The key to change

Susan Bright & Lisa Whitehouse report on attempts to improve the eviction process

IN BRIEF

- Four out of five people facing eviction may receive no legal help.
- A "one-stop" advice shop should be available before the hearing.
- There needs to be more "eye-catching" information to encourage defendants to attend court.

Following our report on the housing possession process which raised questions concerning whether there is effective access to justice (see "Losing a home", *NLJ*, 20 June 2014, p 16), we held a seminar to discuss the issues raised. Key actors involved in the possession process—judges, housing advisers, claimant representatives, policy makers, court administrators—imagined how the process might be improved.

There were two key themes that emerged. The first focused around the low levels of defendant participation in possession cases: notwithstanding the fact that the home is under threat, many defendants do not receive legal advice and do not actively participate in the court process. This matters not only because of the importance of participation to procedural justice, but also because of its impact on outcome. Research suggests that there is a relationship between attendance and more favourable decisions to the defendant. The second area of interest was on eviction by private landlords. This is highly topical as the government has established a working party "to examine proposals to speed up the process of evicting during a tenancy tenants who do not pay rent promptly or fail to meet other contractual obligations".

Improving defendant participation

There are no official statistics about the number of defendants who attend or are represented in possession cases or file defence forms, but our research suggests it is fewer than half (and maybe as low as 20% attending and 10% filing defences in some courts). At the seminar, there was a presentation from a firm of solicitors that represents claimants in over 1,500 mortgage cases each month. Their statistics show that defendants attend in 38% of their mortgage cases. This is what we expected from our own research but is likely to be the high point; attendance in tenancy cases tends to be lower. Further, this firm's figures reveal that if the defendant does not attend, outright possession is given in 47% of cases compared with 31.5% of cases where the defendant is in attendance.

What is particularly surprising from this firm's statistics is that while defendants attend in 38% of the cases they are involved in, defendants are represented in only 20% of all cases (and most of these receive help under the free representation schemes on the day of the hearing). This means that of the minority who do attend, around half will have representation. Again, there are no official statistics on these levels of representation. The firm's figure is worryingly low. We do not know how this might compare with tenancy cases, but when we combine it with the fact that few defendants in housing cases receive any legal advice before the hearing what we see is a picture with potentially as many as four out of five people facing eviction receiving no legal help. And this is set in a climate in

which cuts to legal aid and advisory services is making it increasingly difficult for defendants to access advice.

A spokesperson from Greenwich Housing Rights explained the impact that the funding cuts are having on their local landscape: three law centres had closed in the previous nine months; Citizens Advice and other law centre services were severely restricted and a large proportion of expertise and capacity to deal with the underlying causes of possession claims has been lost. The result is that an area with a population of nearly 1.1m is now served by only one specialist not-for-profit agency, and this at a time when demand for their services is rising dramatically across all tenure types.

For those who do receive free representation at court, there were concerns expressed at the seminar that the time available to give advice and support is simply too short. The role of the adviser is clearly to assist defendants but there can be tension with the funding agency to reduce the time spent with clients by agreeing terms of a suspended possession order rather than seeking adjournment.

A number of suggestions were made as to what can be done to encourage more defendants to turn up at court.

Publicity

Information needs to be bolder, more striking in appearance, and more widely available. The court forms do clearly state that the defendant should attend and that they may be evicted if they do not attend, but the "ostrich effect" means that defendants already under pressure may not open official looking post. There need to be eye-catching posters and leaflets at places where people go: GP's surgeries, libraries, bus stops, churches and the like. The message needs to be stronger too: it is not too late, turning up at court can make the difference between eviction and being able to stay in the home.

Friendlier courts

Courts can be scary places for those unfamiliar with them. As one delegate said: the county court can appear fortress-like, the court counters are often closed and may deal only with urgent applications. It may not be possible to change the architecture, but it can be made less daunting by welcoming people into the court at non-crisis moments. A few courts, for example, have held successful annual open days where families can wander in to see what it is like.

More accessible court opening hours

Some defendants do not turn up because they cannot get take time off work, or have caring responsibilities. If courts could list some cases in the evenings and at weekends, this might make it easier for defendants to attend (although it may not be popular with those who have to staff and manage the cases). Telephone hearings were also suggested.

The one-stop shop or drop-in

There was a lot of support for the idea that there should be a drop-in facility at court that litigants should be strongly encouraged to go to before the hearing. There would be various people available to talk to and get support from such as benefits advisers, social landlord representatives, the

personal support unit, and lawyers from the free representation scheme. As well as giving practical support, perhaps with benefits claims and filling in the defence form, it would also help to demystify the process. There may be creative ways of thinking about how this might be staffed. For example, perhaps more use could be made of law students. In the context of family law disputes, the state of California runs successful "self-help" clinics and workshops that make resources available as well as giving practical advice. This one-stop shop could be accompanied by redesigning how information is accessed for litigants in person—with a central hub of information that is accessed through call centres and the web.

Private sector

There are real problems with the eviction of private sector tenants. Vulnerable persons are increasingly housed in the private sector, and yet local authorities struggle to dedicate resources to tenancy relations and provide support to private sector tenants. In most cases, private tenants have no defence to a possession action provided that the proper process has been followed. However, there is particular concern regarding illegal and retaliatory evictions; Shelter reports that a significant number of tenants are reluctant to raise concerns about repair and conditions with their landlord. It is pursuing legislation that aims to prevent retaliatory evictions by restricting the use of s 21 notices, and a Private Member's Bill was introduced by Sarah Teather MP last month which will have a second reading in November 2014.

The seminar confirmed findings from our report: private landlord cases are often badly prepared and managed, frequently there are procedural errors, and they take up unnecessary court time.

The Department for Communities and Local Government's working group is looking at improving eviction as part of its wider concern with encouraging landlords to offer longer tenancies in the private rented sector. The working party has not yet concluded and has yet to report to the government, but one issue that it sees as troublesome is the s 21 notice that has to be served before possession proceedings can begin. Although some problems have been lessened by the Court of Appeal case of *Spencer v Taylor* [2013] EWCA Civ 1600, [2013] All ER (D) 230 (Dec), there is still scope for further improvements, possibly through a standard s 21 form (a proposal also supported by Shelter) and wider use of the accelerated possession procedure.

A number of suggestions were made during discussions at the seminar.

Clearer court forms

Given the number of mistakes commonly made, the forms should be redesigned so that it is obvious what has to be completed, and who can fill it in and sign it (it appears that frequently agents, and even solicitors, are signing when the landlord personally is required to).

Clearer guidance

Most landlords are amateurs and many are not aware of their obligations. There should be accessible and clear guidance given to them, and one suggestion was that this should accompany the grant of a buy-to-let mortgage (for example, a booklet on "How to be a good landlord" and "What to do if things go wrong").

Diverting form checking from judges

Particularly in private sector cases, judges spend a lot of time checking whether things have been completed properly and talking landlords through errors. This does not need to be a judicial job and could be done by other trained personnel, as occurs, for example, in some of the tribunal jurisdictions.

A national licensing scheme

One suggestion that received widespread support from the delegates was for a licensing scheme funded by private landlords. In order to seek possession, a private landlord would have to be licensed under the scheme. The annual fee paid by landlords would fund the provision of information on issues such as eviction and current legal developments.

Joined-up processes & conversations

Although courts do have user groups there are clearly benefits to be gained from more "joined-up conversations". Income team leaders from a London housing authority illustrated this with reference to how a frustratingly high number of adjournments led them to develop a better understanding of the court process and its requirements by talking to judges and court managers. Some courts have focus groups to promote the exchange of information and best practice, but this is not a nationwide model and geography might make this difficult in more remote places.

Conclusions

Amid the various issues discussed and recommendations put forward at the seminar there was one consistent and unifying theme, which was the need for more effective information about the possession process to be disseminated to both defendants and claimants (particularly private landlords). Effective access to justice demands that individuals are able to make an informed choice about whether to engage with the legal process and if they choose to do so, do not feel inhibited in seeking to defend or enforce their claims. Our research suggests that more needs to be done to ensure that the housing possession process is achieving these fundamental requirements.

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