
Pre-action Protocol for Possession Claims based on rent arrears

Aims and scope of the protocol

This protocol applies to residential possession claims by social landlords (such as local authorities, Registered Social Landlords and Housing Action Trusts) which are based solely on claims for rent arrears. The protocol does not apply to claims in respect of long leases or to claims for possession where there is no security of tenure.

The protocol reflects the guidance on good practice given to social landlords 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.

Its aim is to encourage more pre-action contact between landlords and tenants and to enable court time to be used more effectively.

Courts should take into account whether this protocol has been followed when considering what orders to make. Registered Social Landlords and local authorities should also comply with guidance issued from time to time by the Housing Corporation and the Department for Communities and Local Government.

Initial contact

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. 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.
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 or by the tenant, and a running total of the arrears.

4.

- (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 Disability Discrimination Act 1995; 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.
- 5. 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.
- 6. The landlord should offer to assist the tenant in any claim the tenant may have for housing benefit.
- 7. Possession proceedings for rent arrears should not be started against a tenant who can demonstrate that he has –
 - (a) provided the local authority with all the evidence required to process a housing benefit claim;
 - (b) a reasonable expectation of eligibility for housing benefit; and
 - (c) paid other sums due not covered by housing benefit.

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

The landlord and tenant should work together to resolve any housing benefit problems.
- 8. 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.

After service of statutory notices

- 9. 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 position.
- 10. If the tenant complies with an agreement 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. 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

11. 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.
- The Legal Services Commission has published a booklet on 'Alternatives to Court', CLS Direct Information Leaflet 23 (www.clsdirect.org.uk/legalhelp/leaflet23.jsp), which lists a number of organisations that provide alternative dispute resolution services.

Court proceedings

12. 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;
 - (b) disclose what knowledge he possesses of the tenant's housing benefit position to the tenant.
- 13.
- (a) The landlord should inform the tenant of the date and time of any court hearing 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.
14. 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;
 - (b) in cases other than those brought solely on mandatory grounds, adjourn, strike out or dismiss claims.
15. 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.

