



Alternative Dispute Resolution in the Private Rented Sector

Examining the case for the establishment of an independent dispute resolution service for tenants and landlords in Northern Ireland.

The court system has historically been considered to be the best model for settling civil disputes. This is due to it being seen to be independent, respected by society and fair. However, in many jurisdictions, questions are now being raised as to whether formal litigation is the most effective method to resolve civil disputes. In Northern Ireland, the Department for Communities (DfC) have proposed the concept of an independent housing panel as a method of alternative dispute resolution in the private rented sector (PRS). **The proposal presents an opportunity to examine the path private tenancy disputes in Northern Ireland currently follow and to ask in what ways can the system be improved.**

The aim of this research was to explore the potential application of alternative dispute resolution (ADR) in the PRS. It makes recommendations to develop and pilot a digital by default ADR system which can be used in this sector of the housing market. The research:

1. Reviews relevant policy documents from Northern Ireland and the UK which support improving access to justice;
2. Identifies and examines specific good practice ADR case studies from other jurisdictions;
3. Gathers expert opinion from those living and working in the PRS in Northern Ireland, as well as housing practitioners and policy makers;
4. Assesses the data and makes recommendations for the principles which an ADR system needs to consider, and how that system could function.

The Momentum for Change

Key policy documents were reviewed to understand the support that exists across government for working to improve access to justice and dealing with disputes more effectively.

Northern Ireland Programme for Government:

The Northern Ireland Executive's draft Programme for Government took a fresh approach, focusing on the major societal outcomes and the positive impact on citizen's lives that the Executive wants to achieve. The draft Programme for Government defined its purpose as “[i]mproving wellbeing for all – by tackling disadvantage, and driving economic growth”¹

Department for Communities' Proposals for Change in the Private Rented Sector:

The proposals aim to “identify [...] where improvements can be made to help make the private rented sector a more attractive housing option”². This paper is focused on proposal 16 (of 16) to “Examine the financial case for establishing an independent housing panel for Northern Ireland.”³

Review of Civil & Family Justice in Northern Ireland:

The report aims to set out “how [the civil justice system] can be transformed in order to improve access to justice; achieve better outcomes for court users [...] and] create a more responsive and proportionate system that makes better use of available resources, including new technologies.”⁴ It proposes the introduction of a one to two year pilot online dispute resolution scheme (ODR) for all money damages cases of under £5,000.

Key Findings

The research collected quantitative and qualitative data from over 800 people who live or work in the PRS in Northern Ireland, and who have had experience of a housing dispute. Respondents included: private tenants, landlords, letting agents, independent advisers, government officials, council officers, dispute adjudicators and The Property Ombudsman Service staff.

The analysis results in the identification of four key principles which respondents deemed key to the development of an alternative dispute resolution service in the PRS. Respondents called for a system which:

- **Is coherent, giving parties clear information about how to resolve housing disputes**
- **Is developed and delivered by impartial, housing experts who help parties to resolve disputes**
- **Takes a holistic, person-centred approach and incorporates various ADR methods**
- **Is responsive, cost-effective and accessible, regardless of the user's preferred medium**

¹ NI Executive (2016); Programme for Government Consultation Document; available at: <https://www.northernireland.gov.uk/consultations/programme-government-consultation>

² Department for Communities (2016); Private Rented Sector in Northern Ireland: Proposals for Change; available at: <https://www.communities-ni.gov.uk/consultations/private-rented-sector-northern-ireland-proposals-change>

³ Ibid.

⁴ Lord Justice Gillen (2017); Address by The Right Honourable Lord Justice Gillen; Formal Launch of the Review of Civil and Family Justice; available at: <http://www.jsbni.com/civilandfamilyjusticereview/Pages/default.aspx>.

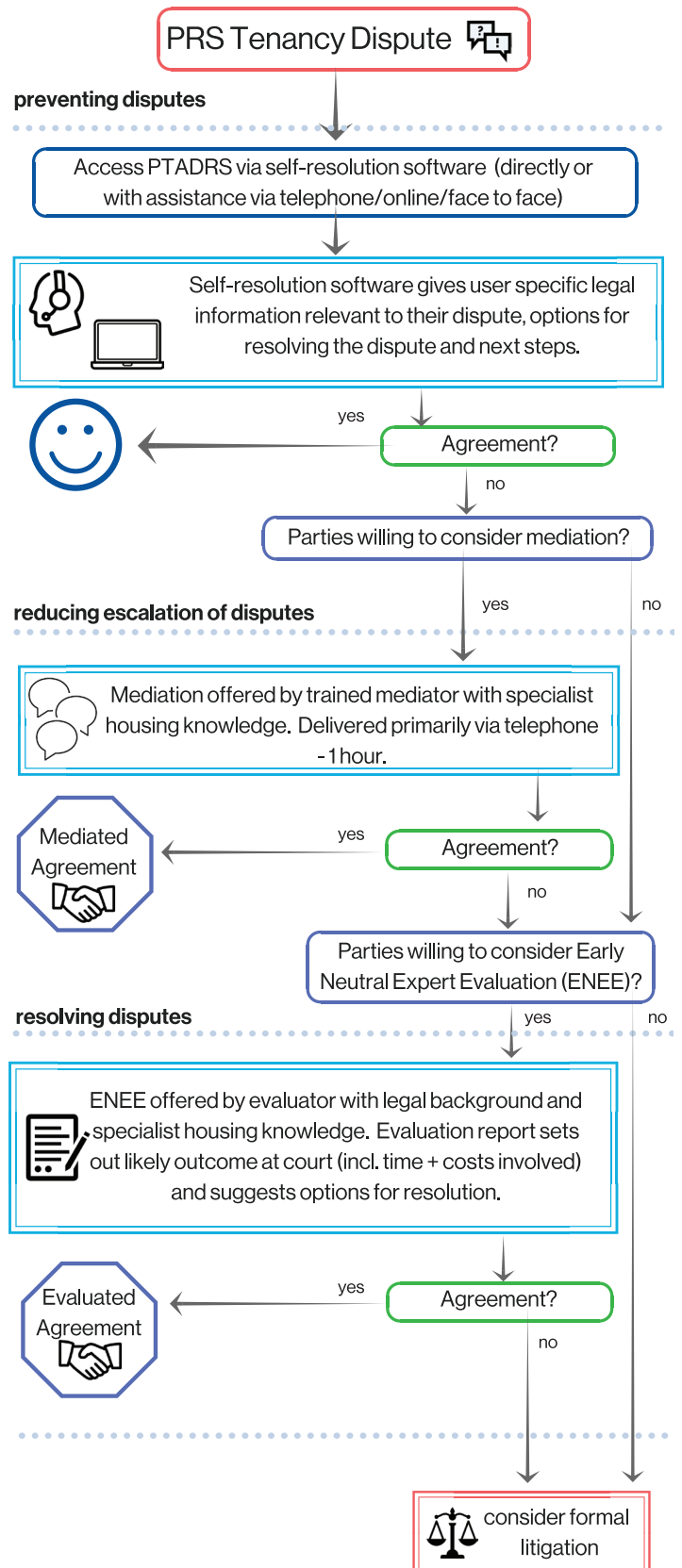
Proposal

It is recommended that a digital by default Private Tenancy Alternative Dispute Resolution Service (PTADRS) be piloted in Northern Ireland. The report proposes the model for this system that is based on three methods of resolution. The three ADR approaches are:

- self-resolution;
- mediation; and,
- early neutral expert evaluation.

By offering three methods of resolution, the proposed system gives parties a suite of ADR options by which they can seek to resolve their housing dispute. Should one option not be appropriate, they can try another. Each option encourages participant involvement and discourages the unnecessary escalation of disputes.

The proposal is designed with an outcomes based approach. It focuses on the positive impact the digital by default PRADRS aims to achieve for tenants and landlords, and the separate outcomes that lead to achieving that impact. This approach means that a plan for evaluation, which includes measureable indicators of success, could be developed and agreed at the outset of the project.



This flowchart is a synopsis of how the digital by default PTADRS would work and the services it would offer those parties involved in a dispute. A more detailed version of this flowchart is available in the full report, which can be downloaded at www.housingrights.org.uk

The report proposes digital by default PTADRS' impact and outcomes to be:

Impact

- The PRS is a suitable housing option, which functions fairly for both tenants and landlords.

Ultimate Goals

- Improved tenant-landlord relationships.
- Reduced number of tenancies ending as a result of a dispute.
- Reduced statutory homelessness.
- Increase in evidence-based policy decisions in relation to the private rented sector.

Intermediate Outcomes

- Landlords and tenants better understand their rights and responsibilities.
- Landlords, agents and tenants work together to solve housing disputes.
- Landlords, agents and tenants work together to sustain tenancies.
- Government departments identify policy and/or system improvements required in the PRS.

We recommend:

1. A Private Tenancy Alternative Dispute Resolution Service (PTADRS) which is digital by default should be piloted in Northern Ireland.
2. The Department for Communities actively explore, in collaboration with the Department of Justice, the potential to develop a digital by default PTADRS, in light of the Preliminary Civil Justice Review. The PTADRS could be a stepping stone towards the development of the voluntary ODR scheme.
3. The PTADRS should be based on the 4 key principles identified via stakeholder feedback.
4. An outcomes-based measurement framework, agreed at the project's outset with regard to the 4 key principles, should be developed to evaluate the success of the service.
5. A steering group should be established to help inform development and implement the pilot. This could include key stakeholders, including private tenants, landlords and professionals from the housing and administrative justice sectors.
6. Resources should be made available to develop and evaluate the pilot. To ensure the most cost effective use of resources and to avoid duplication, consideration should be given to the potential which exists across current services that would support the implementation of PTADRS.
7. The service should be branded and communicated as a discrete and distinct entity, whilst being embedded in structures that already exist.
8. The PTADRS should take the form of a time limited pilot, at the end of which the project can be evaluated according to the impact measurement framework. At this time, the need to develop the service further to include an adjudicative, independent housing panel can be revisited.

This is a brief summary of a substantive research paper. To download the full document, please go to www.housingrights.org.uk /AlternativeDisputeResolutionPRS

Housing Rights hope that this research will inform and stimulate discussion of more effective dispute resolution systems that could be introduced to support tenants and landlords in the private rented sector in Northern Ireland. We welcome opportunities to discuss the contents of the paper further with those who have an interest in this area.

Get in touch via policy@housingrights.org.uk or 028 90 245 640.