process whilst judges ask for the various relevant authorities to be consulted.

"UC is a nightmare because the housing element is paid to the tenant and not the landlord" (Tenant representative stakeholder).

"There are delays and cock ups which result in rent arrears" (Tenant representative stakeholder).

"If it's not mandatory arrears, we will seek an adjournment to get their Universal Credit sorted out" (Tenant representative stakeholder).

3.3.8 **Delays with Enforcement of Possession Orders**

3.3.8.1 As the enforcement process is common to all possession cases, issues with this element of possession have been covered in the previous section on accelerated claims.

4 Findings for Objective 2 - non-possession cases

4.1 Context for non-possession claims

4.1.1 Stakeholders and tenants thought that there considerable barriers to tenants taking action against landlords. These included:

I. Tenants often lack knowledge and understanding about the legal options available so, unless they are advised, they do not necessarily know that they can seek redress;

II. Any legal action involves a lot of time and effort in research and progress chasing. Working tenants may find it hard to take time off to attend meetings with advisors or go to hearings;

III. Access to legal advice and support is limited. Tenants may struggle to find organisations willing to take their case on;

IV. They may well be a fear of having to attend court, which is a daunting experience for non-experts.

4.1.2 Unsurprisingly, the perceived costs of taking legal action are also regarded as a major barrier, as it would be a big risk for tenants to fund it themselves. The type of tenants who can afford to take on a legal case themselves probably also have the financial flexibility to live elsewhere. Therefore, stakeholders felt that tenants were more likely to leave the property and find a better one. The fear of incurring high costs for court fees and lawyers, plus the possibility of having costs awarded against them, deters all but the most determined or those with support of legal aid, pro bono lawyers or a conditional fee arrangement.

"The only people who can access the courts are the really poor or the really rich" (Landlord representative stakeholder).

"Vulnerable people have no access to lawyers and need it to be on a no win no fee basis" (Tenant representative stakeholder).

4.1.3 Access to Legal Aid has become more constrained in this area (since changes to the system in 2013). For example, lawyers reported that, whilst Legal Aid might support a tenant in forcing a landlord to make repairs, it will not cover the 'compensation' element of claims for disrepair. As it is from the 'compensation' element that lawyers will recoup their fees, this means that law firms are less

inclined to take on such cases because they are unlikely to recover costs. In the absence of Legal Aid, there were also few options for obtaining legal advice and support on a pro bono basis.

“Fees are a big issue. There has been a big hike over the last 2 years. A disrepair claim can cost £1000 on top of legal fees. To a litigant in person, it’s a major hurdle” (Tenant representative stakeholder).

“We can’t take on as many claims as before because they withdrew Legal Aid for compensation claims. We can’t afford to take on these claims now as a charity” (Tenant representative stakeholder).

“We won’t take on a disrepair case for a private tenant because we only get Legal Aid for the repair, not for the compensation damages. You can’t get any money out of a small private landlord. We’ll only take it on as a conditional fee arrangement against larger landlords and Local Authorities.” (Legal professional stakeholder).

4.1.4 Tenants in our sample were also said that they were inhibited by fears of the landlord’s reaction to them making a complaint. They were wary of retaliation, especially if they wanted to continue living in the property. Tenant representative stakeholders confirmed that this can be an issue. They felt that it tends to be the less scrupulous landlords at the lower end of the market, with vulnerable tenants who have less flexibility to find other accommodation, who are more likely to cause these problems. There was clear evidence of ‘retaliatory eviction’ amongst our sample of tenants, as in the following examples:

I. Tenant 1 repeatedly asked his landlord to make repairs but had been ignored. He reported the landlord to the Local Authority Environmental Health department (on the advice of Shelter). The landlord was forced to make repairs, but then issued a s.8 notice based on rent arrears (arrears which the tenant claimed not to be aware of).

II. Tenant 2 objected to a planning application in the neighbourhood, unaware it was made by the landlord. The landlord subsequently issued a s.21 notice.

III. Tenant 3 had asked for serious problems with the property to be addressed (including mould, dilapidation etc). After no response, she paid for a survey and sent it to the landlord. She then withheld rent to try and force action. This resulted in a s.21 notice being issued. Finally, she

counter claimed for disrepair.

"A disrepair claim is likely to be met by a Section 21 notice" (Tenant representative stakeholder).

4.1.5 Some stakeholders believed that current protection against retaliatory eviction is not sufficiently effective. This is because, in their view, the requirements that trigger protection are set at a relatively high level. Firstly, it requires the Local Authority to inspect the property and issue a dilapidation order to the landlord. In their experience, Local Authorities lack the resources to do this except in the most extreme cases. Furthermore, some stakeholders felt that, even when Local Authorities did inspect, their criteria for issuing a dilapidation order were relatively high: some Local Authorities will only issue an order if there is serious risk of harm (a Category 1 hazard on the Housing Health and Safety Rating System).[8] This is a high threshold to meet.

"The measures introduced to prevent retaliatory eviction have no effect. The Local Authority would have to have served a disrepair notice before the serving of the Section 21 notice by the landlord. The chances of the Local Authority serving notice are minimal to nil" (Tenant representative stakeholder).

4.1.6 As a consequence of these barriers, stakeholders believed that there are relatively few 'non-possession' cases in comparison with possession cases in the county courts. The statistics on the volume of non-possession cases are unknown, so this report is therefore reliant on the evidence of stakeholders in our sample. In our recruitment, it was hard to find and recruit tenants and stakeholders with experience of these cases. Lawyers and judges commented that cases in which disputes are not resolved and reach county court are relatively rare.

"They are few and far between. I can't remember the last one in this court" (Legal professional stakeholder).

"These cases are rare and costly. It's usually better to settle. It's not worth pursuing most them." (Landlord representative stakeholder).

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[8] The Housing Health and Safety Rating system (HHSRS) is a risk-based evaluation tool to help local authorities identify and protect against potential risks and hazards to health and safety from any deficiencies identified in dwellings: https://www.gov.uk/government/publications/housing-health-and-safety-rating-system-guidance-for-landlords-and-property-related-professionals

"You have to take a pragmatic view of non-possession cases" (Landlord representative stakeholder).

"There aren't a lot of other actions, because of the cost and bureaucracy" (Landlord representative stakeholder).

4.1.7 There were comments from some stakeholders that some judges in county courts lacked experience of housing cases. Legal representatives found that, occasionally, they needed to explain the legal position to judges, particularly newer deputy district judges who, perhaps, had specialised in other areas of law. These stakeholders felt that judgments were sometimes inconsistent as a result and they offered this argument as a potential justification for a specialist court. The infrequency of 'non-possession' cases in county courts may explain why some judges may lack knowledge and experience in these areas: they simply do not see many of such cases.

4.2 Factors influencing the progress of non-possession cases in county courts

4.2.1 Timescales for non-possession cases

4.2.1.1 When there are proceedings, these are handled in the same way as other county court litigation. Unlike possession, these cases are not always treated with a 'special' track or time limits, so they are subject to same procedures and constraints as other county court business.

"These non-possession cases don't have the benefit of Part 55 CPR and Section 21. They follow the standard procedure of the civil lists" (Legal professional stakeholder).

4.2.1.2 The overall perception was that 'non-possession' cases can take a very long time – in the order of several months – and much longer than possession cases. However, this was seen as a function of the due legal process which involves strict evidence requirements, disclosure requirements, the need to examine cases from both sides, and the need for time to prepare cases.

"These tend to be the difficult cases. They are plagued by the generic case progression difficulties in courts. Hearings are cancelled at the last minute. There are resource issues. Courts list more hearings than it has space for and

hopes they'll be abandoned or adjourned" (Landlord representative stakeholder).

"It takes a long time, like any other court case. It's inevitable for the type of case. They have to prove disrepair and they require evidence. It is what it is" (Legal professional stakeholder).

"You're looking at the same timescale for a standard damages claim. It can take 9 months" (Tenant representative stakeholder).

4.2.2 Factors influencing timescales for non-possession cases in county courts.

4.2.2.1 The main issue reported by court users was the lack of court time and resources. This led to difficulties in finding time for hearings and in allocating judges to handle them. There was – as in possession cases – a general perception that the court system was under enormous strain with high workloads, too few staff and limited resources. The closure of some courts was thought to have exacerbated this, along with the perception that there have been staff cuts. As a result, court users expected and experienced significant delays in listing these cases for hearings.

"Not many cases come to trial, but the court's capacity to hear the trial is an issue" (Tenant representative stakeholder).

"It's not change that's needed, it's resources. They need more people to do the work" (Tenant representative stakeholder).

4.2.2.2 In addition, as described for possession cases, users believed that the pressure on court staff can also lead to administrative delays. However, these pressures are not unique to housing cases: they are the same for other cases in county courts.

"Courts can take 15 to 20 days to look at incoming documents. There are delays at every step" (Tenant representative stakeholder).

"The court system is under-resourced. There aren't enough admin officers, so matters are not dealt with quickly enough. Users get used to these delays." (Legal professional stakeholder).

"I got told by senior managers at the court user group that there are no delays. Our mouths dropped open. They are in denial" (Legal professional stakeholder).

"Orders don't go out until after the dates have passed" (Legal professional stakeholder).

4.2.2.3 Another factor in the delay is that landlords can be unwilling to engage in a process that is acting against them (just as, in possession cases, landlords are battling with disengaged tenants). So, in this case, it is landlords who are reluctant to produce information and evidence within the timescales required by the court, or who fail to turn up.

"All these cases are infected by non-compliant landlords" (Legal professional stakeholder).

"A landlord is unlikely to comply and be an active litigant if they have unlawfully evicted someone. It tends to be the nastier landlords who are involved" (Legal professional stakeholder).

"Landlords are not good at complying with directions" (Tenant representative stakeholder).

4.2.3 Perceptions of cases related to non-returned or unprotected deposits.

4.2.3.1 Stakeholders reported that there had been a spike in these types of case when the new tenancy deposit regulations came in. This was also driven by the introduction of a fixed penalty system, which gave tenants an incentive to bring cases to court in order to receive the set amounts of compensation.

4.2.3.2 However, stakeholders believed that there were fewer cases in the county courts now. (The actual volume of cases or the change over time are unknown as these statistics are not collected by the MOJ). The perceived low volume of cases was thought to be, in part, a result of the existence of a mechanism for dealing with deposit disputes outside the court system (through ADR and mediation). It was also thought to be a sign that the law is being effective in terms of changing behaviour regarding deposits. Private landlords were thought to be more aware that there are punitive compensation arrangements (up to three time the deposit), so they take more care about protecting deposits. Alternatively, stakeholders reported, some landlords are choosing not to take a deposit, to avoid the penalties and complications that this can cause.

"I can't recall getting one of these cases. They are mainly settled by mediation and there's a procedure to keep them out of court." (Legal professional stakeholder).

“A lot of cases will get resolved and not proceed” (Legal professional stakeholder).

“The deposit legislation has taken away the disputes from courts to dispute resolution. There is reasonable satisfaction with this, despite landlord grumbles” (Landlord representative stakeholder).

4.2.3.3 If such cases reach the county court, the process may take a long time to resolve. Participants reported that these claims are dealt with in the same way as small money claims and follow similar procedures. Therefore, time has to be found for the hearing, which may be several weeks away. Time also needs to be allowed in the process for directions to be met and evidence to be gathered. Some stakeholders felt that disputes over deposits should be speeded up by placing more emphasis on mediation, before sending cases to the county court.

“There is a case for compulsory mediation. It should be handled by ADR” (Landlord representative stakeholder).

4.2.4 Perceptions of cases related to claims for disrepair.

4.2.4.1 Stakeholders considered ‘stand-alone’ disrepair cases to be relatively rare. They believed that this was because, since changes to Legal Aid provision in 2013, it has become more difficult for tenants to bring disrepair cases. Legal Aid is still available to force landlords to do repairs but not for tenant compensation. As law firms aim to recover their costs from the compensation element, this means that, without this prospect, they are less inclined to take on such cases. Therefore, legal support agencies claimed that they rarely bring stand-alone disrepair cases. Instead, it was thought to be more likely that a disrepair claim would be used as a counter claim by tenant in a possession case. This is because Legal Aid is available for possession cases and, therefore, there is a greater likelihood that lawyers can recover their costs.

4.2.4.2 Disrepair cases were also thought to be quite complex, requiring evidence gathering and expert advice. This raises the likely cost and the importance of receiving expert legal advice. As a result, stakeholders believed that tenants were unlikely to bring a disrepair case unless they were supported by a Legal Aid firm, Shelter, or a Local Authority.

“I don’t see many of these as stand-alone cases. It’s usually a counter claim brought against a social landlord” (Tenant representative stakeholder).

“The biggest problem is the lack of Legal Aid, which was removed in 2013 unless it’s hazardous to health you can only get repairs not damages. It’s hard to

take proceedings for a tenant under a conditional fee arrangement against a private landlord because you can't get money out of them, unlike a Local Authority or Housing Association" (Tenant representativestakeholder).

"It's difficult to do a disrepair claim because the tenant is not entitled to Legal Aid unless it's a counter claim to possession and only if it's a serious risk to health. Solicitors won't take on these claims and enforcement is too difficult unless it's against a Local Authority" (Legal professional stakeholder).

4.2.4.3 Disrepair claims are handled differently from other cases by courts. They have separate civil procedures and a more complex process than relatively 'simple' possession claims. These cases can take a long time (many months) because of need for expert evidence, for disclosure, for a survey report, for a 'Scott schedule' of repairs and, possibly, health reports. Sorting out entitlement to Legal Aid can also use up time.

"It's very costly because it needs experts to prove disrepair" (Legal professional stakeholder).

"It takes four to five months to comply with the directions and gather evidence. A six-month hearing would be feasible, but it usually takes 9 months to a year in reality" (Tenant representative stakeholder).

4.2.4.4 The broad expected timescales were as follows:

- The 'usual' wait for an initial hearing date could be four to six weeks;
- This first hearing would often be adjourned with directions;
- There might be another six or more weeks' wait for second hearing (during which time the directions needed to be met);
- As either party may not have understood or completed the directions, this could lead to another adjournment;
- Then, after an order is made to make improvements, if the landlord still does not make the required improvements, or only minimal improvements, the tenant may have to go back to the court.

4.2.4.5 Respondents reported that the whole process could take months, during which time tenant may be living in poor standard accommodation and, potentially, exposed to risks to health. Furthermore, having obtained an order to make

repairs, the tenant will then have to bring a second claim if they wish to pursue a compensation claim. The timescales are potentially very long but are largely a result of the necessarily complex legal process.

4.2.4.6 In addition, there may also be delays associated with the time taken to list a hearing and to process orders if the county court is particularly busy. The pressure of workloads and lack of staff and resources were issues for all types of county court case. Unlike possession cases, disrepair or other non-possession cases are not prioritised by the system.

"There's pressure on the courts to find court and judge time, so there might be a delay in listing because of the amount of work the county court has to deal with" (Legal professional stakeholder).

"These are thrown in with all the other types of county court case, there's no special treatment" (Legal professional stakeholder).

"Courts are often double, or treble booked. You get bumped off lists and X County Court has a horrible system of a floating list. You just turn up and see what happens" (Tenant representative stakeholder).

4.2.4.7 Some stakeholders called for disrepair cases to be heard by the First Tier Tribunal (FTT) rather than county court, because the presence of a surveyor on the panel might avoid the need for costly and time-consuming evidence from expert witnesses.

"They would handle it quicker and it would be cheaper" (Landlord representative stakeholder).

"I'd like the FTT to expand into disrepair as they have a surveyor on the panel and it would be less of a loss to landlords" (Landlord, South).

4.2.4.8 Disrepair was more likely to be used by tenants as a counter claim to a possession claim. Tenants (advised by legal support organisations) use disrepair counter claims to offset claims for rent arrears. If they can prove disrepair, the damages can potentially reduce the arrears below the 'mandatory' level of 2 months.

4.2.4.9 Tenant representative stakeholders and legal professionals observed that disrepair claims were usually made against social landlords or larger private

landlords, rather than small private landlords. This is because there was more likelihood of a compensation claim being successful against landlords who have assets and can pay the claim (and therefore the legal costs).

"Private tenants don't want to stay on in the accommodation if it is so bad, they are keen to get out. But a local authority tenancy has an intrinsic value" (Legal professional stakeholder).

"We do disrepair as a counter claim not as a money claim, because of the legal aid changes" (Tenant representative stakeholder).

"Most disrepair claims are now counter claims to a possession notice on arrears grounds. If awarded, the compensation can defeat the possession order." (Tenant representative stakeholder).

4.2.5 Perceptions of claims for harassment, unlawful conviction and ASB.

4.2.5.1 Stakeholders reported these types of case as being very rare nowadays (although MoJ statistics are not available on the volume of such cases). Tenants need advice and support to bring these cases, so they are dependent on Legal Aid and advice being provided quickly. It is hard for them to access help because advice providers are overburdened with requests and have to be selective. If they get Legal Aid, this will only help to get redress in terms of the eviction, not the compensation.

"These are very, very rare. I can't remember the last one, because they are so few and far between" (Legal professional stakeholder).

4.2.5.2 On the plus side, stakeholders believed that courts will act urgently in emergencies (when there is a need for an injunction or stay of execution). However, there was some criticism that closing court offices has made access to courts with urgent applications more difficult.

"Courts are good at the initial emergency proceedings for a stay of eviction, injunction for unlawful eviction. They are on an emergency list" (Tenant representative stakeholder).

"It's more difficult to get an emergency injunction now because court offices have closed, and you need to get an appointment" (Tenant representative stakeholder).

4.2.5.3 There was no evidence in our sample of undue delays in these cases. Courts are responsive to the urgent nature of the cases. However, beyond the initial action, cases are subject to the normal timescales and requirements of evidence, once they get to a hearing.

4.2.5.4 Some stakeholders felt that Local Authorities are in a better position than tenants to prosecute these sorts of cases because they have greater ability to collect the necessary evidence. As these cases are on the borders of criminality, their view was that they should be pursued in the criminal not civil courts initially. If the case is proven in the criminal courts, tenants would then have a better chance of success with compensation claim afterwards.

“These cases should be dealt with by criminal prosecution, not by civil action” (Landlord representative stakeholder).

4.3 Perceptions of the First Tier Tribunal (Property Chamber)

4.3.1 There was little direct experience of the First Tier Tribunal (Property Chamber) (FTT) amongst our sample of tenants and landlords. However, amongst stakeholders, the FTT was well regarded as a positive addition to the system. It was praised for:

- Efficient case handling, with an electronic filing system;
- The accessibility of case officers, who manage the process from end to end;
- the support provided to help landlords and tenants prepare for hearings;
- Chairs with the expertise needed to understand and resolve technical property disputes (such as service charges and leasehold management issues);

“Tribunals are far more efficient. They answer the phone in minutes and are more likely to use email” (Landlord, South).

“Procedures are less formalised and more flexible” (Landlord representative stakeholder).

“You are dealing with an expert panel that understands the technical issues” (Legal professional stakeholder).

4.3.2 Users were positive about other benefits they saw in the tribunal system:

- Some commented that the presence of an expert on the panel (such as a srveyor) was a key benefit of the FTT. This was found easier, quicker and cheaper than having to source expert witnesses;

- They also approved of the fact that the panel will usually visit the property concerned, to assess the issues first hand;

- Locating hearings in convenient, suitable premises (rather than being tied to court locations) was also well received;

- Some stakeholders (e.g. letting agents) liked the fact that they can assist clients in the Tribunal (whereas they do not have right of audience in county courts). In their view, this could reduce the need for clients to hire lawyers.

"They have built-in expertise, so no need for expert witnesses. It's less costly and less hassle" (Landlord representative stakeholder).

"I like them because I can assist clients. I don't need right of audience and I don't need to bring a solicitor or barrister" (Landlord, South).

"The feedback is generally positive. They are less formal and intimidating and it is easier for us to provide support" (Landlord representative stakeholder).

4.3.3 Stakeholders acknowledged that the Tribunal benefits from having lower volumes of cases that the county court, which gives it more flexibility. There was a view that it could perhaps take on more types of case involving technical issues, but not the high volume of possession cases that the county court copes with.

"It performs well. It is quicker, but it doesn't have the same workload as a county court" (Tenant representative stakeholder).

4.3.4 Overall, Tribunal cases were perceived to progress in a timely and efficient manner. However, there were issues raised by some stakeholders:

- Stakeholders commented that, to non-professional landlords and tenants, there was little distinction between a Tribunal and a court. The Tribunal can still be quite daunting and court-like;

- There was some confusion about what is within the Tribunal's jurisdiction and what is within County Court jurisdiction (or elsewhere). For the non-

expert (and even some well-informed), the decision about where to go for different types of housing case can be complex and difficult;

- Some lawyers felt there was too long a period after the hearing before the judgment was issued (although, they appreciated receiving a detailed written judgement);

- The fact that Tribunals do not have the power of enforcement was seen as a major disadvantage by some, because claimants have to go to a County Court to get enforcement after a Tribunal decision. Bouncing between Tribunal and County court on certain cases can prolong timescales. However, the current pilot programme of 'double hatting' Tribunal and District Judges (so they can perform both functions in one hearing) may help to address this;

- There were concerns about the absence of Legal Aid provision for Tribunals. Stakeholders believed that this can lead to tenants or leaseholders being unrepresented in cases against more experienced large landlords or freeholders who can afford solicitors and barristers. Although Tribunals aim to facilitate those who self-represent, in practice it was felt that there can be 'inequality of arms';

- The 'no cost' regime of Tribunals was also seen as a limitation by some. Because litigants are unable to claim costs against the other party, this can limit access to sources of legal advice and support, particularly for tenants. It was pointed out that landlords / freeholders may be able to reclaim costs under the terms of the lease, whilst the leaseholder cannot. It further disincentivises Legal Aid / legal support providers from getting involved in Tribunal cases (although, some 'pro bono' legal providers see the Tribunals as an opportunity for training lawyers).

"The issue with the FTT is that it's no cost, which undermines tenants' rights because they won't bring an action if they can't get costs back" (Landlord representative stakeholder).

"Landlords are often represented and tenants not. There's an inequality of arms issue." (Tenant representative stakeholder).

"A freeholder can recover their legal costs under the lease, the leaseholder can't" (Tenant representative stakeholder).

5 Conclusions

5.1 Conclusions for Objective 1 – Private landlord possession claims

5.1.1 Accelerated possession

5.1.1.1 Accelerated possession is a relatively streamlined process designed to give priority to possession cases and it operates well, at least up to 'possession order' (PO) stage. MoJ statistics support this, stating a median average of 5.3 weeks from claim to order for accelerated possession cases in Q1 2018.

5.1.1.2 Landlords expect accelerated possession to live up to its name. As they believe it is a mandatory, 'open and shut' paperwork case, with no need to prove fault, they expect it to be dealt with quickly and easily. This is why many private landlords prefer to use Section 21 (s.21) accelerated possession rather than s.8 (even if there are grounds).

5.1.1.3 Nevertheless, some landlords perceive it to take too long (to PO) because, even with s.21, there is can be an underlying reason for seeking possession, such as rent arrears, damage, or ASB. Private landlords - particularly small, non-professional landlords – may take action only after a period of trying to sort the problem out. Therefore, they may start the process with considerable rent arrears, which then mount up during the process. Given that such tenants may not have significant assets, their chances of recovering the rent arrears are low.

5.1.1.4 Although many accelerated cases progress smoothly to PO stage, there are factors that cause a delay in progress to a possession order in some cases.

i) Stakeholders reported that mistakes made by landlords in the application form are common. This results in some cases (statistically, the actual proportion is unknown) being dismissed or listed for a hearing.

ii) The application process itself has become more complicated because it is being used to police regulations that protect tenants (such as Gas Safety, EPC and Deposit protection). Therefore, there are more elements that can trip up unwary or unprepared landlords. In addition, non-professional landlords attempt to complete the form themselves without taking legal advice. Because the application form has become more complicated, this is leading to more mistakes made by landlords and letting agents (a common issue being that letting agents sign the form, rather than the

landlord or a solicitor).

iii) Another reason for accelerated possession resulting in a more prolonged process is the involvement of tenant advice services. As accelerated possession requires landlords to confirm compliance with various regulations, this gives more scope for challenging a claim (if tenants become aware of this through advisors before a possession order is granted). Landlords feel that the 'certainty' of the Section 21/ accelerated procedure is being undermined by the use of such objections.

iv) If there is any challenge, judges will list the claim for a hearing, resulting in a longer timescale (the same as for other, non-accelerated, possession cases). There is also potential for that hearing to be adjourned with directions.

5.1.2 Other possession cases (non-accelerated)

5.1.2.1 Private landlord possession cases that require a hearing also operate reasonably well (up to Possession Order stage). Again, there are procedures in place that aim to prioritise possession cases in the county court system, with the Civil Procedure Rules (CPR) guidance being that a hearing must be held within eight weeks of the application.

5.1.2.2 MoJ statistics seem to support this. They quote a median average 5.9 weeks from claim to order for private landlord possession in Q1 2018. CPR guidance is that there needs to be a hearing within 8 weeks of application. However, the national figures disguise considerable variation between areas. Because housing cases must be held in a local court, there are big differences in the workload, and therefore the timescales, by area. Stakeholders reported that, in higher demand areas, there tends to be a longer wait for a hearing date than in lower demand areas, even though possession cases are prioritised. This was perceived to be a function of stretched court resources and the lack of court staff to process the workload.

5.1.2.3 Possession cases are generally listed on court 'possession days' with short hearing slots of around 5 to 10 minutes. However, it was reported that that some courts allow 15 or 20 minutes for private landlord cases, to allow for the relative inexperience of the parties, mistakes in paperwork and the need to explain the process to litigants in person.

5.1.2.4 In most cases, participants reported, the first hearing is sufficient as no defence is produced and most tenants do not attend. The landlord can then expect to receive a Possession Order with a 14-day time limit.

5.1.2.5 Legal professionals pointed out that, in comparison with court cases more generally, a two-month process to a Possession Order would be considered a quick result. However, in these uncontested cases, landlords feel frustrated that they have waited 6 - 8 weeks for a hearing unnecessarily (especially if they are unfamiliar with the court system). Having waited up to 8 weeks to find that the tenants do not turn up or provide any defence, some landlords felt that this was wasted time. Ideally, they believed that 'undefended' claims could be screened out earlier and dealt with more promptly (as for accelerated claims). This would allow more capacity and time for the 'defended' claims which do need hearings. A further factor influencing the mood of landlords was that, while they are waiting for the hearing, the rent arrears may well have been growing (and they are unlikely to be able to recover the cost).

5.1.2.6 Further delays arise if the initial short hearing is insufficient to resolve the case, which happens for many reasons:

- if the tenant produces a defence (perhaps at the last minute, in the hearing);
- or they make a counter claim having received advice from a support agency;
- or there are mistakes in the initial application by the landlord;
- or litigants in person have not provided the necessary information in the right way.

5.1.2.7 MoJ statistics do not tell us in what proportion of cases this happens but, in such circumstances, judges adjourn off with directions for another hearing. This could be 4 to 6 weeks away, or even longer in busy courts. This could also lead to a further hearing, if litigants in person fail to fulfil the directions. Again, this is a normal legal process, but landlords and landlord stakeholders felt that it takes too long.

5.1.2.8 Some private landlords complained that tenants, especially if advised by tenant support agencies, put forward what landlords regard as vexatious defences, intended to delay proceedings or cause them more expense. This leads to a sense of frustration amongst landlords, particularly if they felt that the case should have been decided at the initial hearing and particularly if the tenant is not paying rent.

5.1.3 Enforcement of possession orders

5.1.3.1 From the landlords' point of view, the Possession Order is meaningless if it cannot be enforced and it seems that this is where the main issue with the timescales arises. Stakeholders and landlords reported significant delays in the enforcement of orders to enable them to get actual possession.

5.1.3.2 Some stakeholders pointed out that non-professional, inexperienced landlords can be slow to understand that they need to apply for a warrant to enforce the order. This may lead to some delay in commencing enforcement.

5.1.3.3 However, stakeholders and landlords reported that, when landlords do apply for a warrant, they encounter significant delays in enforcement because of the lack of availability of bailiffs. This can vary widely between areas. Some areas (e.g. Nottingham) reported that bailiffs evict within 2 to 4 weeks of the warrant. However, in busy areas in the South East and West Midlands, landlords can wait 6 to 10 weeks for bailiffs to become available and to gain actual possession.

5.1.3.4 This is supported by MoJ statistics (Q1 2018), which show that the major delays in the system come <u>after</u> the Possession Order. The MoJ analysis shows a median average of 11 weeks from Order to Possession for Private landlord possession, of which 6.8 weeks comes after the Warrant is issued. There was a median average of 13.4 weeks from Order to Possession for accelerated possession (though this may include some social landlords), of which 8 weeks comes after the Warrant is issued. Having gone through the due process to receive a Possession Order, landlords were unhappy that it could take just as long again to take possession of their property. This was especially frustrating if, meanwhile, the tenant was not paying rent.

5.1.3.5 These delays in enforcement were believed to be the result of a lack of court resources and, specifically, a lack of bailiffs to handle the workload. Investment in county court bailiffs was regarded as a priority by stakeholders, who believed that increasing the number of bailiffs would be an effective way to reduce the timescales for landlord possession.

5.1.3.6 A consequence of the lack of county court bailiffs was that some landlords sought to transfer their cases to the High Court for enforcement using High Court Enforcement Officers (HCEOs). HCEOs were perceived to be quicker and more effective in enforcing possession than county court bailiffs. Transfer to the High Court for enforcement requires the permission of the District Judge and the statistics on how often this happens are unknown. Those in our sample were not inclined to grant this permission, but there was anecdotal evidence that courts in particularly busy areas, where the waiting times for bailiffs are very long, District Judges may be more willing to allow cases to transfer.

5.1.3.7 This long wait for eviction was an unsatisfactory situation for tenants, too. Having received a Possession Order and warrant for eviction, some would prefer to access help and get settled elsewhere. This is a stressful time, but the system encourages them to stay put until eviction is imminent. This is exacerbated by the advice given to tenants by Local Authorities to stay put. Some tenants who seek their Local Authority's help are told to stay until they are about to be evicted before they can receive help. This encourages tenants to ignore court orders and forces landlords to take enforcement action. It is unknown how many authorities take this approach but, clearly, some do this because they lack the resources to re-house evicted tenants. (Therefore, speeding up the possession process may have the unintended consequence of exacerbating the difficulties local authorities face in preventing homelessness). The Homelessness Reduction Act, which came into force in April 2018, should address this issue: local authorities will be required to intervene earlier rather than wait until eviction is imminent.

5.2 Conclusions for Objective 2 – Non-possession cases

5.2.1 Statistics are not available to assess the volume of 'non-possession' housing cases, but Stakeholders believed that non-possession cases are relatively rare in the county courts. This is partly because there are considerable barriers to tenants acting against landlords, including:

- Lack of knowledge and understanding about the legal options available;
- Fear of having to attend court;
- Limited access to legal advice and support;
- The costs of taking legal action;
- The limited availability of Legal Aid;
- The reluctance of Legal Aid and other solicitors to take on cases, if they are not confident of recovering costs;
- The limited options for pro bono work.

5.2.2 Tenants can also be inhibited by fears of their landlord's reaction to their complaint, especially if they want to continue living in the property. There was some evidence of retaliatory conviction amongst our small sample of tenants.

Current protection against retaliatory eviction does not seem to be effective because it relies on action by the Local Authority, who lack the resources, and the ‘serious harm’ threshold is too high.

5.2.3 There were comments from some stakeholders that some judges in county courts lacked experience of housing cases. Legal representatives found that, occasionally, they needed to explain the legal position to judges, particularly newer deputy district judges who, perhaps, had specialised in other areas of law. These stakeholders felt that judgments were sometimes inconsistent as a result and they offered this argument as a potential justification for a specialist court. The infrequency of ‘non-possession’ cases in county courts would explain why some judges may lack knowledge and experience in these areas: they simply do not see many of these cases.

5.2.4 Where cases are pursued, it tends to be cases in which tenants are supported and funded by legal support services. Stakeholders reported that non-possession cases tend to be actions against large social landlords (who are more likely to be able to pay, if compensation is agreed), or large private landlords, rather than small private landlords. Alternatively, non-possession claims are made as counter claims in a possession case, to offset rent arrears or challenge possession.

5.2.5 When there are proceedings, these are handled in the same way as other county court litigation. Unlike possession, non-possession cases are not always treated with a ‘special’ track or time limits. They are subject to the same procedures and constraints as other county court business. Overall, there was a perception that ‘non-possession’ cases can take a very long time (in the order of 9 to 12 months), so, much longer than most possession cases. This timescale was seen by stakeholders as a function of the legal process which involves evidence requirements, the need to examine cases from both sides, and the need for time to prepare cases.

5.2.6 The main ‘delay’ factor was thought to be the pressure on court resources. Stakeholders reported delays in listing hearings for non-possession cases, which they blamed on the difficulty of finding time in the court schedule and the lack of available judges. Stakeholders also reported that court administration is under pressure (with too few staff and too much work), which can lead to administrative delays. However, these pressures are no different from those that affect other cases in county courts: they are not specific to housing cases.

5.2.7 Stakeholders believed that claims related to unprotected or non-returned deposits were now more often dealt with away from the courts. Changes to the law, and the introduction of mediation, have made some cases easier to resolve outside the courts.

5.2.8 Changes to Legal Aid since 2013 mean that disrepair claims are harder for tenants to bring. As these are complex, costly and time-consuming cases involving expert witnesses, the costs are very high. Restricted Legal Aid means that solicitors are reluctant to take such cases on unless they are confident of being able to recover costs. Disrepair is therefore more commonly used as a counter claim in possession cases.

5.2.9 Courts were considered to be good at responding to emergency injunctions in cases of harassment, illegal eviction and ASB. However, Local Authorities feel they are in a better position to pursue these as criminal prosecutions because evidence is hard to gather. They felt that it was better if civil cases follow criminal action. County Courts seen as the more appropriate home for areas which border on criminality

5.2.10 The First Tier Tribunal (Property Chamber) was very well regarded by stakeholders and users. It was seen as reasonably quick and efficient, with good case management procedures and more accessible case managers. Users appreciated the more informal approach and valued the presence of experts on the panel. They felt that the specialist judges in Tribunals can understand the complex technical issues they deal with. Users also commented that the 'front loaded' procedures of the Tribunal mean that a higher proportion of decisions are made at the first hearing.

5.2.11 However, it was recognised that the FTT handles a lower volume of cases than county courts. Therefore, it was easier for Tribunals to manage the workload and avoid undue delays. However, although there may be some capacity for the Tribunals to handle more housing work, stakeholders agreed it would not be able to cope with the high volume of possession claims handled by the county courts.

5.2.12 Other issues with the FTT were:

- The lack of legal aid provision and the 'no cost' regime mean can lead to inequality of arms between landlords / freeholders who can afford legal representation and tenants / leaseholders, who cannot.

- Because Tribunals cannot enforce orders, this can lead to cases 'bouncing' between the FTTand county courts. The current pilot scheme in which FTT Chairs also sit as District Judges may address this.

5.3 Summary of the conclusions

5.3.1 Accelerated possession cases

5.3.2.1 Key factors affecting timescales:

- Landlord (or letting agent) errors in completing the paperwork. This leads to claims being rejected or judges listing cases for hearings, which delays the process significantly;
- Long, complex paper application. This makes it more likely that mistakes will be made;
- Landlords choosing not to take legal advice and completing the forms themselves;
- Challenges to the facts of the case or the landlord's application by the tenant (if they have received legal advice);
- The capacity of district judges to handle the volume of box work, in busy areas;
- The capacity of court administration to process the paperwork.

5.3.2 Other private landlord possession cases (non-accelerated)

5.3.2.1 Key factors influencing the timescales of these cases:

- Outdated PCOL online application form;
- Landlord / letting agent errors in the paperwork. Results in claims being rejected or delayed;
- Landlords and tenants choosing to represent themselves;
- Landlords not seeking legal advice;
- Lack of access to legal advice for tenants at an early enough stage. If their first access is at the hearing, with a duty solicitor, then there is a higher chance that the case will be adjourned;
- Short time slots for the first hearing (so cases are adjourned to a further hearing);
- Court capacity to list hearings;
- Capacity of court administration to process the paperwork.

5.3.3 Enforcement of possession orders

5.3.3.1 Key factors influencing the timescales for enforcement

- Landlords not understanding the need to apply for a warrant after receiving a possession order;
- Lack of bailiffs in busy court areas, leading to long delays in booking appointments;
- Local Authority advice to tenants to stay put (although this policy will change under the new Homelessness Reduction Act).

6 Appendix A: Discussion guide

MHCLG Housing Court research

Draft - Qualitative research discussion guide
Individual depth interviews - Stakeholders
15.06.18 (v2)

1. Introduction

- *Thank them for agreeing to take part*
- *Explain the purpose of the interview*
    - *To understand the factors influencing timescales in private landlord possession cases in County Courts*
    - *And to explore experience and satisfaction with the progress of non-possession cases in County Courts and Tribunals, for private and social tenants and landlords*
    - *To identify ways in which user experience of the Housing Courts can be improved.*
- *Explain that the interview will be confidential and anonymous.*

2. Warm up and context

- Obtain background on the interviewee’s role and responsibilities, and years in this role.
- What brings them into contact with Housing Courts and Tribunals?
- What sorts of cases do they have experience of?

2. (Stakeholders and landlords) Focus on Objective 1 – Landlord possession cases (from the point of view of landlords)

Some interviews will lead with ‘landlord possession’, others will lead with ‘non-possession’, so the order of introduction of these topics will change accordingly. We anticipate that most stakeholders and some landlords will be able to discuss both, whilst tenants may only have experience of one type of case.

- What are their experiences of private rented sector landlord possession cases
    - From the point of view of private landlords?
    - From the point of view of private tenants?

- Thinking about possession cases from the pov of private landlords
    - Overall, how willing are landlords to seek possession through the courts?

- How well are the possession process, and the requirements to gain possession, understood?
    - How easy is it for landlords to seek possession? Which elements are easy? Which elements are difficult?
    - Are there any factors that would hold landlords back from seeking possession / using the court process?
    - Overall, what timescale do they expect?
    - How satisfied are they with the timescales involved?
    - Overall, how satisfied are landlords with the process?

- *Look at the various stages of the process in detail:*
    - *Initiating a claim*
    - *Making an order*
    - *Requesting a warrant*
    - *Enforcing possession*

- At each stage
    - How long does this part of the process take?
    - How satisfied are they with this element of the process?
    - What factors drive the timescales?
    - If there are delays, what causes these?
    - What would make this part of the process easier?
    - What would make this part of the process quicker?

4. (Stakeholders and tenants) Focus on Objective 1 – Landlord possession cases (from the point of view of private tenants)

- What experience do they have of private landlord possession cases (from tenants pov)?

- Thinking about possession cases from the pov of private tenants
    - Overall, how seriously do tenants take possession cases?
    - How well are the possession process, and the requirements to gain possession, understood by tenants?
    - How easy is it for them to respond or deal with the process?
    - Which elements are easy? Which elements are difficult?
    - Overall, what do they think of the timescales involved (from tenants pov)?
    - Overall, how do tenants feel about the process?
    - What would improve the system, from their point of view?

- *Look at the various stages of the process in detail:*
    - *Initiating a claim*
    - *Receiving an order*
    - *Requesting a warrant*

- *Enforcing possession*

- At each stage
  - How long does this part of the process take?
  - How satisfied are they with this element of the process?
  - What factors drive the timescales?
  - If there are delays, what causes these?
  - What would make this part of the process easier?
  - What would make this part of the process quicker?

5. (Stakeholders and landlords) Focus on Objective 2 – Non - possession cases (from the point of view of private and social landlords)

- How much experience do they have of non-possession cases in County Courts
  - From the point of view of private landlords?
  - From the point of view of private tenants?

- What sorts of non-possession cases do they have experience of?
  - List the types of case they have experience of
  - *Use prompt list if necessary to explain: e.g. non-returned deposits, harassment, unlawful eviction, disrepair, tenancy breaches*

- Taking each type of case (that they have knowledge of) in turn, explore experiences and satisfaction in detail
  - Describe landlords' experiences of this type of case
  - What issues do they encounter with this type of case? (Probe for issues relating to speed, ease of access, ease of use)
  - Which elements are easy? Which elements are difficult?
  - Overall, what timescale do they expect? What do they think of the timescales involved?
  - If they experience delays, what causes these? (Probe the extent to which timescales are an issue with different types of case, different situations)
  - What is the impact on landlords (if there are issues / delays with the process)?
  - Overall, how satisfied are landlords with the way these sorts of case are handled by the courts?
  - What would improve the process (in terms of speed, access, ease of use)?

- In their experience, to what extent to they think the county court system delivers the right outcome in housing cases?
  - Is there anything that would deter them from using the court system?

- Focus on cases in the First Tier Tribunal (Property Chamber)

    - Have they any experience of this, for what types of case? (e.g. service charges, appointment of new managers, enforcement of minimum standards)
    - How satisfied are landlords with cases in the Tribunal?
    - What issues do they encounter, if any?
    - If there are delays, what causes this, in which types of cases?
    - Are these issues any more or less prevalent than in the county courts?
    - If there are issues, how do they affect landlords?
    - How willing are landlords to use the Tribunal?
    - Is there anything that deters them from using the Tribunal?

6. (Stakeholders and tenants) Focus on Objective 2 – Non - possession cases (from the point of view of private and social tenants)

- What sorts of non-possession cases do they have experience of?
    - List the types of case they have experience of
    - *Use prompt list if necessary to explain: e.g. non-returned deposits, harassment, unlawful eviction, disrepair, tenancy breaches*

- Taking each type of case (that they have knowledge of) in turn, explore experiences and satisfaction in detail
    - Describe tenants' experiences of this type of case
    - What issues do they encounter with this type of case? (Probe for issues relating to speed, ease of access, ease of use)
    - Which elements are easy? Which elements are difficult?
    - Overall, what timescale do they expect? What do they think of the timescales involved?
    - If they experience delays, what causes these? (Probe the extent to which timescales are an issue with different types of case and different situations).
    - What is the impact on tenants (if there are issues / delays with the process)?
    - Overall, how satisfied are tenants with the way these sorts of case are handled by the courts?
    - What would improve the process (in terms of speed, access, ease of use)?

- In their experience, to what extent to they think the court system delivers the right outcome in housing cases?
    - Is there anything that would deter them from using the court system?

- Focus on cases in the First Tier Tribunal (Property Chamber)
    - Have they any experience of this, for what types of case? (e.g. service charges, appointment of new managers, enforcement of minimum standards)
    - How satisfied are tenants with cases in the Tribunal?
    - What issues do they encounter, if any?
    - If there are delays, what causes this, in which types of cases?
    - Are these any more or less prevalent than in the county courts?

- If there are issues, how do they affect tenants?
- How willing are tenants to use the Tribunal system?
- Is there anything that deters them from using the Tribunal?

7. Obtain views on what could improve the housing court/tribunal process from the point of view of landlords and/or tenants

- Overall, what improvements would they like to see to the housing court / tribunal process? Why? What impact would this have?

8. Thank and close