

COUNTY COURT IN NORTHERN IRELAND
PRE-ACTION PROTOCOL FOR EJECTMENT PROCEEDINGS BASED ON
NON-PAYMENT OF RENT IN THE SOCIAL HOUSING SECTOR

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1. INTRODUCTION

- 1.1 This protocol describes the behaviour the court will normally expect of the parties prior to the start of a possession claim that falls within the scope of paragraph 3.1 below.
- 1.2 This protocol does not alter the parties' rights and obligations.
- 1.3 This protocol 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. Tenants have a responsibility to pay their rent on time and social landlords have a responsibility to maintain and sustain tenancies. There will however be occasions when failure by a tenant to pay rent may result in more serious action being taken resulting in court action and eventual eviction. Eviction should always be viewed as a last resort and should only be used when all other avenues have been exhausted.

2. AIMS

- 2.1 The aims of this protocol are to:
- 2.1.1 ensure that landlords and tenants act fairly and reasonably with each other in resolving any matter concerning rent arrears consistent with the Department for Social Development's guide *Managing Rent Collection*;¹ and

¹ Contained in the Housing Association Guide – Housing Management Guide at http://www.dsdni.gov.uk/index/hdiv-housing/ha_guide/haghm-contents/hagtm.htm.

- 2.1.2 encourage more pre-action contact between landlords and tenants in an effort to achieve agreement between parties and, where this cannot be reached, to enable court time to be used more effectively.

3. SCOPE

- 3.1 This protocol applies to ejectment proceedings for non-payment of rent brought under the County Court Rules (Northern Ireland) 1981. It applies to proceedings taken by landlords in the social housing sector based solely on claims for rent arrears. The protocol does not apply to claims for possession where there is no security of tenure.

4. DEFINITIONS

- 4.1 'current arrears' means arrears that are accruing on an on-going basis;
- 4.2 'landlords in the social housing sector' means the Northern Ireland Housing Executive and registered housing associations as defined pursuant to the Housing (Northern Ireland) Order 1992;
- 4.3 'static arrears' means arrears that are not continuing to accrue; and
- 4.4 'technical arrears' means arrears in respect of income due from a public sector organisation receivable by the housing association directly.

5. INITIAL CONTACT

- 5.1 The landlord should contact the tenant as soon as reasonably possible if the tenant falls into arrears to discuss the cause of arrears, the tenant's financial circumstances, the tenant's entitlements to benefits and repayment of the arrears. If there is uncertainty around the tenant's entitlement to benefits the landlord should encourage the tenant to liaise with the appropriate Government agency (such as the Social Security Agency) or independent advisers (as set out at paragraph 5.2). Where contact is by letter, the landlord should write separately to each named tenant. This letter should include details of:
 - 5.1.1 the amount of arrears owed;
 - 5.1.2 an invitation to contact the landlord to discuss proposals for payment and a statement that the tenant can at any time contact the landlord and ask for a statement of arrears;
 - 5.1.3 how to contact the landlord;
 - 5.1.4 appropriate agencies to contact if the tenant needs to apply for benefits;

- 5.1.5 where independent advice on benefits, debts and housing issues may be sought, along with an indication that such advisers may be able to assist the tenant in drawing up a financial statement and making a proposal for payment; and
 - 5.1.6 possible consequences of failing to take steps to reach a solution with the landlord.
- 5.2 Bearing in mind that rent arrears may be part of a general debt problem, the landlord should advise the tenant of the appropriate sources of free independent benefits, debt and housing advice as soon as possible. This may include advising the tenant of a specialist housing advice body such as Housing Rights Service or of other bodies such as Advice NI or the Citizens' Advice Bureau.
- 5.3 The landlord and tenant should try to agree reasonable, realistic and sustainable sums for the tenant to pay towards arrears based on the tenant's income and expenditure (information on which the tenant should make available) and consistent with good practice debt advice guidance. The tenant should bear in mind that, in order to do this, it may be helpful for the tenant to meet with an independent adviser who may assist the tenant to draft a financial statement and offer letter for payment of the arrears. The landlord should clearly set out in pre-action correspondence any time limits with which the tenant should comply.
- 5.4 The landlord should provide, on a quarterly basis, rent statements in a comprehensive and clear 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. The statement should identify the nature of the arrear and clearly differentiate between current arrears, static arrears and technical arrears.
- 5.5 If the landlord is aware that the tenant has difficulty in reading or understanding information given to him/her, the landlord should take reasonable steps to ensure that the tenant understands any such information. 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.

- 5.6 The landlord should consider at an early stage whether the tenant is under 18 or is vulnerable and, if so, whether:
 - 5.6.1 any issues arise in relation to duties under the Disability Discrimination Act 1995 or Section 75 of the Northern Ireland Act 1998; and
 - 5.6.2 a referral to Social Services should be made.
- 5.7 If the tenant is in receipt of a qualifying benefit, the landlord should arrange for arrears to be paid by the Social Security Agency from the tenant's benefits.
- 5.8 The landlord should offer to assist the tenant in any claim the tenant may have for Housing Benefit.
- 5.9 The landlord should make every effort to establish effective on-going liaison with the Housing Benefit office and, with the tenant's consent, make direct contact with the Housing Benefit office before taking possession proceedings.
- 5.10 The landlord and tenant should work together to resolve any Housing Benefit problems.
- 5.11 Possession proceedings for rent arrears should not be started against a tenant:
 - 5.11.1 who can either demonstrate or have the landlord confirm:
 - 5.11.1.1 that the tenant has completed a Housing Benefit form and provided the Housing Benefit office with all the evidence required to process a Housing Benefit claim (or, where there has been a change to the tenant's Housing Benefit, the tenant has appealed that change; and
 - 5.11.1.2 the tenant has paid the landlord other sums due not covered by Housing Benefit; or
 - 5.11.2 where direct deductions can be taken from social security benefits towards the arrears.
- 5.12 If the tenant complies with an agreement to pay the current rent and reasonable, realistic and sustainable sums towards arrears that are consistent with good practice debt advice guidance, 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 pursue proceedings and give the tenant clear time limits within which to comply.

6. COURT PROCEEDINGS

6.1 The landlord should:

- 6.1.1 inform the tenant of the date and time of any court hearing;
- 6.1.2 inform the tenant of the order sought;
- 6.1.3 stress to the tenant the importance of attending the hearing to take the opportunity to explain his/her circumstances, as the tenant's home is at risk, and remind the tenant of sources of independent legal advice; and
- 6.1.4 keep records of such advice.

6.2 Where the landlord issues court proceedings, the landlord should, not later than 10 days before the date set for the hearing:

- 6.2.1 provide the tenant with up-to-date rent statements detailing the nature of arrears as outlined above at paragraph 5.4; and
- 6.2.2 disclose the knowledge he possesses of the tenant's Housing Benefit position to the tenant.

6.3 Parties should be able, if requested by the court, to explain the actions that they have taken to comply with this protocol. If the landlord is aware that the tenant is vulnerable and/or has had difficulty understanding the situation, the landlord should bring this to the attention of the court.

6.4 If the landlord unreasonably fails to comply with the terms of the protocol, the court may take this into account when considering whether it is reasonable to make an order for costs and/or any other reliefs the court deems appropriate.

6.5 If the tenant unreasonably fails to comply with the terms of the protocol, the court may take this into account when considering whether it is reasonable to make a possession order.

This Protocol was first published and took effect on 9 January 2014. This amended version replaces the previous version and takes effect on 19 February 2015.

Checklist for compliance with the Pre-Action Protocol for ejectment proceedings based on non-payment of rent in the social housing sector

CASE NUMBER

NAME OF TENANT

		Response / comment
1	On what date was the Tenant 'T' contacted to discuss the cause of the arrears, their financial circumstances and their entitlement to benefit?	
2	Have copies of all letters/documents been sent to each joint tenant separately?	
3	If T has not responded, have you tried different forms of contact such as by phone and/or visiting?	
4	Has T been referred to appropriate sources of free independent benefits, debt and housing advice as soon as possible where it is not clear that they are already obtaining such advice?	
5	Where T is in receipt of qualifying benefits have direct deductions been applied for?	
6	Has any agreement been reached with T for reasonable, realistic and sustainable sums to be paid off the arrears?	
7	If an arrangement was reached, what were the time limits for payment to be made?	
8	Have rent statements been sent regularly and, if requested, a one-off statement sent?	
9	Does T have difficulty in reading and/or understanding information given/letters sent and if so, has information been appropriately communicated?	
10	Is T aged under 18 or otherwise vulnerable and, if so, should you make a referral to Social Services?	
11	Do any issues arise under the Disability Discrimination Act 1995 or under section 75 of the Northern Ireland Act 1998?	

12	Does T need assistance in applying for Housing Benefit?	
13	Has a Housing Benefit claim been submitted to the appropriate Housing Benefit office with all the evidence required to support an application?	
14	Is there a reasonable expectation of an entitlement to Housing Benefit?	
15	Are sums which are not covered by Housing Benefit payable to the rent account?	
16	Is Housing Benefit information up-to-date?	
17	What was the most recent date that T was contacted to discuss the cause of the arrears and repayment options?	
18	If there was previously an arrangement for payment of the arrears, on what date was T warned of the intention to start Court action?	
19	Has T been supplied with an up-to-date rent statement at least 10 days before the Court hearing?	
20	Has T been to appropriate sources of free independent debt advice to ensure that T has been given opportunity to arrange representation at the hearing?	
21	Has T been informed of the date and time of the hearing and the importance of attending the court hearing and possible consequences of not attending the court hearing?	
22	Has T complied with any arrangement to pay off arrears entered into after Court proceedings were started?	