

Private Rented Sector Division  
Ministry of Housing, Communities  
and Local Government  
Third Floor – Fry Building  
2 Marsham Street  
London  
SW1P 4DF



16/01/2019

To Whom it May Concern

### **Response to a Call for Evidence: Considering the case for a Housing Court**

#### Introduction:

Flat Justice is a not-for-profit Community Interest Company that assists tenants in the private rented sector (PRS), particularly with application for Rent Repayment Orders, mostly in London.

We only have experience of the First-tier Tribunal -Property Chamber (FtT) and only in relation to making Rent Repayment Order (RRO) applications, so our comments relate only to these matters.

We started in August 2018 and have quickly become the ‘goto’ specialists for tenants interested in RRO application as we offer a no-win-no-fee representation service (20%) and pay tenants’ application fees for them in advance. We have so far attended a number of FtT hearings for tenant RROs and currently have approximately 20 RRO applications that have been submitted or are in the process of being prepared for submission, as well as many more we have guided. Our fee is well below that a solicitor might charge and we expect this number to increase substantially in 2019. Applicants for a RRO are not eligible for Legal Aid and so Flat Justice is a cost effective and simple way for tenants to access justice under this legislation.

As an indication of our commitment and interest in Tribunal matters, we recently wrote to the FtT president about an important error in the RRO1 form (used by tenants and LAs): this error is now to be corrected.

#### Comments

##### General

We find the FtT to be very approachable and open to comments. We particularly welcomed the response from Judge McGrath to our letter regarding the error in RRO1. Members of staff are always very helpful and the case officers we have dealt with have been excellent at giving guidance where they were able to. At the hearings we have attended, the judges have always been very understanding of the difficulties tenants face in bringing their own cases forward and have been very patient, especially with Litigants in Person (LiPs), nearly always the case for tenants. Likewise for the respondents who are also often LiPs.

Where we feel there is room for improvement is in the area of

1. accessibility of the application process and the use of technology
2. availability of specialist advice for tenants preparing their applications
3. consistency in the making of awards and the judgments

We detail these below.

1.

Accessibility/Technology: Many of our applicants are in the lower rung of the PRS, often in Houses of Multiple Occupation (HMOs) and often younger: mostly students or young professionals. A large number are also not native English speakers. This demographic has little to no experience of courts or tribunals in the UK.

Currently RRO applicants must complete form RRO1, then print and submit it by post with all additional evidence documents and enclose a cheque or postal order. We are not aware of any non-English help notes and the link on the government website that offers the form in “an accessible format” simply links back to the same page.

## Documents



Figure 1 accessible format not available- from <https://www.gov.uk/government/publications/form-rro1...>

Although the form is in electronic form and can be completed with a word processor, there is no method of electronic submission or signature. Many tenants we come across do not have cheque books and some banks no longer issue them for some or all of their accounts; Postal Orders are a very inconvenient way to pay the application fee and very few people in our demographic have ever used them or heard of them.

To help tenants prepare for cases and for organisations such as Flat Justice to conduct research, it would be helpful if the decisions from the Tribunal could be uploaded and freely available online. Although there is a web service for this, the recent decisions (since 2016) from the London FtT are not available. This has been an on-going issue now for well over a year, despite the acceptance that the availability of such documents is important for the accountability of HMCTS

(please see: <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Consultations/accountability.pdf>).

### *Suggestions:*

- a. Provide RRO1 notes & guidance in several languages and form formats accessible to people who use assistive technology
- b. Provide a full online submission option with digital signature and payment possibilities
- c. Upload the decisions for public use

2.

### Specialist Advice for Applicants

With no Legal Aid available for applicants for a RRO, it is a very steep learning curve for tenants wanting to make an unassisted claim: part of the reason for the existence of Flat Justice.

The HaPA 2016 gave tenants the right to make RRO applications directly to the FtT, without prior intervention by their LA. **It can be argued that much of the responsibility for policing of property licensing and landlord behaviour has now passed to tenants: yet no resources at all have been allocated to help them.**

With the recent introduction of the The Homes (Fitness For Human Habitation) Act (2018), the policy of devolving responsibility for litigation to tenants continues and can only mean that the number of tenant LiPs will increase.

At the risk of arguing ourselves out of business, we believe that courts and tribunals where a high percentage of applicants are poorly resourced tenants acting as LiPs could be greatly helped by provision of a dedicated officer to assist tenants with preparation of the application. This expense would likely be more than recovered by avoiding the expensive waste of judges' time picking through poorly assembled applications and evidence bundles. It would also be much fairer: tenants do not usually have the resources of landlords to hire solicitors or barristers to assist them.

### *Suggestion:*

Provide a dedicated officer to assist tenants with RRO applications with email and telephone support, as well as a possibility for a walk-in service for applicants without such technology.

3.

Consistency of awards and judgments

RROs were extended by the HaPA 2016 significantly. The Government explained the background to this development in their “[Rent repayment orders under the Housing and Planning Act 2016 Guidance for Local Housing Authorities](#)”:

a small number of rogue or criminal landlords knowingly rent out unsafe and substandard accommodation. **We are determined to crack down on these landlords and disrupt their business model.**

They go on to say:

When extended rent repayment orders were introduced through the Housing and Planning Act 2016, **Ministers made clear that they expected this power to be used robustly as a way of clamping down on rogue landlords.** In the House of Commons, Brandon Lewis MP

And:

### 1.3 Will the First-tier Tribunal use this guidance?

**While the First-tier Tribunal is not bound by it, they will have regard to this guidance.**

### 1.4 What is a rent repayment order?

We have reviewed 19 decisions on RRO applications made by tenants under the HaPA 2016 in London and must conclude that there is worrying lack of consistency in the methods of calculating the award. Judgments often refer to the HA 2004 and UT decisions under that legislation. However, the relevant 2016 HaPA RRO legislation differs substantially in both wording and intention from the 2004 HA.

As an example, that is not untypical, a recent decision included this by way of introduction to the summing up:

*Whilst sections 44 and 45 of the 2016 Act do not include the word “reasonable”, given the similarities between these provisions and the relevant provisions of the 2004 Act, the Tribunal considers that the guidance provided in these Upper Tribunal decisions remains relevant under the 2016 Act. (LON/00AL/HMK/2018/0016; Pereira v Stress Free Estates Ltd.)*

In this case, the respondent landlord did not submit any evidence, did not turn up to the hearing and offered no excuse for failing to attend or take part in the process. Yet the tenant was only awarded 80% of the rent applied for. We cannot understand on what basis, under the HaPA 2016, this reduction was made; there are many similar examples in the cases reviewed.

The HaPA 2016 RRO legislation does not instruct Tribunals to make awards that are “reasonable in the circumstances” (as it does in the HA 2004). The only ‘leeway’ for awards is in consideration of landlord & tenant conduct, the landlord’s financial circumstances and whether the landlord has received a related conviction. Whilst there are some overlaps in 2004 & 2016 legislation, the latter was conceived by Parliament with very different intentions and the wording is also very different. Most of the UT guidance on 2004 relies heavily on the “reasonable in the circumstances” wording in that Act, yet despite the absence of this wording in 2016, cases appear still to be assessed according to the 2004 guidance. Indeed the mistake in the RRO1 form for HaPA 2016 applications (which wrongly instructed applicants that they could not claim any rent falling outside the 12 months prior to application date) originated in a related rule from the HA 2004 not in the HaPA 2016.

We would hope that a specialist Housing Court could look at a more consistent approach to these cases, taking full account of the new legislation and the intentions behind it: to hold “rogue” landlords to account. An acceptance that the 2004 guidance is not fully applicable to 2016 cases would also avoid the huge amount of time that is spent in hearings listening to arguments from both sides about what landlord expenses should be deducted from the rent applied for, when the 2016 Act seems clear: none.

*Suggestion:* For RRO cases at least: a re-assessment of the way such cases are heard and a development of a consistent approach across the Housing Court/Tribunal.

Flat Justice welcomes the opportunity to contribute to the debate in this area and is open to further contributions should the opportunity arise.

Flat Justice