

Regulatory Committee

9.30am, Monday, 21 October 2019

Repairs to Privately Rented Property – Results of Consultation on Support for Tenants Referring Landlords to a Tribunal

Item number	
Executive/routine	
Wards	Citywide
Council Commitments	

1. Recommendations

- 1.1 The Regulatory Committee is asked to:
 - 1.1.1 Note the contents of this report and the outcome of the consultation;
 - 1.1.2 Agree to continue the current approach supporting private tenants to make application to the First Tier Tribunal for Scotland (Housing and Property Chamber) to ensure that landlords repair and maintain accommodation to minimum physical standards; and
 - 1.1.3 Agree the draft policy (Appendix 1), detailing the service offered by the Council to tenants seeking to use the Housing and Property Chamber in respect of the repairing standard.

Paul Lawrence

Executive Director of Place

Contact: Andrew Mitchell, Regulatory Services Manager

E-mail: andrew.mitchell@edinburgh.gov.uk | Tel: 0131 529 4208

Report

Repairs to Privately Rented Property – Results of Consultation on Support for Tenants Referring Landlords to a Tribunal

2. Executive Summary

- 2.1 This report provides an update on a consultation agreed by the committee on 20 May 2019 with respect to the current support provided to tenants applying to the Tribunal to require improvement works.
- 2.2 The consultation has been completed and the results suggest general support for the current Council practice.
- 2.3 The draft Policy attached at Appendix 1 details the approach taken by the Council - supporting tenants making an application to the Housing and Property Tribunal..

3. Background

- 3.1 The City of Edinburgh has the largest Private Rented Housing (PRH) sector in Scotland, with over 43,000 registered private landlords.
- 3.2 PRH landlords have a duty to ensure that their let property meets the 'Repairing Standard'. The repairing standard duty includes a duty to make good any damage caused by carrying out works whilst complying with the duty. A house meets the repairing standard if:
 - 3.2.1 it is wind and watertight and in all other respects reasonably fit for human habitation
 - 3.2.2 the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order
 - 3.2.3 the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order
 - 3.2.4 any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order

- 3.2.5 any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed
- 3.2.6 the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and
- 3.2.7 the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health
- 3.2.8 the house meets the tolerable standard
- 3.3 If a tenant believes that a rented house does not meet that standard, they can make an application to the First Tier Tribunal for Scotland (Housing and Property Chamber) to decide if the landlord is complying. The tribunal can order a landlord to carry out repairs.
- 3.4 The Housing (Scotland) Act 2014 amended the Repairing Standard legislation to allow the local authority to make such an application, with or without the consent of the tenant.
- 3.5 At present the City of Edinburgh Council does not make applications on behalf of tenants but encourages them to apply to the Housing and Property Chamber directly. Exceptions may be made where the tenant is vulnerable and requires support. Currently basic advice is given to support tenants to make their own applications to the Tribunal. No policy underpins this practice at present.
- 3.6 The draft policy will be supported by the continuing use of the available enforcement powers. Landlords must be fit and proper. Let property must be of the required standard upon inspection.

4. Main report

- 4.1 As directed by the committee at its meeting on 20 May 2019, a consultation on the proposed changes was published on the Council's Consultation Hub between 10 June and 18 July 2019 (Appendix 2).
- 4.2 A summary of results is attached at Appendix 3, and respondents' further comments are attached at Appendices 4 and 5. There were 25 responses in total.
- 4.3 80% of respondents either agreed or strongly agreed that the Council should refer matters to the tribunal on behalf of tenants who might require additional support. 12% disagreed or strongly disagreed.
- 4.4 Respondents were asked whether the Council should make referrals to the tribunal on behalf of any other groups of people. There were 12 responses to this question and these are attached at Appendix 4.
- 4.5 Respondents were asked whether they would like to make any further comment about how the Council supports tenants to refer landlords to the Housing and Property Chamber. There were eight responses to this question and these are attached at Appendix 5.

- 4.6 Having reviewed the comments, the Directorate proposes that the current approach is maintained. The Council is not resourced to routinely take applications to the tribunal on behalf of tenants and will not normally make applications on behalf of private tenants but will encourage them to apply to the Housing and Property Chamber directly. Basic advice will continue to be provided to empower and support tenants to make their own applications to the Tribunal.
- 4.7 In exceptional circumstances the Council may provide additional assistance where there is reason to support a tenant. A tenant may be classed as requiring additional support if they are in need of special care or protection because of age, disability or risk of abuse or neglect. This approach is detailed in the draft policy set out in Appendix 1. This policy will be implemented if approved by the committee.

5. Next Steps

- 5.1 If agreed, the draft policy detailing these arrangements will be displayed on the Council website and publicised more widely. Appropriate partners such as Shelter, and local Citizens Advice Bureaux will be informed of this approach along with all identified internal and external providers of housing advice.
- 5.2 Guidance material detailing the policy will be produced and circulated to partners and other advice providers.
- 5.3 Relevant Council Officers will be trained in the new policy.

6. Financial impact

- 6.1 The proposed policy will continue current practice and is therefore unlikely to have any impact on service provision or generate any significant financial impact.

7. Stakeholder/Community Impact

- 7.1 The development of policy in respect of the regulation of the Private Rented Housing Sector is part of the wider place-making role for the Council. It is considered that the proposed policy is consistent with all the strategic aims of the Council.
- 7.2 Matters described in this report have no impact on equalities or environmental issues. The draft policy is intended to support individuals and groups who have protected characteristic under the Equality Act 2010.

8. Background reading/external references

- 8.1 [Private Rented Housing Sector Enforcement Activities report](#) to Regulatory Committee on 20 May 2019

8.2 Housing and Property Chamber – [Repairing Standard](#)

9. Appendices

- 9.1 Appendix 1 – Draft policy on Council support for tenants at the First Tier Tribunal for Scotland (Housing and Property Chamber)
- 9.2 Appendix 2 - Consultation
- 9.3 Appendix 3 - Summary of consultation results
- 9.4 Appendix 4 – Respondents’ Comments
- 9.5 Appendix 5 – Respondents’ Comments

Appendix 1

Draft policy on Council support for tenants at the First Tier Tribunal for Scotland (Housing and Property Chamber)

The City of Edinburgh Council support for private tenants' complaints regarding landlord's failure to repair or maintain let property.

The City of Edinburgh Council has powers and responsibilities to ensure basic standards for accommodation provided by landlords in the Private Rented Housing sector

The Housing (Scotland) Act 2006, details the legal and contractual obligations of private landlords to ensure that let property meets a minimum physical standard known as The Repairing Standard. In simple terms housing is required to be fit for human habitation, with adequate services and installations all in proper working order.

Landlords have a duty to repair and maintain let property throughout the tenancy. They must complete any necessary works within a reasonable time of becoming aware of any defect.

Further guidance and information on the repairing standard –

<https://www.housingandpropertychamber.scot/>

Where a tenant believes that a rented property does not meet that standard and the landlord is not prepared to repair or maintain the property, the tenant may apply to the First Tier Tribunal for Scotland (Housing and Property Chamber) the 'tribunal', to decide if the landlord is complying. If not, the tribunal can order the landlord to carry out the necessary repairs.

The City of Edinburgh Council does not normally make applications to the tribunal on behalf of private tenants other than in exceptional circumstances where tenants might require additional support. A tenant may be considered to require additional support if they need special care or protection because of, for example:

- age
- disability
- risk of abuse or neglect.
- individuals and groups who have protected characteristics under the Equality Act 2010.

The Council encourages tenants to make applications to apply to the tribunal directly and offers basic advice on how to do so. Tenants seeking further advice should call Licensing on 0131 529 4042.

Alternatively, tenants can contact;

Shelter, shelter.org.uk 0808 800 4444 or,

Citizens Advice, citizensadviceedinburgh.org.uk 0131 510 5510

Repairs to Privately Rented Property

Overview

This consultation asks whether the Council should exercise a specific statutory power in support of tenants of privately rented properties by referring landlords to a tribunal, if the property does not meet the required standard.

Why we are consulting

At its meeting on 20 May 2019 the Regulatory Committee was presented with a report which proposed to consult interested parties on whether the Council should take applications to the Housing and Property Chamber ('the tribunal') on behalf of tenants. The Council has not previously exercised this power.

It is proposed that tenants would normally be expected to make applications to the tribunal themselves, but that the Council would provide additional assistance where there is a reason to support a tenant.

Introduction

We want to know what you think about whether the Council should support some tenants to make referrals to the tribunal if a landlord fails to meet the Repairing Standards.

Which tenants might require additional support?

A tenant may be classed as requiring additional support if they are in need of special care or protection because of age, disability or risk of abuse or neglect.

1 What is your name?

Name

2 What is your email address?

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

Email

3 What is your business or organisation (if applicable)?

More about you

4 What is your ethnic group? (Choose ONE section from A to E, then tick ONE box which best describes your ethnic group or background)

A) WHITE

Please select only one item

- Scottish Other British Irish Gypsy / Traveller Polish
 Other white ethnic group, please write in

B) MIXED OR MULTIPLE ETHNIC GROUP

Please select only one item

- Any mixed or multiple ethnic groups, please write in

C) ASIAN, ASIAN SCOTTISH OR ASIAN BRITISH

Please select only one item

- Pakistani, Pakistani Scottish or Pakistani British
 Indian, Indian Scottish or Indian British
 Bangladeshi, Bangladeshi Scottish or Bangladeshi British
 Chinese, Chinese Scottish or Chinese British Other, please write in

D) AFRICAN, CARIBBEAN OR BLACK

Please select only one item

- African, African Scottish or African British
 Caribbean, Caribbean Scottish or Caribbean British
 Black, Black Scottish or Black British Other, please write in

E) OTHER ETHNIC GROUP

Please select only one item

- Arab Other, please write in

5 What is your sexual orientation?

Please select only one item

- Heterosexual / straight Gay / Lesbian Bisexual Other

6 What is your age?

Please select only one item

- Under 16 16 - 24 25 - 34 35 - 44 45 - 54 55 - 64
 65 - 74 75 and over

7 How would you describe your national identity? (Please tick all that apply)

Please select all that apply

- Scottish English Welsh Northern Irish British
 Other, please write in

8 What is your gender?

Please select only one item

- Male Female Other Gender Identity

9 What religion, religious denomination or body do you belong to?

Please select only one item

- None Church of Scotland Roman Catholic Other Christian
 Muslim Buddhist Sikh Jewish Hindu Pagan
 Another religion (please specify)

Questions

Related Information

The City of Edinburgh Council has powers and responsibilities to maintain basic standards for accommodation provided in the Private Rented Housing sector.

One way that the Council can do this is using the 'Repairing Standard'.

A house meets the Repairing Standard if it is "fit for human habitation, with adequate services and installations all in proper working order".

If a tenant, or the Council, believes that a rented house does not meet the Repairing Standard, an application can be made to a tribunal (the **Housing and Property Chamber**), for a decision on whether or not the landlord has complied with the duty to meet the Repairing Standard.

That tribunal can then order the landlord to carry out the necessary repairs.

At present the Council will not generally make such applications on behalf of tenants, but will give a tenant advice on how to make their own application.

In exceptional circumstances the Council will make an application, but only where the tenant is considered vulnerable and the Council thinks that it is appropriate to do so.

Further information on the Repairing Standard

<<https://www.housingandpropertychamber.scot/repairs/repairs-faq>>

10 Do you agree that the Council should refer matters to the tribunal on behalf of tenants who might require additional support?

Please select only one item

- Strongly agree Agree Neither agree not disagree Disagree
 Strongly disagree

11 If you think the Council should make referrals to the tribunal on behalf of any other groups of people, please tell us who and why.

Any further comments?

Do you have any other comments or suggestions about how the Council helps tenants to refer to the tribunal (the Housing and Property Chamber)?

12 Would you like to make any further comment about how the Council supports tenants to refer landlords to the Housing and Property Chamber?

Please give us your comments.

Appendix 3 – Summary of online consultation results



Repairs to Privately Rented Property: Summary report

This report was created on Monday 22 July 2019 at 10:39.

The consultation ran from 10/06/2019 to 18/07/2019.

Contents

Question 1: What is your name?	1
Name	1
Question 2: What is your email address?	1
Email	1
Question 3: What is your business or organisation (if applicable)?	2
organisation	2
Question 4: What is your ethnic group? (Choose ONE section from A to E, then tick ONE box which best describes your ethnic group or background)	2
Ethnicity (A - White)	2
Other white ethnic group, please write in	2
Ethnicity (Mixed or multiple ethnic group)	2
Any mixed or multiple ethnic groups, please write in	2
Ethnicity (Asian, Asian Scottish, Asian British)	3
Other, please write in	3
Ethnicity (D - African, Caribbean or Black)	3
Other, please write in	3
Ethnicity (E - Other)	4
Other, please write in	4
Question 5: What is your sexual orientation?	4
Sexuality	4
Question 6: What is your age?	5
How old are you?	5
Question 7: How would you describe your national identity? (Please tick all that apply)	6
National Identity	6
Other, please write in	6
Question 8: What is your gender?	6
Gender	6
Question 9: What religion, religious denomination or body do you belong to?	7
Religion	7
Another religion (please specify)	7
Question 10: Do you agree that the Council should refer matters to the tribunal on behalf of tenants who might require additional support?	8
refer elderly/vulnerable tenants	8
Question 11: If you think the Council should make referrals to the tribunal on behalf of any other groups of people, please tell us who and why.	8
support for who else?	8
Question 12: Would you like to make any further comment about how the Council supports tenants to refer landlords to the Housing and Property Chamber?	8
Please give us your comments.	8

Question 1: What is your name?

Name

There were 21 responses to this part of the question.

Question 2: What is your email address?

Email

There were 18 responses to this part of the question.

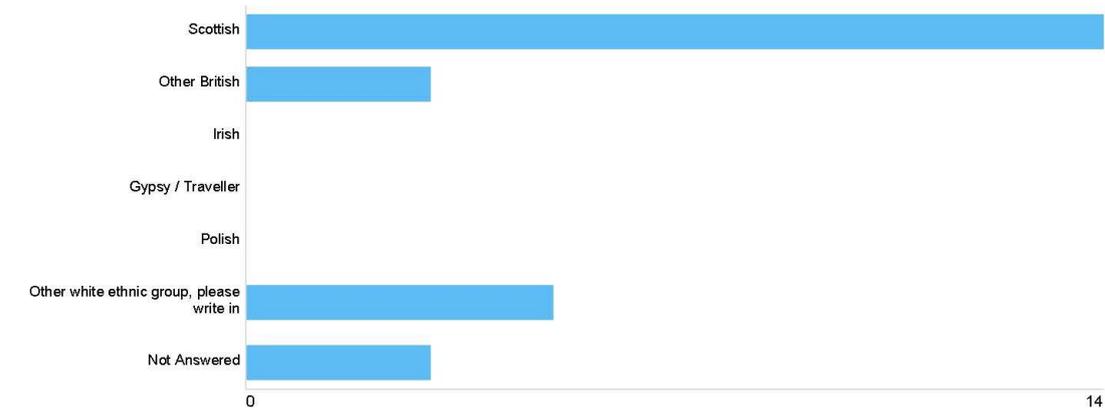
Question 3: What is your business or organisation (if applicable)?

organisation

There were 5 responses to this part of the question.

Question 4: What is your ethnic group? (Choose ONE section from A to E, then tick ONE box which best describes your ethnic group or background)

Ethnicity (A - White)



Option	Total	Percent
Scottish	14	56.00%
Other British	3	12.00%
Irish	0	0%
Gypsy / Traveller	0	0%
Polish	0	0%
Other white ethnic group, please write in	5	20.00%
Not Answered	3	12.00%

Other white ethnic group, please write in

There were 3 responses to this part of the question.

Ethnicity (Mixed or multiple ethnic group)



Option	Total	Percent
Any mixed or multiple ethnic groups, please write in	1	4.00%
Not Answered	24	96.00%

Any mixed or multiple ethnic groups, please write in

There was 1 response to this part of the question.

Ethnicity (Asian, Asian Scottish, Asian British)



Option	Total	Percent
Pakistani, Pakistani Scottish or Pakistani British	0	0%
Indian, Indian Scottish or Indian British	0	0%
Bangladeshi, Bangladeshi Scottish or Bangladeshi British	0	0%
Chinese, Chinese Scottish or Chinese British	0	0%
Other, please write in	1	4.00%
Not Answered	24	96.00%

Other, please write in

There was 1 response to this part of the question.

Ethnicity (D - African, Caribbean or Black)



Option	Total	Percent
African, African Scottish or African British	0	0%
Caribbean, Caribbean Scottish or Caribbean British	0	0%
Black, Black Scottish or Black British	0	0%
Other, please write in	1	4.00%
Not Answered	24	96.00%

Other, please write in

There was 1 response to this part of the question.

Ethnicity (E - Other)



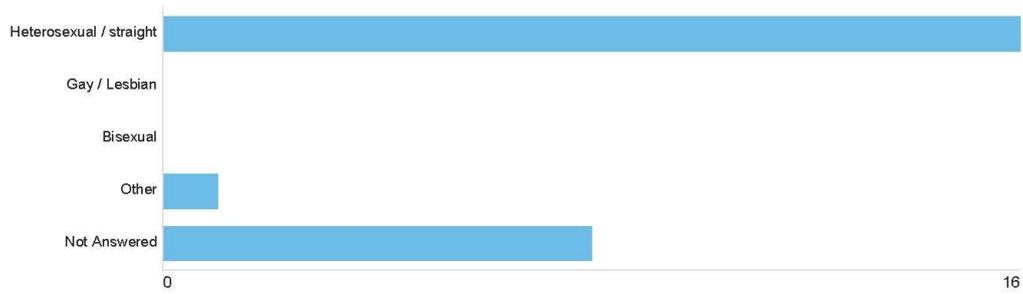
Option	Total	Percent
Arab	0	0%
Other, please write in	1	4.00%
Not Answered	24	96.00%

Other, please write in

There was 1 response to this part of the question.

Question 5: What is your sexual orientation?

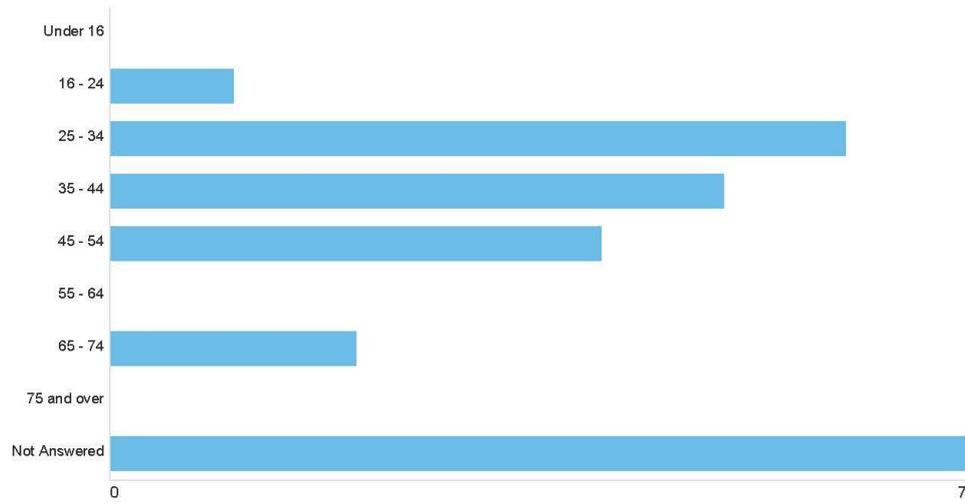
Sexuality



Option	Total	Percent
Heterosexual / straight	16	64.00%
Gay / Lesbian	0	0%
Bisexual	0	0%
Other	1	4.00%
Not Answered	8	32.00%

Question 6: What is your age?

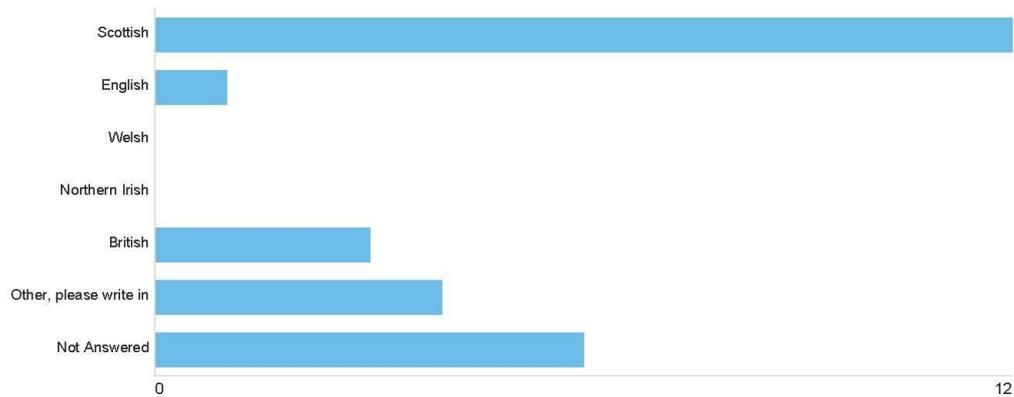
How old are you?



Option	Total	Percent
Under 16	0	0%
16 - 24	1	4.00%
25 - 34	6	24.00%
35 - 44	5	20.00%
45 - 54	4	16.00%
55 - 64	0	0%
65 - 74	2	8.00%
75 and over	0	0%
Not Answered	7	28.00%

Question 7: How would you describe your national identity? (Please tick all that apply)

National Identity



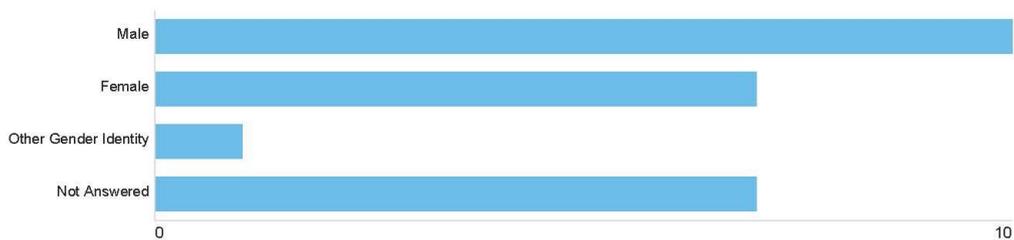
Option	Total	Percent
Scottish	12	48.00%
English	1	4.00%
Welsh	0	0%
Northern Irish	0	0%
British	3	12.00%
Other, please write in	4	16.00%
Not Answered	6	24.00%

Other, please write in

There were 3 responses to this part of the question.

Question 8: What is your gender?

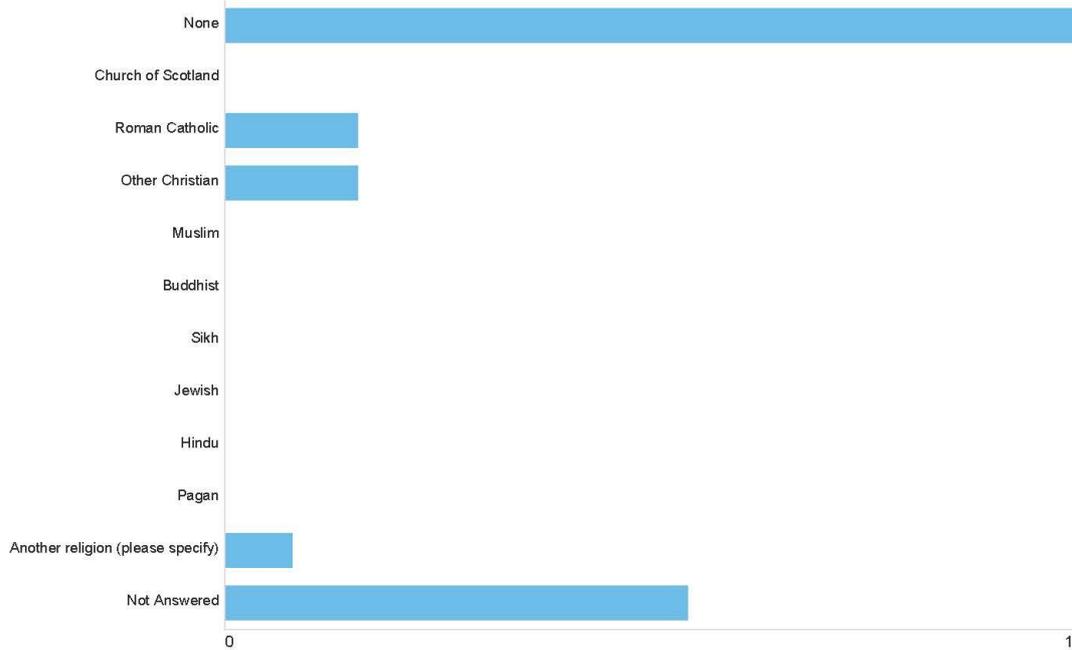
Gender



Option	Total	Percent
Male	10	40.00%
Female	7	28.00%
Other Gender Identity	1	4.00%
Not Answered	7	28.00%

Question 9: What religion, religious denomination or body do you belong to?

Religion



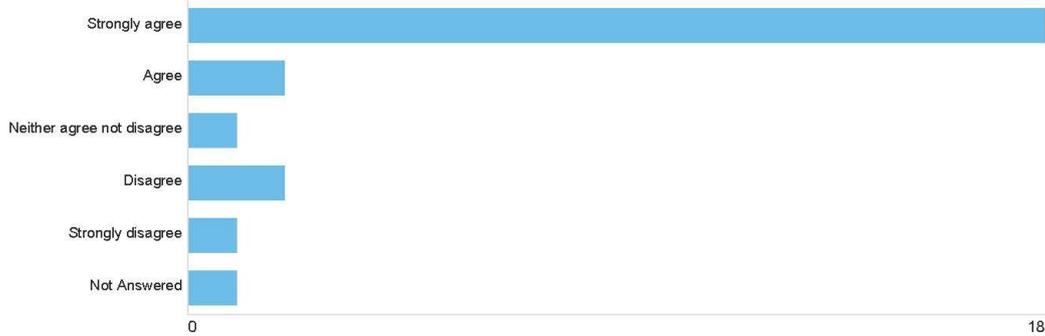
Option	Total	Percent
None	13	52.00%
Church of Scotland	0	0%
Roman Catholic	2	8.00%
Other Christian	2	8.00%
Muslim	0	0%
Buddhist	0	0%
Sikh	0	0%
Jewish	0	0%
Hindu	0	0%
Pagan	0	0%
Another religion (please specify)	1	4.00%
Not Answered	7	28.00%

Another religion (please specify)

There were 2 responses to this part of the question.

Question 10: Do you agree that the Council should refer matters to the tribunal on behalf of tenants who might require additional support?

refer elderly/vulnerable tenants



Option	Total	Percent
Strongly agree	18	72.00%
Agree	2	8.00%
Neither agree nor disagree	1	4.00%
Disagree	2	8.00%
Strongly disagree	1	4.00%
Not Answered	1	4.00%

Question 11: If you think the Council should make referrals to the tribunal on behalf of any other groups of people, please tell us who and why.

support for who else?

There were 12 responses to this part of the question.

Question 12: Would you like to make any further comment about how the Council supports tenants to refer landlords to the Housing and Property Chamber?

Please give us your comments.

There were 8 responses to this part of the question.

Appendix 4 – Respondents’ Comments

If you think the Council should make referrals to the tribunal on behalf of any other groups of people, please tell us who and why?

1	I'd say there is already a certain vulnerability being a private tenant. In dealing with matters including complaining it is then worse if there is any vulnerability.
2	Unless it's a matter of public safety, then it's nothing to do with the Council. Will you be offering the same service in reverse, ie supporting landlords who have problems with messy destructive tenants?
3	In my view, vulnerable groups of people are the most likely to be taken advantage of by landlords who do not provide the minimum standard of accommodation. For many the process of applying for a tribunal is too complex and is therefore a barrier to the tenant receiving the legal help they need. The council could have a massive positive impact if they were to offer applications on behalf of tenants who are in a precarious situation, such as pensioners and people living with disabilities or mental health problems.
4	Other residents. If matters like this are not 'referred' essential repairs will not be carried out.
5	The council service should provide advice, support and referrals to all tenants.
6	The Council should be more proactive in assisting the communities and council tax payers in their city to deal with the multitude of problems in relation to private rented properties notably with absentee landlords.
7	I think the council should support ALL people in the private rented sector wrt tribunal applications
8	Those with special needs Those with disabilities Vulnerable adults Asylum seekers Those with limited English who are being taken advantage of
9	Yes. As it is very difficult for our voice to be heard. If councils get involved then we may be taken seriously
10	People require support to make sure their legal rights are respected
11	Neighbours should be able to refer I refer mainly to gardens that are not maintained
12	Tenants from other countries who generally have no idea of the laws and practices regarding renting in Scotland.

Appendix 5 - Respondents' Comments

Would you like to make any further comment about how the Council supports tenants to refer landlords to the Housing and Property Chamber? - Please give us your comments.

1	<p>I'm not sure if private tenants who don't need support necessarily know their rights. Perhaps a leaflet should be made available - or perhaps the information online?</p> <p>Your consultation is in respect of those who might need additional support, but I would have thought that such tenants would be the clients of a support organisation? So surely the support organisation would help the tenant? So, is this strictly necessary? Just a thought - but I guess the Council must have its reasons.</p>
2	<p>Already covered by other legislation -- no need for Council to get involved. Council already overstretched in too many areas that it's got involved in and underperforming.</p>
3	<p>Many of the landlords on our estate only care about money and use agents as a 3rd party and try and distance themselves from liability. There needs to be huge reform in respect of how easy it is in Edinburgh, and elsewhere for that matter, to buy a property and rent out it out with no care of the local area or impacts buy to let's. There is no difference with this and Air B&B same issues, same problems. A cap is required in both areas, a maximum of homes to be rented out</p>
4	<p>Yes. Last year I had a repairs case go to the tribunal and received a decision in my favour. I was however astounded by two things:</p> <ol style="list-style-type: none"> 1) that the whole process of communication was done on paper and by post! in 2018!! - I strongly recommend moving quickly to an online system or at least using email 2) that the two parties have to arrange payment between themselves, I got lucky that the landlord paid up, but this should be enforced by the HPC
5	<p>I would like to see definitive, strict and PROACTIVE action if a tenant needs to be referred on. Then I would like to see hard and fast action to nip things in the bud. It often feels like the Council simply "go through the motions" or just tick boxes as part of their paperwork.</p>
6	<p>The skills of the council staff should be available to support all tenants.</p> <p>There is no point in restricting this valuable knowledge, by sharing and supporting more applicants, the general standard of referrals to and decisions from the Housing and Property Chamber could be improved</p>
7	<p>You should work to resolve issues before they create additional time and resource problems for you in future. For instance, you can disregard this issue entirely but you would then be faced with the possible paperwork and time required to deal with issues like unpaid council tax, people being forced to leave their homes with no alternative option, complaints from other residents and calls for action to be taken to resolve the multitude of secondary issues arising.</p>
8	<p>I rent a property via a rental agency company in Edinburgh and have issues with a lack of action or acknowledging liability for maintenance and ensuring the structural integrity of the building despite repeatedly notifying the rental agency and the landlord. Defects in the ground floor flat I rent include a floor that appears to have and probably continue to sink with a resulting gap in the skirting that you could easily stick your hand through. Also, a variety of large cracks in worrying locations such as at the 'shear' point above doors where bowing in the lintel occurs. These are also at other locations. I am a Civil Engineer and understand some of the issues that could be causing this such as subsidence etc. Any required works are 'postponed' but I have no confidence that any repairs will be carried out. I tried to contact someone in the City of Edinburgh Council but could not obtain sufficient usable information as to who this could be raised with which is disappointing to say the least. Hence, I fell badly let down and concerned as to the safety of my family who live in these conditions. I do not feel I</p>

have had any support from anyone and have no voice or powers to take this forward positively and rental agencies and landlords, from my experience, seem to be able to get away with these types of disgraceful activities, or lack thereof. Something is very much wrong with the private rental system and drastic change appears to be required as a matter of urgency.