

Judicial Decision-Making in Housing Possession Cases

L. Whitehouse, S. Bright, M.K. Dhimi and S. Connor Desai



Pilot Study Objectives and Methodology

This bulletin presents the initial findings of a pilot study into judicial decision-making in housing possession cases. The objectives of the pilot project were to enhance knowledge of judicial decision-making in housing possession cases and to identify ways in which it might be improved.

Research Questions

The pilot study addressed three fundamental research questions:

- i. What strategies do district judge's employ in deciding housing possession cases?
- ii. Can pivotal decision-making criteria be identified?
- iii. If so, can this information be used to improve the housing possession process, in terms of resource efficiency and access to justice for court-users?

The pilot study investigated whether it is possible to address these empirical goals in a larger scale project and establish which information it would be possible to obtain from court records.

Research Methodology

- Relevant information (see Box 1) was extracted from court records of housing possession lists.
- The lists included social landlord, private rental, accelerated possession, and other applications, but did not include mortgage possession cases.

The study examined base and process data from paper files, Caseman records, and audio recordings of housing possession cases heard by 2 district judges at 2 different London county courts.

- 62 case numbers were initially provided for inspection of the court file, and audio recording of the hearing. There were 10 cases at Court 1, and 52 cases at Court 2. The cases numbers included five different hearing dates: 3 hearing dates at Court 1, and 2 at Court 2.

There were 51 completed data files including 9 records from Court 1 and 42 records from Court 2. Some court files could not be located.

Box 1: Data Collected

Base Data:

- Court
- Date of application
- Reason for application
- Forms filed (e.g. defence form)
- Those attending (e.g. defendant)
- Financial data (e.g. weekly/monthly rent/mortgage payment, level of arrears)
- Demographic characteristics of defendant (if disclosed) e.g. age, gender, ethnicity, health issues disclosed, etc.
- Reasons for and/or criteria considered by the judge in determining the type of order
- Time spent on the case;
- Time spent by the judge on procedural matters

Process Data:

- Any adjournments
- Type of order

Key Findings from the Pilot Study

Box 2: Data analysis

- Data analysis focused on defendant attendance and representation, hearing length, adjournments, mentions of reasonableness, and relationships between decision-making variables.
- Only possession hearing cases were included in the analysis (e.g., warrant suspension hearings were excluded).
- This left 41 cases relating to possession hearings: 39 from Court 2 and two from Court 1. There were 3 different hearing dates included in the analysis.
- Table 1 shows the 41 cases included in the analysis, according to the type of housing agreement involved.
- Due to sample size, it was not possible to test associations between attendance and outcome in a statistically reliable way but this could be done with a larger sample.

Defendant Attendance and Representation at Hearings

Attendance

- There was at least one defendant present at the hearing in 41% of cases.
- A defence form was filed in 6 out of 41 (15%) cases.
- Local authority rent hearings were attended 48% of the time whereas housing association rent hearings were only attended 14% of the time.

Representation

- When a defendant attended, they were represented at 62.5% of the hearings.

- Represented defendants were mainly represented by a duty solicitor (70%), or otherwise by a solicitor (30%).
- The defendant was represented in 9 local authority; 1 private rental, 1 application (other), and no housing association or accelerated possession hearings.

Attendance and Hearing Outcome

- The data suggest a possession order was equally likely whether the defendant attended (15%), or did not attend the hearing (15%).

Table 1 Cases according to housing agreement type

Type of housing agreement	No. of cases	%
Accelerated Possession	1	2
Application (other)	3	7
Private Rental	2	5
Social Landlord (Housing Association)	7	17
Social Landlord (Local Authority)	28	68

- The hearing was more likely to be adjourned when the defendant attended the hearing (41%), than when they did not attend the hearing (35%).
- Fewer suspended possession orders were granted when the defendant attended (8%), than when the defendant did not attend (20%).

Hearing Length

- Hearing length was recorded for 95% of the cases included in the analysis.
- Fig. 1 shows the frequency of hearings of different lengths.
- The majority of hearings lasted 1-7 minutes. On average, hearings lasted around 5 minutes. There was some variation with hearings for some, more complicated, cases being 10-20 minutes. The longest hearing was 22 minutes.
- The hearing length data (Mean = 5.38 minutes, Median = 5 minutes) supports previous reports suggesting that the average time allocated to possession hearings is approximately 5 minutes (Bright & Whitehouse, 2014; Hunter, 2005)¹.

Hearing Length and Housing Agreement Type

- There was no hearing length data for the accelerated possession case and 1 private rental case. The other private rental hearing lasted 6 minutes. The average duration of application (other) (Mean = 8.33, SD = 8.08) was longer than local authority rent hearings (Mean = 5.57, SD = 5.04), and housing association rent hearings (Mean = 3.29, SD = 2.81).

Hearing Length and Defendant Attendance

- On average hearings were longer when the defendant attended the hearing (Mean = 8.76, SD = 5.51), than when the defendant did not attend. (Mean = 2.76, SD = 2.17).

Hearing Length and Hearing Outcome

- The data shows that median hearing length was higher when a possession order or suspended possession order was granted. This suggests that more time is spent when a possession or suspended possession order is made, than other types of outcomes.

Hearing length and request for order by claimant

- The length of the hearing was more variable when the claimant requested a possession order. In contrast, there was almost no variability in hearing length when the claimant requested the case to be struck out.
- Median hearing length was also highest when the claimant requested a possession order.

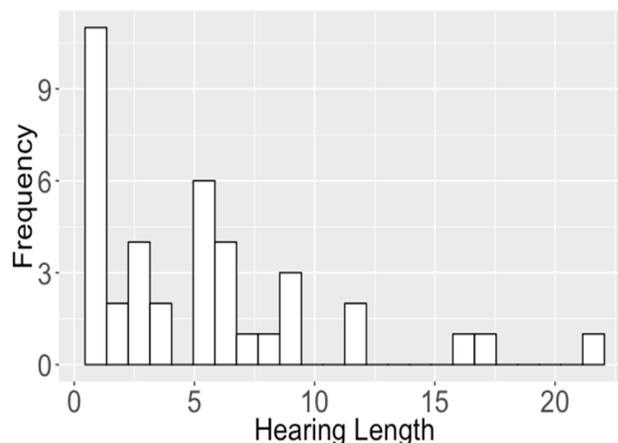


Figure 1: Histogram showing the distribution of hearings of different lengths (minutes)

¹S. Bright and L. Whitehouse, 'Information, Advice and Representation in Housing Possession Cases' April 2014 available at https://www.law.ox.ac.uk/sites/files/oxlaw/housing_possession_report_april2014.pdf
C Hunter et al, The Exercise of Judicial Discretion in Rent Arrears Cases (DCA, London 2005).

Box 3: Adjudgments

Adjudgments

- The hearing resulted in an adjournment in 37% of the possession hearing cases that were examined.
- 54% of cases that resulted in an adjournment were adjourned to the first open date, 33% were adjourned generally with permission to restore, and 13% were adjourned on terms.

Reasons for Adjudgment

- The most common reasons for adjournment were: housing benefit issues, to allow the defendant more time to pay the arrears, or due to the personal circumstances of the defendant.
- Other reasons included: to decide who the claimant was; to enable the defendant to bring an interpreter; missing paper work, and because a defence and counterclaim was pending.
- Where the hearing was adjourned, housing benefit issues were identified as a reason for adjournment in 20% of cases.

Level of Arrears

- The most recent level of arrears was available for 80% of the cases.
- The average level of arrears was relatively high (Mean = £1993.41). However, there was substantial variation in the level of arrears across cases (SD = £2644.61)
- There was greater variability in the most recent level of arrears when a possession order was granted, than when a suspended possession order was granted, or when the claim was adjourned.
- When no order was made (i.e., just claimant's costs) the most recent level of arrears was relatively low compared to the other hearing outcomes discussed here.

Order Requested by the Claimant

- The claimant requested a specific order in 56% of the possession hearing cases.
- There appeared to be an association between the requested order and outcome. The only exception was when the claimant requested a suspended possession order.
- It was not possible to test the association statistically, due to the small sample.
- The outcome of the hearing when the claimant requested a suspended possession order was more varied than when requests were made for adjournments or possession orders.

Box 4: 'Reasonableness'

Mention of Reasonableness

- In local authority cases, the courts can only order possession when the judge considers it reasonable. This grants the judge a substantial amount of discretion when deciding whether to grant an order for possession.
- In our sample, there was mention of reasonableness in 33% of local authority cases. The information was not recorded for two of the social rent cases.
- The judge ordered possession in 3 of the 11 cases in which reasonableness was mentioned, granted a suspended possession order in 3 cases, adjourned the hearing in 4 cases, and made an order for costs in 1 case.

Potential Long-Term Outcomes of Pilot Study

In addition to addressing the research questions, analysis of the pilot data was also conducted with a view to identifying:

- Best practice that can feed into improved guidelines for judges which will make decision-making more efficient;
- The reasons for adjournments and whether the decision could have been decided without the need for an adjournment (e.g. if adjournments are often because of information deficits then court forms or processes might be changed to ensure that relevant information is made available from the outset);
- Opportunities for reducing judicial time spent on administrative tasks (e.g. judges may spend time checking forms to ensure compliance but this could be undertaken by an administrator prior to the hearing); and
- Ways in which court time might be used more effectively (e.g. private landlords tend not to understand or use the 'accelerated procedure' for possession leading to unnecessary court hearings).

Conclusions

- Several points of interest have been identified from this small-scale pilot study that could usefully be the subject of further investigation. Such research could prove beneficial in respect of improving guidelines for judges and ways in which court time might be used more effectively.
- A number of factors that play a role in hearing length and the outcome of the hearing. For example, attendance by the defendant at the hearing appears to result in more hearings being adjourned.
- Furthermore, the pilot study findings suggest that housing benefit issues gave rise to a large proportion of adjournments in the cases we studied. This raises a number of questions that could usefully form the subject of further research including whether court time could be saved by ensuring that specific issues, such as housing benefit applications, are addressed prior to a court hearing.