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SafeDeposits Scotland
Charitable Trust

Alternative Approaches to Resolving Housing Disputes

**The role and potential of alternative dispute resolution in the UK
private rented sector**

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RAISING STANDARDS IN THE UK PRIVATE RENTED SECTOR



Resolving PRS Disputes: The Current System

Northern Ireland

- Liganside Courts
- No tribunals or housing panels
- Membership with redress scheme not compulsory for letting agents or landlords
- Adjudication service offered by 3 statutory tenancy deposit schemes (compulsory membership)

Wales

- Residential Property Tribunal Wales
- County Court
- Membership with redress scheme compulsory for letting agents but *not* for landlords
- Adjudication service offered by 3 statutory tenancy deposit schemes (compulsory membership)



Scotland

- First-tier Tribunal for Scotland
- Membership with redress scheme not compulsory for letting agents or landlords
- Adjudication service offered by 3 statutory tenancy deposit schemes (compulsory membership)

England

- First Tier Tribunal (Property Chamber)
- County Court
- Membership with redress scheme compulsory for letting agents but *not* for landlords
- Adjudication service offered by 3 statutory tenancy deposit schemes (compulsory membership)



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Move towards reforming dispute resolution in the PRS and increased policy interest in alternative dispute resolution (ADR)

ADR: an alternative process allowing landlords and tenants to resolve disputes outside of the courts and tribunals.

England

- New Homes Ombudsman for developers of new builds to be introduced.
- Compulsory membership with a redress scheme to be introduced for all private landlords.
- Single point of access for all redress schemes to be introduced.

Scotland

- The First-tier Tribunal for Scotland (Housing and Property chamber).
- Landlords and tenants approaching Tribunal are encouraged to find other ways of resolving disputes (e.g. mediation).

Northern Ireland

- Department for Communities (DfC) exploring the potential of an independent housing panel and has expressed interest developing mediation service



But very little is currently known about the role, potential, and limitations of the use of ADR within this context.



Research Aim

- To explore the role of alternative dispute resolution mechanisms within PRS disputes in the UK, and to provide suggestions for how they could be improved.

Research Questions:

- What ADR systems and approaches are currently used in the UK to resolve housing disputes in the PRS?
- What are the strengths and weaknesses of these approaches and how are they evidenced?
- What ADR principles or approaches could be applied to the UK to facilitate landlord and tenant dispute resolution?

Methods

- 17 semi-structured interviews with professionals from UK services providing ADR in the PRS and advice organisations.
- Literature review on two main forms of ADR operating within this context: adjudication and mediation.
- Three international case studies of ADR schemes addressing housing disputes.



Court/Tribunal-connected mediation

- Pre-action protocols for disrepair cases in England and Wales.
- Mediation presented as divisionary first step for cases taken to the Scotland Tribunal.
- Despite these mechanisms the role of ADR/mediation within resolving disputes not related to deposits remains limited.
- Only provided as an add-on to adversarial court or tribunal processes.
- Distinct lack of free or low-cost mediation services for landlords and tenants.

Out of court processes: Ombuds services and UK tenancy deposit schemes

- Adjudication service provided by tenancy deposit schemes only ADR service specifically designed for PRS disputes
- Services increasingly focusing on multi-tiered resolution mechanisms, early resolution, advice and information, and digitalising services.

Research suggests ADR can provide quicker, cheaper and less stressful means of resolving disputes (although not without its limitations).



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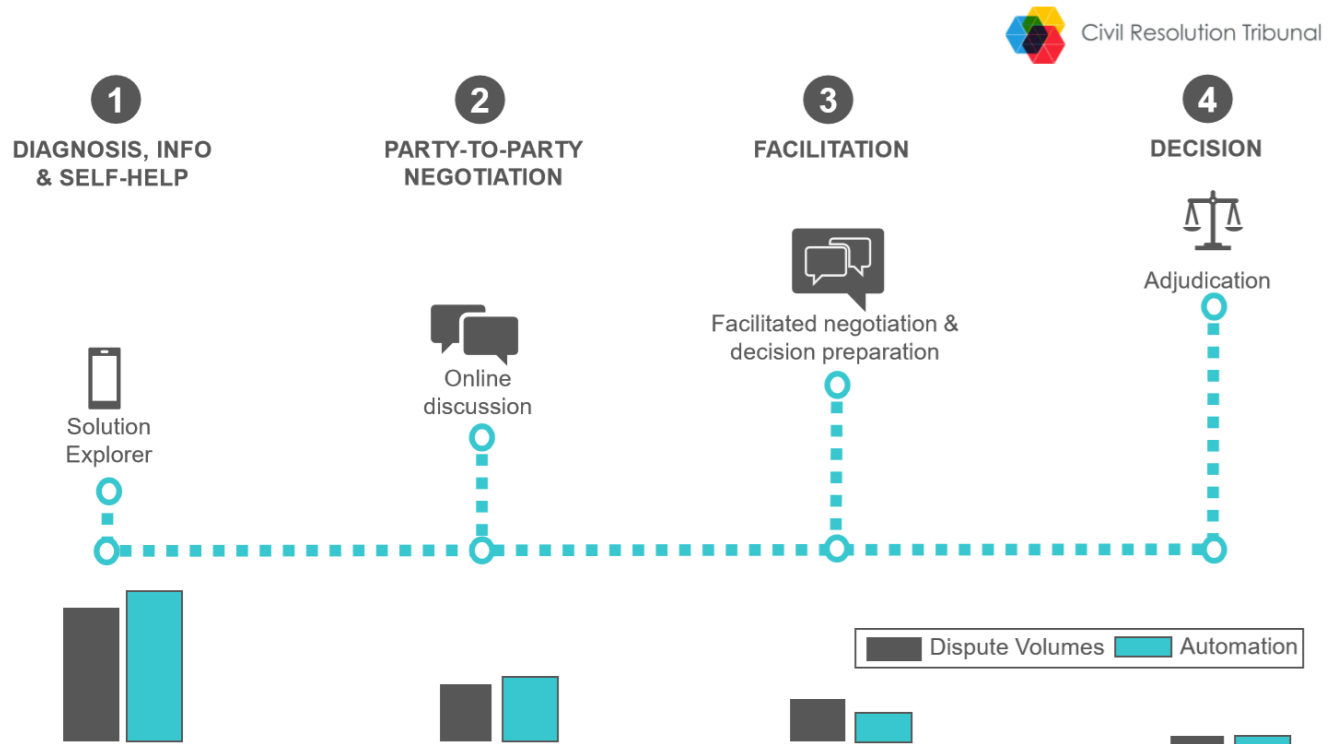
ADR in the UK Private Rented Sector

By the time [the dispute] has got to the Tribunal it's probably too late, because usually by then the landlord has made the decision they want rid of the tenant. They think the relationship's actually broken down, they just want to actually resolve it and they want somebody else to review it (Mediator, Scotland).

There doesn't seem to be out there a really clear obvious pathway where landlords and tenants can sit down and talk things through, can reach a compromise ... I'm a big fan of the possibility of ADR because, as I say, the reality is that most of the stuff that I probably do two or three housing PRS trials every year to 18 months. That's because everything else settles (Barrister, England & Wales).



British Columbia: Civil Resolution Tribunal

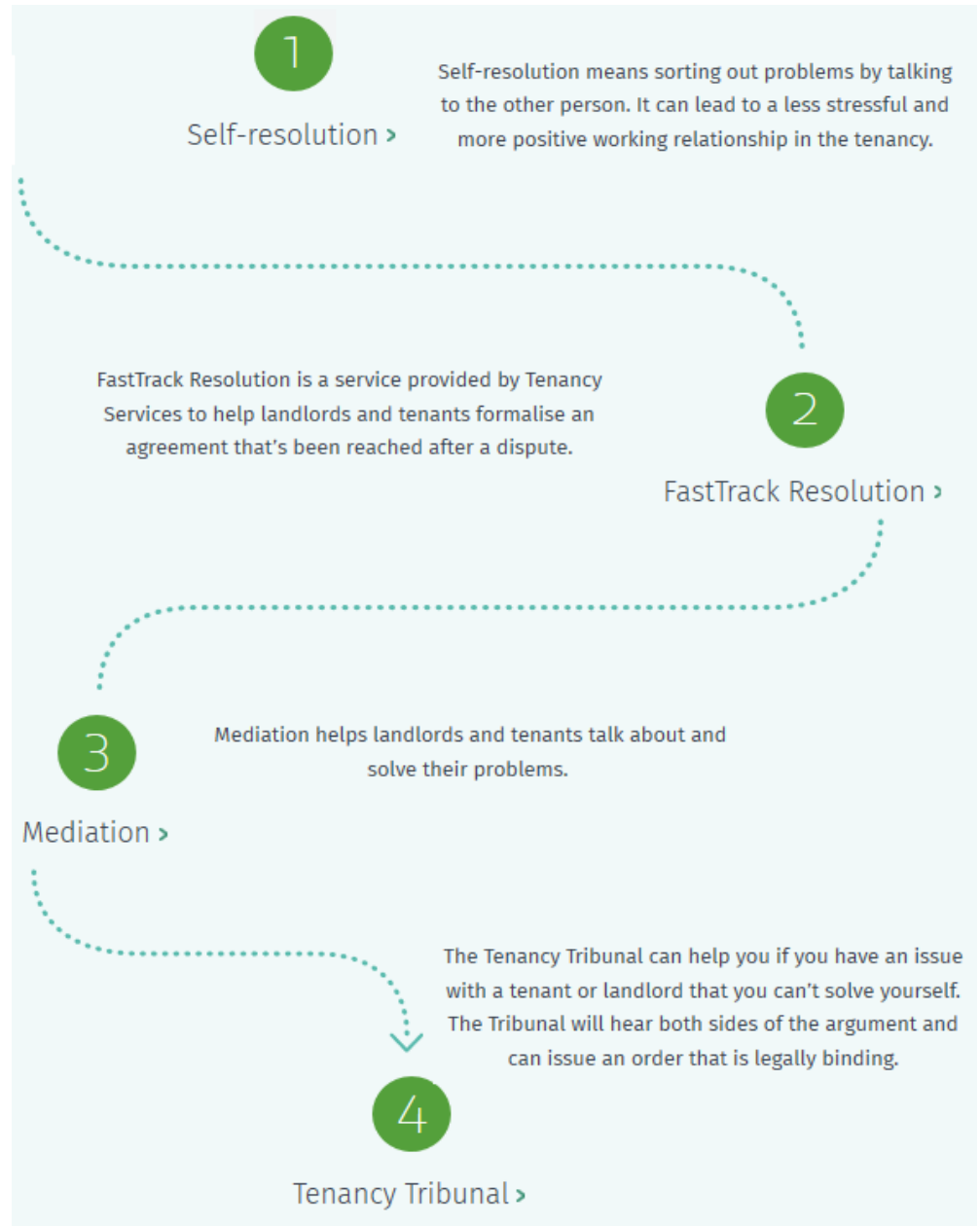




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Tenancy Services

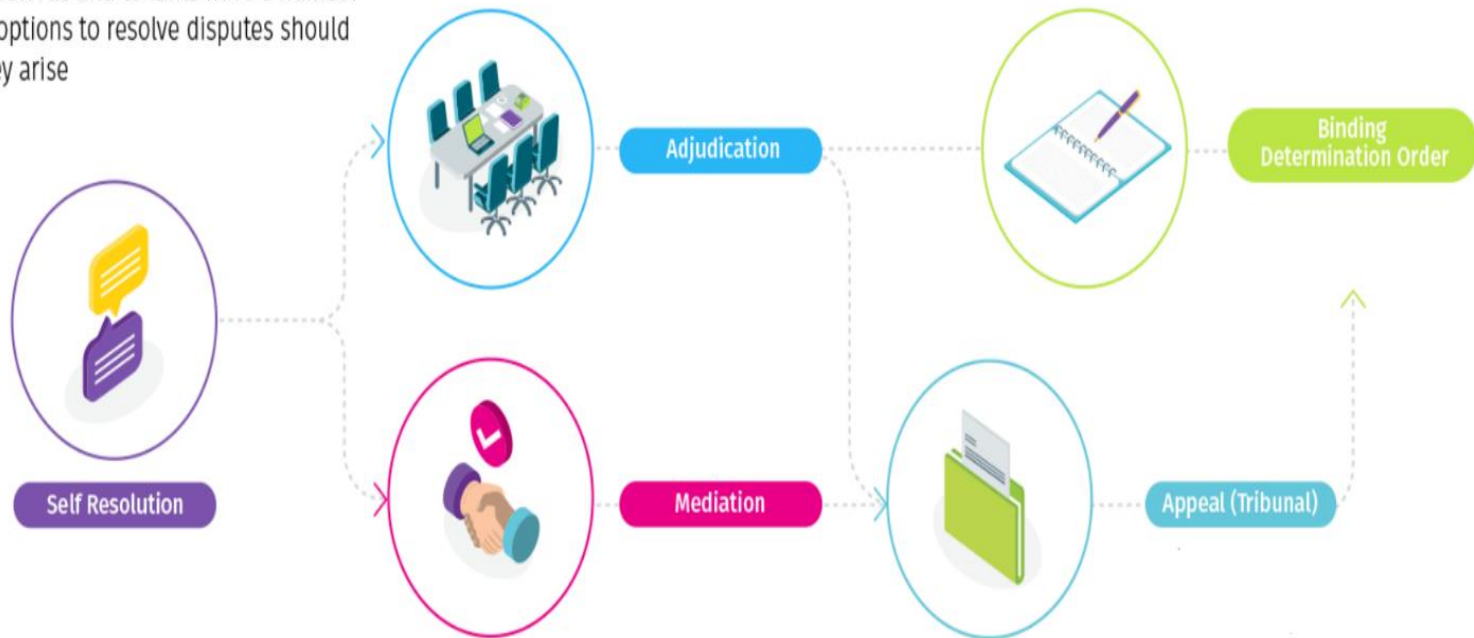
New Zealand





Disputes Resolution Process

Landlords and tenants have a number of options to resolve disputes should they arise





A multi-tiered process

- Two or three step process, often with mediation preceding other more formal forms of adjudication is common within the participating case studies
- Evidence suggests that a participatory and facilitated negotiated process – such as mediation – can play a role in a significant number of cases being resolved before formal adjudication proceedings.
- Benefits of a deliberately constructed end-to-end system instead of attaching ADR to pre-existing dispute resolution process (e.g. mediation added on to adversarial court process).

Proportionate dispute resolution

- Aim is to resolve disputes at the earliest opportunity.
- Extent of resources, service involvement, staff expertise, time taken, effort required from disputants etc, should reflect nature and complexity of individual cases.
- Includes a stage which focuses on helping client to decide what to do for him/herself.



Appropriate dispute resolution

- Shift away from treating dispute resolution in the private rented sector as the exclusive domain of courts and tribunals.
- Improving dispute resolution not only about finding alternative means of resolving disputes, but about finding the most appropriate approach to fit different cases.
- Not every dispute will be resolved or appropriate for ADR and therefore an adjudicatory stage is necessary.

A user-led approach

- Public justice systems and processes should be considered, designed and redesigned according to the perspective of the end- user.
- Alternative dispute resolution systems and digital processes should accommodate and respond to the diverse needs of people using these systems.
- This can only be properly determined through vigorous user testing: stage 1) with organisations supporting people, 2) with people who are using the system.
- Focusing on users should be a continuous and ongoing process.

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The private rented sector in the UK

An overview of the policy and regulatory landscape

Professor Alex Marsh (University of Bristol) and Professor Ken Gibb (University of Glasgow)

25 July 2019





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