

Response of the Residential Property Tribunal to the consultation on the Mobile Homes (Wales) Bill

Introduction to the RPT – purpose and independence

The purpose of the Residential Property Tribunal is to provide an accessible, effective and relatively informal service to the people of Wales. It is entirely independent of Government though sponsored by the Housing Directorate of the Welsh Government.

The role of the Residential Property Tribunal is to adjudicate fairly and impartially the applications which it is to determine. Amongst other matters such applications include disputes over rent, leases of houses and flats and also disputes between landlords and local housing authorities about licensing or the condition of property.

General issues

The proposed bill covers a large number of issues where it is mooted that disputes would be referred to the Residential Property Tribunal. The Tribunal has a wide range of jurisdictions, including those conferred by the Housing Act 2004, and its members have expert knowledge and experience of determining property related disputes. Thus, it is appropriate that recourse would be to the Tribunal.

However, if the measures referred to were to be enacted this would potentially have a considerable impact on the work of the Tribunal and change the way in which the business would be run.

Specific question responses

This response is directed to those measures where the Tribunal would be likely to, or should be, involved. We have not addressed measures which would be outside the Tribunal's proposed jurisdiction.

1. The Role of the Residential Property Tribunal

After considerable consultation most disputes relating to Mobile Homes under existing legislation were transferred to the Residential Property Tribunal earlier this year. The underlying reasons for the transfer were to provide a more cost effective, informal and quicker access to justice in dispute resolution.

It would, therefore, seem appropriate that the Tribunal should be the first instance venue for dealing with disputes under the proposed bill (other than criminal matters). Also, a number of the measures proposed are similar to those provided for under the Housing Act 2004 and are likely to involve similar issues if in a different context.

Should all the wide ranging proposals put forward be included in the bill consideration will have to be given to resources. Over recent years costs to the Tribunal have increased and there already exists considerable pressure on the budget, members time and staff resources. Training members in new jurisdictions will also have to be considered.

Staff and resources (including translation services) will have to be made available to produce application forms and guidance for the public. Consideration will also need to be given for fees payable on applications.

2. Buying and selling Mobile Homes

Whilst we note the preferred option would be to remove the Site Owners "veto" we believe that a better option is that the purchaser is deemed to be approved unless, on an application by the site owner within a set time limit, the Residential Property Tribunal declares them unsuitable.

This puts the onus on the site owner to raise substantive issues regarding the potential buyer. The Tribunal already has powers to dismiss vexatious applications and to award costs so there is a safeguard against spurious applications. We would also suggest that the fee for such an application should be realistic and sufficient to require a site owner to fully consider their position before making one.

In our view a compulsory meeting between all three parties as proposed may well be difficult to enforce.

3. Licensing/Fit and Proper Person Test

We consider that disputes relating to the granting/refusal of a site license, conditions imposed on the Licensee, and in relation to whether the site owner is a fit and proper person should come to the Tribunal.

We believe that the criteria for considering whether a person is a 'fit and proper' person must be clear and transparent and applied consistently across Wales by all Local Authorities. We agree that the test should apply to the person having 'control' of the site as well as the owner by analogy with Houses in Multiple Occupation under the 2004 Act.

We agree that appeals relating to a decision to vary or revoke a site license should be heard by the Residential Property Tribunal again in a similar fashion to the 2004 Act.

If the Local Authority were to be given powers in relation to enforcement notices or Management Orders then we would assume there would be a right of appeal to the Residential Property Tribunal. Consideration should be given as to whether, in the case of a Management Order, the Local Authority

should have to obtain prior approval of the Tribunal before taking such action, given that such action will materially interfere with the rights of the site owner.

4. Written Agreements/Site Rules/Breach of the Written Agreement

The Residential Property Tribunal has considerable experience in the field of landlord and tenant. We know that there are good landlords and bad landlords and good and bad tenants.

We consider that any legislation in relation to breach of the Written Agreement should balance the rights and obligations of both parties to it.

When a tribunal exercises any power under the regulations which govern it or interprets any regulation it seeks to give effect to the overriding objective of dealing fairly and justly with applications which it is to determine. This means that the Tribunal, in any determination, must be fair to both sides.

Should, therefore, the power to award compensation or damages as proposed apply equally to site owners and homes owners? Would this extend to breaches of the site rules or just the Written Agreement?

The award of damages or compensation would be a new departure for the Residential Property Tribunal but, if the power is to exist, it is right that it rests in the Tribunal dealing with the dispute. Subject to the right of appeal, we agree that the failure to comply with such an award should be a breach of the site license by the owner. If the power were to extend to owners of Park Homes, consideration would need to be given to what sanction would exist if they failed to comply.

5. Alterations/Re-siting

We agree that Park Home owners should have the right to alter the exterior elevation of their home with the consent of the site owner and a right to appeal to the Tribunal if they consider that consent to have been refused unreasonably.

With regard to re-siting, whilst we agree that in the case of essential repairs consent of the Tribunal should be necessary, we believe it would be disproportionate to require consent in an emergency. We accept that the interpretation of 'emergency' may be open to question.

6. Succession

We believe that the law on succession needs to be clarified in a similar way to that in relation to protected tenancies. The proposals put forward by the Department of Communities and Local Government and repeated in the consultation document appear to clarify both parties rights on succession.

7. Costs

Clearly if all the proposals set out in the bills consultation document were to become law, this would place a heavy burden on the Residential Property Tribunal to deal with cases in a proportionate and expeditious fashion. A Tribunal of Lawyer, Surveyor and Lay Person costs over £1,000 per day leaving aside the cost of a venue, travel and the office staff.

To date, the Tribunal has received no valid applications under the existing legislation so it is difficult to judge the likely impact of the proposed bill. The complete proposal is a major piece of legislation with some proposals likely to be more frequently used than others. The effect of changing the law in relation to the site owners veto on the sale of a home may go a long way to reducing disputes which would otherwise come to the Tribunal.

It must, however, be accepted that if the law is used by the Local Authorities of Wales and enforced, then appeals to the Tribunal will follow. Funding will, therefore, have to be put in place to cover the administrative work and the extra members sitting days that will inevitably follow. Training will have to be provided to members on the new legislation and to the office staff.

On a wider front, the Tribunal is considering the option of mediation and it may well be that disputes under the Bill may be helpfully resolved in this way, in some cases, with a significant reduction in cost.

Conclusion

It is appropriate that the Tribunal should deal with disputes under the proposed bill. Tribunal members already have expert knowledge and experience in determining property related applications. The Tribunal is an independent decision making body which deals justly and without bias to either side.

Should the proposals contained within the bill come to fruition, this would impact on the capacity of the Tribunal to respond without additional resources. An increase in workload would require additional funding to cover the operation of more tribunals; extra administrative costs and the recruitment and training of other members.