

Pre-action protocol for possession



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Part 1: Aims and scope of the protocol

- 1.1. This Protocol applies to residential possession claims by social landlords (such as local authorities, Registered Social Landlords and Housing Action Trusts) and private registered providers of social housing. Part 2 relates to claims which are based solely on claims for rent arrears. Part 3 relates to claims where the Court's discretion to postpone possession is limited by s89(1) Housing Act 1980. The protocol does not apply to claims in respect of long leases or to claims for possession where there is no security of tenure.
- 1.2. Part 3 of the protocol does not apply to cases brought by social landlords solely on grounds where if the case is proved, there is a restriction on the Court's discretion on making an order for possession and/or to which s89 Housing Act 1980 applies.
- 1.3. Part 2 of the protocol reflects the guidance on good practice given to social landlords and private registered providers in the collection of rent arrears. It recognises that it is in the interests of both landlords and tenants to ensure that rent is paid promptly and to ensure that difficulties are resolved wherever possible without court proceedings.
- 1.4. Part 3 seeks to ensure that in cases where Article 8 of the European Convention on Human Rights is raised the necessary information is before the Court 109 at the first hearing so that issues of proportionality may be dealt with summarily, if appropriate, or that appropriate directions for trial may be given.
- 1.5. The aims of the protocol are:
 - (a) to encourage more pre-action contact and exchange of information between landlords and tenants;
 - (b) to enable the parties to avoid litigation by settling the matter if possible; and
 - (c) to enable court time to be used more effectively if proceedings are necessary.
- 1.6. Courts should take into account whether this protocol has been followed when considering what orders to make. Social Landlords and private registered providers of social housing should also comply with guidance issued from time to time by the Homes and Communities Agency, the Department for Communities and Local Government and the Welsh Ministers.

- (a) If the landlord is aware that the tenant has difficulty in reading or understanding information given, the landlord should take reasonable steps to ensure that the tenant understands any information given. The landlord should be able to demonstrate that reasonable steps have been taken to ensure that the information has been appropriately communicated in ways that the tenant can understand.
- (b) If the landlord is aware that the tenant is under 18 or is particularly vulnerable, the landlord should consider at an early stage
 - i. whether or not the tenant has the mental capacity to defend possession proceedings and, if not, make an application for the appointment of a litigation friend in accordance with CPR 21;
 - ii. whether or not any issues arise under Equality Act 2010; and
 - iii. in the case of a local authority landlord, whether or not there is a need for a community care assessment in accordance with National Health Service and Community Care Act 1990.

Part 2: Possession claims based upon rent arrears

Initial contact

- 2.1 The landlord should contact the tenant as soon as reasonably possible if the tenant falls into arrears to discuss the cause of the arrears, the tenant's financial circumstances, the tenant's entitlement to benefits and repayment of the arrears. Where contact is by letter, the landlord should write separately to each named tenant.
- 2.2 The landlord and tenant should try to agree affordable sums for the tenant to pay towards arrears, based upon the tenant's income and expenditure (where such information has been supplied in response to the landlord's enquiries). The landlord should clearly set out in pre-action correspondence any time limits with which the tenant should comply.
- 2.3 The landlord should provide, on a quarterly basis, rent statements in a comprehensible format showing rent due and sums received for the past 13 weeks. The landlord should, upon request, provide the tenant with copies of rent statements in a comprehensible format from the date when arrears first arose showing all amounts of rent due, the dates and amounts of all payments made, whether through housing benefit, discretionary housing payments or by the tenant, and a running total of the arrears.

- 2.4 If the tenant meets the appropriate criteria, the landlord should arrange for arrears to be paid by the Department for Work and Pensions from the tenant's benefit.
- 2.5 The landlord should offer to assist the tenant in any claim the tenant may have for housing benefit, discretionary housing benefit or universal credit (housing element).
- 2.6 Possession proceedings for rent arrears should not be started against a tenant who can demonstrate that –
- (a) the local authority or Department for Work and Pensions have been provided with all the evidence required to process a housing benefit or universal credit (housing element) claim;
 - (b) a reasonable expectation of eligibility for housing benefit or universal credit (housing element); and
 - (c) paid other sums due not covered by housing benefit or universal credit (housing element).

The landlord should make every effort to establish effective ongoing liaison with housing benefit departments and DWP and, with the tenant's consent, make direct contact with the relevant housing benefit department or DWP office before taking enforcement action.

The landlord and tenant should work together to resolve any housing benefit or universal credit (housing element) problems. 111

- 2.7 Bearing in mind that rent arrears may be part of a general debt problem, the landlord should advise the tenant to seek assistance from CAB, debt advice agencies or other appropriate agencies as soon as possible. Information on debt advice is available on the Money Advice Service website <https://www.moneyadviceservice.org.uk/en/articles/whereto-go-to-get-free-advice-debt-advice>.

After service of statutory notices

- 2.8 After service of a statutory notice but before the issue of proceedings, the landlord should make reasonable attempts to contact the tenant, to discuss the

amount of the arrears, the cause of the arrears, repayment of the arrears and the housing benefit or universal credit (housing element) position and send a copy of this protocol.

- 2.9 If the tenant complies with an agreement to pay the current rent and a reasonable amount towards arrears, the landlord should agree to postpone issuing court proceedings so long as the tenant keeps to such agreement. If the tenant ceases to comply with such agreement, the landlord should warn the tenant of the intention to bring proceedings and give the tenant clear time limits within which to comply.

Alternative dispute resolution

2.10 The parties should consider whether it is possible to resolve the issues between them by discussion and negotiation without recourse to litigation. The parties may be required by the court to provide evidence that alternative means of resolving the dispute were considered. Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored.

2.11 The Civil Justice Council and Judicial College have endorsed The Jackson ADR Handbook by Susan Blake, Julie Browne and Stuart Sime (2013, Oxford University Press). The Citizens Advice Bureaux website also provides information about ADR: http://www.adviceguide.org.uk/england/law_e/law_legal_system_e/law_taking_legal_action_e/alternatives_to_court.htm Information is also available at: <http://www.civilmediation.justice.gov.uk>

Court proceedings

2.11 Not later than ten days before the date set for the hearing, the landlord should:

- (a) provide the tenant with up to date rent statements; and
- (b) disclose what knowledge it possesses of the tenant's housing benefit or universal credit (housing element) position to the tenant.

2.12

- (a) The landlord should inform the tenant of the date and time of any court hearing and provide an up to date rent statement and the order applied for. The landlord should advise the tenant to attend the hearing as the tenant's home is at risk. Records of such advice should be kept.

- (b) If the tenant complies with an agreement made after the issue of proceedings to pay the current rent and a reasonable amount towards arrears, the landlord should agree to postpone court proceedings so long as the tenant keeps to such agreement.
- (c) If the tenant ceases to comply with such agreement, the landlord should warn the tenant of the intention to restore the proceedings and give the tenant clear time limits within which to comply.

2.13 If the landlord unreasonably fails to comply with the terms of the protocol, the court may impose one or more of the following sanctions–

- (a) an order for costs; and
- (b) in cases other than those brought solely on mandatory grounds, adjourn, strike out or dismiss claims.

2.14 If the tenant unreasonably fails to comply with the terms of the protocol, the court may take such failure into account when considering whether it is reasonable to make possession orders.

Part 3: Mandatory grounds for possession

- 3.1 This part applies in cases where if a social landlord proves its case, there is a restriction on the Court's discretion on making an order for possession and/or to which s. 89 Housing Act 1980 applies (e.g. non-secure tenancies, unlawful occupiers, succession claims, and severing of joint tenancies).
- 3.2 In cases where the court must grant possession if the landlord proves its case then before issuing any possession claim social landlords:
 - (a) should write to occupants explaining why they currently intend to seek possession and requiring the occupants within a specified time to notify the landlord in writing of any personal circumstances or other matters which they wish to take into account. In many cases such a letter could accompany any notice to quit and so would not necessarily delay the issue of proceedings; and
 - (b) should consider any representations received, and if they decide to proceed with a claim for possession give brief written reasons for doing so.

- 3.3. In these cases the social landlord should include in its particulars of claim, or in any witness statement filed under CPR 55.8(3), a schedule giving a summary:
- (a) of whether it has (by statutory review procedure or otherwise) invited the defendant to make representations of any personal circumstances or other matters which they wish to be taken into account before the social landlord issues proceedings;
 - (b) if representations were made, that they were considered;
 - (c) of brief reasons for bringing proceedings; and
 - (d) copies of any relevant documents which the social landlord wishes the Court to consider in relation to the proportionality of the landlord's decision to bring proceedings."



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