

# THE JUSTICE PAPERS

The Bar Council

Fighting for Rights

Fighting to keep your home



The Bar Council

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Some public services don't need much explaining. We all go to school. We all need to see the doctor sometimes. We all know to call 999 if we witness a crime or if there is a fire.

The justice system is different. We don't see judges patrolling the streets in their judicial robes. We're not taken to the local court for routine check-ups as children and the number for the county court office is not engrained in us from a young age.

The justice system is something that we may not really think about until we're in it. And most people don't want to be in it. To be embroiled in the justice system is seen as an indication that something has gone wrong. You are being sued, or you have been the victim of a crime, or you are threatened with eviction. A District Judge once observed to me that one of the things that takes its toll on lawyers, particularly those who practice in areas like housing and family, is that they work with people who are at one of the lowest points of their lives – and they do it day in and day out.

It's perhaps not surprising, in these circumstances, that most of us don't want to spend too much time thinking about the justice system and its role in our lives. But this is to do it a great disservice. The justice system, and the rule of law which it upholds, underpin all of our

lives. The justice system breathes life into the protections against discrimination contained in the Equality Act 2010 and the fundamental freedoms enshrined in the Human Rights Act 1998. These rights exist not just because they are written down on a statute book but because the courts enforce them. If we ourselves don't have to go to court to have our rights upheld, that is often only because someone else has already done so. The fact that you may be in the fortunate position of not having to call on the justice system for help is a sign that it is working well, not that you don't need it.

Nowhere is this more true than when it comes to housing.

The clients that I and other members of the Housing Law Practitioners Association represent are people who don't have a home; or who are at risk of losing their home; or whose homes are in disrepair. Our clients come from all walks of life. Some have jobs and others don't. Some have spent years on the streets and others are facing homelessness for the first time. Some of our clients have children. Some of our clients are children: others are octogenarians.

For the people that we represent, the justice system is often their last and most important bulwark against homelessness

and other forms of housing deprivation. If a tenant has been unlawfully evicted by their landlord, we can apply to the court for an injunction requiring the landlord to re-admit them. If a landlord isn't carrying out the repairs for which they are responsible, we assist the tenant to bring a claim asking the court to order them to do the work (and for damages for the period when the property was in disrepair). If a landlord wants to evict a tenant, we can help them bring a defence to the possession claim. If a person experiencing homelessness has applied to the local housing authority for assistance and been rejected, we can assist them to challenge that decision.

We tend to think of homelessness as something that happens to other people, but we're wrong. Research by Shelter in 2019 found that almost half of working private renters were just one paycheque away from losing their home<sup>1</sup>. And private renting is the new status quo for younger generations. In the 1980s, around 10% of households lived in the private rented sector. Now it's more like 20%<sup>2</sup>. What's more, thanks to the introduction of assured shorthold tenancies in the Housing Act 1988 private renting is now not only more

common, but much less secure. Currently, a landlord under an assured shorthold tenancy can obtain a possession order simply by serving a two-month notice.

Everyone needs a home which is secure, safe, and affordable. If you're fortunate, you will have this without ever needing to go to court. But if you lose your job, or happen to live in an expensive part of the country, or your relationship breaks down, you may find your home is in jeopardy. It is the justice system to which we must then turn to defend against a claim for possession, or to challenge an unlawful refusal of homelessness assistance. And even if we don't find ourselves in a situation of crisis, it is still the presence of a working justice system that ensures that the landlord abides by the tenancy agreement and doesn't unlawfully evict us or fail to carry out repairs.

But the justice system only works if it can be accessed. If people do not have unimpeded access to the courts to uphold their rights, then *"laws are liable to become a dead letter, the work done by Parliament may be rendered nugatory, and the democratic*

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1 [https://england.shelter.org.uk/media/press\\_releases/articles/almost\\_half\\_of\\_working\\_renters\\_only\\_one\\_paycheque\\_away\\_from\\_losing\\_their\\_home](https://england.shelter.org.uk/media/press_releases/articles/almost_half_of_working_renters_only_one_paycheque_away_from_losing_their_home)

2 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/860076/2018-19\\_EHS\\_Headline\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/860076/2018-19_EHS_Headline_Report.pdf)

*election of Members of Parliament may become a meaningless charade*"<sup>3</sup>. This is why legal aid is so important, and why the cuts to legal aid brought in by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 have been so devastating.

The county court waiting area is one of the rare places where you can find a person who is homeless sitting alongside a wealthy business owner, both waiting to

access the same vital public service. Cuts to funding and court closures are putting the justice system in jeopardy. It is vital that we defend it, in case we ever need it to defend us.

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<sup>3</sup> R (Unison) v Lord Chancellor 2017 UKSC 51, per Lord Reed at para 68