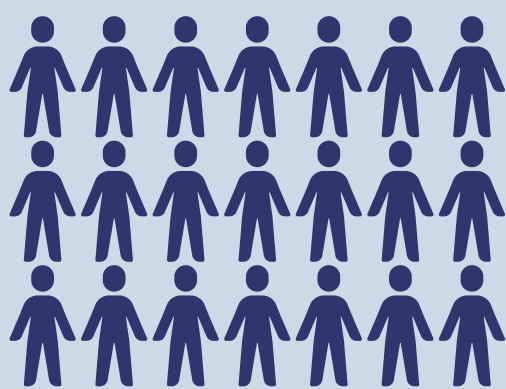


Home Matters 2021

Legal Practitioner Survey Responses

This ESRC-funded project explores the court system's response to the COVID-19 pandemic. It questions the extent to which it has proven effective in addressing the risks and challenges posed by the pandemic and what lessons, if any, we might want to take forward into the post-pandemic era.

This leaflet offers a summary of the data provided by legal practitioners who represent landlords and mortgage lenders. An analysis of the data will follow soon.



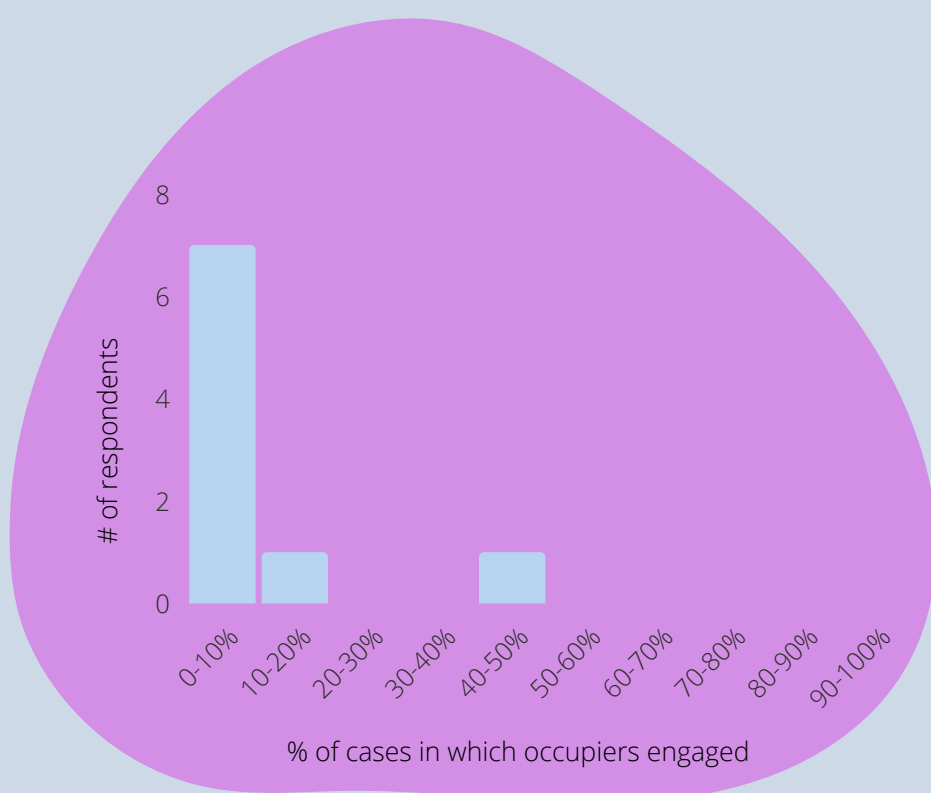
Between 14 July and 15 August 2021, an online survey was made available to claimant representatives. Responses were received from 27 legal practitioners located in England and Wales. Of those, 20 dealt with private landlords, five with public landlords and two with lenders. We would like to thank those who took the time to complete the survey.

Occupier Engagement in the Possession Process

Respondents with experience of the 'Review Date' stage ('R Date') indicated that very few defendants engaged with the process.

"Not had any responses from the Defendant or duty solicitor on the review date."

"Tenants tend not to do anything until after the possession order has been made."

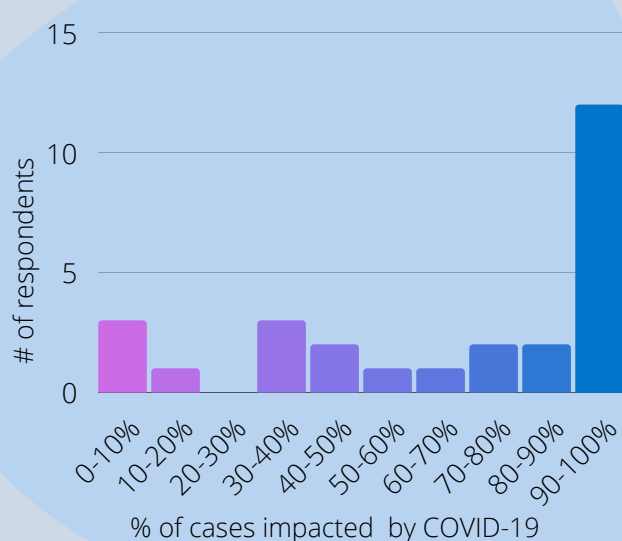


"I have not yet had a claim where there has been engagement by a Defendant at the review stage."

The Impact of COVID-19

A significant proportion (17 out of 27) of claimant representatives indicated that a large proportion of the cases they had dealt with had been impacted by the COVID-19 pandemic.

"Higher levels of people in arrears who weren't before COVID due to furlough/redundancy."



"Extended notice periods and moratoria have made it extremely difficult for landlords to take possession. This has been very troubling where the reason for possession has nothing to do with the pandemic."

Views on the 'R Date'

The vast majority of respondents indicated that the 'R Date' merely delays the process and increases costs for the claimant. As regards reform, the most common response was, "get rid of them".

"It is an utterly pointless waste of Court time and public money."

"It simply delays matters and tenants do not get involved."

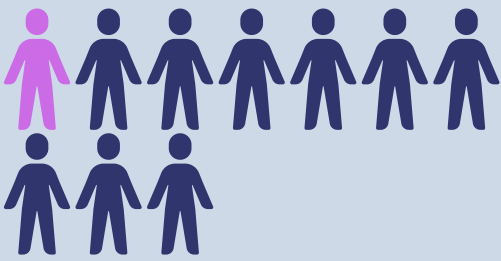
"It is an additional obstacle to landlords, increasing costs for an additional date to prepare."

"It is not an improvement. It has no function other than to increase delay and costs."

There were, however, two positive comments.

"It's an improvement in that it includes vetting of claims to ensure only those which are properly prepared proceed to a full hearing."

"It gives further opportunity for settlement."

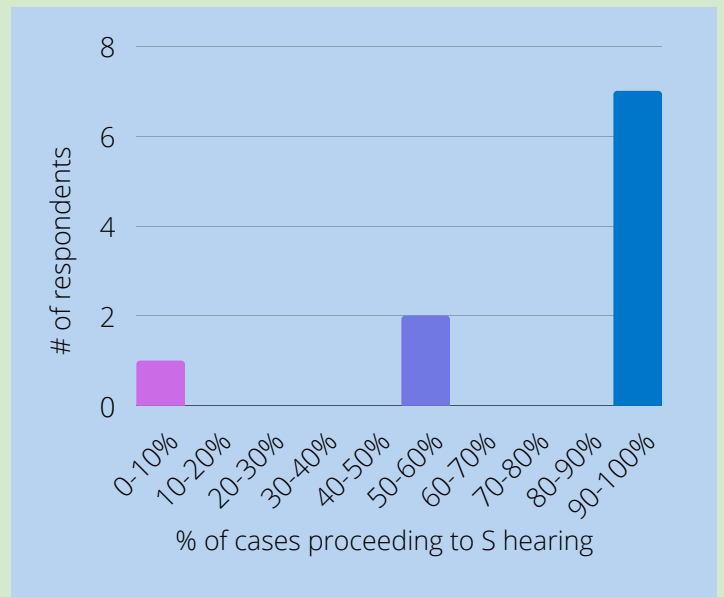


Orders Made at the 'R Date' Stage?

Only one of the 10 claimant representatives who answered this question were aware of orders being made at the 'R date' stage. The Overall Arrangements make it clear that this should only happen (para. 51) where both parties consent (para. 52).

Substantive Hearings

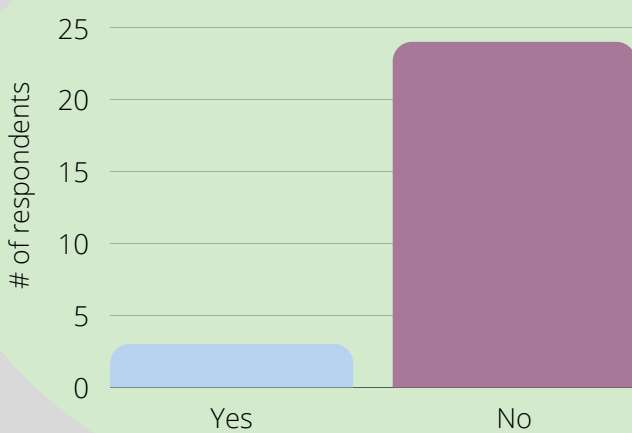
Respondents with experience of the 'R Date' process said that the majority of the cases they dealt with proceeded to a 'S Hearing'.



Breathing Space/Debt Respite Scheme

Only three (of the 27) claimant representatives had encountered any cases since May 2021 that had involved the 'Breathing Space/Debt Respite' Scheme.

"Two cases. Less than expected so far."

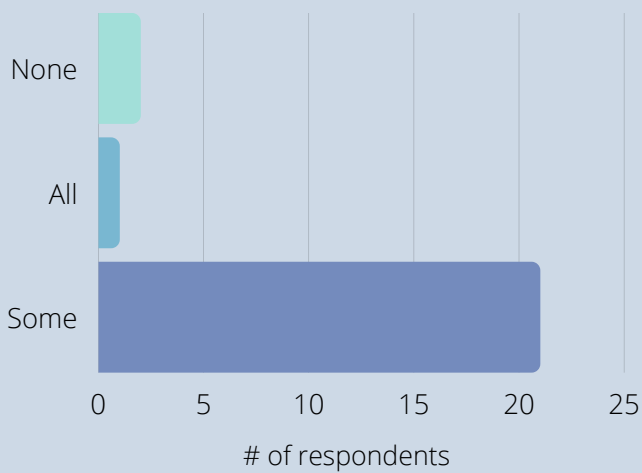


"Lack of clarity for potential applicants to the scheme."

"I am aware of it but no tenant has raised this yet."

Is Mediation Appropriate in Housing Possession Cases?

A majority of claimant representatives considered mediation to be appropriate in *some* housing possession cases.



"In many cases the relationship has broken down so much that I cannot see a mediation working."

"Evicting people from their home is huge and everyone should have the opportunity to try and come to an agreement with a landlord regardless of the circumstances"

"Possibly in social housing situations involving antisocial behaviour and breaches of tenancies not connected to rent non-payment."

"Not for those non-fault cases where possession is required under Section 21."

"...where tenants are in very substantial arrears and there is no prospect of recovering those, landlords just need to evict them as quickly as possible to stem the losses."

The Rental Mediation Service (RMS)

Referrals to the temporary RMS are made by Duty Solicitors. According to the research results, none of the 27 respondents have been involved in cases which have been referred to the scheme.



"There is limited engagement with the Defendants and so mediation is often not considered as an option."





'Enhanced Information'

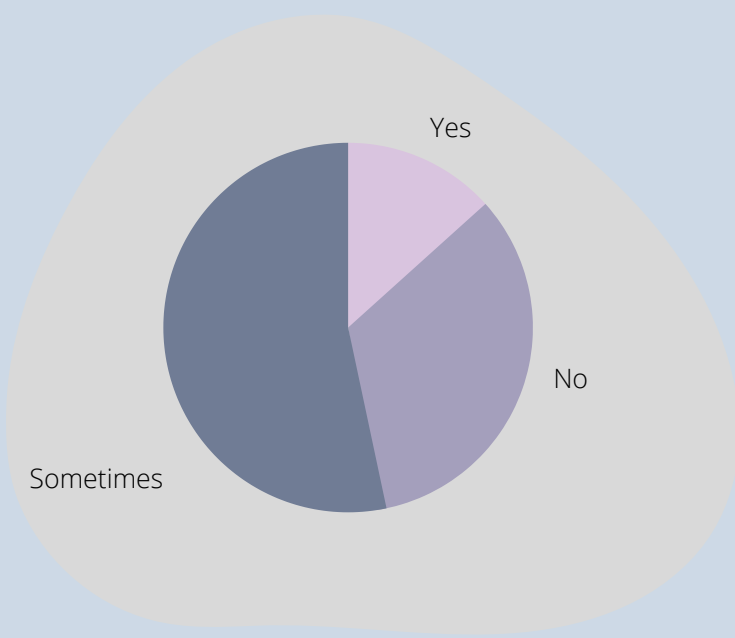
A majority of the claimant representatives (11) thought that the judge now receives the same amount of information as in pre-COVID cases. The other four respondents felt that the judge now receives more information. Although there was praise for the electronic bundle of 'enhanced information', most respondents criticised the PD55C notices.

"The bundle is better organised than the case file might be, with more chance that the judge has everything, but otherwise not much further info."

"The PD55C notices are useless and pointless."

"Judges appear to be better prepared."

"Unnecessary procedural steps (PD55C notices) are a pointless overcomplication."



Is the Extra Time for 'S Hearings' Being Used Effectively?

Overall, claimant representatives felt that the time was being used effectively, albeit only sometimes. In the main, comments suggest that the lack of attendance by the defendant makes the extra time unnecessary.

"... some hearings need more time and some need less. Again, this is a waste of Court time and public money and is causing a substantial backlog"

"Few cases are truly defended in any serious way so the additional time is often wasted."

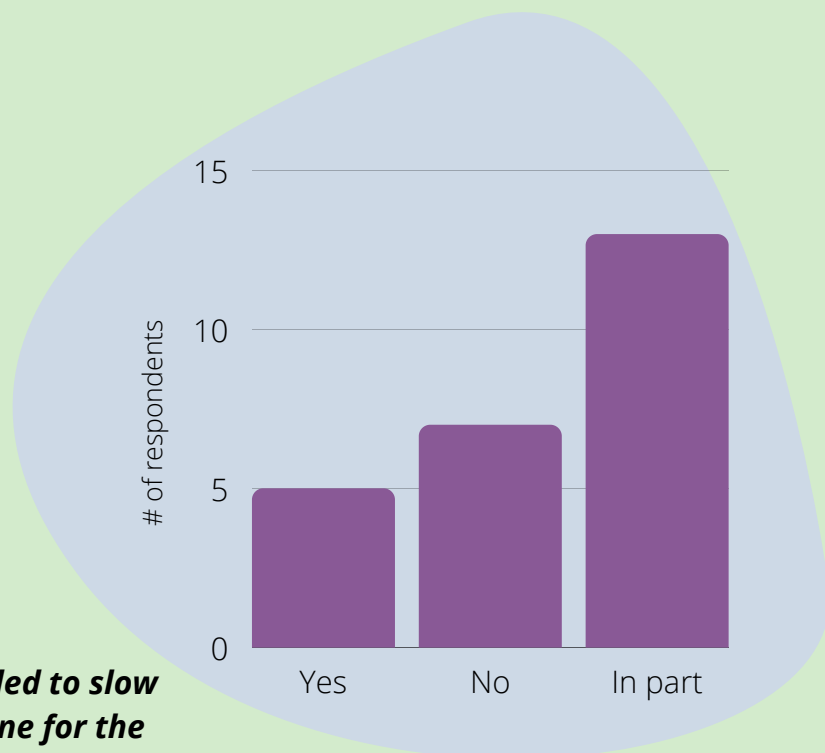
"Mostly devoted to either cleaning courts or dialling people into telephone hearings"

The Overall Arrangements, Overall

An overwhelming majority considered the OA to be effective, at least in part.

"Tenants have been protected."

"The overall arrangements were largely intended to slow down the process. They have. This was not done for the benefit of landlords or tenants but to benefit the courts and local authorities. They have been successful in that respect"



"Effective if there is desire between landlord and tenant to come to an agreement but, not so effective if the position is simply that the tenant will or cannot pay the rent."

"The process has become more difficult and long-winded and really is not achieving any results other than increasing court time and costs. Our experience is that the vast majority of tenants either do not engage until its too late or do so at the hearing without prior engagement."

Further information

If you have any questions about the survey or would like a copy of the full report when it's published please contact us at:

homematters@hull.ac.uk

Acknowledgements

The research team would like to thank all the respondents who took part in this survey. Sharing your experience with us will help develop an improved understanding of the possession process. It will also help us to put forward informed proposals that could help to shape the process into the future.

Special thanks go to the ESRC for funding this project.