Justice Committee
Courts Reform (Scotland) Bill
Written submission from Shelter Scotland

Shelter Scotland helps over half a million people a year struggling with bad housing or homelessness – and we campaign to prevent it in the first place. We’re here so no-one has to fight bad housing or homelessness on their own.

Shelter Scotland provides expert support services, online advice and a free national helpline for everyone facing housing and homelessness difficulties. As such we have only submitted evidence on the parts of the Bill which relate to housing and/or homelessness.

Summary:

- Shelter Scotland is supportive of a national sheriff appeal court which would enable greater consistency in decision making in housing cases across Scotland.

- Shelter Scotland believe that a three month time limit for the raising of judicial review actions may be insufficient. Some clients may not have time to take an informed decision about whether they wish to raise an action against a public body. Leave to proceed for judicial review actions should not become a barrier for clients looking to assert their rights.

- Alternative dispute resolution should be encouraged by the court where appropriate. However, it is important to recognise its limitations and we feel that there will always be a place for some form of formal dispute resolution in housing cases.

- In terms of housing cases we feel that many of the issues the Courts Reform (Scotland) Bill seeks to resolve could be addressed by setting up a full housing tribunal, as we argue in our Scottish Government consultation response ‘Better dispute resolution in housing’.1 We note that the current Housing (Scotland) Bill proposes that eviction and non-eviction private rented cases are taken out of the sheriff court and into a tribunal.

The creation of a national Sheriff Appeal Court

Shelter Scotland is supportive of the establishment of a national Sheriff Appeal Court, as this is likely to lead to more consistent decision-making across Scotland’s sheriff courts. Currently it is unclear how a sheriff principal’s decision applied across Scotland – Sheriff Principals’ decisions are followed in some sheriffdoms, but not others. For example it has been hard to say how recent mortgage repossession cases will be interpreted across Scotland.2

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1 Shelter Scotland, ‘Consultation response: Better dispute resolution in housing’, April 2013
http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/consultation_response_better_dispute_resolution_in_housing

2 http://www.journalonline.co.uk/Magazine/58-7/1012824.aspx
It is important that this court is able to sit in the jurisdiction in which the case originated. This would ensure ease of access for our clients. If the sheriff appeals court were to sit in one location, e.g. in the central belt, we would expect there to have been developed effective ways of ensuring access to justice for people across Scotland – particularly those in very rural areas.

**Alternative dispute resolution**

Where appropriate alternative dispute resolution (ADR) can play a role, however, it is limited in its scope. Both parties will need to agree to its use and agree to the outcome of, for example, mediation. It is important to recognise that more formal dispute resolution will always be necessary for some ‘hard’ cases. If ADR is to play a formal role it should be recommended as early as possible in the dispute process. This is why we support the setting up of a full housing tribunal which could promote the use of ADR, such as mediation, during the dispute resolution process.

**Judicial specialisation**

Shelter Scotland welcomes the intention to introduce greater specialisation in the sheriff courts. We feel that this is particularly the case in housing matters. Cases often involve the application of complex statute and case law, and can be linked to other areas of law such as social security legislation. Where parties appear unrepresented this can cause delay – particularly if the sheriff does not ordinarily handle the type of case in front of them, and would normally rely on a solicitor or other representative to present them with the relevant statute or caselaw.

While the Bill will go some way to resolving these issues, Shelter Scotland favours the introduction of a housing tribunal as outlined in the current Housing (Scotland) Bill. This tribunal will hear private rented sector cases initially, with the potential to hear social rented sector cases in future, if the tribunal proves to be a suitable forum for these disputes. This is an approach that we consider to be sensible. It is hoped that the tribunal will be less intimidating for court users, more efficient and play an inquisitorial role. Shelter Scotland believe that the proposals in the Court Reform (Scotland) Bill and the current Housing (Scotland) Bill have the potential for more effective and better decision making in Scotland’s courts and tribunals.

**Judicial review – three month time limit**

Shelter Scotland is concerned that a three month time limit for judicial review claims could act as an added barrier for our clients who wish to assert their legal rights, in relation to the duties owed to them by public bodies. For example, where a homeless applicant disagrees with a local authority’s decision and has exhausted all other avenues of appeal. In some cases it can take a significant amount of time to put together a judicial review claim for a vulnerable client. Clients may not seek legal assistance immediately after the decision has been made. Once they have sought advice their prospects for success need to be investigated. This involves carrying out legal research, potentially getting an advocate’s opinion, applying for legal aid and presenting the options to the client for them to make a decision on how to proceed. All this work must be carried out before a judicial review application is lodged. A three month time limit may increase the risk of redress for vulnerable clients being out of reach. We note that the court may decide to hear a case which falls outside
the three month limit; it would be important to clarify what the grounds for an extension are, and how these would be reached. Further, we are not aware of a significant number of deliberately delayed judicial review actions coming to court, and therefore placing a high burden on the courts and public bodies.

Judicial review – leave to proceed

It is important that leave to proceed does not become an added layer of administration for someone wishing to assert their rights. The current system can encourage the early resolution of disputes in some situations – for example where the intention to raise a judicial review action is raised a public body may decide to change their initial decision. It would be important to ensure that the temptation is not there for public bodies to await the result of the leave to proceed, rather than review their decision once the possibility of judicial review is raised. And, as with the proposed three month time limit, we are not aware of a significant number of unmeritorious judicial review actions being raised, and putting pressure on public bodies and the court.

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