

Enforcement of possession orders and alignment of procedures in the county court and high court

Generation Rent represents the UK's private renters and campaigns for secure, safe and fair private rented homes. We have been campaigning for some time for the abolition of section 21 of the 1988 Housing Act and an end to 'no fault' evictions in England to give private renters more security in their homes. The problems caused by the current level of insecurity for private renters are well documented.¹² We welcome the Government's commitment to ending section 21 announced by the Secretary of State in March 2019. Nevertheless, we recognised in the campaign that some landlords have concerns regarding the length of time to regain possession, especially if accruing rent arrears during this time. The RLA found that 77% of landlords said the speed and cost of a section 8 eviction was the main barrier to longer tenancies.³ Generation Rent's research found that, if tenants do not leave the property after the two month notice period has expired, the time taken to regain possession through the courts can often be longer under section 8 than section 21.⁴ Nevertheless, the possession process does contain delays in the courts and in enforcement. Streamlining the process plays an important role in improving security of tenure for tenants, as well as supporting access to the rental market for 'riskier' tenants. While evicting someone from their home is a very serious matter, whether the tenant is at fault or not, and time delays are a vital safeguard within this process, the overall process and use of resources can be improved to reduce unnecessary delays. It is in this context that Generation Rent submitted a response to the MHCLG call for evidence on the case for a housing court in January 2019, and that we are submitting this consultation response on the enforcement of possession orders.

Generation Rent have strong concerns regarding how transfer of possession enforcement to High Court currently operates and impacts, in particular the significantly higher financial, physical and mental health costs borne by tenants evicted by HCEOs in comparison to those evicted through County Court enforcement. These costs are not only unfair but also create unnecessary harm to already vulnerable individuals. Within the current system concerns are as follows:

- Transferring possession enforcement to High Court dramatically increases costs both for the application for the Writ and for the costs of the enforcement. It is very common for more than £1000 to be added to the costs of the tenant.
- Despite the requirement to have given notice to the tenant that enforcement will be applied for, that often does not happen. Even if it does, tenants more often than not do not understand that they will hear nothing more before enforcement takes place and that they have to apply for a stay at the High Court. It puts tenants in a very vulnerable situation.
- High Court enforcement occurs at usually at 6am - 7am. Tenants are often roused from their bed by the HCEOs and rarely given more than 15-20 minutes to get dressed. Tenants are often thrown out of the house with no more than the clothes on their back and it can take weeks, months and even years (or never) to get their most basic possessions such as passports, laptops, medicine back. This can endanger tenant's livelihoods and health and leave them extremely vulnerable and at risk of exploitation.

¹ <https://www.ippr.org/publications/sign-on-the-dotted-line>

² <https://www.centreforsocialjustice.org.uk/library/putting-down-roots>

³ <https://research.rla.org.uk/report/longer-term-tenancies-in-the-private-rented-sector/>

⁴ https://www.generationrent.org/section_21_evictions_what_do_we_know

Generation Rent do not support the transfer of the possession enforcement from County Court to High Court in the current system. However, if procedures and the rights and treatment of tenants between both courts are aligned, then regularising the transfer of cases to High Court for possession enforcement could play a useful role in creating a more secure rental market that works for both landlords and tenants.

Question 1: (a) Should there be a process in the County Court of providing a notice of the time and date of eviction prior to the retaking of possession? And if so then (b) should it be put on a statutory basis?

1a - Yes

1b - Yes

There is already a process within the County Court (Form N54 procedure) of providing a notice of time and date of eviction to tenants. Providing advance notice of the time and date of eviction is important in enabling vulnerable tenants about to lose their home make preparations including applying for relief. The Form 54 procedure supports human rights compliance in possession enforcement, as noted in Court of Appeal in *LB Southwark v Brice*. It would be simple and easy to put this good practice on a statutory basis to ensure that the procedure is human rights compliant.

Question 2: Should the notice be based on the current Form N54?

Yes

Question 3: What information should be included in the notice?

a) The same as the N54 Form

Question 4: a) To whom should the notice be addressed and b) where should it be delivered? In particular should it always be addressed "to the occupiers" and delivered to the premises?

4a Tenants may not always open post that is addressed to 'The Occupiers'. But if the tenancy is in the name of a person who is not at the property for whatever reason (relationship separation, sharer who has left, in hospital, on holiday, etc), then the other tenants affected may not open that post either. It would be best to address the notice to both the tenant and other occupiers e.g. John Smith and other occupiers.

4b - The premises. It would also be good practice to email a copy of the Notice to tenants if email address is available, and to attach a copy of the notice to the front door.

Question 5: What should the standard length of notice be?

b) 14 days – A fortnight gives the tenants time to prepare and make alternative housing arrangements, whether privately or with the local authority, whilst still minimising the delay for landlords seeking to repossess their property.

Question 6: Should the court have the power (i) to dispense with or (ii) to reduce or (iii) extend, the notice period?

No. Adjustable notice periods are unfair to both tenants and landlords. Adjustable notice periods would make it harder for both tenants and landlords to understand the enforcement process and make necessary preparations. Giving the courts the power to adjust the notice period may reduce the confidence of landlords to rent to more vulnerable tenants.

Question 7: Should there be an exception to the requirement for advance notice of the eviction to be given in the case of trespassers?

No. If trespassers are living in the premises then they still need notice to make alternative housing arrangements. Many trespassers are vulnerable and destitute people experiencing mental and physical health problems. The eviction procedure, even with advance notice, has a considerable impact on the wellbeing of an individual. A sudden and unexpected eviction, which can often occur forcibly and in the middle of the night, is particularly traumatic and can trigger existing mental health conditions. Providing advance notice to trespassers is necessary to reduce the harm that vulnerable individuals experience during the eviction procedure.

Question 8 - Should there be any other exceptions to the requirement for advance notice of the eviction to be given (e.g. commercial premises or mortgages)?

No

Question 9: Should procedures, (in terms of enforcement of possession orders in the High Court and in the County Court) be aligned by a similar requirement for HCEOs to provide a Notice to occupiers of the date and time of eviction delivered to the premises prior to the retaking of possession?

a) Yes. It is a matter of fairness and transparency for both tenants and landlords that the enforcement of possession orders is aligned with regards to the provision of advance notice to occupiers of the date and time of eviction between High Court and County Court procedures.

Question 10: If it is accepted that provisions for enforcement of possession orders in the County Court and High Court be aligned, should there still be the need for judicial permission to enforce possession orders in the High Court?

Yes. There must be a process to ensure that historical possession orders are not used to evict occupiers who were not party to the original claim. We are aware of landlords attempting to evict tenants who had moved into the property after the subjects of the relevant possession order had moved out.

Question 11: Should the current exception regarding the absence of need for judicial permission for a Writ to issue against trespassers continue?

No – Many trespassers are destitute and vulnerable, and should receive the same rights and process as others being evicted to reduce the harm of this process and enable them to make preparations.

Question 12: Should there be any limits on the trespassers exception?;

No, there should not be a trespassers exception.

Question 14: Should the requirement of occupiers having “sufficient notice of proceedings” be defined; and if so then how and in particular as to notice of:

Occupiers should have sufficient notice of all of the above/ following proceedings:

- (i) the proceedings seeking possession
- (ii) the original order for possession
- (iii) any order transferring enforcement to the High Court
- (iv) the last order or writ or warrant for possession or order staying or suspending such
- (v) an intent to enforce

Occupiers should be made aware of all proceedings relating to their home to allow them to make arrangements to move out or apply for relief. This notice should be by registered post addressed to “[the tenant] and occupiers,” with a copy sent via email where available.

Question 15: Should there be a need to justify transfer of enforcement of possession orders between the County Court and the High Court (i) if the procedures for possession are aligned and (ii) if they are not?

If the possession procedures are aligned between the two courts then justifying transfer is less important, but occupiers should be made aware of any transfer. However if the procedures are not aligned or if the occupier faces significantly higher costs as a result of a transfer, then justification for a transfer should certainly be required.

Question 16: What (if any) information should the court be provided with on application to transfer?

Justification for transfer should require evidence of significant delays expected for County Court enforcement and of hardship that would be caused to the applicant of waiting such a time frame for enforcement.

Question 17: Where a landlord wishes to transfer a case for the purposes of enforcement, should there be a specific provision that these applications are made on notice to the defendant using Form N244 or some other means?

Yes, defendants must receive notice of transfer and be able to challenge.

Question 18: Should such an application be capable of being determined on paper without a hearing?

Yes in the interests of expediency, but occupiers should be given notice and the ability to challenge the application.

Question 19: Should there be any provision made regarding the higher costs of the HCEO over the County Court bailiff procedure?

Yes – It is a matter of fairness that costs accrued in the course of HCEO enforcement are capped at the level of costs in the County Court bailiff procedure. People being evicted are likely already financially very vulnerable, and being burdened with the higher cost of HCEO enforcement is not only unfair but also extremely unhelpful to their situation. A solicitor experienced in this area tells us that it is very common for more than £1000 to be added to the costs of the tenant in the case of HCEO enforcement.

Question 20: Should there be any provision made regarding notice having to be given to occupiers in advance of eviction if a transfer order is made and a Writ obtained?

Yes – It is only fair that the notice given to occupiers evicted by HCEOs should mirror that given to tenants by County Court bailiffs. As noted previously, providing advance notice of the time and date of eviction is important in enabling vulnerable tenants make preparations including applying for relief. The County Court Form N54 notice procedure supports human rights compliance in possession enforcement, and individuals evicted by HCEOs should similarly be protected by a human rights-complaint procedure.

Question 21: Should any applications for stays or suspensions of the possession order (made by the tenant) be made to the (home) County Court rather than the High Court?

Yes, such applications should be made to the County Court. This would support tenants to engage with the court process as County Courts are more local and accessible.

Question 22: In cases where there is a request for a warrant or writ of possession, should the applicant have to certify that all occupants have had sufficient notice of proceedings to able to apply for relief (i) if advance notice does have to be given of the date and time of eviction and (ii) if such advance notice does not have to be given?

Yes all occupants should receive sufficient notice of proceedings. This could be achieved by registered post. If the names of occupiers are unknown and make registered post unsuitable, it may be appropriate for evidence of the attachment of notices of proceedings to the front door to be considered sufficient.

Should there be exceptions (e.g. trespassers)?

No

Should the Court be able to waive such a requirement?

No .

Question 23: If there is to be a need for such certification; then should it be defined?

Yes and it should be evidence of all of the above/ following:

- (i) the proceedings seeking possession
- (ii) the original order for possession
- (iii) any order transferring enforcement to the High Court
- (iv) the last order or writ or warrant for possession or order staying or suspending such
- (v) an intent to enforce

Question 24: What form should such certification take so as to give confidence that all occupiers who may be affected by a possession order are informed?

Given that it might be difficult to have some occupiers make a declaration, then registered post or attachment of the notice to the property may be sufficient.

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