

Stopping Possession



Given by Roni Marsh

Contact: ronimarsh@gmail.com

Index

| | |
|---|---------|
| Aims and Objectives..... | Page 3 |
| Causes of debt and delays in seeking advice | Page 4 |
| The Main Debts which can cause possession of a property..... | Page 5 |
| Procedures and Guidance pre-court | Page 5 |
| Private Rent Properties | Page 5 |
| Social Rent Properties..... | Page 6 |
| Mortgage and Secured Loans | Page 7 |
| Service Charge and Ground Rent | Page 8 |
| County Court Money Claims..... | Page 8 |
| Benefit Problems..... | Page 9 |
| Actions to avoid court..... | Page 11 |
| Private Rent Properties | Page 11 |
| Social Rent Properties..... | Page 12 |
| Mortgage and Secured Loans | Page 12 |
| Service Charge and Ground Rent | Page 14 |
| County Court Money Claims..... | Page 14 |
| Court Action | Page 15 |
| Rent, Mortgage and Secured Loans..... | Page 15 |
| Service Charge and Ground Rent | Page 16 |
| County Court Money Claims..... | Page 16 |
| Charging Order..... | Page 18 |
| Order for Sale..... | Page 18 |
| Defences and Other things to Consider | Page 19 |
| Housing Possession Court Duty Schemes (HPCDS) | Page 20 |
| Legal Aid | Page 20 |
| Financial Statement..... | Page 21 |
| Free Debt Advice Services in London | Page 21 |
| <u>Appendices</u> | |
| 1 – Section 8 Notice | Page 22 |
| 2 – Pre-Action Protocol for Mortgage Possession Claims | Page 26 |
| 3 – Pre-Action Protocol for Possession Claims by Social Landlords | Page 30 |
| 4 – Debt Pre-Action Protocol Form | Page 36 |

Aims and Objectives

Aims

To give delegates an overview of the possession that can result in clients losing their homes due to arrears of rent, mortgage secured loan and other debts

Objectives

By the end of the course delegates should be able to understand:

- How to identify the debts which can cause possession of a property
- The stages of action for possession debts
- Ways to stop a case escalating to court
- The relevant Pre-Action Protocols
- How to prepare the client for a court hearing
- How the County court duty scheme works
- Defences to possession hearings at court
- Stopping Eviction

Causes of Debt

Debt problems can stem from multiple sources such as long term low income, sudden loss of work, benefit problems or sanctions, change of domestic situation such as divorce, death or illness amongst others.

Delays in Seeking Advice

People often put off seeking help about them because they feel there is stigma attached to debt. This can cause extra problems because often someone will not seek advice until the situation is dire. This is often when they have received a notice of seeking possession or even have a court date

Financial Conduct Authority (FCA)

Debt advice is now regulated by the FCA and those giving advice on options for debts and financial products must have an FCA licence. There are still many areas around debt that the non-regulated adviser will come across and will need to help clients with. Whilst advice relating to the options for dealing with debt is regulated advice the advice covered in this course today is not.

Full Debt Advice

Most clients who have housing arrears have financial or other money problems and should always be recommended to seek full debt advice. There are multiple free services across London and details are on page 21. Saving the home can then hopefully be the first step to long term financial stability.

The Main Debts which can cause possession of a property

The main types of debts which can lead to repossession of a property are:

- Rent
- Mortgage
- Secured Loan
- Service Charge or Ground Rent
- County Court Judgment

Procedures and Guidance Before Court Hearing can be applied for

Each type of housing debt can follow a different path to end at the point where the property can be repossessed and we will look at each of these in turn.

Rent

There are two different procedures for rented property depending on whether it is private rented or not.

Private Rented Properties

The first stage of action is that the Notice of Seeking Possession will be issued by the landlord to end the assured shorthold tenancy. This will be either a section 8 notice or a section 21 notice. A section 8 notice is used if the tenants have broken any of the terms of the tenancy and a section 21 notice if the landlord wants the property back for any other reason.

Section 21 notices are not covered in this course. An excellent resource for these is found on the Nearly Legal website www.nearlylegal.co.uk

A standard section 8 notice (from www.gov.uk) is in Appendix 1 on page 22. This allows the landlord to seek possession using the grounds, mandatory or discretionary, from Schedule 2 of the Housing Act 1988. The grounds that relate to arrears are:

- 8 – Mandatory – This is where the tenant has at least 8 weeks (or 2 months if rent paid monthly) of arrears at the point when the notice is served and only stays mandatory if this is still the case at issue date of the court hearing.
- 10 – Discretionary – The rent is lawfully due and some of it is owed.
- 11 – Discretionary – The tenant has been persistently late when paying the rent which is lawfully due.

The other grounds do not relate to arrears. Landlords will normally try to apply under ground 8 as this is mandatory and therefore means that they believe they will be granted possession of the property rather than end up with a suspended or adjourned order.

The Notice of Seeking Possession has to be served on a certain date in the tenancy cycle and also must give the correct notice period. Once the notice period runs out then the landlord can take the next stage of action which is applying for a court hearing for possession of the property. You should check that the dates on the Notice are correct. If not, then this is a defence against possession.

Money claims – Some private landlords will take money claims instead of possession action. This is done either because the landlord has not realised that there are options available or to get a judgment which confirms the amount of the arrears to try to remove the risk that the mandatory ground 8 can be avoided.

Social Rented Properties

There are different types of tenancies for social housing which here cover Council and Housing Association landlords. These include:

- Secure
- Flexible (also known as fixed term)
- Introductory
- Demoted

They have different rights and procedures for possession action. This course only covers secure tenancies.

If the social landlord wants to take possession of the property they have to follow the Pre-Action Protocol for Possession Claims by Social Landlords. This is at Appendix 3 on page 30.

The court should take into account whether this has been followed and you should find evidence of the landlord's actions regarding this in the particulars of claim. It would be unusual if this was not there.

The first step is the Notice of Seeking Possession to allow the landlord to seek possession from Schedule 2 of the Housing Act 1988. The grounds that relate to arrears are:

- 10 – Discretionary – The rent is lawfully due and some of it is owed.
- 11 – Discretionary – The tenant has been persistently late when paying the rent which is lawfully due.

Housing Associations may also use section 8 which is covered in the private landlord's section and is a mandatory ground. The other grounds do not relate to arrears.

Timescale from Notice of Seeking Possession to Court Hearing

The landlord has 12 months from the date the Notice expires to apply for the court hearing.

Mortgage and Secured Loans

The lender should comply with the Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property which is at Appendix 2 on page 26.

At point 4.1 this also confirms that it covers

(b) second charge mortgages over residential property and other secured loans regulated under the Consumer Credit Act 1974 on residential property

and

(c) unregulated residential mortgages.

This is where there is a money claim or possession claim taken. It does not cover buy to let mortgages.

Section 5 – This covers the information and documentation that the lender should provide.

Section 6 – These are the reasons that a lender should postpone that start of a possession claim

Section 7 – These are other matters that the lender should consider before starting a possession claim.

Section 8 – This is the section about complaints to the Financial Ombudsman Service.

Financial Conduct Authority (FCA) – The FCA has its own rules and guidance which can be found on their website at www.handbook.fca.org.uk. The relevant sections for mortgages and secured loan are:

- PRIN – Principles for Business
- CONC – The Consumer Credit Sourcebook (for CCA agreements)
- MCOB – Mortgages and Home Finance: Conduct of Business sourcebook

In these there are the rules which will help with any complaint about the behaviour of lenders. They include:

- PRIN 2.1.1.6 Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly.

- CONC 7 Arrears, default and recovery (including repossessions)
- CONC 7.3 Treatment of customers in default or arrears (including repossessions): lenders, owners and debt collectors
- MCOB 11.6 Responsible lending and financing

Service Charge and Ground Rent

For owned properties which are leasehold flats and properties on managed estates can have service charges and/or ground rent to pay. This is normally due weekly, monthly, quarterly or yearly depending on the terms. If the service charge or ground rent is not paid then the landlord can apply for possession of the property. Ground rent is normally low although with some new build properties they can have very high charges. Service charge is often a much higher figure and can run into hundreds of pounds per year.

Ground Rent – There must be arrears of ground rent of either £350 or 3 years.

Service Charge – The amounts included in the service charge must be payable in the terms of the lease. A service charge cannot include charges for anything not in the terms of the lease and so this can give rise to the ability to challenge the amount demanded. Demands for service charge payments must be in writing. If the demand for payment is made after the work is carried out then this must be made within 18 months.

The website www.lease-advice.org contains excellent advice on service charges and ground rent as does www.shelter.org.uk.

County Court Money Claims

This could be for:

- Rent arrears for a private rented property
- Service Charge
- Ground Rent

Before the court claim can be made the Debt Pre-Action protocol must be complied with. As part of this protocol a letter of claim is issued with a reply form.

The reply form is at Appendix 4 on page 36 and it also has a financial statement to complete and return with it. The deadline for the reply to this is 30 days. It has multiple possible replies and the creditor must take account of the response before taking court action. If documents or information are requested by the client then the creditor must respond to that request within 30 days. If the client does not respond in the deadline then the creditor can make a court claim as soon as the 30 days deadline passes.

A factsheet on this can be found at

<https://www.nationaldebtline.org/EW/factsheets/Pages/pre-action-protocol-for-debt/county-court-protocol.aspx> and the full details of the protocol are at <https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/protocols/pre-action-protocol-for-debt-claims.pdf>.

Benefit Problems

Benefit problems can cause loss of property if they are not resolved. Some of the frequent issues with benefits are:

- Not Making a Claim – This is because someone either does not know there is benefit available to help or they could not make the claim on their own which is often due to their inability to use a computer for Universal Credit claims.
- Housing Element on Universal Credit – This can be wrong for a number of reasons including wrong rent entered on claim, wrong number of adults living in the property on claim, the mortgage or secured element has not started being paid after the waiting period.
- Housing Benefit – The non-dependant deductions for other adult children can be wrong on this.
- Help with Mortgage/Secured Loan – This is available through Universal Credit, Income Support, Pension Credit Guarantee Credit, Income Related Employment and Support Allowance and Income Based Job Seeker's Allowance after a 39 week (9 assessment periods on Universal Credit) period. It may not start to be paid or may not have been correctly noted at the beginning of the application. You can get help with any mortgage or secured loan under Universal Credit but only those used for home purchase or some home improvements under the other benefits.
- Help with Service Charge – This is available through Universal Credit, Income Support, Pension Credit Guarantee Credit, Income Related Employment and Support Allowance and Income Based Job Seeker's Allowance after a 39 week (9 assessment periods on Universal Credit) period. It may not start to be paid or may not have been correctly noted at the beginning of the application.
- Help with Ground Rent – This is available through Income Support, Pension Credit Guarantee Credit, Income Related Employment and Support Allowance and Income Based Job Seeker's Allowance after a 39 week period. It may not start to be paid or may not have been correctly noted at the beginning of the application. It is not available under Universal Credit.

Some problems with benefits which are more difficult to resolve are:

- Local Housing Allowance – This is the limit of help that you can get for the size and make up of your household. There is no overcoming this limit but you can ask for a Discretionary Housing Payment to top up the amount you get.
- Non-Contributing Non-Dependant – There are deductions for non-dependants made from Universal Credit (a flat rate of £73.89 per month per non-dependant) and from Housing Benefit (the amount depends on the income of the non-dependant. If the non-dependant will not contribute enough to cover the shortfall then check if it will increase their benefit if they change to Universal Credit or if they can claim a benefit which exempts them from having a deduction for a non-dependant.
- Bedroom Tax (AKA Spare Room Subsidy) – This does not affect pensioners but does affect all other social tenants. It is a reduction in housing help of 14% if you are considered to have one extra bedroom for the size of your household and 25% if you have two or more.
- Mortgage/Secured Loan is Interest Only – The help is only available with the interest part of the mortgage/secured loan and not the capital. This is paid at 2.61% meaning that it does not cover most people's full instalment leaving a shortfall.
- Mortgage/Secured Loan gives Limited Help – The help is only available for the first £200,000 on all benefits about from Pension Credit where it is only available on the first £100,000.
- Mortgage/Secured Loan is a Loan not Benefit – The benefit paid is secured on the property by means of the charge and has to be repaid on re-mortgage or death. This differs from Housing Benefit where the amount paid to help with the rent does not have to be repaid. The loan scheme is not automatic and has to be signed up for through Serco who contacts those currently on the scheme. Only around half of current claimants have changed to the loan scheme so those who have not will have their benefit stopped. It changed to a loan on 6th April 2018.

Actions to Avoid Court Action

Rent

Local Authority and Housing Association Landlords – They are generally more patient than private landlords and can be easier to deal with. The options to keep the case out of court include:

- *Deductions from Benefits* – Where the landlord is a Registered Social Landlord then the rent arrears can also be repaid by deductions from Income Based Job Seeker's Allowance, Income Based Employment and Support Allowance and Pension Credit Guarantee Credit at £3.70 per week and from Universal Credit at 10% of 20% of the standard allowance.
- *Alternative Payment Arrangements* – This is there either the Housing Benefit or Universal Credit housing element is paid directly to the landlord going forward to try avoid further arrears.
- *Repayment Plans* – Social landlords will often accept much lower repayment offers than private landlords. The lowest offer they will currently accept is £3.70 per week for those on very low incomes.
- *Landlord Support Schemes* – Some of the social landlords and Councils have their own in-house support, benefit and/or financial capability services. Referring the client to these for support can often keep the case out of court as the client will be working with the landlord's own staff who are likely to have more weight in decisions.
- *Discretionary Housing Payments* – If the client receives any Housing Benefit or Housing element in Universal Credit then they can apply for this. It is applied for through the local Council and can cover a top up of rent or a lump sum towards the arrears. It is completely discretionary and there is no right of appeal on refusal.
- *Grants* – This is a sum of money from a charity which does not have to be repaid. Some of the major charities are BandCE, ForYouByYou and Hospitality Action. A full list can be found at www.turn2us.org.uk
- *Rent A Room Scheme* – Social landlords are often agreeable (or even it is allowed in the tenancy) to a tenant renting out a room to bring more income in. Beware that this will affect the benefits as for all except Universal Credit it counts as income.

Private Landlords – These vary immensely in what they will accept to keep a case out of court. They may want to avoid court fees and any associated costs if there is going to be no chance of recovering the money if the tenant is no longer in the property. Some options to try are:

- *Repayment Plan* – A private landlord is more likely to offer for a high repayment plan to recover the arrears as quickly as possible. If this is affordable then the tenant should pay as much as they can afford. It is better to offer a lower repayment than an unrealistic one as if the arrangement fails then the landlord is much less likely to enter another one.
- *Alternative Payment Arrangements* – This is there either the Housing Benefit or Universal Credit housing element is paid directly to the landlord going forward to try avoid further arrears. This is straight forward for the landlord to apply for on form UC47 which is completed and sent to the FREEPOST Universal Credit address.
- *Deductions from Benefits* – Under Universal Credit deduction can be made for private landlords where the rent arrears are 2 months or more. The landlord applies through the www.gov.uk website and the deductions are at 10% of 20% of the standard allowance.
- *Discretionary Housing Payments* – If the client receives any Housing Benefit or Housing element in Universal Credit then they can apply for this. It is applied for through the local Council and can cover a top up of rent or a lump sum towards the arrears. It is completely discretionary and there is no right of appeal on refusal.
- *Grants* – This is a sum of money from a charity which does not have to be repaid. Some of the major charities are BandCE, ForYouByYou and Hospitality Action. A full list can be found at www.turn2us.org.uk

Mortgage and Secured Loan

If the lender is a major one then it is worth approaching them to see if they have an in-house scheme to help those who are in arrears with their payments. If they do not then things to consider are:

- *Repayment Plan* – If this is affordable then offering current mortgage/loan plus something on top to repay the arrears is a good option. The lenders will often ask for the arrears to be cleared in a couple of years but don't be afraid to ask for as long as needed. A stepped offer could be made if the arrears are high with lower repayments at first and then higher repayments once other

income becomes available, for example if there are other priority debts being paid off. A reasonable starting place is often 5 years or 60 months.

- *How to Offer Repayment* – A quick telephone call to the company is the best way to deal with them even if the offer is not ready to be made. Just contacting the company can often get further action held and also allow you to get further information about the mortgage if needed.
- *Mortgage Arrears Fees* – The quicker a repayment arrangement is reached with the mortgage company the better for the client. This is because any mortgage arrears fees must cease as soon as an arrangement is in place. These can be very high. The property is always more secure if the client never has to go to court.
- *Equity Release* – Where there is equity in a property there may be a way to release it to clear the mortgage arrears. Financial advice would be needed for this option.
- *Changing the Mortgage to Interest Only* – This is only available with the agreement of the lender. It would likely have other financial impacts which might include increasing the amount paid and the length of the agreement amongst others.
- *Increasing the Term of the Mortgage/Loan* – This is only available with the agreement of the lender. It would likely have other financial impacts such as increasing the amount paid over the term.
- *Capitalising the Mortgage Arrears* – This is where the arrears are added to the mortgage itself and the monthly instalment may go up when this happens. It would need the agreement of the lender.
- *Time Order* – A Time Order is an order which can be made by the Court under the Consumer Credit Act 1974 Section 129. Time Orders are normally, but not always, for when someone is experiencing temporary financial difficulties and can be for a limited period. They request that the agreement is changed to either make lower monthly repayments, increase the length of the loan, lower the interest rates, stop charges or other similar changes to the terms of the agreement. A Time Order can be applied for free of charge when Possession of a property is sought or in response to a County Court claim otherwise there is a Court Fee which has to be paid. You need to be able to show good cause to the Judge as to why the Time Order should be granted.

- *Rent A Room Scheme* – The lender may agree to the owner renting out a room to bring more income in. Beware that this will affect the benefits as for all except Universal Credit it counts as income.
- *Grants* – This is a sum of money from a charity which does not have to be repaid. Some of the major charities are BandCE, ForYouByYou and Hospitality Action. A full list can be found at www.turn2us.org.uk

Service Charge and Ground Rent

If there is an application for the forfeiture of the lease then the options to be tried are:

- *Repayment Plan* – If this is affordable then offering current service charge and/or ground rent plus something on top to repay the arrears is a good option.
- *Equity Release* – Where there is equity in a property there may be a way to release it to clear the arrears. Financial advice would be needed for this option.
- *Grants* – This is a sum of money from a charity which does not have to be repaid. Some of the major charities are BandCE, ForYouByYou and Hospitality Action. A full list can be found at www.turn2us.org.uk

County Court Money Claims

The most effective way to keep a money claim out of court is to pay it in full before the deadline to respond to the claim pack and then return the form N9B stating that the debt has been paid in full. This is obviously not an option for most clients otherwise they would not be seeking legal advice. Other possibilities to look at are:

- *Debt Pre-Action Protocol Form* – On this the response could be made that this is not the correct way to address the debt if it is for rent arrears. A money claim is less serious than a forfeiture of lease so a preferable type of action. This form gives the client a chance to request documents to enable other defences to be looked at such as documents around the tenancy deposit, copies of agreement and a full statement of the rent.
- *Grants* – This is a sum of money from a charity which does not have to be repaid. Some of the major charities are BandCE, ForYouByYou and Hospitality Action. A full list can be found at www.turn2us.org.uk Most charities would not normally help with a debt so it needs to be made clear on the application that this is for a priority.

Court Action

Rent, Mortgage and Secured Loan Procedures

Possession Hearing for Arrears – This is the first stage and at this hearing the Judge will decide whether to grant a Possession Order, Postponed Possession Order, Adjourn the Case or Dismiss the Case.

- Possession Order – This is an order where the Judge orders the defendant to give up possession of the property after a certain amount of time normally 14 or 28 days but up to 56 days can be given. The defendant does not have to leave the property once this has expired.
- Postponed Possession Order/Suspended Possession Order – This is where the defendant has a Possession Order which is postponed/suspended as long as payments are made to cover the instalment and an amount off the arrears. As long as the defendant keeps up with the payments then no further action can be taken but if they miss or are late with payments then the company can apply for an Eviction order.
- Adjournment for Stated Time Period – This is where the Judge states that a new hearing will take place after a certain amount of time to allow time for something to happen. This could include: time for the defendant to seek debt advice, time for the defendant to pay a lump sum to clear the arrears, time for the defendant to claim Housing Benefit or Universal Credit or even time for the claimant to produce something which the Judge decides is needed.
- Adjournment with Liberty to Restore– This is where the Judge states that as long as a defendant does something, normally payments towards the arrears, then no further action will take place no court order will not be granted. If they do not do what they have been ordered then the claimant can request that the Possession Hearing take place again. This is better for the defendant because they do not end up with a Postponed Possession Order. Sometimes the Liberty to Restore is without end and sometimes for a certain period.
- Dismissal – This is where the Judge dismisses the claimant's application for some reason maybe faulty paperwork or no arrears are owed.

Eviction Order – The second stage, if a possession order has been granted, is that after the time period has expired the claimant can apply to the court for an eviction order. The defendant will be sent a notice from the court giving the time and date of the eviction. Bailiffs will then attend the property at this appointed time to change the locks and give possession of the property back to the claimant.

Mortgage/Secured Loan and the Norgan Offer – The case *Cheltenham & Gloucester Building Society v Norgan* [1996] 1 WLR 343 says that it is reasonable for the Court to accept the arrears being repaid over the full period of the agreement. If the claimant is in Court for the first time then a Norgan offer will be the standard offer for the arrears.

Stopping an Eviction

Once the defendant has received the time and date of the eviction they can still apply back to the court for another hearing. They can again use all the previous suggestions of ways to stop court action to try to stop the eviction.

Service Charge and Ground Rent

There are multiple actions available to the landlord which are:

- *Money Judgment* – This is a standard money claim and may be taken on its own or as a first step in the Forfeiture of Lease or Request for Payment from Mortgage Lender.
- *Leasehold Valuation Tribunal (LVT)* – The owner or the landlord can apply to the LVT for a decision on whether the amount demanded is the amount which is actually owed.
- *Forfeiture of Lease* – This is applied for through the County Court. For this to be an option the terms of the lease must include the ability for the landlord to apply for the lease to be forfeited. They most often do.
- *Request for Payment from Mortgage Lender* – This is request from the landlord directly to the mortgage lender (or even second charge holder if there is more than one charge on the property) to ask them to pay the debt.

County Court Money Claims

The court action for this is the claim form N1. The deadline to respond is 14 days plus 2 days for postage unless it is from a bulk/business or money claim centre when there are 5 days for postage. The response is with admission or full or part, defence or a request for 14 extra days to complete the defence. If making a counter claim as part of the defence then there will be a court fee payable otherwise this is free.

Even if the defendant is out of time for responding they should do it anyway if they do not have a Judgment. The reason for this is that if the defendant gets the response to the court (for defence) or claimant (for admission) before the claimant applies to the court for Judgment then they are considered to be in time.

Admission and Offer of Repayment – This is on form N9A and is where the defendant makes an admission and offer of repayment. It is sent back to the creditor. The claimant then makes a decision on whether they will accept the offer or not and completes a form and sends it with the defendant's forms to the court.

- Claimant Accepts Offer – If the claimant has accepted the offer then the court will normally make a Judgment for this amount and send a copy to the defendant and the claimant.
- Claimant Refuses Offer – If the claimant refuses the offer and asks for an alternative amount then the court will make the decision on how much the County Court Judgment instalment order should be for or whether it should be for a forthwith order. The court will then send a copy of the judgment it has made to the defendant and the claimant.
- Redetermination of the Order – If the order has been decided without a hearing then the claimant and the defendant both have the right to ask for a redetermination of the amount of the order within 14 days of service if they are unhappy. This is free. They can ask for this to take place at a hearing so that the case can be put to a Judge in person. This is under CPR 14.13.

Defence and Counterclaim of Debt – On form N9B the defendant out in a defence. The forms are returned directly to the court. The defence form has room for a small defence on it but if it is complicated a witness statement should be completed and sent with the form. This must be finished with a statement of truth. This would be paginated with evidence attached in the usual manner of a defence. If a counterclaim needs to be submitted there will be a court fee for this which can be found on form EX50a.

Default Judgment – If the defendant fails to respond to a claim then the claimant can ask for a default Judgment made. You cannot ask for a redetermination of a default Judgment and must ask for a variation.

Enforcement – As soon as a CCJ has been granted a Charging Order can be applied for. If the CCJ is defaulted then the claimant can take any of the following enforcement actions: Attachment of Earnings Order, Third Party Debt Order or Warrant of Execution for Enforcement Agents.

Default on Judgment Terms – If a forthwith County Court Judgment is granted then this means that immediately it is granted the defendant is considered to have defaulted on the terms. They would only default on the terms of the Instalment Order if they did not meet or were late with the payments due.

Variation of the Order – This can be made at any time by the defendant or claimant if there has been a change in circumstances and costs £50. If your defendant is on a low income then they may qualify for full or partial fee remission leaflet EX160. This needs to be made on form N245 and asks for a change in the payment for a County Court Judgment. The court sends a copy of your defendant's application to the

creditor and if they do not respond in 14 days then the variation will be made. If the creditor objects the court officer will decide the amount. Your defendant and the creditor then have 14 days to object to the amount. If either objects then this will be decided at a hearing.

County Court Judgment enforcement

Once the claimant has a county court judgment they can take enforcement action for the debt. As soon as the judgment is made they can apply for:

Information order – This is an order for a defendant to attend a hearing at their local County Court. They will be required to provide certain information on form EX140 which can be found at www.justice.gov.uk/forms. They will also provide the defendant with a list of documents that they require them to bring to the hearing. At the hearing the defendant will be required to answer under oath the questions on form EX140 and any additional questions required by the creditor. There is the risk of prison if they do not attend the hearing or provide the documentation required. The reason for this hearing is for the creditor to discover information which will allow them to apply for further enforcement of the County Court Judgment. It is unlikely they would apply for an Information Order if they already had the information needed to take further enforcement action against the defendant.

Charging order – This is an order to secure the amount owed by a defendant to a claimant against an asset. This is usually a charge or security against property. When a charging order is obtained an entry is made on the Land Register to show it.

- There is not a Court hearing before an Interim Charging Order is awarded
- A Charging Order is not final until there has been a Court hearing and it has been made into a Final Charging Order. The Final Charging Order Hearing should be at the nearest Court to your defendant's address. The Judge at the Hearing will decide whether to grant the Final Charging Order.
- If your defendant has a Charging Order hearing ask them to ask for conditions to be attached to Order, for example that if monthly payments are maintained then the claimant should not be allowed to enforce their Final Charging Order. If the payment conditions are then defaulted on, the claimant can enforce the charging order by applying for an Order for Sale if the debt is £1,000 or higher.

Order for Sale – This can be applied for by the claimant once a Charging Order has been defaulted on. It is where the claimant applies to the Judge for the property to be sold and the proceeds to be used to clear the debt. There will be a Hearing and the decision on whether an Order for Sale is granted will be made by a Judge.

Attachment of Earnings Order – This is where the claimant requests that the defendant’s employer and some occupational pension providers deduct regular amounts directly from their wages, pension or Statutory Sick Pay through the Court. The debt must be more than £50 for an Attachment of Earnings Order to be applied for by a claimant.

Third Party Debt Order – This is where a claimant requests the Court freeze a cash asset such as a bank or building society account so that the defendant cannot take money out of it until there has been a Hearing. The claimant will then request at the Hearing that the cash in the asset is used to pay off their debt. It is very less unusual than it used to be for a claimant to request a Third Party Debt Order and is covered in CPR part 72.

Warrant of Execution for Enforcement Agents – This is where the claimant requests the Court give permission for Enforcement Agents to be sent to collect the amount outstanding. There is not a hearing for this. The first the defendant will often know about this is when Enforcement Agents contact them or they may receive a letter from the claimant informing them about it. If Enforcement Agents are collecting a debt then the defendant can apply back to the Court to stay the Warrant of Execution and Vary the County Court Judgment.

Defences and Other Things to Consider

History

When looking at dealing with arrears it helps if you find out from the client whether they have been in court before and how long they have been in arrears. The history will affect the likelihood of success of the different ways to stop court action or possession.

Previous court action will also affect the stage of action that the client is at now. Clients can present with “I’m being evicted” and if they are without papers it will be down to the adviser to work out if this is correct or not.

Personal Circumstances

If the defendant has disabilities then it may be worth considering whether they have been discriminated against either indirectly or indirectly throughout the procedures they have been through so far. Has the claimant taken into account their disability when communicating with the defendant?

Condition of Rented Property

If the property is in a bad condition could a counter claim be made for disrepair which, if successful, would reduce or eliminate the arrears.

Paperwork

Is the claimant's paperwork correctly written? Does the section 8 notice have mistakes? Does it contain the prescribed terms?

Tenancy Deposit

If this is for a private rented property was the tenant's deposit correctly put into one of the tenancy deposit scheme and were they service the correct notices?

Housing Possession Court Duty Schemes (HPCDS)

In London most of the courts have a provider running the County Court Duty Scheme and these provide housing specialists free of charge for representation. The service providing this will normally want the defendant to attend the hearing at least half an hour early and to bring with them all their court paperwork, any other relevant paperwork such as proof of payment, tenancy agreement or medical evidence of disability, and details of their finances if offering repayment. If you are supporting someone who will be attending court helping the defendant to prepare for this increases their chances of success at hearing.

To find details of the local provider use the www.gov.uk and put in "Housing Possession Court Duty Schemes". The April 2018 list gives:

- Barnet = SSP Law
- Bow = Edwards Duthie
- Brentford = Hammersmith & Fulham Law Centre
- Bromley = Greenwich Housing Rights
- Central London = Duncan Lewis
- Clerkenwell & Shoreditch = Islington Law Centre and Lambeth Law Centre
- Croydon = South West London Law Centre
- Edmonton = Edwards Duthie
- Kingston = South West London Law Centre
- Romford = Edwards Duthie
- Uxbridge = Hillingdon Law Centre
- Wandsworth = South West London Law Centre and Hammersmith & Fulham Law Centre
- Willesden = David Long Solicitors

Legal Aid/Legal Help

Legal Aid is the Government scheme to cover the costs of legal advice and/or representation at court. It has two levels which are Legal Help and then if the case goes to court Legal Aid. To check if someone is eligible for this there is a calculator online at <https://civil-eligibility-calculator.justice.gov.uk/> or Civil Legal Aid can be rung

on 0345 345 4 345. If the case is for a tenant then this is under the subject Housing and if for an owned property under the Subject debt. For a Debt case before a specialist can be approached for help the Civil Legal Aid gateway must first be spoken to. If they agree that the case can be granted legal aid then they will give the client a reference. For home owners there is a statutory charge for legal aid which is normally attached to the property by way of a charge. For all cases there may be a request for monthly payments towards the cost of legal aid to be made if their income is over a certain amount.

Financial Statement

Court forms often need a financial statement completed as part of them. This includes responses to a court claim for money where repayment is being offered and a request to vary a court judgment to affordable payments. An accurate financial statement is very important to show the court the offer of repayment is affordable and the client does not have a lot of spare money they are not using. An offer at court for repayment is expected to be accompanied with a financial statement to show that it is affordable and sustainable.

Websites for financial statements – Using a website to make a financial statement is one of the easiest ways as it has all the prompts about things to be added and also completes the adding. It can be set up in the client's name and then they can access this separately. The easiest services to use for this are:

- www.nationaldebtline.org – then click on Your Budget
- www.businessdebtline.org – for those self-employed or running their own company
- www.mymoneysteps.org

The client can also use these sites to complete full debt advice.

Face2Face Debt Advice – In London this is available through:

- Debt Free London – They are a network of advice centres across London with one access point through www.debtfree.london or 0808 164 2480.
- Citizens Advice Bureau – Some of the local CAB offer specialist debt advice and can be found at www.citizensadvice.org.uk

FCA Licence – All debt advice services (apart from those provided by Councils) are now regulated by the Financial Conduct Authority and must hold a licence. This means that certain standards will be upheld by that service so make sure any service you are referring a client to holds a licence.

Appendix 1

FORM 3

Notice seeking possession of a property let on an Assured Tenancy or an Assured Agricultural Occupancy

Housing Act 1988 section 8 as amended by section 151 of the Housing Act 1996, section 97 of the Anti-social Behaviour, Crime and Policing Act 2014, and section 41 of the Immigration Act 2016.

- Please write clearly in black ink.
- Please cross out text marked with an asterisk (*) that does not apply.
- This form should be used where possession of accommodation let under an assured tenancy, an assured agricultural occupancy or an assured shorthold tenancy is sought on one of the grounds in Schedule 2 to the Housing Act 1988.
- Do not use this form if possession is sought on the "shorthold" ground under section 21 of the Housing Act 1988 from an assured shorthold tenant where the fixed term has come to an end or, for assured shorthold tenancies with no fixed term which started on or after 28th February 1997, after six months has elapsed. Form 6A 'Notice seeking possession of a property let on an Assured Shorthold Tenancy' is prescribed for these cases.

1 To:

.....

*Name(s) of tenant(s)/licensee(s)**

2 Your landlord/licensor* intends to apply to the court for an order requiring you to give up possession of:

.....

.....

.....

.....

Address of premises

3 Your landlord/licensor* intends to seek possession on ground(s) in Schedule 2 to the Housing Act 1988 (as amended), which read(s):

.....

.....

.....

.....
Give the full text (as set out in the Housing Act 1988 (as amended) of each ground which is being relied on. Continue on a separate sheet if necessary.

4 Give a full explanation of why each ground is being relied on:

.....
.....
.....
.....

Continue on a separate sheet if necessary.

Notes on the grounds for possession

- If the court is satisfied that any of grounds 1 to 8 is established, it must make an order (but see below in respect of fixed term tenancies).
- Before the court will grant an order on any of grounds 9 to 17, it must be satisfied that it is reasonable to require you to leave. This means that, if one of these grounds is set out in section 3, you will be able to suggest to the court that it is not reasonable that you should have to leave, even if you accept that the ground applies.
- The court will not make an order under grounds 1, 3 to 6¹, 9 or 16, to take effect during the fixed term of the tenancy (if there is one) and it will only make an order during the fixed term on grounds 2, 7, 7A, 8, 10 to 15 or 17 if the terms of the tenancy make provision for it to be brought to an end on any of these grounds. It may make an order for possession on ground 7B during a fixed-term of the tenancy even if the terms of the tenancy do not make provision for it to be brought to an end on this ground.
- Where the court makes an order for possession solely on ground 6 or 9, the landlord must pay your reasonable removal expenses.

5 The court proceedings will not begin until after:

.....
.....

Give the earliest date on which court proceedings can be brought

Notes on the earliest date on which court proceedings can be brought

¹ Amended to reflect changes shortly to be made to correct the form prescribed in the Assured Tenancies and Agricultural Occupancies (Forms) (England) Regulations 2015.

- Where the landlord is seeking possession on grounds 1, 2, 5 to 7, 9 or 16 (without ground 7A or 14), court proceedings cannot begin earlier than 2 months from the date this notice is served on you and not before the date on which the tenancy (had it not been assured) could have been brought to an end by a notice to quit served at the same time as this notice. This applies even if one of grounds 3, 4, 7B, 8, 10 to 13, 14ZA, 14A, 15 or 17 is also specified.
- Where the landlord is seeking possession on grounds 3, 4, 7B, 8, 10 to 13, 14ZA, 14A, 15 or 17 (without ground 7A or 14), court proceedings cannot begin earlier than 2 weeks from the date this notice is served. If one of 1, 2, 5 to 7, 9 or 16 grounds is also specified court proceedings cannot begin earlier than two months from the date this notice is served.
- Where the landlord is seeking possession on ground 7A (with or without other grounds), court proceedings cannot begin earlier than 1 month from the date this notice is served on you and not before the date on which the tenancy (had it not been assured) could have been brought to an end by a notice to quit served at the same time as this notice. A notice seeking possession on ground 7A must be served on you within specified time periods which vary depending on which condition is relied upon:
 - Where the landlord proposes to rely on condition 1, 3 or 5: within 12 months of the conviction (or if the conviction is appealed: within 12 months of the conclusion of the appeal);
 - Where the landlord proposes to rely on condition 2: within 12 months of the court's finding that the injunction has been breached (or if the finding is appealed: within 12 months of the conclusion of the appeal);
 - Where the landlord proposes to rely on condition 4: within 3 months of the closure order (or if the order is appealed: within 3 months of the conclusion of the appeal).
- Where the landlord is seeking possession on ground 14 (with or without other grounds other than ground 7A), court proceedings cannot begin before the date this notice is served.
- Where the landlord is seeking possession on ground 14A, court proceedings cannot begin unless the landlord has served, or has taken all reasonable steps to serve, a copy of this notice on the partner who has left the property.
- After the date shown in section 5, court proceedings may be begun at once but not later than 12 months from the date on which this notice is served. After this time the notice will lapse and a new notice must be served before possession can be sought.

6 Name and address of landlord/licensor*.

To be signed and dated by the landlord or licensor or the landlord's or licensor's agent (someone acting for the landlord or licensor). If there are joint landlords each landlord or the agent must sign unless one signs on behalf of the rest with their agreement.

Signed Date

.....
.....
.....

Please specify whether: landlord / licensor / joint landlords / landlord's agent

Name(s) (Block Capitals)

.....
.....
.....

Address

.....
.....
.....
.....
.....

Telephone: Daytime *Evening*

.....

What to do if this notice is served on you

- This notice is the first step requiring you to give up possession of your home. You should read it very carefully.
- Your landlord cannot make you leave your home without an order for possession issued by a court. By issuing this notice your landlord is informing you that he intends to seek such an order. If you are willing to give up possession without a court order, you should tell the person who signed this notice as soon as possible and say when you are prepared to leave.
- Whichever grounds are set out in section 3 of this form, the court may allow any of the other grounds to be added at a later date. If this is done, you will be told about it so you can discuss the additional grounds at the court hearing as well as the grounds set out in section 3.
- If you need advice about this notice, and what you should do about it, take it immediately to a citizens' advice bureau, a housing advice centre, a law centre or a solicitor.

Appendix 2

PRE-ACTION PROTOCOL FOR POSSESSION CLAIMS BASED ON MORTGAGE OR HOME PURCHASE PLAN ARREARS IN RESPECT OF RESIDENTIAL PROPERTY

CONTENTS

SECTION I – INTRODUCTION

| | |
|-------------|-------------|
| Preamble | Paragraph 1 |
| Aims | Paragraph 2 |
| Scope | Paragraph 3 |
| Definitions | Paragraph 4 |

SECTION II – ACTIONS PRIOR TO THE START OF A POSSESSION CLAIM

| | |
|---|-------------|
| Initial contact and provision of information | Paragraph 5 |
| Postponing the start of a possession claim | Paragraph 6 |
| Alternative dispute resolution | Paragraph 7 |
| Complaints to the Financial Ombudsman Service | Paragraph 8 |
| Compliance | Paragraph 9 |

SECTION I – INTRODUCTION

1. PREAMBLE

- 1.1 This Protocol describes the behaviour the court will normally expect of the parties prior to the start of a possession claim within the scope of paragraph 3.1 below.
- 1.2 This Protocol does not alter the parties' rights and obligations.
- 1.3 It is in the interests of the parties that mortgage payments or payments under home purchase plans are made promptly and that difficulties are resolved wherever possible without court proceedings. However in some cases an order for possession may be in the interest of both the lender and the borrower.

2. AIMS

- 2.1 The aims of this Protocol are to—
 - (1) ensure that a lender or home purchase plan provider (in this Protocol collectively referred to as 'the lender') and a borrower or home purchase plan customer (in this Protocol collectively referred to as 'the borrower') act fairly and reasonably with each other in resolving any matter concerning mortgage or home purchase plan arrears; and

- (2) encourage more pre-action contact between the lender and the borrower in an effort to seek agreement between the parties, and where this cannot be reached, to enable efficient use of the court's time and resources.

2.2 Where either party is required to communicate and provide information to the other, reasonable steps should be taken to do so in a way that is clear, fair and not misleading. If the lender is aware that the borrower may have difficulties in reading or understanding the information provided, the lender should take reasonable steps to ensure that information is communicated in a way that the borrower can understand.

3. SCOPE

3.1 This Protocol applies to arrears on—

- (1) first charge residential mortgages and home purchase plans regulated by the Financial Services Authority under the Financial Services and Markets Act 2000;
- (2) second charge mortgages over residential property and other secured loans regulated under the Consumer Credit Act 1974 on residential property; and
- (3) unregulated residential mortgages.

3.2 Where a potential claim includes a money claim and a claim for possession this protocol applies to both.

4. DEFINITIONS

4.1 In this Protocol—

- (1) 'possession claim' means a claim for the recovery of possession of property under Part 55 of the Civil Procedure Rules 1998 ("CPR");
- (2) 'home purchase plan' means a method of purchasing a property by way of a sale and lease arrangement that does not require the payment of interest;
- (3) 'bank holiday' means a bank holiday under the Banking and Financial Dealings Act 1971; and
- (4) 'business day' means any day except Saturday, Sunday, a bank holiday, Good Friday or Christmas day.

SECTION II – ACTIONS PRIOR TO THE START OF A POSSESSION CLAIM

5. INITIAL CONTACT AND PROVISION OF INFORMATION

5.1 Where the borrower falls into arrears the lender should provide the borrower with—

- (1) where appropriate, the required regulatory information sheet or the National Homelessness Advice Service booklet on mortgage arrears; and
- (2) information concerning the amount of arrears which should include—
 - (a) the total amount of the arrears;

- (b) the total outstanding of the mortgage or the home purchase plan; and
 - (c) whether interest or charges will be added, and if so and where appropriate, details or an estimate of the interest or charges that may be payable.
- 5.2 The parties should take all reasonable steps to discuss with each other, or their representatives, the cause of the arrears, the borrower's financial circumstances and proposals for repayment of the arrears (see 7.1). For example, parties should consider whether the causes of the arrears are temporary or long term and whether the borrower may be able to pay the arrears in a reasonable time.
- 5.3 The lender should advise the borrower to make early contact with the housing department of the borrower's Local Authority and, should, where necessary, refer the borrower to appropriate sources of independent debt advice.
- 5.4 The lender should consider a reasonable request from the borrower to change the date of regular payment (within the same payment period) or the method by which payment is made. The lender should either agree to such a request or, where it refuses such a request, it should, within a reasonable period of time, give the borrower a written explanation of its reasons for the refusal.
- 5.5 The lender should respond promptly to any proposal for payment made by the borrower. If the lender does not agree to such a proposal it should give reasons in writing to the borrower within 10 business days of the proposal.
- 5.6 If the lender submits a proposal for payment, the borrower should be given a reasonable period of time in which to consider such proposals. The lender should set out the proposal in sufficient detail to enable the borrower to understand the implications of the proposal.
- 5.7 If the borrower fails to comply with an agreement, the lender should warn the borrower, by giving the borrower 15 business days notice in writing, of its intention to start a possession claim unless the borrower remedies the breach in the agreement.

6. POSTPONING THE START OF A POSSESSION CLAIM

- 6.1 A lender should consider not starting a possession claim for mortgage arrears where the borrower can demonstrate to the lender that the borrower has—
 - (1) submitted a claim to an insurer under a mortgage payment protection policy and has provided all the evidence required to process a claim;
 - (2) a reasonable expectation of eligibility for payment from the insurer; and
 - (3) an ability to pay a mortgage instalment not covered by the insurance.
- 6.2 If a borrower can demonstrate that reasonable steps have been or will be taken to market the property at an appropriate price in accordance with reasonable professional advice, the lender should consider postponing starting a possession claim. The borrower must continue to take all reasonable steps actively to market the property where the lender has agreed to postpone starting a possession claim.

- 6.3 Where the lender has agreed to postpone starting a possession claim the borrower should provide the lender with a copy of the particulars of sale, the Home Information Pack and (where relevant) details of purchase offers received within a reasonable period of time specified by the lender. The borrower should give the lender details of the estate agent and the conveyancer instructed to deal with the sale. The borrower should also authorise the estate agent and the conveyancer to communicate with the lender about the progress of the sale and the borrower's conduct during the process.
- 6.4 Where the lender decides not to postpone the start of a possession claim it should inform the borrower of the reasons for this decision at least 5 business days before starting proceedings.

7. ALTERNATIVE DISPUTE RESOLUTION

- 7.1 The court takes the view that starting a possession claim is usually a last resort and that such a claim should not normally be started when a settlement is still actively being explored. Discussion between the parties may include options such as:
- (1) extending the term of the mortgage;
 - (2) changing the type of a mortgage;
 - (3) deferring payment of interest due under the mortgage; or
 - (4) capitalising the arrears

8. COMPLAINTS TO THE FINANCIAL OMBUDSMAN SERVICE

- 8.1 The lender should consider whether to postpone the start of a possession claim where the borrower has made a genuine complaint to the Financial Ombudsman Service (FOS) about the potential possession claim.
- 8.2 Where a lender does not intend to await the decision of the FOS it should give notice to the borrower with reasons that it intends to start a possession claim at least 5 business days before doing so.

9. COMPLIANCE

- 9.1 Parties should be able, if requested by the court, to explain the actions that they have taken to comply with this protocol.

Appendix 3

Pre-Action Protocol for Possession Claims by Social Landlords

From <https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-possession-claims-by-social-landlords>

| Table of contents | Paragraph |
|---|-----------|
| Aims and scope of the protocol | 1 |
| Possession claims based upon rent arrears | 2 |
| Initial contact | 2.1 |
| After service of statutory notices | 2.8 |
| Alternative dispute resolution | 2.10 |
| Court proceedings | 2.11 |
| Mandatory grounds for possession | 3 |

PART I 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 applies 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.

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/tools/debt-advice-locator>.

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.

Appendix 4

ANNEX 1 INFORMATION SHEET

You have received this notice because a business intends to take you to court in relation to a debt. This notice tells you what to do next, including how to avoid court action. Please read it carefully.

What should I do now to make sure I am not taken to court unnecessarily?

Read the enclosed letter from the business very carefully. Think about whether you owe the debt and whether the amount is correct. The letter should provide information about how much money you owe and any interest and fees added to the debt. If it doesn't, ask the business for more information.

Once you have read the letter, consider the following options.

- **Seeking debt advice.**

If you are in financial difficulty or need advice to help you work out whether you owe the debt, or how you might pay the debt, contact a debt advisor (particularly if you haven't been in contact with the business for a number of years).

The following organisations offer free, impartial and non-judgemental advice:

| | | |
|----------------------------|--|--|
| Citizens Advice | 03444 111 444 (England) 03444 772 020 (Wales) | www.citizensadvice.org.uk |
| Civil Legal Advice | 0345 345 4345 | www.gov.uk/civil-legal-advice |
| StepChange Debt Charity | 0800 138 1111 (Freephone) | www.stepchange.org |
| National Debtline | 0808 808 4000 (Freephone) | www.nationaldebtline.org |
| AdviceUK | 0300 777 0107 | www.adviceuk.org.uk |
| Christians Against Poverty | 0800 328 0006 (Freephone) | www.capuk.org |

It is recommended that you get debt advice if you have any doubt about whether you owe the debt or whether you can pay it now.

If you don't have a copy of the agreement (contract) between you and the business, and you need this to decide what to do next or to help you get debt advice, you can ask the business to provide you with a copy.

- **Speaking to the business.**

If you agree you owe the debt and want to talk to the business about payment terms, or if you have any questions or concerns, get in touch with the business as soon as possible. Their contact details should be in the letter they sent you.

- **Filling in the Reply Form.**

If you have not been able to resolve the matter by speaking to the business, you should fill in the Reply Form that was provided with the letter from the business, and then send it back to the business. You should complete the Reply Form with as much information as possible to avoid court action being taken against you.

How long do I have to fill in the Reply Form?

You only have **30 days** from the date at the top of the letter from the business to send back the Reply Form. If the business does not get your Reply Form within 30 days, it could **take you to court** in relation to the debt. Make sure you allow time for posting.

If a court orders you to pay an amount of money (called "having judgment entered against you"), details of the judgment will usually be entered on the Register of Judgments, Orders and Fines. Most entries stay on the Register for six years unless you pay the amount you owe within one month of the judgment.

Organisations such as banks, building societies and credit companies use the information on the Register when someone applies for credit, such as a loan or overdraft. It helps them decide whether or not that person would be able to pay off a debt.

What happens if I fill in and return the Reply Form in time?

If you return the Reply Form within 30 days, you and the business will have at least a further 30 days to discuss the debt, or for you to seek debt advice, before the business takes you to court. During that time you should discuss with the business how you can resolve the matter, ideally without going to court.

If you request more information in the Reply Form, the business must wait at least 30 days after it gives you that information before taking you to court.

Where can I find out more?

This Information Sheet is a summary of your rights and responsibilities under the Pre-Action Protocol for Debt Claims. Where a business and an individual disagree about a debt claim, the Protocol tells them what they should do before they go to court. If you want to know more, the full Protocol is available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/protocol>.

REPLY FORM

YOU HAVE 30 DAYS FROM THE DATE AT THE TOP OF THE ENCLOSED LETTER TO FILL IN AND RETURN THIS FORM.

IF YOU DON'T, IT COULD RESULT IN COURT PROCEEDINGS.

If you have any questions or would like to discuss the debt, please call the business that sent you this form as soon as possible.

Full name:

Address and postcode:

Contact telephone numbers:

Email address:

Reference:

SECTION 1: Do you owe the debt?

Fill in one of the boxes in this section. Use more pages if you need to.

It is recommended that you get debt advice if you have any doubt about whether you owe the debt and whether you can pay it now, or if you want advice on any rights and protections you may have.

Box G below asks about debt advice.

BOX A

I agree I owe the debt.

Tick this box if you agree you owe the debt and agree the amount of the debt is correct.

IF YOU WILL PAY THE DEBT, GO TO SECTION 2.

IF YOU NEED DEBT OR LEGAL ADVICE, GO TO SECTION 3.

BOX B

I owe some of the debt, but not all of it.

Tick this box if you agree you owe some of the debt, but not all of it, for example if you think too much interest has been added or you haven't been credited for payments you made in the past.

The amount of debt I owe to you is £.....

Say how much you think you owe.

I don't owe any more than this because

Explain on a separate piece of paper why you don't owe all of the debt. Give as much detail as possible and provide copies of any supporting documents.

IF YOU WILL PAY THE PART OF THE DEBT YOU OWE, GO TO SECTION 2.

IF YOU NEED DEBT OR LEGAL ADVICE, GO TO SECTION 3.

OTHERWISE, GO TO SECTION 4.

BOX C

I don't know whether I owe the debt.

Tick this box if you're not sure whether you owe the debt and/or you need help from a debt adviser to work out whether you should pay.

NOW GO TO SECTION 3.

BOX D

I dispute the debt.

Tick this box if you don't owe the debt, for example because the debt should be paid by someone else, because you have already paid it, or because there is a legal problem with the credit agreement.

I dispute the debt because

Explain on a separate piece of paper why you dispute the debt. Give as much detail as possible and provide copies of any supporting documents.

NOW GO TO SECTION 4.

SECTION 2: How will you pay?

Only complete this section if you ticked Box A or Box B in Section 1 and you want to pay now.

The letter from the business will tell you how to pay. Keep a record of the payments you make.

BOX E

I will pay what I owe now.

Tick this box if you agree that you owe all or part of the debt and you are able to pay what you owe now. You should pay using the payment details in the letter from the business. Keep a copy of any proof of payment you receive.

BOX F

I will pay, but I need time to pay.

Tick this box if you agree that you owe all or part of the debt, but you can't pay right now.

If you offer to make repayments, you must be able to afford them. You should consider getting debt advice about how much you can afford to repay. If you are seeking debt advice, complete Section 3.

My proposals for repayment are

Explain on a separate piece of paper how you intend to pay the debt. Say how much you could pay now and how you will pay the remainder. For example, say how much you could pay each week, fortnight or month and when your first payment would be made.

I have provided a Financial Statement showing my current financial situation:

Yes No

To help the business ensure you can afford your proposed repayments, fill out the Financial Statement that is attached to this form. You should also attach a copy of any budget or financial statement that a debt advice organisation has helped you prepare.

SECTION 3: Do you intend to get, or are you already getting, debt advice?
Only complete this section if you are getting debt advice about whether you owe the debt or whether you can afford to pay.

BOX G

I am getting or intend to get debt advice.

I am getting advice from

.....

Insert the name and contact details of the person or organisation giving you advice.

I am getting advice about

Explain on a separate piece of paper what you are getting advice about, for example whether you owe the debt or how you could pay.

I have an appointment with an adviser on

.....

If you have an appointment with a debt adviser, give the appointment date and time.

I can't obtain advice within 30 days of returning this Reply Form because

If it will take you longer than 30 days to get debt advice, explain on a separate piece of paper the reason for the delay and when you expect advice will be available.

NOW COMPLETE SECTION 4.

SECTION 4: What documents are you sending with this form? What information do you need?

Complete the boxes below if you want to provide or get more information.

BOX H

I have provided documents.

Tick this box if you want to provide documents about the debt, for example you might want to provide a letter showing you have an appointment for debt advice or a receipt showing you paid some of the debt.

I have enclosed the following documents

Describe on a separate piece of paper the documents you have provided and why they are important.

BOX I

I need more documents or information.

Tick this box if you need more information, such as copies of documents you don't currently have.

I need a copy of

.....

Additional documents or information that you might need could include:

- *A copy of the written contract for the debt*
- *A full statement of account, including details of all interest and charges included on the outstanding balance of the debt, explaining how they have been calculated, and any payments already made toward the debt*
- *A calculation of the interest claimed*

- *The annual or daily rate of interest*
- *A description of the nature and amount of any administrative charges included in the debt*
- *A copy of the notice of assignment of the debt*

Signature **Date**...../...../.....

Print name

Sign and date this Reply Form once you've filled it in. Then send it to the address given in the letter from the business.

Make sure you keep a copy of this form for reference in the future.

If your circumstances change, please update the business as soon as possible.