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Policy Response

A response to the Report of the September 2017 Review of Civil Justice

December 2017

when everyone has a home

Housing Rights

Introduction

Housing Rights is the leading provider of specialist housing advice in Northern Ireland, and has worked for over 50 years to help those in housing need.

In 2016/17, we helped over 11,500 people deal with over 43,000 housing issues. In the course of our work, we assist and represent our clients at all stages of the formal and informal justice process:

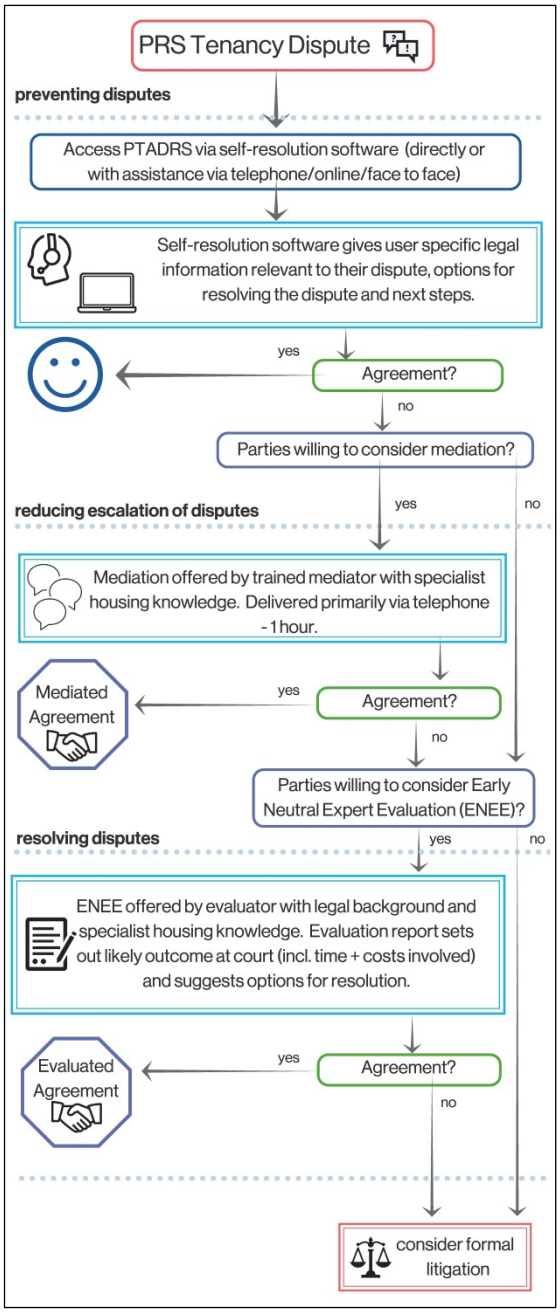
- Our helpline team provide initial advice and information to clients on the entire range of housing queries.
- Our advice and casework staff represent and advocate for clients with more complex issues; this often includes informal mediation and dispute resolution with (for instance) landlords or lenders.
- Our advice website, housingadviceNI provides online advice and information to tenants, owner occupiers and landlords across Northern Ireland, including template letters which clients can use when seeking to resolve disputes. In 2016/17, there were 2.1 million page views on our site.
- If disputes reach the stage of Court proceedings, Housing Rights solicitors provide formal representation to our clients on housing disputes across all tenures. In 2016/17, our solicitors provided representation in 66 cases.
- If disputes reach the stage of Court proceedings, our Housing Possession Court Duty Scheme offers free representation to tenants and homeowners across Northern Ireland, who are dealing with rent or mortgage arrears. In 2016/17, we offered Court representation to 221 clients facing possession proceedings.

Due to our developing experience and expertise in this area, Housing Rights strongly feels that there is a role for alternative forms of dispute resolution in tackling housing disputes. Housing Rights therefore welcomes the opportunity to engage in the review of civil justice. In particular, we are eager to engage with the Review's recommendations to develop a pilot online dispute resolution system[1], and the creation of a Civil Justice Council as a strategic driver of improvements in civil justice.[2]

[1] 'Review of Civil and Family Justice in Northern Ireland Review Group's Report on Civil Justice', p x
[2] Ibid., p xi

Online dispute resolution

Housing Rights welcomes the review's proposal for a pilot online dispute resolution scheme for disputes under £5,000 in value.[3] In this light, Housing Rights would refer the Review Group to our recently published research on Alternative Dispute Resolution in the Private Rented Sector.



This research paper and an Executive Summary have been attached to this response. This research recommends that a digital by default *Private Tenancy Alternative Dispute Resolution Service* be piloted in Northern Ireland.

The pilot scheme proposed in the Report would have 3 stages: 'Stage 1 – an automated interactive online process; Stage 2 – conciliation of case management by trained case officers; Stage 3 – resolution by judges.'[4] Similarly, the service proposed in our research would take 3 stages, as detailed in the included flowchart:

1. Self-resolution software giving specific legal information relevant to their dispute, options for resolving the dispute and next steps
2. If the parties are willing to engage, they can be offered mediation AND/OR early neutral evaluation. These would be delivered respectively by a trained mediator with specialist housing knowledge, and an evaluator with a legal background and specialist housing knowledge.
3. Formal litigation.

Housing Rights would recommend that, in light of this Review, the Departments of Justice and Communities explore the potential of a *Private Tenancy Alternative Dispute Resolution Service*, as a pilot and a potential "stepping stone" to a broader ODR scheme.

[3] Ibid., p52
[4] Ibid.

Civil Justice Council

Housing Rights welcomes the proposal for 'creation of a Civil Justice Council as a strategic level forum for driving significant improvements in the performance of the civil justice system'[5], and is aware that a shadow Council is currently being developed.

Housing Rights strongly believes that membership of this Council should go beyond the legal profession and judiciary and include representation from key stakeholders including consumers and voluntary organisations. Stakeholders from such sectors can offer added value to the Council, and provide additional insights and expertise from outside the legal profession and judiciary.

In this light, Housing Rights notes that the Civil Justice Council in England & Wales must include 'persons with experience in and knowledge of the lay advice sector'[6], and is encouraged by the Review's recommendation which states that the NI Council should include 'lay members.'[7]

Housing Rights would welcome the opportunity to engage with the Department and the Review group on these issues.

[5] Ibid., p334
[6] Ibid., p337
[7] Ibid., p344

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Executive Summary
Research Paper
November 2017

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.

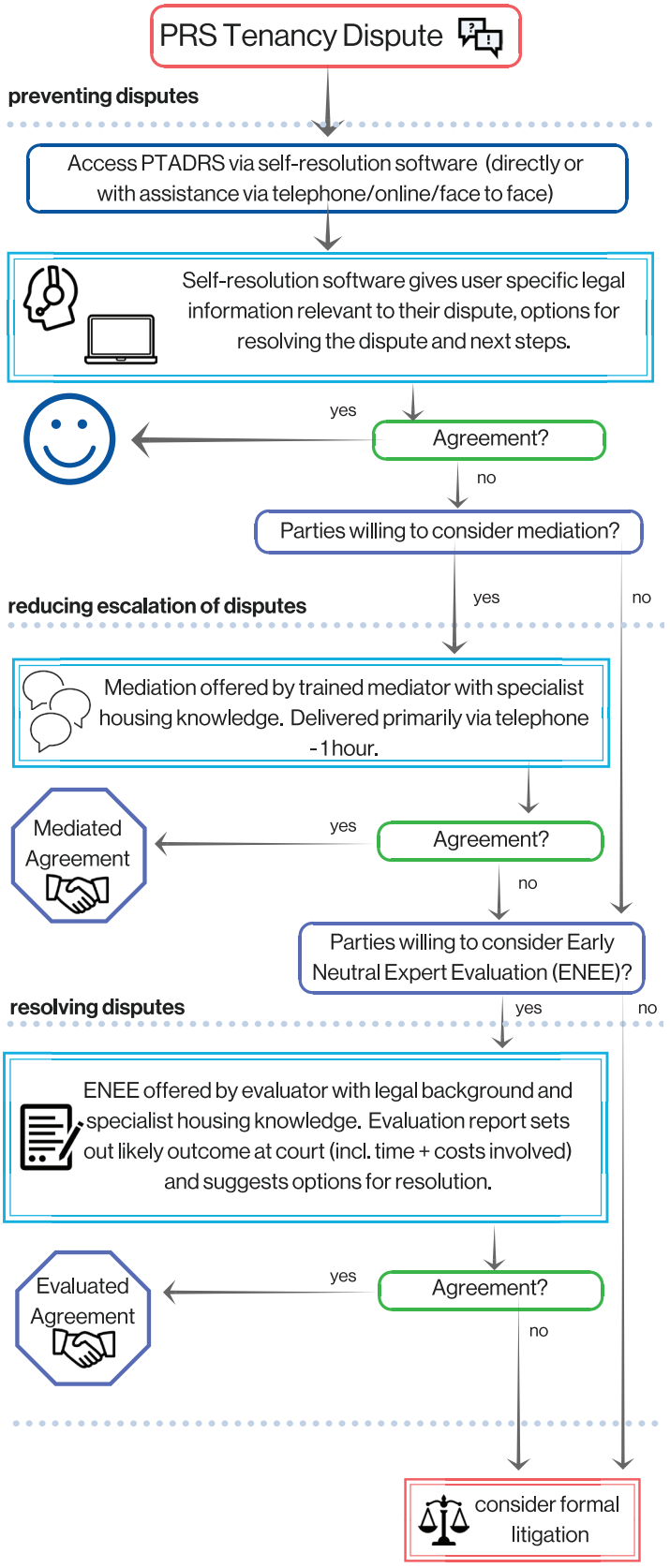
Proposal

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

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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.

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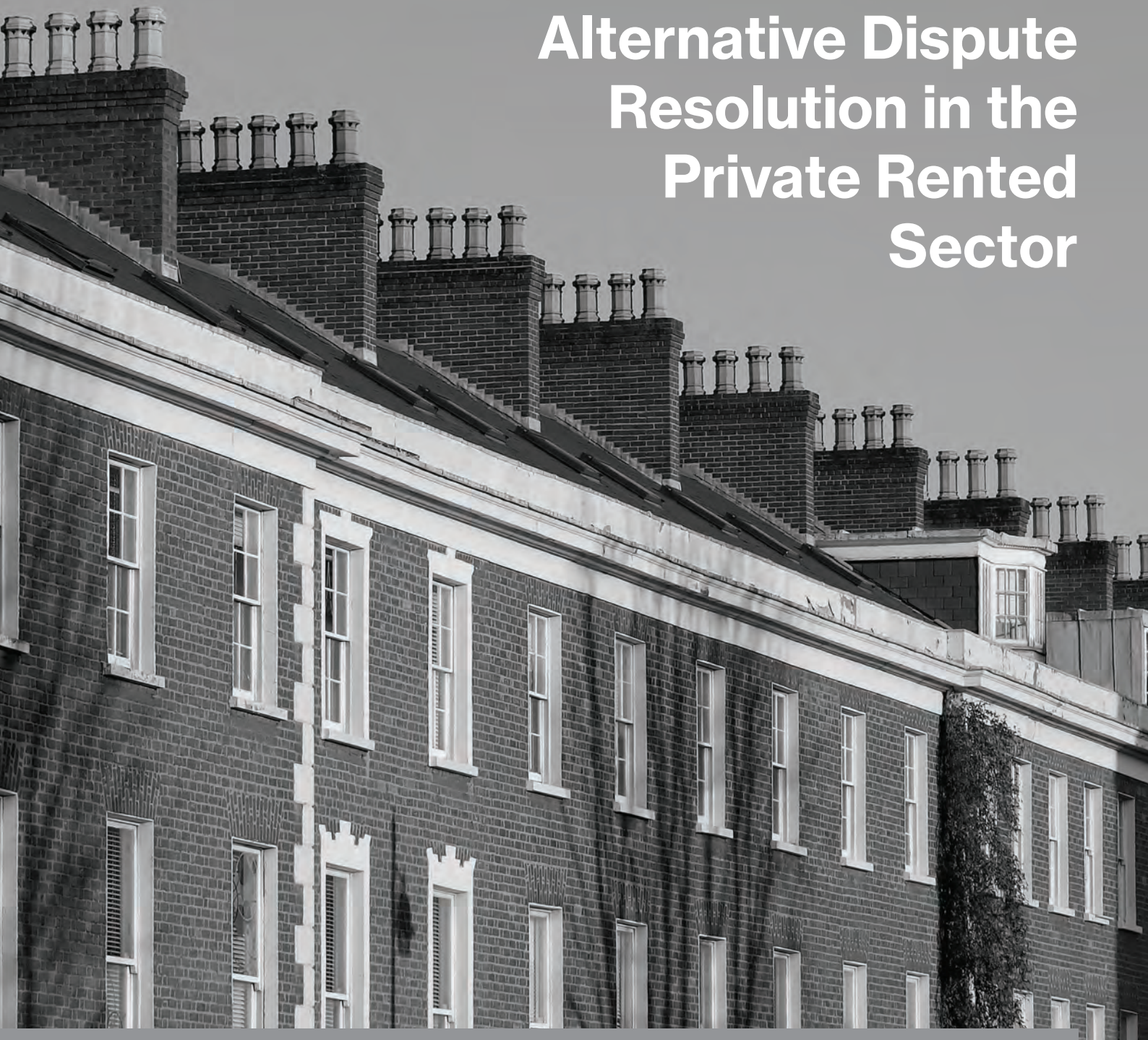
Research Paper
November 2017

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.

Acknowledgements

We would like to thank each person who responded to our online and telephone survey to tell us about their experience of disputes in the private rented sector in Northern Ireland, and share their ideas of what could have helped them to resolve their issue.

We acknowledge with thanks our colleagues across the housing sector who contributed to our survey and interviews. We are very grateful to those government officials and housing professionals who participated in our discussion group and provided a range of helpful comments on an earlier draft of this report.

Our thanks is also due to Oak Foundation who provided the funding which enabled this research to be conducted.

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Acronyms

ADR	Alternative dispute resolution
AJTC	Administrative Justice and Tribunals Council
CBA	Cost benefit analysis
CRT	Civil Resolution Tribunal
DfC	Department for Communities
DSD	Department for Social Development
ENEE	Early Neutral Expert Evaluation
EHO	Environmental Health Office
HANI	www.housingadviceNI.org
NIHE	Northern Ireland Housing Executive
OBA	Outcomes Based Accountability
ODR	Online dispute resolution
PCJR	Preliminary Civil Justice Report
PfG	Programme for Government
PRS	Private Rented Sector
PTADRS	Private Tenancy Alternative Dispute Resolution Service
ToC	Theory of Change
TPOS	The Property Ombudsman Service

1. Introduction

The court system has historically been considered to be the best model for settling civil disputes, due to it being seen to be independent, respected by society and fair. However, in many jurisdictions, questions have been raised as to whether litigation is the best method to resolve disputes.

In Northern Ireland, the Department for Communities (DfC) has 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 housing disputes in Northern Ireland currently follow and to ask in what ways can the system be improved.**

This paper considers the potential costs and benefits of establishing an independent dispute resolution service for the private rented sector, as well as highlighting the wider social issues such a strategic change influences, in relation to access to justice and societal wellbeing.

a. The momentum for change

i. The private rented sector in Northern Ireland

The PRS is the fastest-growing housing tenure in Northern Ireland. At the turn of the century, 5% of households in Northern Ireland were in the private rented sector.[1] The most recent figures show that the sector now accounts for 17% of NI households.[2] It is likely that the population living in the private rented sector will continue to grow substantially. A recent PwC analysis has forecast that over 25% of households in Northern Ireland will be in the private rented sector by 2025, due in part to rising house prices and lender deposit requirements discouraging first-time buyers.[3]

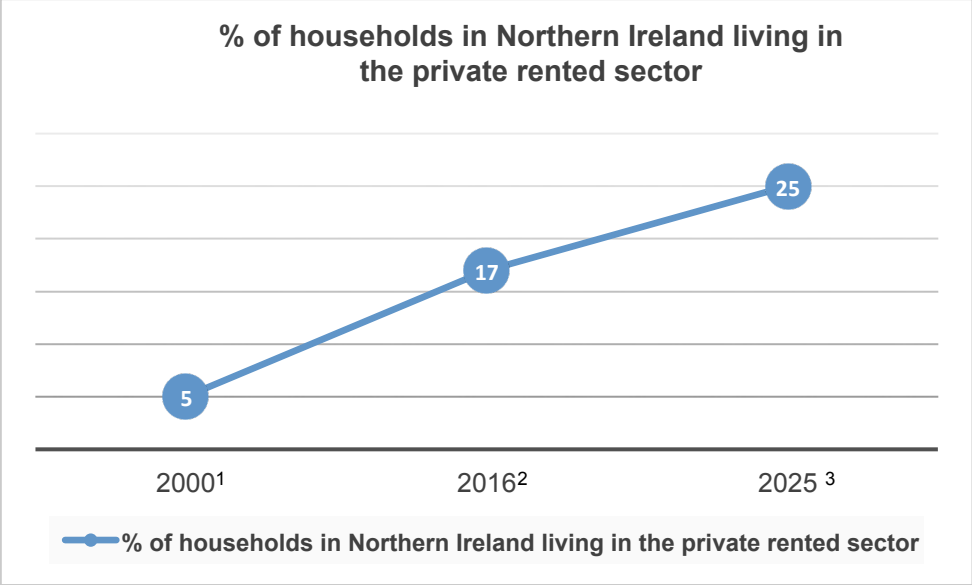

Figure 1: Chart demonstrating the growth and projected growth of the PRS in Northern Ireland between 2000-2025

An increasing number of families and working households in Northern Ireland rent privately and intend to stay in the sector for the long term.[4] Due to pressures on the supply of social housing, Housing Rights has also witnessed a growing number of vulnerable households and clients living in the private rented sector.

[1] Department for Social Development (2000) 'Northern Ireland Housing Statistics 1999-2000', p.10
[2] Department for Communities (2016) 'Northern Ireland Housing Statistics 2015-16', p.11.
[3] See http://www.pwc.co.uk/who-we-are/regional-sites/northern-ireland/press-releases/northern-ireland-embraces-generation-rent-as-property-ownership-falls.html
[4] See Gray P, McAnulty U & Shanks P (2014) 'Living in the Private Rented Sector: Experiences of tenants' Northern Ireland Housing Executive/University of Ulster

Advising on issues in the PRS has become an increasingly large element of Housing Rights' work. Despite the sector accounting for 17% of Northern Irish households, 45% of our enquiries in 2016/17 related to privately rented homes. Our advisers have found that disputes between private tenants and landlords arise most frequently in relation to disrepairs, affordability and deposits. Collectively these three issues prompted private tenants to contact Housing Rights for advice in 50% of cases recorded for 2016/17.

ii. Outcomes Based Approach to Government

The Northern Ireland Executive published a draft Programme for Government (PfG) in May 2016. The draft took a fresh approach, focusing on the major societal outcomes and the positive impact on citizens' lives that the Executive wanted to achieve.[5] This was a move away from the content of previous PfGs, which tended to be more concerned with the delivery of services and the cost of those services.

The draft Programme for Government defined its purpose as *"[i]mproving wellbeing for all – by tackling disadvantage, and driving economic growth"*.[6] The approach, which moves away from inputs and outputs, is known as Outcomes Based Accountability™ (OBA). The benefits associated with OBA include:

- creating a common language;[7]
- bringing together key stakeholders across different contexts (e.g. across government departments and across sectors) for a common purpose; and,
- providing a framework for managing and maximising performance.

This shift to an outcomes-based model of government is practically and culturally challenging for government. While government has operational control over output (e.g. increasing the number of free school meals), it can only influence the outcomes (e.g. childhood obesity levels) because these are affected by a range of factors.

The outcomes-based approach has relevance to this paper as the proposal to establish an independent housing panel originates from an aspiration to improve the experience tenants and landlords have in the PRS. As such, it will require key stakeholders to come together from a variety of different contexts to engage in discussions and actions about how to achieve this outcome.

iii. Department for Communities' Proposals for Change

The DfC published Proposals for Change in the PRS in January 2017. The proposals aimed to *"consider the current and potential future role of the sector and assess the effectiveness of current regulation, identifying where improvements can be made to help make the private rented sector a more attractive housing option"*.[8] This paper is focussed on proposal 16, (of 16), which states:

> *The Department proposes to*
>
> *Examine the financial case for establishing an independent housing panel for Northern Ireland.*[9]

The DfC highlights potential positives of the establishment of a housing panel, including reducing unnecessary court action, preventing homelessness and improving landlord-tenant relationships. The benefit of a quicker, less costly process is also mentioned. The DfC state

[5] An overview of the PfG framework, as presented by David Sterling HOCS during his presentation *Making this a better place* at NICVA on 25 October 2017, is available in appendix 1.
[6] NI Executive (2016); *Programme for Government Consultation Document*; available at: https://www.northernireland.gov.uk/consultations/programme-government-consultation
[7] For a glossary of associated terms, see appendix 2.
[8] Department for Communities (2016); *Private Rented Sector in Northern Ireland: Proposals for Change*; p.6; available at: https://www.communities-ni.gov.uk/consultations/private-rented-sector-northern-ireland-proposals-change
[9] Ibid. p.49.

that *"[g]reater consideration would need to be given to the role and potential make up of such a panel"*.[10] This paper explores the concept of alternative dispute resolution more broadly, examining the evidence to determine what system is the most appropriate for alternative dispute resolution in the PRS and how this system would function.

iv. Review of Civil & Family Justice in Northern Ireland

In September 2017, the Judicial Studies Board for Northern Ireland launched two preliminary reports produced by a review group established to undertake a fundamental review of the civil justice systems 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"*.[11] The Civil and Family Justice Review's Preliminary Civil Justice Report (PCJR) makes three flagship recommendations which are of particular relevance to this paper. They are as follows:

- *Justice to be delivered in many ways — by the most appropriate decision maker; in modern hearing rooms, community halls or remote locations; by video links, on laptops, tablets and smartphones; and online with the citizen and the decision maker coming together virtually.*

- *Online dispute resolution as an alternative to court in certain types of low-value money damages cases of under £5,000, excluding personal injuries over the value of £1,000.*

- *Courts to take a more active role in the encouragement, facilitation and management of dispute resolution in the widest sense by weaving alternative dispute resolution more firmly into the civil justice fabric.*[12]

The PCJR takes an outcomes-based focus and encourages collaborative working. It is important that the report's content is taken into consideration alongside the plans the DfC has in relation to establishing an independent housing panel in Northern Ireland.

There are clear overlaps between the PCJR and the DfC's proposal regarding a housing panel, which present opportunities for co-design across government departments. The PCJR recommends a: *"pilot scheme of voluntary ODR [online dispute resolution] to be set up throughout Northern Ireland for money damages cases of under £5,000"*.[13] If this recommendation was actioned, housing related cases with a value of up to £3,000 that are usually taken through the Small Claims Court, could be resolved through this pilot ODR scheme.

[10] Ibid.
[11] 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.
[12] Civil and Family Justice Review Group (2017); *Preliminary Civil Justice Report*; p.x; available at: http://www.jsbni.com/civilandfamilyjusticereview/Pages/default.aspx
[13] Ibid. p.54.

2. The current system for resolving disputes

a. The court system

The traditional location for the resolution of disputes is within the court system. Despite tenants being able to use the courts to resolve disputes, research carried out by Tenancy Deposit Service NI and the Northern Ireland Housing Executive suggests that the percentage of tenants who take court action against their landlord can be as low as 1-2%.[14]

The Department of Justice in Northern Ireland has called for a *"person-centred approach, rather than a system-centred focus"*[15] in its Strategy for Access to Justice in 2015.[16] The report sets out the four responsibilities for Northern Ireland's government regarding the justice system; two of which relate directly to alternative dispute resolution:

- *To encourage a culture of compromise and reasonable settlement of disputes, backed up by a range of systems to facilitate the fair and early resolution of disputes without recourse to the courts;*
- *To ensure that the public, especially the poorest and most vulnerable members of society, have reasonable access to the full range of dispute resolution systems, and are assisted towards the most effective and proportionate means of resolving their problems;*[17]

The importance of early intervention and using effective and proportionate means of resolving disputes is key, not only to the justice system as a whole, but to the design and implementation of a private tenancy dispute resolution service in Northern Ireland.

b. Alternative Dispute Resolution currently available in the PRS

i. Definition of alternative dispute resolution

The term 'alternative dispute resolution' (ADR) does not have an officially agreed definition. For the purpose of this paper, the phrase is understood to represent a process that resolves disputes between two (or more) parties, which is related to their civil legal rights and/or duties, and does not involve going to court.

ii. Direct negotiation

The first step in PRS disputes is often direct correspondence or contact between the tenant and landlord, and/or any other relevant parties.

These negotiations can be informed by external information or advice. For example, Housing Rights' advice website www.housingadviceNI.org offers a letter generator for tenants corresponding with their landlords.[18] In 2016/17, these templates were used to create 1,222 letters.

iii. Council enforcement

Where the subject matter under dispute falls within the Environmental Health Office (EHO) duties to enforce, tenants and landlords can contact their local council. Local councils powers in relation to PRS stem from various pieces of legislation and these are set out in appendix 3, along with the extent of the enforcement action that the council can take.

In practice, it is most common for councils to take informal action. If the Environmental Health Officer deems further action is required, they may issue a warning letter or notice.

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[14] Tenancy Deposit Service NI & NIHE (2015); *Tenants' views of tenancy deposit protection in Northern Ireland*: available at: https://www.nihe.gov.uk/tenant_deposit_scheme_survey.pdf.
[15] Ford D (2016); *Speech by Minister of Justice, David Ford: The social value of justice*; available at: https://www.justice-ni.gov.uk/news/speech-by-minister-justice-david-ford-social-value-justice.
[16] Department of Justice (2015); *A strategy for access to justice*; available at: https://www.justice-ni.gov.uk/publications/access-justice-review-part-2-final-report.
[17] Ibid. p.21.
[18] HousingadviceNI (2017); Send a letter to a private landlord; available at: https://www.housingadviceni.org/diy/letters-to-landlords

Relatively few cases result in fixed penalties or court action. This practice is evidenced in the table below, which sets out the number of service requests and interventions (other than informal action) carried out by an urban and a rural council in 2016/17. As the table illustrates the majority of action (~75%) is informal, e.g. contact with the landlord or tenant to inform them of their responsibilities and steps they should take to rectify the issue.

Belfast City Council: Environmental Health Office

- *Received 6400 service requests in relation to privately rented properties*

Intervention	Frequency (2016/17)	% of service requests resulting in the intervention
Nuisance abatement notices	1097	17.14%
Landlord registration warning letters	496	7.75%
Warning letters – work not done/not satisfactory re: Nuisance abatement notice	59	0.92%
Certificate of Fitness application warning letters	53	0.83%
Tenancy deposit warning letters	32	0.5%
Notices of disrepair	24	0.38%
Fixed penalties for landlord registration	12	0.19%
Fixed penalties for tenancy deposits	4	0.06%
Summons for court action	2	0.03%
Warning letter – work not done/not satisfactory re: Notice of disrepair	1	0.02%
Warning letter – work not done/not satisfactory re: Notice of unfitness	1	0.02%

Armagh City, Banbridge and Craigavon: Environmental Health Office

- *Received 286[19] service requests in relation to privately rented properties*

Intervention	Frequency (2016/17)	% of service requests that result in each intervention
Written warning	46	16.08%
Referral	4	1.4%
Abatement notice – premises	8	2.8%
Abatement notice – other	2	0.7%
Abatement notice – accumulation/deposit	1	0.35%
Fixed Penalty Notice	1	0.35%
Notice of Unfitness	1	0.35%
14 day minded-to letter	1	0.35%
Legal proceedings	1	0.35%

Table 1: The number of service requests and interventions (other than informal action) carried out by Belfast City Council and Armagh City, Banbridge and Craigavon council in 2016-2017.

As the data illustrates, fixed penalties and legal proceedings are uncommon, with councils preferring to use alternative means of dispute resolution. Councils try to resolve disputes, and presumably prevent future disputes by informing parties of their legal obligations, whether that be through informal action or written warnings. Council officers report that, in practice, they often take on the role of unofficial mediator between parties and they consider this approach to be more successful than issuing notices or penalties.

iv. Tenancy Deposit Schemes

Currently, the only dispute resolution scheme specifically designed for disputes between landlords and tenants relates to tenancy deposits, and is an adjudication service.

[19] This is a conservative figure. The council does not breakdown public health requests by tenancy. This figure only covers: Harassment/Illegal eviction, Private Tenancies Order service requests, Disrepair complaint from landlord/tenant, Rent book, Tenancy deposit scheme and Landlord registration.

In Northern Ireland, all private tenancy deposits received on or after 1 April 2013 must be protected with one of three government approved scheme administrators. All three scheme administrators were approved by the then Department for Social Development (DSD). The DfC maintains overall responsibility for the scheme.

In the event of a dispute over a deposit, the schemes allow each party to submit evidence, before adjudicating on how the deposit will be apportioned. The service is free and impartial. The schemes do not investigate beyond the evidence submitted, and must reach a decision within 20 working days and tell parties within 5 days thereafter.

Scheme	Market share	Number of disputes in 2015/16 (% of total deposits protected)	Average no. of working days to resolve dispute	Background of adjudicators
Tenancy Deposit Scheme NI	80%	418 (2.1%)	10.7	Legal/professional property background, Member of Chartered Institute of Arbitrators, internal training programme.
mydepositsNI	16%	49 (1.24%)	8.7	Legal background, internal training programme.
Letting Protection Service NI	4%	25 (2.5%)	24.9	Legal background.

Table 2: Figures related to the three government approved tenancy deposit scheme administrators in NI – all data is based on 2015/16 data.

An adjudicator's decision can be challenged if there has been an error in fact or law. If an error has been made, the scheme administrator will accept the review request and a different adjudicator is appointed. The replacement decision is final.

Although the scheme is an alternative to court action, and functions as such for the majority of cases, it is not a replacement of the courts. Parties are able to take their case to court after it has been adjudicated if they so wish.

v. The Property Ombudsman Service

The Property Ombudsman Service (TPOS) can intervene in disputes relating to letting agents. Where a tenant or landlord is having a dispute with a letting agent, they can complain to TPOS if the agent is a member of TPOS. In Northern Ireland, it is not a requirement for a letting agent to belong to an approved redress scheme, therefore not all tenants are able to use TPOS' redress scheme.

206 letting agents in Northern Ireland are TPOS members and are subject to the Ombudsman's Codes of Practice.[20] A tenant/landlord can contact TPOS only after the letting agent's internal complaints process is exhausted. When TPOS receive a complaint, it will request evidence from the tenant/landlord and the agent in question and make a decision on the dispute. TPOS can order the agent to pay an award to the tenant/landlord, up to a maximum of £25,000.

In 2016, TPOS received 1997 complaints regarding lettings (an increase of 1.6% from the previous year), with 45% of complaints coming from landlords and 51% from tenants. Of these, only 1% related to lettings in Northern Ireland (~20 complaints).[21] These figures suggest that very few private tenants currently make use of TPOS. For those that do, 66% of cases are resolved within 90 days.

[20] It is difficult to confirm how many letting agents there are in Northern Ireland, as it is currently not a legal requirement for them to be part of an approved redress scheme or be licensed. The DfC Proposals for Change include a proposal to introduce a regulatory framework for all letting agents.

[21] The Property Ombudsman (2016); *Annual Report 2016*; available at: https://www.tpos.co.uk/news-media-and-press-releases/reports.

vi. Rent Assessment Panel Northern Ireland

The Rent Assessment Panel is a statutory body appointed by the DfC. Rent assessment committees (usually made up of a chair and one member) are constituted from the Rent Assessment Panel. The function of a committee is, at the request of a landlord or tenant, to consider if the rent determined by the rent officer is an appropriate rent. The Rent Officer determines an appropriate rent for any property subject to rent control as per Article 40 of the Private Tenancies (Northern Ireland) Order 2006.

Where a landlord or tenant exercises their right to have the rent considered by a rent assessment committee, the Rent Officer refers the case to the Appeals Service who in turn assign the case to a rent assessment committee. Currently, there are 1,555 properties on the Rent Register, of which 1,027 are live properties.[22]

Whilst the Rent Assessment Panel's volume of work has decreased in recent years, historically the Panel had a much larger role in the PRS in Northern Ireland. The reason for this decline is due to changes in legislation. Until 1978, all private sector rents in Northern Ireland were controlled. Sector-wide rent control was removed in 1978 with the exception of rents for protected tenancies or properties that require a Certificate of Fitness but do not have one.

c. Why does the present system need to change?

The latest figures from NIHE show that 8,923 dwellings were let in Northern Ireland between July and December 2016. Housing Rights assisted with 2,853 private rented sector cases in 2016/17. When these figures are compared with the small number of interactions private tenants have with existing dispute resolution systems, it suggests that the systems may not be meeting the needs of those living in the PRS.

The DfC's Proposals for Change state the cost of an inefficient and inaccessible housing dispute resolution system has a far-reaching, negative impact on both the individual and on society, with consequences including poor housing conditions, financial losses, abandoned tenancies and homelessness.

The Law Commission's substantive paper, Housing: Proportionate Dispute Resolution, consulted a range of stakeholders and criticised the present means of solving housing disputes across the UK for being inaccessible, inefficient, lengthy, costly and inconsistent.[23] These issues are echoed in the Northern Ireland specific PCJR that says, *"[c]ost proportionality is not the only barrier to access to justice; accessibility, user-friendliness, trust and relative cost are also factors."*[24]

i. Lack of coherence

The present systems for resolving housing disputes involve a number of different independent agencies, government agencies and courts, as set out in the previous section of this paper. Each organisation has different processes and expertise when dealing with disputes. This can make it difficult for individuals to understand their options and access the most efficient and effective resolution to their dispute. Stakeholders who participated in this paper's discussion group corroborate this point, calling for clear information and support to help resolve housing disputes.

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[22] *Register of Rent for Northern Ireland;* available at: http://rentregister.communities-ni.gov.uk/PickerNS.aspx (accessed on 2 November 2017).
[23] The Law Commission (2008); *Housing: Proportionate Dispute Resolution*; available at: http://www.lawcom.gov.uk/project/housing-proportionate-dispute-resolution/.
[24] Civil and Family Justice Review Group (2017); *Preliminary Civil Justice Report*; p.49; available at: http://www.jsbni.com/civilandfamilyjusticereview/Pages/default.aspx

Housing is a very complex area of law, compounded by the need for a holistic approach that understands how housing disputes can overlap with other legal areas and impact upon various areas of people's lives. An ADR system staffed by specialists in housing which functions as a first port of call would make the system more coherent.

ii. Efficacy

Housing Rights' advisers often help with cases in which the primary housing issue overlaps with other issues, e.g. health or finance. While Housing Rights assisted with 2,853 PRS cases in 2016/17, these cases involved 14,042 issues. The Civil Justice Council's Housing and Land Committee has affirmed that it is important to understand the wider context when dealing with housing problems:

> *the form in which housing disputes appear before the courts often disguises the underlying problem, which may be difficulties with benefit claims, multiple debt, other personal circumstances or simply poverty. Possession proceedings are probably the most evident example of disputes which reach the courts at the end of a process in which the underlying causes of the problem have not been addressed.*[25]

This clustering of legal problems has been evidenced by other researchers.[26; 27] The current systems in Northern Ireland work within strict parameters, focussing solely on the issue that is the subject of the dispute. However, research suggests that a holistic approach is desirable when considering housing disputes, so that any underlying problems are identified and considered.

iii. Participation and Access

The court system can be confusing, intimidating and inaccessible to people who are not familiar with it. The various courts, their processes and procedures are complex and require lay people to access specialists to help guide them through the process. The formal and adversarial nature of the courts can be daunting. Stakeholders who contributed to this paper's data collection said that they felt intimidated by the legal system and did not think it was the best way to resolve a dispute.

A user centred approach to the design of dispute resolution methods would increase the accessibility and participation in justice systems. The PCJR, which challenges the Northern Irish government to *"take the opportunity to rethink and redesign the justice system from the users' perspective"*, supports such an approach.[28]

iv. Delay

Feedback from landlords in particular has suggested that the current eviction process in Northern Ireland is overly costly and lengthy. A number of respondents to this paper's online survey said that they found legal possession proceedings take too long and they wanted any alternative system to reduce these timescales. However, it is important to acknowledge that court timescales contribute to ensuring that rights are upheld. Court timescales help to ensure that due process of law is applied to each case, which is especially important when deciding housing cases.

Housing is central to people's lives. Housing disputes can affect fundamental components of a person's life and can cause people considerable worry and stress. When asked, 74% of Housing Rights' helpline clients said their housing situation was negatively impacting on their

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[25] Civil Justice Council: Housing and Law Committee; *Consultation Response*; quoted in Law Commission (2008); *Housing: Proportionate Dispute Resolution*; p.11; available at: http://www.lawcom.gov.uk/housing_disputes.htm.

[26] Pleasence, O. P. (2006); *Causes of Action: Civil law and social justice* (2nd edition); p.155.

[27] Moorhead, R., Robinson, M. & Matrix Research and Consultancy (2006); *A trouble shared: Legal problems clusters in solicitors' and advice agencies;* Department for Constitutional Affairs Research Series 8/06; available at: http://www.dca.gov.uk/research/2006/08_2006.pdf

[28] Civil and Family Justice Review Group (2017); *Preliminary Civil Justice Report*; p.51; available at: http://www.jsbni.com/civilandfamilyjusticereview/Pages/default.aspx

health and wellbeing before they asked for advice. A proportionate timescale is important to protect the rights of each party and allow the parties involved in the dispute to move on with their lives.

v. Costs

The costs involved in court proceedings can deter potential users from seeking resolution through the formal justice system. This is supported by this paper's stakeholder feedback and the PCJR which states that the *"[c]ost of litigation is a major feature of public concern and discussion"*.[29] Costs can be a concern because:

- individuals cannot afford to pay the costs; and
- the gradual rate at which funds are received as a result of a successful claim is deemed to make the action pointless.

In either of these situations, the costs involved in the current system are preventing access to justice.

Affordability is a significant concern for many private tenants. Gray & McAnulty[30] found 1 in 10 households in NI have an income below £5,000 and that this almost doubled for PRS households, with 19% having an income of less than £5,000. When the sector is housing some of the most vulnerable in our society, it is essential that the cost of dispute resolution systems does not further disadvantage tenants from accessing justice.

vi. Summary

By considering reported issues with the current housing dispute mechanisms available, we can begin to appreciate some of the key requirements for a new system. The design of a new system should understand and plan for:

- how it can help to make the system more coherent;
- the approach it will take to acknowledge the holistic nature of housing problems;
- the background of staff;
- how participants access the system; and,
- the timescales and costs involved for participants.

This is vital if the DfC's vision of *a "professional, well managed, affordable, sustainable [PRS …] which provides a viable housing option with security for both tenants and landlords"*[31] is to be achieved. As will be outlined in section 6, these principles are also considered key by those living and working in the PRS who participated in this paper's data collection.

[29] Civil and Family Justice Review Group (2017); *Preliminary Civil Justice Report*; p.2; available at: http://www.jsbni.com/civilandfamilyjusticereview/Pages/default.aspx
[30] Gray, P. & McAnulty, U. (2008); The Increased Role of the PRS in Catering for Low-income Groups in Northern Ireland; European Journal of Housing Policy; 8(4): 361-377.
[31] 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. Alternative Dispute Resolution

a. The cycle of disputes

The Administrative Justice & Tribunals Council (AJTC) describes the administrative justice system as a four-stage cycle.[32]

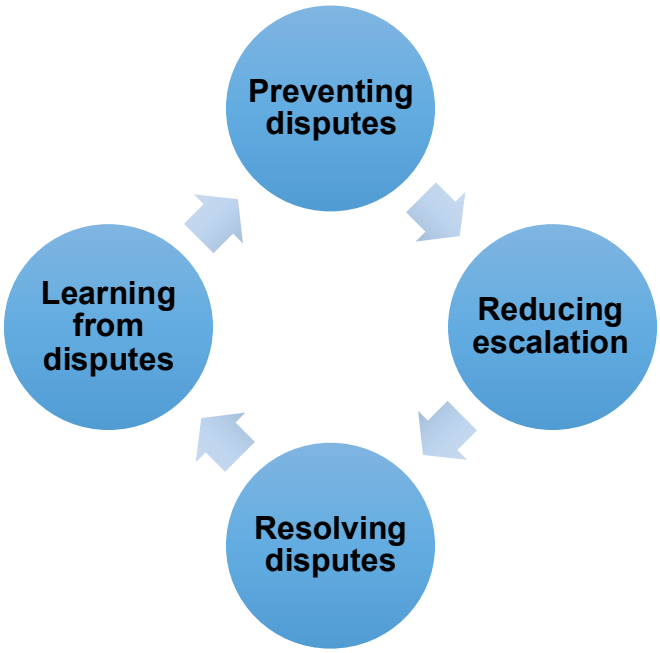


Figure 2: Diagram setting out the cycle of appropriate and proportionate dispute resolution.

The cyclical interpretation gives a structure to developing an appropriate and proportionate approach to dispute resolution. Taking action at an earlier stage can save the funder money, help to improve the service delivered to stakeholders and promote a culture of cooperation and collaboration.

i. Preventing disputes

The prevention of disputes requires a substantial input of time, expertise and resources. In the case of the PRS, it means helping tenants, landlords and agents to understand their housing rights and responsibilities. Each stakeholder group must be helped to understand how to find the correct information and guidance, and be able to understand the applicable law.

ii. Reducing escalation of disputes

AJTC found that *"many people simply want the opportunity to discuss their case"*[33] with the other party but are frustrated that there is not a forum in which to do this with assistance. Mediation can offer this function to parties. When asked if they would be willing to use a mediation service, 47.4% of respondents to this paper's online survey responded positively. By building a mechanism for parties to enter into discussion of their dispute in a supported and neutral environment, the dispute resolution system may be able to reduce the escalation of disputes.

iii. Resolving disputes

This stage is for those cases that cannot be avoided or solved by the parties themselves, and involves a third party who helps the parties resolve the dispute. The AJTC make it clear that policy makers need to think carefully about the design of the dispute resolution system:

[32] Administrative Justice & Tribunals Council (2012); *Putting it Right – A Strategic Approach to Resolving Administrative Disputes*; p.3; available at: http://ajtc.justice.gov.uk/docs/putting-it-right.pdf.
[33] Ibid. p.16.

> *The dispute resolution methodologies that exist at stage three are diverse, and it is important that those seeking to improve the system build up a clear picture of which type of methodology is proportionate and appropriate to which type of case*.[34]

The key methodologies used in ADR will be discussed in more detail in the upcoming section.

iv. Learning from disputes

The final stage of the cycle gives stakeholders the opportunity to reflect upon where and why things are going wrong, and avoid the same issues developing repeatedly. Learning from the problems that arise is fundamental to making improvements to the system overall. This requires time and expertise to analyse the data collected and needs to be budgeted for in the design of the ADR system. By doing so, this will feed back into stage one of the cycle and reduce the number of disputes that occur in the first place.

b. Alternative dispute resolution

There are a number of different dispute resolution processes, each with its own characteristics. All of the processes focus on resolution and agreement, as opposed to argument and conflict; and introduce a level of objectivity to try to assist parties to communicate and achieve resolution.

i. Non-adjudicative methods

In a non-adjudicative process, a third party will not make a decision or impose an outcome on the parties. Rather, the role of the third party is to facilitate communication, investigate options, and help the parties decide on a possible outcome.

- **Mediation**

A neutral third person helps both parties reach a decision on how to solve the problem. The process is flexible, but is usually decided in advance via a written agreement. Mediation can take place on the phone, online or face-to-face. The third party can meet the parties separately or together, or a mixture of the two. The mediation agreement will cover details such as when and where the mediation will take place, and the format that will be followed. If the parties reach consensus, the mediator will confirm the details in a written agreement, which both parties will sign.

- **Early neutral expert evaluation**

An early neutral expert evaluation (ENEE) is an assessment of the issues in a case by an independent third party. An appropriate expert, who has been agreed by the parties, can provide a view that both parties will respect. Both parties send written information to an independent expert evaluator. The evaluator produces a report setting out the likely outcome at court and proposals for how to solve the problem outside of court. The outcome does not bind the parties but can help them evaluate their own case and reach a resolution.

ii. Adjudicative methods

Adjudicative dispute resolution methods involve a decision on the case being made by an impartial third party. The decision is usually legally binding and enforceable.

- **Arbitration**

Arbitration is formally regulated, as it legally binds the parties. The Arbitration Act 1996[35] regulates arbitration proceedings in Northern Ireland, England and Wales. An agreement to go to arbitration is triggered by a clause in a contract, or by agreement between the parties

[34] Ibid. p.9.
[35] *Arbitration Act 1996.* Available at: http://www.legislation.gov.uk/ukpga/1996/23

once a dispute has arisen. The disputing parties agree on an impartial third party to hear the dispute. The parties enter a written agreement which sets out the terms of the arbitration. The independent and neutral arbitrator listens to both sides and then makes a binding decision. An arbitration can range from the consideration of written submissions to a process which is similar to that of a trial with representation.

- **Adjudication**

The key elements of adjudication are broadly similar to the arbitration process but the decision maker in adjudication is a legally appointed or elected official. Adjudication can be adapted to industry needs (e.g. adjudication applies to all construction contracts in the UK) and consequently the adjudicator has specialist knowledge of the area. The process is normally laid down in advance in terms agreed by the industry, and included as a binding agreement in contracts between parties should there be a dispute. By agreement, the adjudication may lead to a binding decision or a decision that is only binding if both parties agree, or if neither party appeals within a set period.

iii. IT-based means of delivery

A dispute resolution system can be designed to be accessed via the internet and uses online tools to help parties solve their dispute without going to court. It can be used to support a specific process, such as mediation or arbitration, or create a new process for gathering and analysing basic information and facilitating agreement.

While ODR is currently non-adjudicative, there has been recent discussion around the place of ODR in adjudicative processes. The Civil Justice Council published a report ODR recommending the establishment of an internet-based court service (HM Online Court) to resolve all civil disputes of a value of less than £25,000. The proposed system would have three tiers:

1. Online Evaluation – to assist the user categorise their potential claim and understand their options
2. Facilitation – evidence is submitted and reviewed with a view to negotiation or mediation, with some automated negotiation tools
3. Online Decisions – judges, working online, decide suitable cases based on the submitted evidence and telephone conferencing.

This approach is echoed in the PRCJ for Northern Ireland which recommends the development of a *"pilot scheme of voluntary ODR to be set up throughout Northern Ireland for money damages cases of under £5,000, excluding personal injuries and road traffic claims"*[36].

c. Potential advantages of ADR

There is a range of potential advantages that alternative dispute resolution can offer when compared with going to court.[37] Whether these advantages are achieved will depend on the method of ADR used and the robustness of the design and delivery of that method.

[36] Ibid. p.54.
[37] Blake S et al (2016); *A Practical Approach to Alternative Dispute Resolution*; Oxford: Oxford University Press; p15-17.

Potential advantage	Explanation
Lower costs	Avoids the legal costs of going to court. If a relatively inexpensive form of ADR is used, the costs saved will be substantial.
Resolved more quickly	Can be conducted soon after the dispute arises and quickly.
User autonomy	Allows parties to have more control over the process.
Expert decision maker	Can be staffed by experienced specialists, rather than being allocated a judge who may not have as much experience in the particular area of law.
More holistic	Can be designed to suit a particular industry. Can be designed to take account of underlying, contributory problems.
A wider range of outcomes	Mediation or EENE can result in any terms that suit the parties, which can be useful if the parties have an ongoing relationship.
Flexible	A court case must follow a set process. ADR options are less formal and parties can often agree the process to be followed.
Confidentiality	If confidentiality is important to the parties, ADR options can be designed to include confidentiality clauses.
Cooperative approach	Litigation tends to focus on the past and on who is to blame. ADR options tend to be constructive rather than adversarial.
Higher satisfaction rate	Parties who use ADR tend to have higher satisfaction rates than those who go to court.

Table 3: Potential advantages of alternative dispute resolution.

d. Potential disadvantages of ADR

The potential disadvantages of alternative dispute resolution, when compared with court action, will not apply to all ADR methodologies.[38] Furthermore, they may be largely avoided if the most proportionate and appropriate method is selected.

Potential disadvantage	Explanation
More expensive	The process may fail and the parties may still need to go to court.
Increased delays	The process may fail and the parties may still need to go to court.
Reduction in outcome	May involve a level of compromise. However, non-adjudicative ADR cannot force a party to accept what that they do not think is fair, and some reduction may be justified if time and costs are saved.
No public finding	There may be no clear winner, which some parties may value, and no legal precedent is set by the outcome. However, the ADR agreement could be made public by agreement, if this was important to the parties.

Table 4: Potential disadvantages of alternative dispute resolution.

[38] Ibid. p17-18.

4. Case studies

This section presents four case studies based on practices currently used to resolve housing disputes in Canada, New Zealand, Scotland and Ireland. This data has been collected via desk research, documentary analysis and interviews.

a. British Columbia

There are two housing-specific, state-managed, dispute resolution processes available to people living in British Columbia, Canada: the Residential Tenancies Branch and the Civil Resolution Tribunal.

i. Residential Tenancies Branch;

The Residential Tenancies Branch is the authority for hearing all disputes between landlords and tenants regarding their rights and responsibilities. The Branch processes claims for $35,000 CAD or less.

The Residential Tenancies Branch offers two levels of dispute resolution. If the first does not resolve the dispute, the parties may move on to the second.

Online information, incl. a solution explorer	Landlords and tenants can find information and advice online, where there is also a solution explorer. The solution explorer is an interactive tool to help users: • access specific, detailed legal information relevant to their situation, and • think through the dispute resolution methods available to them. The solution explorer does this by asking a series of multiple-choice questions. The user can download and print their session, along with relevant factsheets and next steps.[39]
Tribunal	Applicants pay a fee of $100 CAD (~£60.25). An independent decision-maker conducts the tribunal, usually via telephone, and makes an impartial decision, which is final and binding. If a party believes an arbitrator made an error of fact/law or was procedurally unfair, they may apply to the Supreme Court of British Columbia for a judicial review of the decision.

Table 5: Summarising the Residential Tenancies Branch's dispute resolution process.

The Residential Tenancies Branch's dispute resolution process *is "designed to provide an open, consistent, efficient and fair opportunity for each party to tell their version of events and present their evidence to an arbitrator"*.[40] The organisation also has the authority to carry out investigations, levy administrative penalties, prosecute offences and order the redirection of rent to the Residential Tenancies Branch's Director.

ii. Civil Resolution Tribunal

The Civil Resolution Tribunal (CRT) is Canada's first online tribunal system. The CRT has the authority to hear housing disputes relating to the common parts of housing blocks and small claims disputes of less than $5,000 CAD (around £3,000), with plans for this to rise to $25,000 in the future.

The CRT offers four dispute resolution methods. If one level does not solve the dispute, parties move to the next stage of the process.

[39] An example Solution Explorer report is available in appendix 4.
[40] Residential Tenancies Branch (2017); *Residential Tenancies Fact Sheet: The Dispute Resolution Process – RTB-114*; p.1; available at: http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/information-sheets/rtb114.pdf.

Solution explorer	Before beginning a claim with the CRT, a person with a dispute must use the free online solution explorer. The solution explorer works as the RTB's tool – it asks a series of questions about the dispute, and then provides tailored information and resources.
Negotiation	This option brings the parties together to attempt to resolve their dispute themselves. The claimant can use the online platform to invite the other party to participate. The platform presents relevant parts of the tribunal's rules on an as-needed basis to avoid overwhelming parties.
Facilitation/Mediation	If negotiation is not successful, an expert facilitator helps the parties reach a consensual agreement. This is similar to mediation. If the parties reach agreement, the case manager asks a tribunal member to convert the agreement into a binding order, which can be enforced in court.
Tribunal	In the event parties are unable to reach an agreement, the dispute is transferred to a tribunal member with specialised expertise in small claims or strata property dispute matters. The tribunal member hears the parties' arguments, considers the evidence, and issues a binding decision.

Table 6: Summarising the Civil Resolution Tribunal's dispute resolution process.

The service can be accessed from a computer or mobile device at a time that is convenient to the user. From beginning to end, the CRT process is intended to take 60 days for most cases, and cost the parties an amount similar to the current filing fees for Small Claims Court. However, many parties will pay less than at Small Claims Court because fees are staged so that parties who resolve their disputes early pay less than those who require the full range of the CRT's services.

b. New Zealand

The New Zealand Executive has implemented a number of alternative dispute resolution systems across government departments.

i. Policy drivers

In New Zealand, the dispute resolution approaches that have emerged alongside the court system have responded to the need for:[41]

- more flexibility and less formality;
- privacy and confidentiality;
- more specialised and innovative solutions;
- greater participant involvement;
- early resolution.

ii. Dispute Resolution process

New Zealand's Tenancy Services provides tenancy-related information in one searchable online location. Tenancy Services offer four alternative dispute resolution methods:

- Self-resolution: Encourages landlords and tenants to solve tenancy problems themselves.
- FastTrack Resolution: Confirm agreements reached between landlords and tenants through self-resolution. Results in mediated order.
- Mediation: Offered when parties apply to the Tribunal. Helps parties talk about their dispute and come up with a solution. Can result in mediated order.
- Tenancy tribunals: Formalises mediated orders, or makes legally binding orders on issues that cannot be resolved. Results in tribunal order.

[41] Ministry of Business, Innovation & Employment (2013); *Dispute Resolution: Best Practice Report 1 of 2 to Joint Ministers*; available at: http://www.mbie.govt.nz/about/our-work/roles-and-responsibilities/government-centre-dispute-resolution/document-image-library/Best%20Practice%20Report%20One.pdf.

c. Scotland

The First-tier Tribunal for Scotland (Housing and Property Chamber) deals with determinations of rent or repair issues in the private sector as well as assist in exercising a landlord's right of entry. The Chamber will start to hear more private rented sector cases from December 2017 when it becomes the decision maker for all eviction cases in the sector. The decision of the Chamber's Tribunal has the same weight as a Court Order. The service is free for landlords and tenants to use and is accessed by submitting an application either via email or via post.

i. Policy drivers

The policy drivers for the establishment of Chamber were to offer a flexible, proportionate, open, fair, impartial and accessible legal system that assisted parties to present their cases, avoided delays and encouraged participation. [42]

ii. Dispute Resolution process

The Chamber offers two methods of dispute resolution:

Mediation	If an agreement is reached, it is put in writing which both parties sign and action within agreed timescales. The mediator writes to each party to ensure they have both complied with the agreement. If a party has not complied, the case goes to a Tribunal with different panel members.
Tribunal	Held in community venues within a reasonable distance of the rental property. Often, the property will be inspected before the tribunal. Up to three panel members sit on each tribunal. There is always a legal member on every panel, and a surveyor and/or a housing member may join them. To ensure compliance, in the case of repairs, the surveyor member will visit the property after the agreed timescale for works has elapsed, write up a report, and send it to the panel members and both parties.

Table 7: Summarising Housing and Property Chamber's dispute resolution process.

The Chamber does not routinely offer mediation. It has been found to have limited success, particularly in the case of repairs. This is assumed to be due to an imbalance of power and the breakdown of relationships.

d. Ireland

The Residential Tenancies Board (RTB) was set up to support and develop a well-functioning private rented sector. With regards dispute resolution, the RTB's role is to resolve disputes between landlords and tenants cheaply and speedily.

i. Dispute resolution process

The RTB encourages landlords and tenants to resolve disputes themselves. However, if they are unable to do so, they can apply to the RTB.

[42] Devanny A (January 2017); *Research visit by Housing Rights to the First-tier Tribunal for Scotland (Housing and Property Chamber)*. Glasgow.

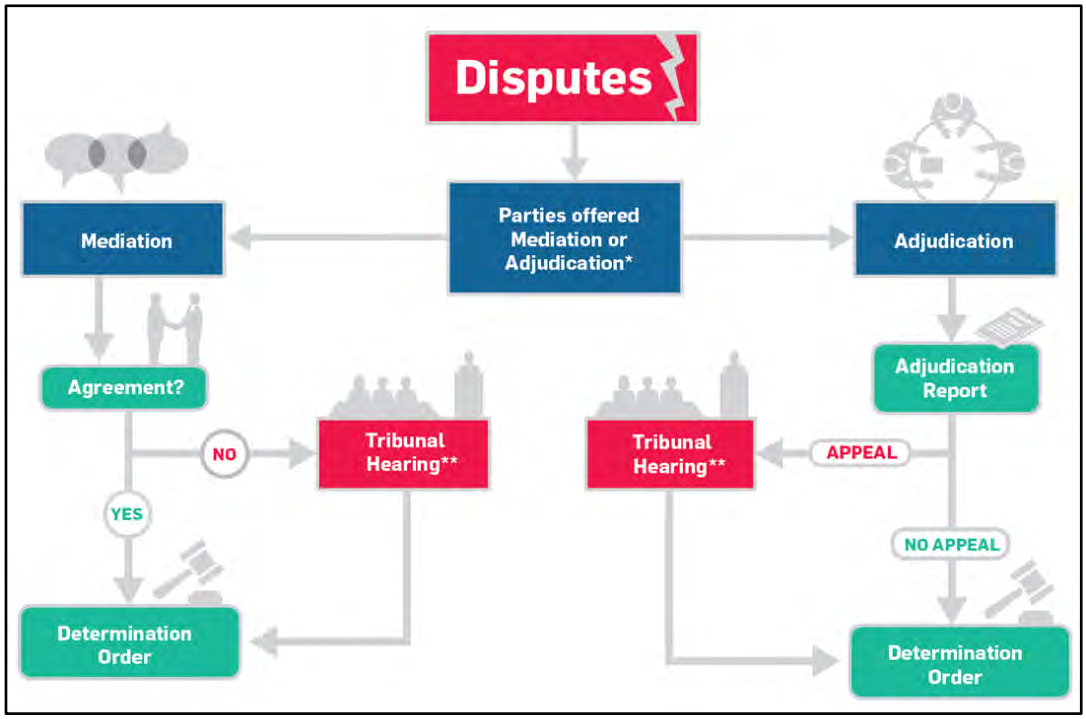


Figure 3: Diagram summarising the dispute resolution process used by the Residential Tenancies Board in Ireland.

ii. Mediation

An independent mediator helps both sides of the dispute to reach an agreement. Where an agreement has not been reached or has broken down, parties can refer the dispute to a tenancy tribunal within ten days of the date the mediation ended.

Over 95% of the RTB's mediation services are carried out by telephone. The RTB report that the telephone mediation services are proving to be particularly successful because they are quicker, non-adversarial and seem to lead to people being more satisfied with the outcome.[43] In 2015, 857 cases were heard via telephone mediation and 647 agreements (75%) were reached.[44] This rate decreased in 2016, when 57% of telephone mediation hearings reached agreement.[45]

iii. Adjudication

Both parties present their evidence to an independent adjudicator who makes a determination on the issues. The adjudicator's decision is binding, unless there is an appeal to a tenancy tribunal. Parties to a dispute can appeal the decision of an adjudicator to a tenancy tribunal within 21 days of the date of receiving the adjudicator's report.

iv. Tribunals

Tribunals are heard by three dispute resolution committee members and are public. The parties are required to take an oath, and a stenographer is present to record the evidence presented. The report and determination order are published on the RTB website.

The RTB has stated that they do not have the financial and personnel resources to enforce all orders. It is open to all parties to take a case themselves to the court, and it is also open to a party to request that the RTB pursue compliance with the determination order on his or her behalf. In 2015, enforcement was outstanding on 962 cases. Of these, the RTB referred 312 cases to its legal advisers for enforcement proceedings.

[43] Residential Tenancies Board (2017); *Annual Report 2016*; p.32; available at: http://www.rtb.ie/docs/default-source/default-document-library/rtb-annual-report-2016.pdf?sfvrsn=6.
[44] Residential Tenancies Board (2016); *Annual Report 2015*; p.22; available at https://www.rtb.ie/about-rtb/who-we-are/annual-reports.
[45] Residential Tenancies Board (2017); *Annual Report 2016*; p.34; available at: http://www.rtb.ie/docs/default-source/default-document-library/rtb-annual-report-2016.pdf?sfvrsn=6.

v. Cost to parties and processing times

There is no fee for mediation. An application for adjudication costs €15 if the application is submitted online and €25 if by post.

In 2016, adjudication cases took twelve weeks on average, from application to determination order. The average completion time for cases that used telephone mediation was five and a half weeks. The average processing time for tribunal cases, from the date the RTB receives the appeal application to issuing a determination order, was eight weeks in 2016.[46] This was regardless of whether the case went through adjudication or mediation in the first instance.

e. Comparison of ADR systems in other jurisdictions

It is helpful to reflect on the similarities that exist between the case studies, regardless of the geographical distance that divides them. Each of the jurisdictions:

- work to increase tenants' and landlords' understanding of their housing rights and responsibilities in order to try to prevent disputes;
- promote early intervention in order to prevent disputes escalating, encouraging parties to engage in self-resolution as a first step to solving their dispute;
- offer more than one method of dispute resolution;
- offer a tiered system of dispute resolution methods, culminating in a tribunal which can make enforceable decisions on the parties.

When considering the design of an equivalent service in Northern Ireland, it is important to recognise the shared approach that exists across key organisations who are leading the way in ADR in private tenancies.

[46] Ibid. p. 37.

5. Methodology

The overall aim of this research is to explore whether the establishment of an independent housing panel in Northern Ireland could improve upon the systems currently available to help landlords and tenants solve housing disputes in NI. The following methodology was devised to collect feedback from tenants, landlords and other professionals working in the private rented sector in Northern Ireland.

The methodology combines a qualitative and quantitative approach, using three data collection instruments: a practitioner-focussed discussion group; one-to-one interviews; and a public survey.

Data collection

Housing experts and dispute resolution specialists from across the public, private and voluntary sectors were invited to sit on a discussion group. In response to the invitation to contribute to the discussion group, two professionals requested that they be able to contribute via a one-to-one interview with the researcher. These interviews were framed around the questions which were presented to the discussion group.

An online survey was created to capture feedback from any party who had experience of a housing dispute in Northern Ireland. This survey was available for completion for four weeks, from 16th August 2017 to 13th September 2017, and was publicised through Twitter, Facebook and email. We are particularly grateful to TPOS and the tenancy deposit protection schemes in Northern Ireland who emailed a link to the survey to their adjudicators and landlord and tenant mailing lists, respectively.

The survey was also administered via telephone with private tenants who had contacted Housing Rights for advice between July and September 2017, in relation to a dispute. The motivation for this was to gather more feedback from stakeholders who may not use the internet – none of the tenants contacted had supplied an email address in their contact details. A total of 47 telephone surveys were completed by Housing Rights' clients.

The survey was completed by 2,058 people, with 796 of those having had direct experience of a housing dispute in Northern Ireland. A blank copy of the survey is available in appendix 3.

The data collected via the discussion group and interviews is qualitative, while the survey presents both qualitative and quantitative information.

6. Data analysis

a. Discussion group and interviews

Relevant parties including housing advisers, a representative from the Private Tenants' Forum, landlords, estate agents, government officials and dispute resolution professionals were invited to attend a discussion group on dispute resolution in the PRS. A preliminary draft of sections 1-4 of this paper was shared with the discussion group. Eight stakeholders attended the group and two participants requested to contribute via a private interview with the researcher.

The group and interviewees were invited to provide comment on the draft paper and were asked to discuss the following questions as part of a focussed discussion:

- What is your experience of resolving disputes?
- What do you think would make it easier to solve housing disputes?
- What are the key characteristics of an effective dispute resolution system?

The researcher invited participants to send any additional contributions via email.

The group discussion developed to centre around five themes: clear information; impartial expert opinion; combining ADR methods; timing; and accessibility. Some of these themes were also discussed in the one to one interviews.

i. Clear information

Stakeholders discussed the importance of providing parties with useful information which is easy to read, written in plain English and available at the appropriate time.

Stakeholders were concerned about the complexity of the means by which housing disputes can currently be resolved in Northern Ireland. The role of advice agencies in providing information via telephone or online was highlighted and deemed very useful.

ii. Impartial, expert opinion

The qualifications/experience necessary to assist parties to resolve their housing dispute were debated and the majority of stakeholders believed it was important for the professional to have specific housing knowledge and be well acquainted with Northern Ireland specific housing law.

One benefit of having housing experts lead the process of dispute resolution was the opportunity for learning. One housing professional reflected on how the current tenancy deposit dispute resolution service had influenced their organisation's processes, as the organisation learnt from the experience and altered its approach to prevent similar issues from occurring in the future.

iii. Combining ADR methods

Stakeholders reflected that an adjudicative approach, as used by tenancy deposit schemes, is not the answer to all housing disputes. Whilst tenancy deposit disputes occur at the end of the tenant-landlord relationship, other disputes that require the relationship to be ongoing will necessitate a different approach. All parties agreed that continuous dialogue between parties is key.

All stakeholders agreed it was important to have a combination of dispute resolution approaches in place if the system was to be a success.

One contributor discussed the value of *"levels of resolution"* in which a different ADR approach could build upon the previous method if that had not been successful. Contributors highlighted the potential developments within the court system as an opportunity for government departments to work together to bring about improvements.

iv. Timing

One stakeholder reflected on their knowledge of a mediation pilot running in England and Wales. The pilot found mediation could be successful when participants agreed to it; however, it was challenging to get parties to agree to take part in mediation if the dispute had developed past a certain stage. The group agreed that the stage at which interventions are offered in the development of a dispute is important.

The lengthiness of the dispute resolution process was also raised. One stakeholder reflected that an investigatory process would be time consuming but potentially fairer and could compromise aim of speedy resolution.

v. Accessibility

The user cost of dispute resolution was discussed, particularly in light of the recent and upcoming welfare reform changes in Northern Ireland. One stakeholder was concerned that there may be future issues with financial eligibility for legal aid or exemptions for court costs, and the impact this may have on parties' access to justice.

Another contributor reflected on their own experience of attending the Small Claims Court in a professional capacity. They said they had found the experience *"very intimidating"* and the adversarial environment an *"ugly way of doing business"*. They suggested that a housing specific dispute resolution service should be designed to look and feel very different to the Small Claims Court, which would be of benefit to all parties involved.

b. Online survey

The survey was created on SurveyMonkey and comprised eleven questions. A blank copy of the survey is available in appendix 3.

i. Question 1 of 11

The first question asked if the respondent had been involved in a housing dispute in Northern Ireland. This allowed the data to be filtered to only include feedback from people who had previous experience of housing disputes. Of the 2058 total respondents to the survey, 796 answered this question positively.

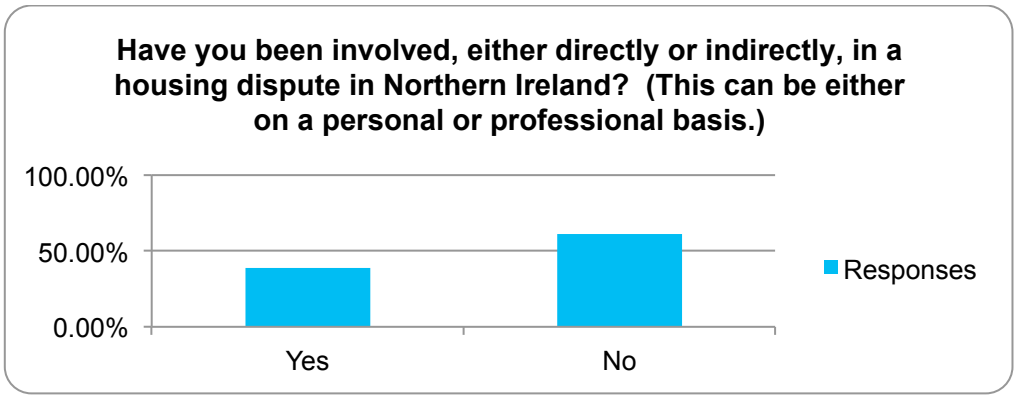


Figure 4: Summarising the responses to "Have you been involved, either directly or indirectly, in a housing dispute in Northern Ireland? (This can be either on a personal or professional basis.)" [n.2058)

The following data and analysis for the remainder of the questions is based solely on the answers supplied by those respondents who said that they had been involved in a housing dispute in Northern Ireland (n.796).

ii. Question 2 of 11

The majority of respondents (67.9%) were involved in a housing dispute as a private tenant. The second largest group (18.9%) had been a landlord at the time of the housing dispute.

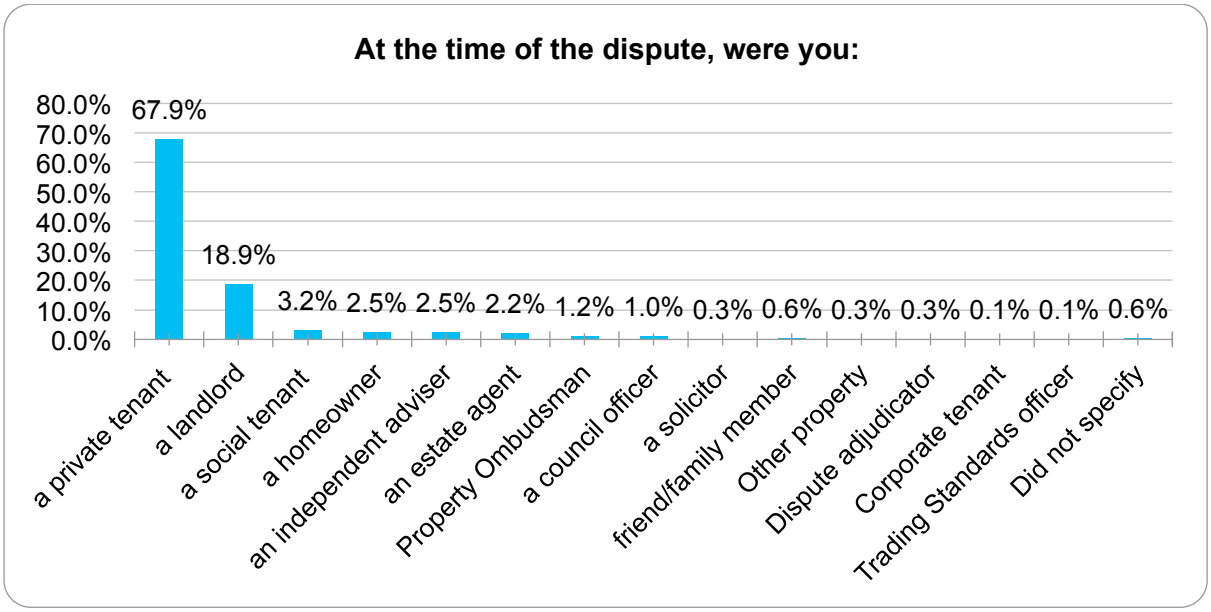


Figure 5: Summarising the position of the respondent at the time of the housing dispute (n.679).

The number of private tenants (n.461) and landlords (n.128) who responded to the survey is encouraging. The final sample should not be considered as statistically representative of all private tenants and landlords in Northern Ireland, but given the size of the sample and the public forum in which the survey was widely shared, the results can offer a useful insight into the opinions and attitudes of a broad spectrum of tenants and landlords.

iii. Question 3 of 11

The three most common causes of housing disputes amongst survey respondents were tenancy deposits (49.2%), repairs (39.8%) and rent (23%). This finding corresponds with the most common issues about which private tenants contact Housing Rights. In 2016/17, 13.8% of private tenants who contacted Housing Rights wanted advice on tenancy deposits, while 19.4% requested advice in relation to disrepair and 16.4% needed help with affordability issues.

Housing issues can overlap and problems can cluster. For this reason, respondents were able to select more than one issue when indicating the topic of their housing dispute.

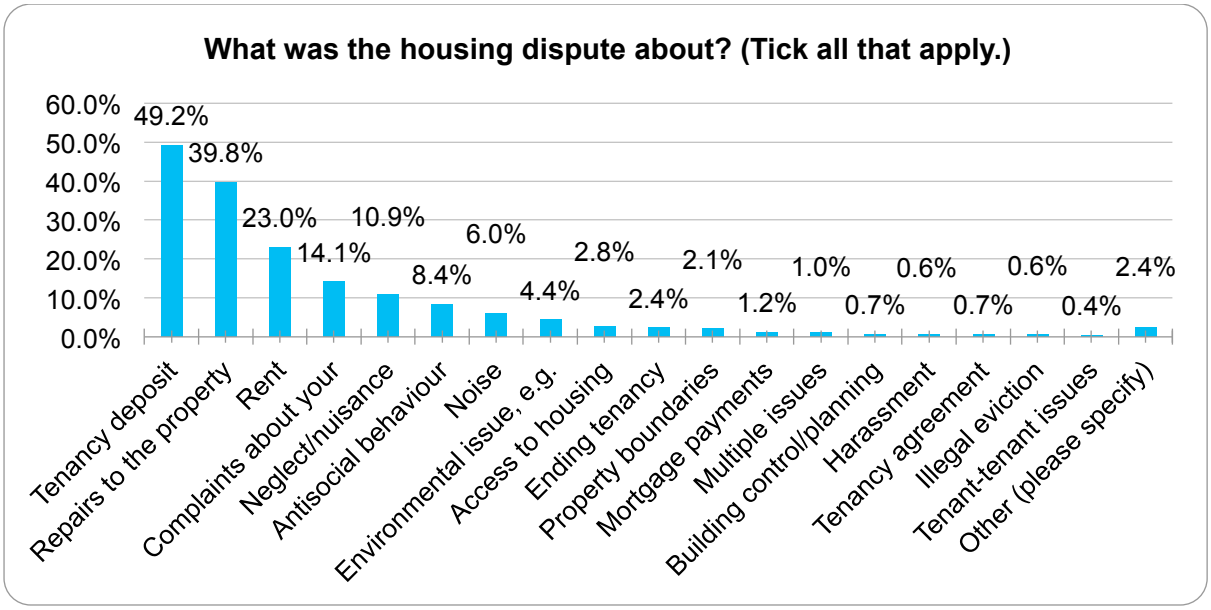


Figure 6: Summarising the cause of housing disputes of which survey respondents had experience (n.679).

As mentioned, the tenancy deposit schemes emailed a link to the survey to their tenant and landlord mailing lists. An effect of this direct mailing may be that respondents were more likely to have had experience of disputes related to tenancy deposits.

iv. Question 4 of 11

The next question asked respondents what methods they had used to try to resolve their housing dispute. As it was predicted that people would attempt multiple methods, respondents were able to choose more than one answer.

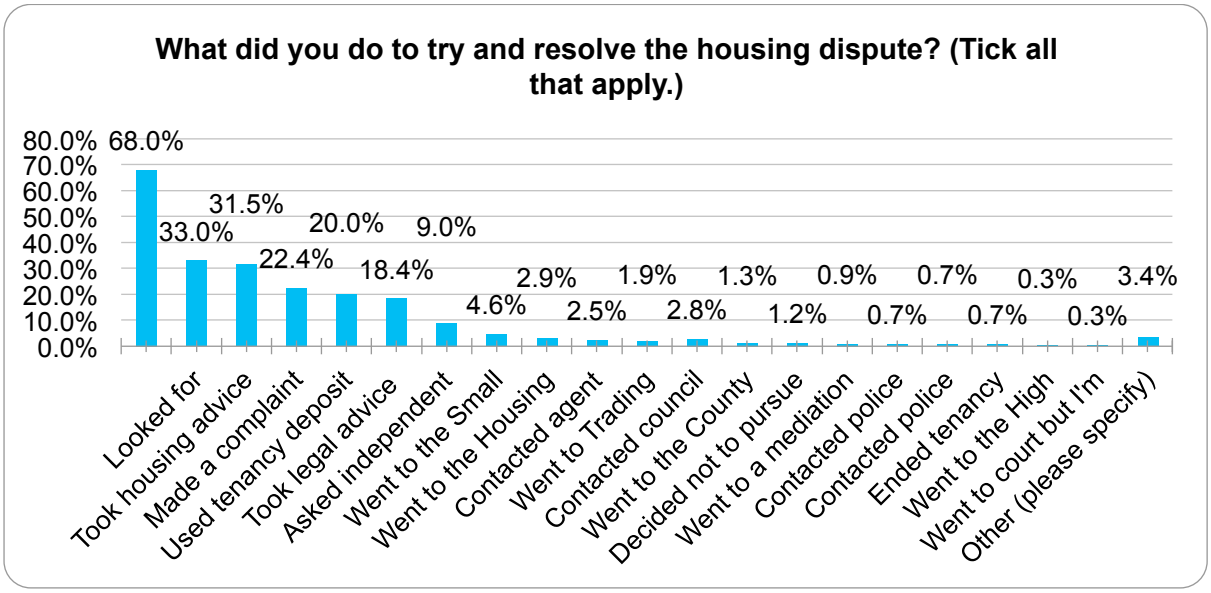


Figure 7: Summarising the action survey respondents had taken to try to resolve their housing dispute (n.679).

Most respondents tried to use self-resolution methods such as contacting the other party, and accessing information and advice, in their attempts to resolve the dispute. One in five had made a complaint or used a tenancy dispute resolution service. One in fifteen had taken their case to court.

v. Question 5 of 11

Question 5 asked if the respondent's housing dispute had been resolved. While just over half of respondents said that their dispute had been resolved (54.1%), more than one in three (38.7%) reported their dispute had not been resolved.

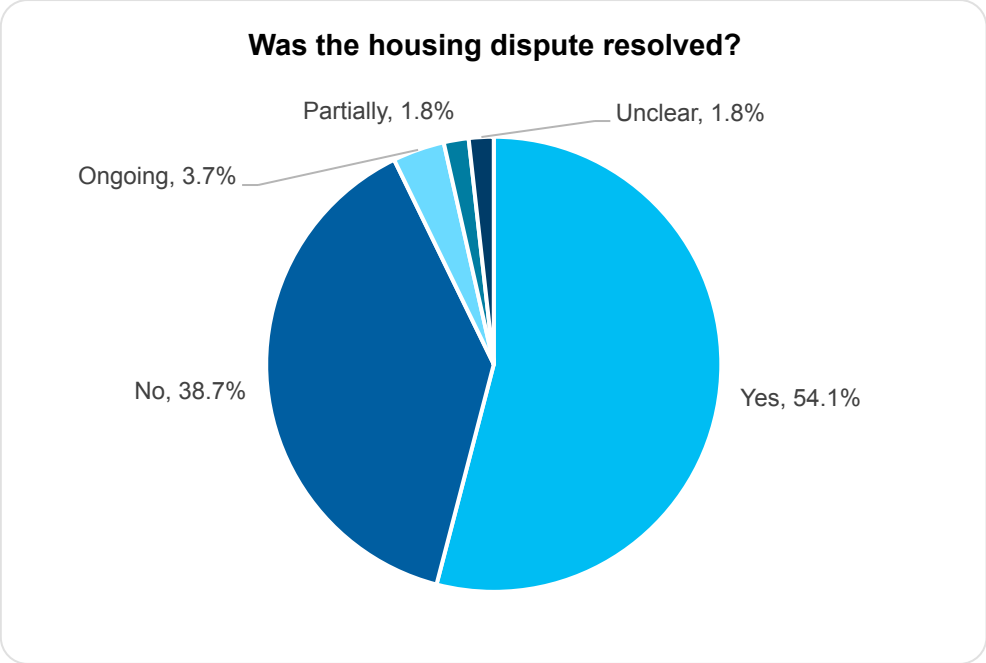


Figure 8: Illustrating the proportion of housing disputes that had or had not been resolved according to respondents (n.679).

vi. Question 6 of 11

If respondents said their dispute had not been resolved, we asked why this was the case. Almost one in five explained this was because the dispute was ongoing. While another one in five said that the dispute had technically being resolved but they remained dissatisfied with the outcome and they did not personally consider it resolved.

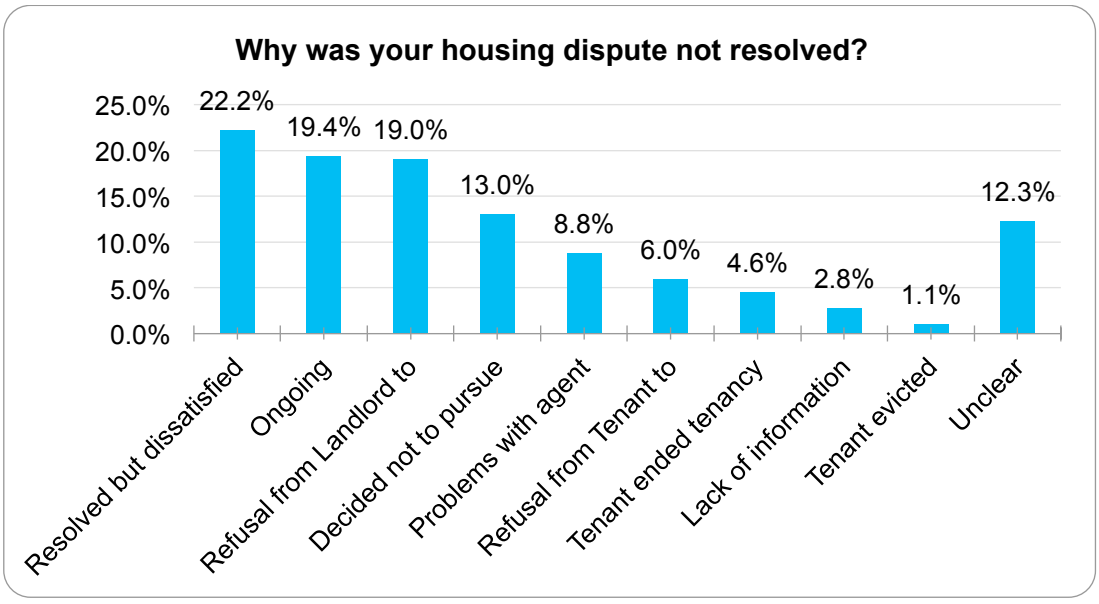


Figure 9: Summarising the reasons why housing disputes, which respondents had experienced, had not been resolved (n.310).

A further one in four respondents said the reason their dispute had not been resolved was due to the other party refusing to engage with them.

Another significant reason was that the respondent decided not to pursue the issue (13%). The following comments were made to explain why people had decided to take no further action:

- *"They threatened legal action so we just paid the damages to get them away"*
- *"I gave up after a while. It was just too much hassle"*
- *"the only potential resolution of this was private action through a small claims court, at my expense, which may, or may not have had a positive outcome, or if it did, this may have taken a long time to recover the full costs."*
- *"I was sent in circles and eventually gave up. I didn't have the money to see a solicitor."*
- *"I just let go of it"*
- *"nothing we could do as tenants"*
- *"Because the landlord knew she was dealing with students that would not dare to make the dispute go further"*
- *"We just gave in and paid the money"*
- *"I needed my deposit back and has [sic.] no option but to agree to their demands."*
- *"I conceded to avoid legal action."*
- *"after struggling for so long to get any results or answers, I abandoned the case and stopped chasing for action."*
- *"Fear of tenancy being terminated"*
- *"Landlord had much more money and could tie me up in court longer than I could affor [sic.]"*
- *"I felt it was a 'David and Goliath' battle and just conceded defeat."*
- *"I lost heart and £495 of a deposit."*
- *"too much hassle as my grandfather had just passed away and it was too much stress."*

The common themes emerging are reticence to engage in legal action because of the costs involved, finding it too difficult or stressful to continue with the dispute, and tenants feeling vulnerable due to a perceived power imbalance.

vii. Question 7 of 11

Question 7 asked respondents to rate how satisfied they were with the methods or services available to help them solve their housing dispute. The question was answered by 567 people and the average response was 40/100, suggesting that most people were more dissatisfied than satisfied with the options which were available to them to resolve their housing dispute.

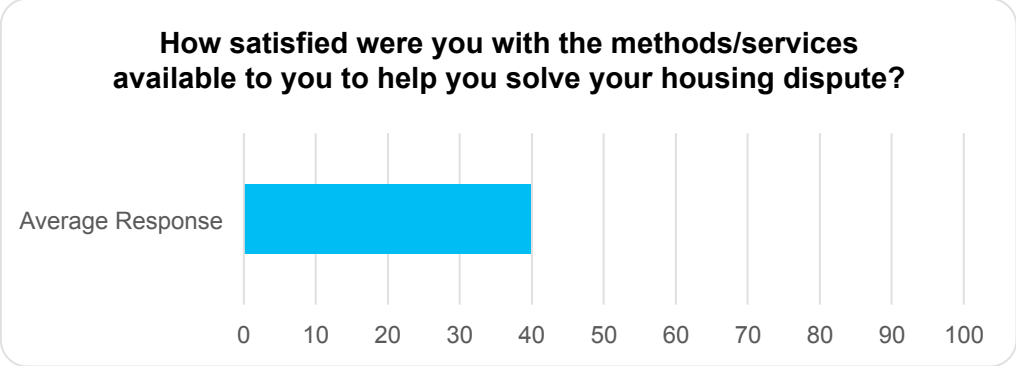


Figure 10: Summarising the average method/service satisfaction rate of survey respondents (n.567).

viii. Question 8 of 11

The next question asked respondents to suggest what would have made it easier for them to solve their housing dispute. 41% of respondents made suggestions that were specific to their individual housing dispute, e.g. if their tenant or landlord had behaved differently. Of the remaining responses, the most frequently made suggestions called for:

- clear information and/or advice to help tenants and landlords resolve disputes (27%)
  "jargon free, accessible information for tenants regarding housing regulations"
  "specialists offering free advice and support"

- a specialised alternative dispute resolution service (25%)
  "an independent, impartial organisation to help reach agreement"
  "an independent body with appropriate knowledge and experience without agenda to assist"

- legislative changes to give both tenants and landlords more rights (18%)
  "proper legislation in place with respect to private tenancies."
  "Better and more enforceable legislation"

This question was posed without multiple-choice options and allowed open-ended responses, making the popularity of these three suggestions notable. The concept of an alternative dispute resolution service was not suggested to respondents until question 9 of the survey.

The remaining suggestions indicate the principles upon which respondents want an effective dispute resolution system to be based:

- Appropriate timescales (11%)
  "a shorter clear and concise process which was fair to landlord as well as tenant"
  "resolved in a reasonable timescale. 6 months down the track isn't good enough"

- Low costs (2%)
  "independent inexpensive service"
  "reduced cost of small claims action"

- Able to access system online (2%)
  "a website that's easier to gain access to"
  "better website"

- Able to access system face to face (2%)
  "Being able to speak to someone in person"
  "face to face meeting with mediator"

- Able to access system via telephone (3%)
  "being able to dispute over the phone not just online"
  "phone contact"

- Person-centred approach (3%)
  "if property people were more understanding"
  "a more personal approach to the problem"

ix. Question 9 of 11

This question asked respondents to indicate whether they would have used specific ADR methods if they had been available. Each option was summarised so that respondents understood what the system entailed.

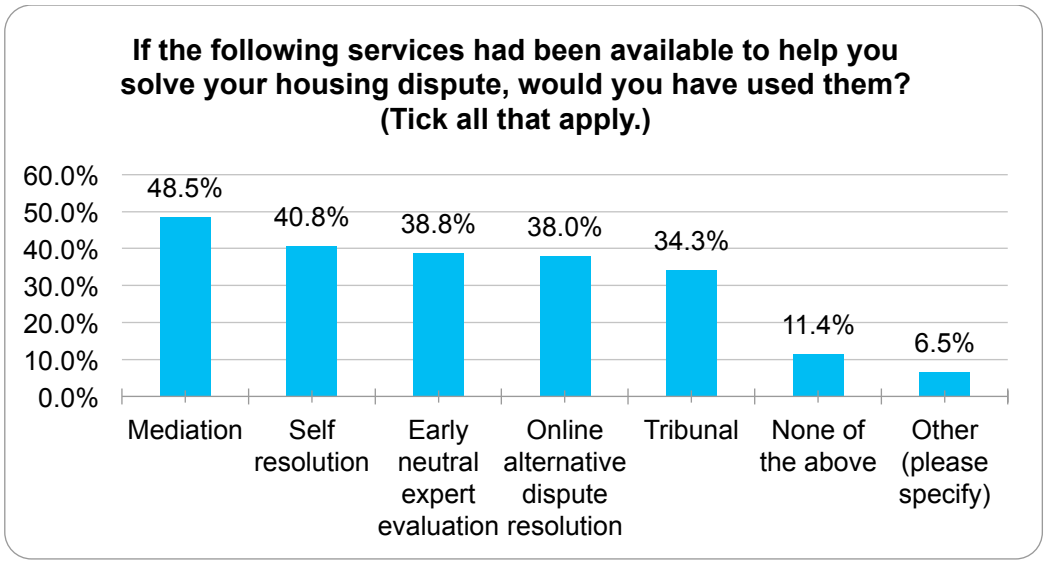


Figure 11: Summarised survey respondents' support of various ADR options (n.613).

Four out of five respondents supported at least one of the alternative dispute resolution options suggested. As the chart illustrates, mediation was the most popular option among respondents. The other suggestions echoed comments made via the previous question, e.g. legislative changes, tenant registration.

x. Questions 10 and 11

The final questions of the survey asked respondents to leave their contact details if they were happy to be contacted for further information, and if they would like to be notified via email when this research paper is published.

c. Summary of data collected

The data collection involved stakeholders from across the private, public and voluntary sectors, landlords and tenants. In total, 796 people provided substantive responses to our call for input. Four key themes emerged with all stakeholders calling for the following:

i. A coherent system that gives parties clear information about how to resolve disputes

Stakeholders highlighted the need for information which clearly sets out each of the dispute resolution methods available to tenants and landlords, including the costs associated with each option. Participants said the information should be delivered in plain English and made available both online and via the telephone.

ii. A system developed and delivered by impartial, housing experts who help parties to resolve disputes

The value of an impartial expert in helping parties to communicate and resolve their dispute was discussed across all data collection methods. More than one in four survey respondents independently suggested that this support would be beneficial, while almost one in two said they would use a mediation service if it was available and more than one in three would be willing to use an early neutral expert evaluation service.

iii. A system which takes a holistic, person-centred approach and incorporates various ADR methods

Discussion group participants agreed there was not one method of alternative dispute resolution which would work in all housing disputes, due to the complexity, timing and topics around which disputes arise. This was echoed in the results of the online survey, in which respondents were supportive of a range of ADR options.

iv. A system which is responsive, cost-effective and accessible, regardless of the user's preferred medium

The accessibility of the system builds upon the earlier point related to information, and the need to make it easier for parties to understand the dispute resolution methods available to them. Of those survey respondents with unresolved disputes, one in eight said they did not pursue the resolution of their housing dispute because they considered it too difficult, stressful or costly.

Although the system is designed to be digital by default, it was clear in the course of the data collection that technology is not the answer to all problems. Although more than one in three survey respondents said they would use an online dispute resolution system, other respondents raised the point that any system should also be available via the telephone and, if required, in person.

7. Proposal for a digital by default private tenancy ADR system in Northern Ireland

This paper has summarised the current strategic climate and the systems that are currently in place to help parties solve their housing disputes in Northern Ireland. The theory behind ADR has been established, alongside examples of housing-specific ADR systems working in practice. Feedback from stakeholders has been collected, taking a range of perspectives into account. Together, this has contributed to the development of the following proposal for the establishment of an alternative dispute resolution system for the PRS in Northern Ireland.

The system addresses each of the four stages in the cycle of disputes. There is no cost to the user to access the service. It sits alongside the current tenancy deposit schemes, as these are specifically designed to help parties at the end of the tenancy.

In order to ensure that the service is appropriate for the user, a series of statements will appear when the user first accesses the self-resolution software. In order to continue using the self-resolution software, the user must indicate their agreement with the statements. Figure 12 sets out the information the self-resolution software's landing page could include.

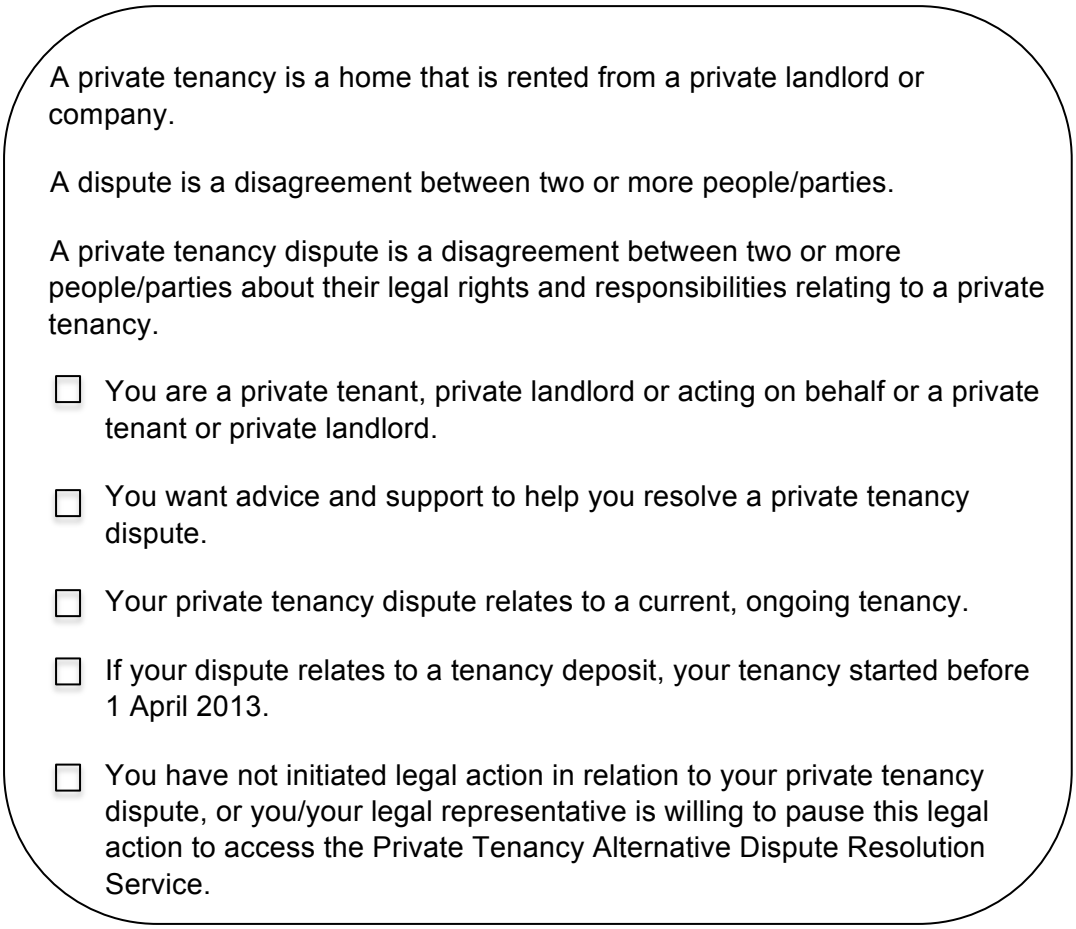
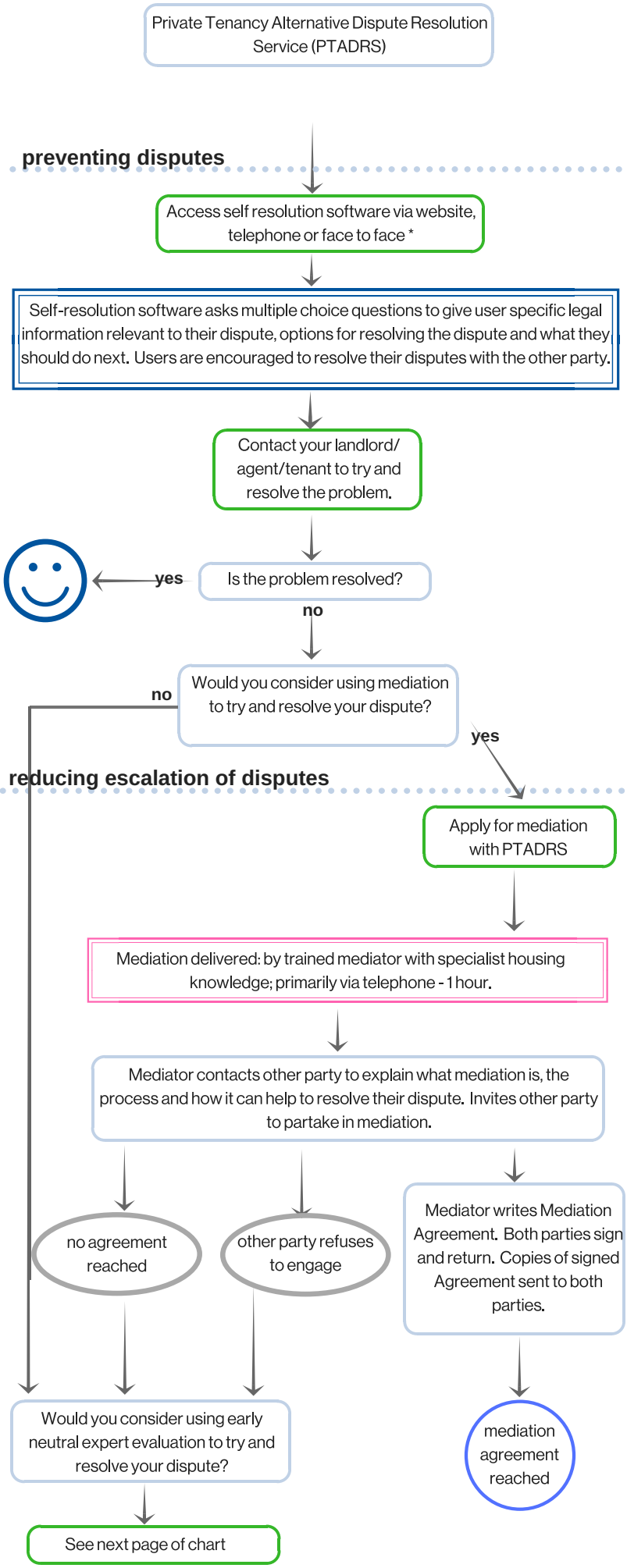


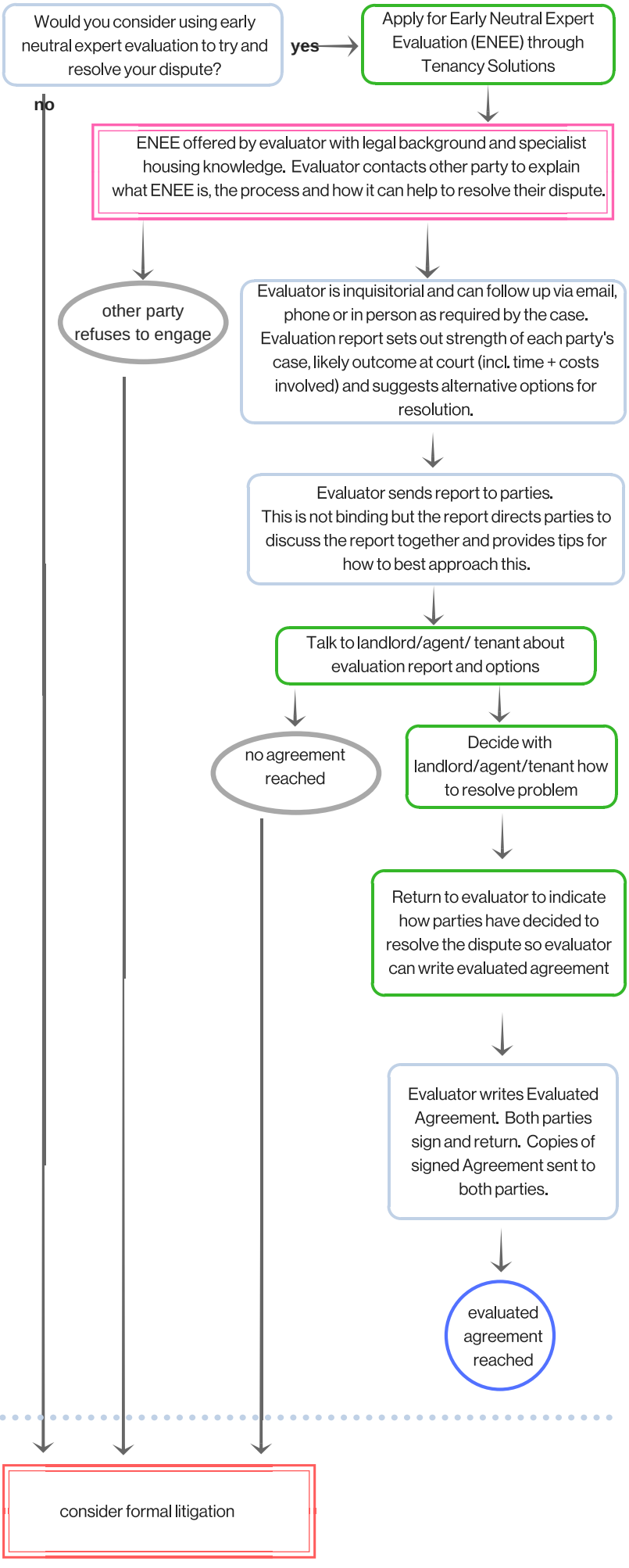
Figure 12: Illustrating a draft landing page for the self-resolution software to ensure the service is appropriate for the user.

Having agreed to the statements in figure 12, the user can access the Private Tenancy ADR system. The following flowcharts set out how the system would work:



* It is suggested that the software could be accessed on behalf of the user by generalist or specialist advisers, if the user is unable to access independently.

resolving disputes



The system encourages parties to understand their rights and responsibilities and use the self-resolution tools available to them, before offering a non-adjudicative, mediation service to support parties to come to a mutual agreement. If this does not prove effective, a more formal, non-adjudicative option is offered via neutral expert evaluation. All options are confidential and support parties to resolve their dispute outside of court.

The system does not remove any party's right to have their case heard in court, should they so wish. However, the system will be quicker, cheaper and more inquisitorial than the service currently offered by the courts. It is vital that the system is well publicised via a comprehensive, specific communication campaign so that stakeholders are aware of the system and how it works. More detail about each of the system's levels and motivations for their inclusion is discussed in section 8.

8. Discussion

By offering three methods of resolution, the proposed system gives parties a suite of ADR options by which they can try 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.

a. Preventing disputes – Self resolution

It is suggested that a website that incorporates a piece of self-resolution software, specifically designed for Northern Ireland should be published. The software will help parties to understand their problem, the strength of their case and the potential ways they can resolve their issue, along with any associated costs. The software will help users by asking them a series of key questions, in order to lead them along guided pathways that select relevant data and inform the user about their rights. An example of the information and assistance British Columbia's solution explorer provides is available in appendix 4.

The self-resolution software could be built on a standalone website to deal exclusively with PRS disputes. However, there is clear merit in building on services which already exist in order to integrate the ADR service into the sector and avoid duplication. There is also a wider educational benefit to embedding the self-resolution software into a housing advice website.

A housing advice website can help users to improve their housing knowledge and be a resource for tenants and landlords to consult before a dispute develops. It is suggested that the website would actively encourage self-resolution, and clearly set out all the other possible means of dispute resolution available to parties in one central location, to deal with the issue of complexity identified in this paper's data analysis. Embedding the software in a housing advice website could increase parties' housing knowledge, promote cooperation and early intervention techniques, empower users and prevent some disputes from occurring.

Drivers for including self-resolution tools

These tools respond to stakeholders' request for clear information, which is accessible and helps landlords and tenants understand their housing rights and responsibilities. More than a third of survey respondents said they had looked for information online to help them solve their housing dispute. As stated in the PRCJ: "*We need to simplify the ways in which justice is done, empowering citizens to vindicate their rights and put their case forward. If a citizen comes through the system, they should be able to negotiate it at their convenience, using the tools and technology they apply in other parts of their lives.*"[47] This demand for online information should be harnessed.

The development of self-resolution tools is supported by stakeholders, with it being the second most popular ADR option among survey respondents. Additionally, seven in ten respondents reported that they had tried to contact the other party to resolve their dispute. The self-resolution software will use problem-solving techniques to support individuals' willingness to communicate with the other party and promote a culture of cooperation.

Stakeholder feedback emphasised that it is important for the information and assistance available via the website to be made available via the telephone and face-to-face, for those

[47] Civil and Family Justice Review Group (2017); *Preliminary Civil Justice Report*; p.352; available at: http://www.jsbni.com/civilandfamilyjusticereview/Pages/default.aspx

people who are either unable or unwilling to access information via the internet. It is suggested that generalist or specialist advisers could access the self-resolution software on behalf of the user.

b. Reducing the escalation of disputes – Mediation

For those cases that cannot be resolved via self-resolution, a party can apply for mediation. After receiving an application, the mediator approaches the other party to inform them that they have been invited to engage in mediation regarding their dispute. The ADR service will explain the process and benefits of mediation. Mediation is not compulsory. If the parties both agree, an appointment for mediation will be made by the ADR service.

Mediation will be provided via a person trained in mediation and with specialist housing knowledge. Mediation will most usually take place over the telephone for one hour, making it a convenient and cost effective way of resolving a dispute. Parties will be encouraged to engage in telephone mediation, but the value of face-to-face mediation should not be dismissed and offered on a case-by-case basis.

It is predicted that mediation will be successful in 60% of cases. This is a conservative estimate based upon the combined experience of:

- the mediation service of the RTB in Ireland which, in 2016, had a 57% success rate,[48]
- the Small Claims Mediation Service in England and Wales for claims below £10,000 which has a 70% success rate[49]; and,
- the Court of Appeal in England's mediation scheme for non-family work which achieved a settlement rate of 68% during its first year of operation.[50]

Those disputes that are resolved via mediation will be formalised via a Mediated Agreement, written by the mediator, including agreed timescales and sent to both parties to sign and return. The first preference is that these agreements are sent and returned via email, but they may be processed via mail if required by either of the parties.

Although these agreements are not legally binding, it will formalise the arrangement and provide documentary evidence should either party need to rely upon it at a later date. The mediation process is entirely confidential. The mediator will contact both parties to ensure the agreement has been complied with by the end of the agreed timescale.

Drivers for including mediation

Mediation was the most popular ADR option among survey respondents, with almost half (47.7%) saying they would have been willing to use it had it been available during their housing dispute. This paper's discussion group participants also valued mediation, as long as both parties agreed to participate and it was made available at the right time. Additionally, the PCJR has called for mediation to be *"seen as a real and effective alternative to litigation for those involved in civil disputes."*[51]

The case studies in section 4 of this paper have drawn attention to the mixed reports regarding the effectiveness of mediation in housing disputes. While the RTB in the Republic of Ireland resolved 57% of mediation cases they received in 2016, the Scottish Housing and

[48] Residential Tenancies Board (2017); *Annual Report 2016*; p.34; available at: https://www.rtb.ie/docs/default-source/annual-reports/annual-report-and-accounts-2015.pdf?sfvrsn=2.
[49] Civil and Family Justice Review Group (2017); *Preliminary Civil Justice Report*; p.235; available at: http://www.jsbni.com/civilandfamilyjusticereview/Pages/default.aspx
[50] Ibid. p. 118.
[51] Ibid. p.127.

Property Chamber has found this method of dispute resolution to have limited success, particularly in repair cases in which they have found tenants to be subject to a power imbalance. However, the success of other schemes is encouraging and has, along with stakeholder feedback, prompted its inclusion in this proposed ADR system for Northern Ireland.

c. Resolving disputes - Early Neutral Expert Evaluation

For those cases that are not resolved via mediation, either party can apply for early neutral expert evaluation (ENEE). Once an application for ENEE has been received, the ADR service will send each party case forms with a clear return by date, in which the parties can put forward the details of their case, as well as the resolution they would like to take place. As the ADR service aims to be digital by default, participants would be encouraged to receive and return these forms electronically.

EENE is not compulsory. If both parties agree to take part and return the case forms, both forms will be reviewed and a neutral expert evaluation carried out. A professional with both a legal background and specialist housing knowledge will complete the ENEE. The evaluator will not have been involved in the mediation of the case and will not have any prior knowledge of it.

The evaluator will be in a position to contact both parties by email, telephone or in person to make further inquiries about the housing dispute. When satisfied that they understand the case in full, the evaluator will write an evaluation report which details the strength of each party's case, the likely outcome, costs and timescale of taking the case to court, and potential options for resolving the dispute outside of court. The parties will be encouraged to contact each other and given guidance for how to approach this discussion.

The parties may then decide to either resolve the case via one of the evaluator's suggested means or take the case to court. If the parties decide to resolve the case outside of court, they can apply to the evaluator to write an evaluated agreement with agreed timescales. As with the mediated agreements, this will formalise the agreement and, although not legally binding, can be relied upon as evidence should either party require it in the future. The evaluated agreement will be sent to both parties for them to sign and return. The neutral expert evaluation process is entirely confidential. As with mediation, the evaluator will check the agreement has been complied with within the agreed timescale.

Drivers for including early neutral expert evaluation

EENE responds to stakeholders' feedback regarding the value of an impartial, expert opinion in resolving housing disputes. More than one in three said they would have used an early neutral expert evaluation service, and participants in the discussion group predicted that the service would mean the ADR system was more productive and respected by parties. It is also in accord with the PCJR which calls for an *"increased emphasis on mediation and early neutral evaluation"*.[52]

It is difficult to predict the success of ENEE, due to limited empirical testing of its effectiveness. It is most commonly used in the USA. The Minnesota Judicial Branch's Early Neutral Evaluation Program has average settlement rates of 74% for social ENEE cases and 68% for financial ENEE cases.

[52] Ibid. p.353.

d. Learning from disputes

The final stage in the cycle of disputes is to analyse and understand patterns that emerge from disputes that come through the ADR system. Identifying recurrent issues is fundamental to making improvements to the private rented sector overall.

This stage embeds the practice of working to maximise the positive impact of ADR and requires the funder to budget for the time and expertise needed to do so. By using the data collected to develop government's understanding of the PRS and evidence policy recommendations, the cycle of disputes is complete as sector improvements will contribute to the prevention of future disputes.

e. The place of the court

At this time, should the parties still be unable to resolve their dispute, the proposed ADR system will not prevent either party from taking their case before a court. The availability of judicial input at a higher tier is important as the ADR system should not limit the right of a party to seek the intervention of a court, as is currently the case for tenancy deposit scheme disputes in Northern Ireland.

Whilst this paper does not discount the potential value of an independent tribunal with the legislative powers necessary to enforce binding decisions on the disputing parties, it proposes a phased approach to the development of an ADR system for the PRS. Other ADR methods, such as mediation and ENEE, can be more quickly implemented and encourage a less adversarial approach to solving disputes. It would appear pragmatic to take the steps necessary to develop these services first, evaluate their effectiveness, reflect upon the results and then reconsider if there is a need for a tribunal. It is anticipated that the development of the non-adjudicative ADR service would decrease the number of cases that require the services of a tribunal.

f. An outcomes based approach to dispute resolution

The proposed system responds to stakeholders' appetite for ADR and gives the Northern Ireland Government an opportunity to rethink and redesign the system from a user's perspective. It will empower users, whilst improving access to justice. By supporting users to participate and resolve their disputes, the system encourages communication and cooperation, which will contribute to improving relationships between tenants and landlords.

The system moves away from the traditional focus on dispute adjudication by the courts, councils and tenancy deposit schemes in Northern Ireland, towards resolution of the dispute. By supporting parties to participate in the process and engage with the other party, the system is just as much about dispute avoidance and learning from previous experience as it is about resolution.

The proposed system is an end-to-end, whole system approach to disputes in the private rented sector. Policy makers will be able to utilise the data collected via the system to better understand the PRS and develop evidence-based policies to continue to improve the sector and avoid future disputes.

A key tool for DfC to measure, manage and maximise the value of the proposed system is to build an impact measurement framework into the project's foundation. The first step to doing this is to write a theory of change (ToC), which has been drafted in the next section.

Theory of change

A theory of change is a tool that helps projects to communicate how they work via an accessible, succinct diagram. The ToC functions as a plan for evaluation of the project. It includes measureable indicators of success being identified, and an agreement from stakeholders about what defines success and what the project needs to do to achieve it.[53]

Based on the proposed ADR system, a draft ToC has been designed to demonstrate how the system should be evaluated. It is the first step towards an impact measurement framework and clearly sets out what needs to be measured.

Designing and developing the project using an outcomes-based framework will set the Northern Ireland housing-specific ADR system apart from those in other jurisdictions, as it will allow Northern Ireland to report on the success of the project using key evidence and stakeholder feedback from the outset of the project.

[53] It is important to understand that a ToC should be considered a working document. As projects develop, there may be unforeseen consequences or learning which mean the ToC requires modification in light of practical experience.

Inputs	Activities	Outputs	Intermediate Outcomes	Indicators	Ultimate Goals	Indicators	Impact	PfG Outcomes
PRS information website with self-resolution software Support line to access self-resolution software via telephone Housing specialists trained in mediation Housing specialists with legal background Administrative + managerial support	Maintaining PRS housing information and self-resolution software available online Providing self-resolution information relevant to dispute via telephone Providing mediation services to disputing parties Writing neutral expert evaluation reports Writing mediated + evaluated agreements	Number of website visits Number of self-resolution cases Number of support line cases Number of mediation cases Number of mediated agreements written Number of neutral expert evaluation reports written Number of evaluated agreements written	**Landlords + tenants better understand their rights + responsibilities**	% of users who report they better understand their housing rights + responsibilities	**Improved tenant-landlord relationships**	% of users who report their relationship with their tenant/ landlord has improved.	**The private rented sector is a suitable housing option, which functions fairly for both tenants + landlords.**	**We care for others + we help those in need.**
			Landlords, agents and tenants work together to solve housing disputes	% of successful mediation cases % of evaluation agreements vs evaluation reports	**Reduced number of tenancies ending as a result of a dispute**	% of service users who report tenancy ended as result of unresolved dispute No. of illegal evictions reported to EHOs		**We have a safe community where we respect the law and each other.**
			Landlords, agents and tenants work together to sustain tenancies	% of mediation and ENEE cases that result in sustained tenancies % of users who report support helped to sustain their tenancy	**Reduced statutory homelessness**	No. of people presenting as statutory homeless who state 'loss of private rented accommodation due to a dispute' as reason for presenting		**We are a shared society that respects diversity.**
			Government departments identify policy and/or system improvements required in the PRS	No. of issues government departments identify requiring policy attention in the PRS.	**Increase in evidence-based policy decisions in relation to the PRS**	No. of legislation and policy changes in the PRS.		

Table 8: Theory of Change for the proposed ADR system.

g. Cost benefit analysis

A cost benefit analysis (CBA) builds on the outcomes and impact of a project and calculates the project's value. The analysis uses New Economy's cost benefit model, which has been reviewed and approved by HM Treasury. Using robust methodology, the model is built using the latest evidence and data, and considers the following types of benefit:

- Fiscal benefit: the financial savings to local government
- Public value: the economic and social benefits

We recommend using the cost benefit model to measure the potential value of this paper's proposal because it is concerned with more than just the fiscal costs and benefits, but determines the public value element. The DfC proposed the concept of an independent housing panel with the view to reducing homelessness and the deterioration of landlord-tenant relationships, and making the private rented sector a more attractive housing option. The societal outcomes and positive impact on citizens' lives element of the system is measured via this public value benefit of the analysis.

After attempting to produce an analysis of the costs and benefits of the proposed ADR system, it became clear that there is a lack of NI-specific data publically available to calculate the costs of the current systems that are available to tenants and landlords to resolve their disputes. This makes it difficult to forecast any savings that may be accrued by implementing the proposed ADR system. It was also difficult to gather specific data related to the current number of private rented tenants who are evicted or present as homeless as a result of the loss of their private tenancy. These gaps need to be addressed if a CBA is to be useful.

The table below sets out the key aspects of how the model works and the evidence required to populate different fields.

Cost Benefit Model element	**Explanation**
Affected population	The number of people at risk of the targeted problem.
Level of engagement (%)	The percentage of the affected population who engage with the programme.
Level of retention (%)	The percentage of individuals who complete the programme.
Impact (%)	The percentage of individuals that achieve the outcome.
Deadweight (%)	The improvement in outcomes which would be expected without the intervention, e.g. if the programme did not exist.
Optimism bias correction	Correction (0% to -40%) included in response to the level of uncertainty or over-optimism in the strength of the data or assumptions made.
Analysis time frame	The length of time selected to measure the benefits of the programme.
Predicted costs	The cost of delivering each cost element over the timeframe of the project.
Unit cost estimates	New Economy have worked with the Cabinet Office to produce a database of mostly national estimates for service costs and savings, related to fiscal benefits and public value.
GDP deflator	Unit cost figures are derived by New Economy based on DWP analysis given in prior years. The cost benefit tool therefore applies a GDP deflator in order to align values to current prices.

Table 9: Describing Cost Benefit Analysis elements and their application in the current analysis.

The CBA will not monetise all of the predicted positive outcomes of the proposed ADR system. Instead, it only focusses on what can be firmly evidenced, for example:

- Reducing housing evictions;
- Reducing statutory homelessness;
- Improved community wellbeing.

There are outcomes beyond these which are included in the ToC, such as improved understanding of housing rights or reduced number of abandoned tenancies, but these are difficult to put a financial figure on.

It is predicted that a CBA will demonstrate that although the proposed ADR system will require some funding, the economic return on investment will be positive and will deliver public value. We expect that a CBA will support the PCJR's prediction that *"a system in which cases are resolved earlier and by registrars – with far fewer cases proceeding to determination by highly paid judges – should deliver significant cost savings, while simultaneously maximising access to justice."*[54]

h. The proposal and the Preliminary Civil Justice Review

As discussed, there are clear links between the establishment of an independent housing dispute resolution service and the PCJR's recommendation regarding ODR.

The PCJR includes a recommendation for *a "pilot scheme of voluntary ODR to be set up throughout Northern Ireland for money damages cases of under £5,000, excluding personal injuries and road traffic claims save possibly for such claims under £1,000. Legislation would be required to introduce such a step."*[55] Housing Rights' experience is that the majority of private rented disputes are heard in the Small Claims Court (cases with a value of up to £3,000). Therefore, if this recommendation was actioned, such disputes could be resolved through the pilot ODR scheme.

PCJR has urged action to be taken to reform the civil justice system in Northern Ireland and has evidenced the enthusiasm of the public and of public bodies for ODR. The report points to significant positive outcomes offered by ODR, including:

- Empowering users;
- Improved access to justice;
- Improved quality of justice;
- Reduced costs to users.

The proposed ODR is based on three stages:

Stage 1	An automated interactive online process with identification of the issues and the provision of documentary evidence.
Stage 2	Conciliation of case management by trained case officers.
Stage 3	Resolution by judges. If it reaches the stage of the judge, the courts will use documents on screen, telephone, video or face-to-face meetings to meet the needs of each case.

Table 10: Summarising the three stages of the proposed ODR system, recommended by the Preliminary Civil Justice Report.

[54] Civil and Family Justice Review Group (2017); *Preliminary Civil Justice Report*; p.42; available at: http://www.jsbni.com/civilandfamilyjusticereview/Pages/default.aspx
[55] Ibid. p.55.

The proposal follows the precedent of HM Online Court, being built on the same three stages (see section 3b.iii.). One may deduce that it would be built upon similar principles as the HM Online Court. This would mean that it:

> *would be conducted online rather than on paper, designed primarily for use by litigants in person, investigatory rather than purely adversarial, with conciliation, including mediation and early neutral evaluation […] as a mainstream option rather than only an alternative for resolution, and face-to-face hearings would be for resolution only if documentary, telephone or video alternatives are unsuitable.*[56]

The PCJR recognises that its recommendation calls for radical structural change within the civil justice system. Consequently, the report recommends advancing with some measure of caution, submitting the pilot to a robust peer review and *"using a system of stepping stones towards a final picture"*.[57] However, the report does not recommend confining the pilot scheme to one geographical area, such as Belfast, before rolling it out across Northern Ireland. This is due to the expenditure of the proposal, which makes it *"only cost-effective if set up province-wide from the outset"*.[58]

Having reflected on the substance of the PCJR proposal for ODR in Northern Ireland, this paper recommends that its proposal for a PRS specific ADR system be piloted as one of the 'stepping stones' towards the development of the ODR system. This paper's proposal shares the same characteristics as Stage 1 and 2 of the PCJR's ODR system. Additionally, the housing sector has established supports in place that could be utilised to implement the pilot system, in a timely and cost efficient manner. For example:

- www.housingadviceNI.org.uk (HANI) is an established, Northern Ireland specific, housing advice website. In 2016/17, it had over 2.1 million page views. HANI offers comprehensive housing and legal information in plain English. The content and expertise that has developed through the design, development and management of HANI makes the website a natural home for the ADR self-resolution software. The software offers the same service to users as Stage 1 of PCJR's proposal: it helps users to classify and categorize their problem, be aware of their rights and obligations, and to understand the options and remedies available to them.
- A housing helpline, with an appointment service is available in Northern Ireland, and a landlord advice line is currently being piloted. These services could be utilised to offer the self-resolution software to those users who are unwilling or unable to access the internet. These will be important supports to offer as another stepping-stone to the ODR system which PCJR recommends.
- The tenancy deposit dispute resolution schemes have been in operation since 2013 in Northern Ireland, and private tenants have developed some experience of using ADR services as a result.
- The Rent Assessment Panel has experience of evaluating tenant and landlord concerns and reporting their appraisal. Consideration could be given to expanding the Panel's remit to offer ENEE services, which are part of this paper's ADR proposal and Stage 2 of PCJR's recommendation.

[56] Ibid. p. 39-40.
[57] Ibid. p. 52.
[58] Ibid. p.53.

It is also of note that this paper's proposal does not require legislative change. It could be implemented and evaluated whilst awaiting the outcome of the PCJR (a report for the Lord Chief Justice to forward to the Department of Justice with recommendations designed to inform the direction of policy development in the next Assembly mandate). In this way, the proposed ADR system will be able to inform and provide evidence to support future policy developments.

The Northern Ireland Government has published an outcomes-based Programme for Government, which encourages collaborative working and co-design across departments, sectors and organisations. This paper offers an opportunity to put those concepts into practice. As the PCJR states, *"the public appetite for ODR is unmistakeable"*[59] and *"there is no conceivable reason why we should delay"*[60].

[59] Ibid. p.54.
[60] Ibid.

9. Recommendations

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 four key principles identified via stakeholder feedback:
    - Be coherent, giving parties clear information about how to resolve housing disputes
    - Be developed and designed by impartial, housing experts who help parties to resolve disputes
    - Take a holistic, person-centred approach and incorporate a suite of ADR methods
    - Be responsive, cost-effective and accessible, regardless of the user's preferred medium
4. An outcomes-based measurement framework, agreed at the project's outset with regard to the four 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.

Housing Rights hopes 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. 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.

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11. Appendices

a. **Overview of the Northern Ireland Executive's Draft Programme for Government**
b. **Glossary of terms related to Outcomes Based Accountability™**
c. **Legislation detailing Councils' responsibility re: private rented sector in Northern Ireland**
d. **Stakeholder feedback survey**
e. **Solution Explorer example case**

a. Overview of the Northern Ireland Executive's Draft Programme for Government

These outcomes will be delivered through collaborative working across the Executive and beyond government and through the provision of high quality public services

b. Glossary of terms related to Outcomes Based Accountability™

Inputs

The resources that go into the project that a team or organisation needs to be able to carry out its activities.

Activities

The things that an organisation or project does or the way it chooses to deliver a project day-to-day. Activities are within an organisation or project's control.

Outputs

Products, services or facilities that result from an organisation or project's activities. These are often expressed quantitatively; for example, number of users, how many sessions they receive and the amount of contact they had with a project.

Outcomes

The direct changes, benefits, learning or other effects that result from what a project or organisation does. These short-term steps will contribute to a final goal and may include changes in users' knowledge, skills, attitudes, and behaviour. A useful way to think about outcomes is the changes achieved after the project—what service users take away from it.

Indicators

Measurable evidence of meeting a goal. Indicators are signs, (e.g. reading scores, attendance) that demonstrate that the outcomes are achieved. Often, indicators can be counted (quantitative), but sometimes evidence will be something more descriptive (qualitative).

Ultimate goal(s)

The primary impact that your programme aims to have on its beneficiaries. This should represent the direct and immediate impact of the programme, rather than the more long-term impact that happens because of it.

Impact

The long-term result that you are trying to achieve. The broader social change a project or organisation is trying to achieve.

c. Legislation detailing NI Councils' responsibility re: private rented sector

Article	Description	Extent of Enforcement Action	Fixed penalty issuable by council	Fine if convicted
Private Tenancies (Northern Ireland) Order (2006)				
5	Rent books	All private tenants have the right to a rent book.		£2,500, second offence if not remedied within 14 days.
5B	Tenancy deposit protection	Any deposits paid since 1 April 2013 must be protected in an approved tenancy deposit scheme. It is an offence to fail to protect the deposit within 14 days of receiving it or to fail to provide the tenant with certain prescribed information relating to the deposit with 28 days of receiving it.	Not more than £500 for requiring deposit other than money. Three times the value of the deposit for all other breaches.	£2,500 for requiring deposit other than money. All other breaches result in fine not exceeding £20,000.
24	Notice of Unfitness or Notice of Disrepair	It is an offence not to carry out repair works specified within a notice of unfitness or notice of disrepair.		£2,500, further offence if not complied within 14 days of conviction.
28	Obstruction	Where the district council or anyone authorised by the council is obstructed from trying to perform its duties, an offence will have been committed.		£1,000
33	Landlord's application for certificate of fitness	Article 33 (5) enables a district council to take legal action if a landlord fails to apply for a certificate of fitness within 28 days of tenancy starting.		£2,500
50	Rent in excess of rent limit to be irrecoverable by landlord	Article 50(2)&(3) states that a landlord is guilty of an offence if the rent book shows the tenant to be in arrears because of rent which is in excess of the rent limit and that the entry should be removed within 7 days of being requested by the tenant.		£2,500
65	Information as to ownership of dwelling houses.	Article 65 provides that district councils may request from the occupier/owner details of those with an interest in the property in order that the council can serve a notice. Under Article 65(1), it is an offence not to provide or knowingly give wrong information to the council.		£1,000
65A	Landlord registration	If a landlord of a private tenancy fails to register certain details with a		£500 for Failure to provide evidence of

		central database, he or she has committed an offence and may be issued with a fixed penalty or prosecuted by the council.		registration in prescribed circumstances; £2,500 for letting a tenancy without being registered or for providing false information on the landlord register.
66	Service of notices on landlord's agents	It is an offence if the agent fails to provide landlord contact details, if requested by the district council or the tenant.		£1,000
1(2) of Sch. 2	Consideration of determinations by rent assessment committees	Landlord or tenant is guilty of an offence if they fail to provide information as requested by a rent assessment committee.		£2,500
Rent (Northern Ireland) Order 1978				
16	Payments to protected or statutory tenants	Protected or statutory tenant who asks or receives payment as a condition of leaving tenancy from someone other than landlord.		Not exceeding £500.
49	Payments in addition to rent for protected tenancies	The requiring or receiving of payments in addition to rent as a condition of renewal or continuance of a protected tenancy.		Not excessing £1000.
54 as amended by Art 60 of the PTO	Unlawful eviction and harassment of occupier	If any person unlawfully deprives the tenant of her /his occupation of a dwelling house, s/he shall be guilty of an offence and the district council may institute proceedings. *The definition of harassment in the Rent Order states that the acts involved must have been calculated to interfere with the tenant's peace or comfort. This has been amended to refer to actions likely to interfere with the tenant's peace or comfort.*		Not exceeding £1,000 or imprisonment for no more than 6 months or both
Clean Neighbourhoods & Environment Act (Northern Ireland) 2011				
65	Statutory nuisances	Where the council has served an Abatement Notice on investigating and finding that a Statutory Notice exists, the landlord or tenant will have committed an offence by failing to comply with the particulars of this notice.		Not exceeding £5,000 with further fine of £500 for each day on which the offence continues after the conviction.
Gas Safety (Installation & Use) Regulations (Northern Ireland) 2004				
36	Gas Safety	Failure to ensure that gas fittings and flues are maintained in a safe condition.		Not exceeding £5000.
Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2009				
3	Energy Performance Certificate	Landlords must obtain an Energy Performance Certificate and make it available to each new tenant.	£200	

d. Stakeholder feedback survey

Thank you for contributing to Housing Rights' research into the current methods available to help people solve housing disputes in Northern Ireland.
We consider a housing dispute to be: a disagreement between two (or more) parties which relates to their housing rights and/or responsibilities.

Housing disputes in Northern Ireland

* 1. Have you been involved, either directly or indirectly, in a housing dispute in Northern Ireland?
- Yes
- No

* 2. At the time of the dispute, were you:
- a private tenant (you lived in a house owned by a private
- landlord)
- a social tenant (you lived in a house owned by the Housing
- Executive or a Housing Association)
- a landlord
- a homeowner
- an estate agent
- an independent adviser
- a solicitor
- a council officer
- Other (please specify)

* 3. What was the housing dispute about? (Tick all that apply.)
- Rent
- Mortgage payments
- Tenancy deposit
- Repairs to the property
- Antisocial behaviour
- Property boundaries
- Access to housing
- Building control/planning permission
- Environmental issue, e.g. hedges too high
- Neglect/nuisance
- Complaints about your landlord or agent
- Noise
- Other (please specify)

4. What did you do to try and resolve the housing dispute? (Tick all that apply.)
- Contacted the other party (by phone/email/letter/in person)
- Took legal advice (e.g. from a solicitor)
- Took housing advice (e.g. from Citizen's Advice
- Bureau/Housing Rights)
- Looked for information on the internet
- Made a complaint
- Asked an independent third party to help resolve the dispute
- Went to the Housing Ombudsman
- Went to Trading Standards

- Went to the Small Claims Court
- Went to the County Court
- Went to the High Court
- Went to court but I'm not sure which one
- Went to a mediation service
- Used the dispute resolution service offered by the company
- protecting my tenancy deposit
- Other (please specify)

* 5. Was the housing dispute resolved?
  - Yes
  - No
  - Other (please specify)

6. Why was your housing dispute not resolved?

7. How satisfied were you with the methods/services available to you to help you solve your housing dispute?

8. What do you think would have made it easier for you to solve your housing dispute? (All suggestions welcomed.)

* 9. If the following services had been available to help you solve your housing dispute, would you have used them? (Tick all that apply.)
  - Self resolution: clear information and self-help tools to help you approach the other party in the dispute to try and solve the dispute without involving other people/services.
  - Mediation: a neutral third party helps you both reach a decision on how to solve the problem. It can be done online, over the phone or in person.
  - Early neutral expert evaluation: you both send information to an expert evaluator. The expert evaluator produces a report to tell you both the likely outcome at Court and proposals for how to resolve the problem outside of court. You then decide what to do next.
  - Tribunal: a specially appointed, impartial third party listens to both sides and then makes a decision that is legally binding. This is separate from the present Court system.
  - Online alternative dispute resolution: a system you access through the internet that you can upload information to and can use any of the above methods to help you solve your housing dispute.
  - None of the above
  - Other (please specify)

Thank you for taking the time to tell us about your experience and contribute to our research.

10. Can we contact you if we need to ask more about your experience? If you are happy with this, please leave your name and contact details. Thank you.

11. If you would like to be notified when our research is published, please leave your email address:

e. Solution Explorer example case

BRITISH COLUMBIA | Solution Explorer

Residential Tenancies

I am a Tenant

Summary Report

Your Summary Report gives you information and tools that may help you resolve your problem. Remember that a limitation period may apply. It could run out if you wait too long to take action.

To return to this report:

Go to **http://www.housing.gov.bc.ca/RTB/WebTools/SolutionExplorer.html**

Your access code is: **aNGv76TXe**

Access expires in 32 days on **July 29, 2017**

Issues

Your exploration found 1 issue(s).

Issue 1

Disputing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities

Expert Summary

Based on what you told us, it appears you would like to dispute a 10 Day Notice to End Tenancy.

Because legal notice has been served, tenants who disagree with a notice must apply for dispute resolution - writing a letter or talking to the landlord is not enough. Within five days of receiving the notice, submit the Tenant's Application for Dispute Resolution to the Residential Tenancy Branch along with a copy of the Notice to End Tenancy.

You must submit evidence to support your claim that you have withheld rent for a valid reason. Evidence may include proof of an illegal rent increase or evidence that your landlord was going to reimburse you for emergency repairs that you paid for. If you are withholding rent because your landlord did not reimburse you for emergency repairs you paid for, you must submit evidence that you made at least two attempts to contact your landlord about the emergency issue. You must also submit evidence that you provided your landlord with receipts for repairs and a written summary of what happened in order to receive payment (see section 33(6)

of the *Residential Tenancy Act*). Withholding rent as a method to make your landlord do something is not an allowable reason to withhold rent.

If you have missed the application deadline (five days from receiving the notice) due to an exceptional circumstance, you may apply for more time with at the time you submit your application for dispute resolution; however, you must submit evidence to support your exceptional circumstance. The Residential Tenancy Branch will determine if your circumstance is considered exceptional based on your evidence.

Learn more about solving problems and dispute resolution.

Learn more about the law.
If you apply for dispute resolution, you are still responsible for paying rent while you wait for a hearing.

Contact the Residential Tenancy Branch if you have questions about your tenancy.

Resource

** Use your access code and return to this Summary Report if you want to view these resources online. You can also print, save or email copies to yourself.*

- What types of tenancies are covered by tenancy laws?
- INFO: Understanding Tenant Requirements to Pay Rent and/or Utilities

Additional External Resources

- POLICY GUIDELINE 27: Jurisdiction <http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl27.pdf>
- Residential Tenancy Act: What this Act does not apply to <http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_02078_01#section4>
- Calculator: Time line for Disputing an Eviction Notice <http://www.housing.gov.bc.ca/rtb/WebTools/DisputeLandlordNotice.html>
- Learn About 10 Day Notices to End Tenancy <http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/ending-a-tenancy/landlord-notice/10-day-notice>
- Applying for Dispute Resolution <http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/dispute-resolution/applying-for-dispute-resolution>

Information You Provided

1. The accommodation that is being rented is home, suite or apartment.
2. I am still living in the rental property.
3. I am not seeking more than $35,000 from the landlord.
4. I received an eviction notice
5. I received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities
6. I am within the allowable time limit
7. I was served the notice for unpaid rent only
8. Yes, I am withholding rent for one of the allowable reasons and I have evidence to support my claim

Intake Unavailable

Intake is not yet available. Please check back again at a later time.

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.

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