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Shelter
88 Old Street
London
EC1V 9HU

Telephone 0300 330 1234
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Housing matters

Housing matters is produced by Shelter for the NHAS and aims to provide a source of up-to-date housing and homelessness news, focus on important case law, cover key legal issues, and produce information for public use.

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Edited by: Jackie Lees

Contributors: John Gallagher, Jools Ramsey and Kathy Meade

Housing matters welcomes contributions from NHAS members. If you would like to provide an article or update for *Housing matters* please email JackieL@shelter.org.uk

National Homelessness Advice Service

The National Homelessness Advice Service (NHAS) is a partnership between Shelter and Citizens Advice funded by the Department for Communities and Local Government.

The service aims to prevent homelessness and remedy other housing problems through increasing public access to high-quality housing advice in England, including online information on the NHAS website at www.nhas.org.uk

The NHAS provides the following to local authorities, CABx and around 100 other advice agencies in England:

- **a national telephone housing advice consultancy service** for local authorities, CABx and around 100 other advice agencies in England. Call **0300 330 0517** 9am–8pm, Monday to Friday, or send in an enquiry using the online enquiry form available on the members' areas of www.nhas.org.uk
- **housing debt casework** - specialist support for cases relating to mortgage arrears and other problems with housing affordability, including welfare benefits issues. Call **0300 330 0517** or use the online enquiries form (see above for details)
- **free basic housing advice training courses** to develop housing advice skills, covering the main housing advice presenting issues and how to advise households effectively on homelessness prevention options
- **written briefings**, articles in *Housing matters* and *Adviser*, information on housing issues and other written materials
- **support** in the implementation of new homeless prevention initiatives.

Contact details

For more information about NHAS training, please email JoanneK@shelter.org.uk or call **0344 515 1676**.

For general enquiries about the NHAS service, please email nhas@shelter.org.uk or call **0344 515 2268**.

Alternatively, please use the 'contact us' page at www.nhas.org.uk

What's new?

Budget 2015

In the summer 2015 budget, the Government outlined measures of particular relevance to tenants in social housing:

- tenants with household incomes of £40,000 and above in London, (£30,000 in the rest of England), will be required, following consultation, to pay a market or near market rent for their homes
- rents will be reduced by one per cent a year for four years from 2016
- the use and granting of 'lifetime' tenancies will be reviewed.

In addition, the benefit cap for households will be reduced to £23,000 in London and £20,000 out of London (and to £15,410 and £13,400 for single adults). The full budget can be found at tinyurl.com/budget-housing

Government's homelessness policy

Marcus Jones, the new minister with responsibility for homelessness, outlined the Government's homelessness policy of 'prevention, intervention and recovery' at the recent Homeless Link annual conference. Read the full speech at tinyurl.com/MJ-HL-speech

Scale of youth homelessness

A report commissioned by Centrepoin shows that three-times more homeless young people rely on charities and councils for support than official homelessness figures show. In total, it is estimated that in the last year around 1.3 million young people aged 16-24 have slept rough or in unsafe places, and just under 300,000 are doing so on any one night. The report considers all types of homelessness, including sofa-surfing. For a copy see tinyurl.com/truefigures

Standard interest rate (SIR)

With effect from 6 July 2015, the SIR used to calculate support for mortgage interest (SMI) for income support, income-based JSA, income-related ESA, universal credit and pension credit purposes has been reduced from 3.63 to 3.12 per cent. The Social Security (Housing Costs) (Standard Interest Rate) Amendment Regulations 2010 SI 2010/1811 provide that the SIR changes when the Bank of England publishes an average rate that differs from the standard rate by 0.5 per cent or more. More information on SMI is available from Gov.uk at tinyurl.com/SIR-SMI

Tenancy deposits

The last opportunity for landlords to protect tenancy deposits received prior to 6 April 2007 has now elapsed. Deposits taken before 6 April 2007 on tenancies which became periodic tenancies on or after that date had to be protected in a tenancy deposit protection scheme by 23 June 2015 if the tenancy was still running. Landlords who have not complied by that date will be liable to sanctions.

Right to buy forms

With effect from 17 August 2015, the Housing (Right to Buy) (Prescribed Forms) (Amendment) (England) Regulations 2015 SI 2015/1542 introduce a new RTB1 form to be used by secure tenants when applying to exercise their right to buy their council homes. The form has been updated to reflect the reduction of the right to buy qualifying period from five to three years, as introduced by the Deregulation Act 2015.

Rent-a-room scheme

The Income Tax (Limit for Rent-a-Room Relief) Order 2015 SI 2015/1539 increases from £4,250 to £7,500 the level of annual tax income relief available to resident landlords from 6 April 2016 for letting out a furnished room or an entire floor in their only or main residence. The tax exemption is automatic if annual earnings from lodgers remain within the threshold. For more information about the rent-a-room scheme see tinyurl.com/rent-a-room-scheme

DHP allocation overspent

Almost one third of local authorities in England and Wales overspent their discretionary housing payment (DHP) budget in the last financial year. New Department for Work and Pensions (DWP) statistics also show that 45 per cent of spending was to help tenants affected by the bedroom tax. An analysis of how DHP was used can be found at tinyurl.com/DHPoverspend

Further roll-out of universal credit

The Welfare Reform Act (Commencement No.24 and Transitional and Transitory Provisions and Commencement No.9 and Transitional and Transitory Provisions (Amendment)) Order 2015 SI 2015/1537 provides details for the further roll-out of universal credit in respect of new claims from single claimants. A map showing the progress of the roll-out can be found at tinyurl.com/UCUKmap

Escaping the mark of intentional homelessness

What happens where a local authority considers that a person became homeless intentionally for leaving accommodation, but where that person would have become homeless through no fault of their own from the same accommodation at a later time?

John Gallagher, principal solicitor at Shelter, considers the Supreme Court's decision in *Haile v Waltham Forest*.

The meaning of intentional homelessness has given rise to a great deal of case law. Each of the elements of the statutory definition has been considered by the courts over the years since the earliest homelessness legislation, the Housing (Homeless Persons) Act 1977. That definition has not changed in 38 years and is now found in section 191 of the Housing Act 1996:

'A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.'

The 1996 Act acknowledges that an act or omission in good faith on the part of a person who was unaware of any relevant fact is not to be treated as deliberate.

Timing of the test

One of the earliest issues to be tackled by the courts was when the test of intentional homelessness should be applied. Should a person be judged at the time when s/he left the accommodation? Or should the 'intentionality' test be applied at the time the local authority makes its decision on the individual's homelessness application, and take account of later events which had come to pass by the date of the decision? In other words, should a person be considered to have become homeless intentionally for having left accommodation on a certain date when s/he would have had to leave that accommodation anyway at a later date?

Earlier authority - the case of *Din*

In May 2015, the Supreme Court considered these questions in the case of *Haile v Waltham Forest LBC*¹ and in doing so had to distinguish this case from the earlier House of Lords decision in *Din v Wandsworth LBC*.²

In *Din*, the judgment focused on the question of the timing of the test, concluding that it must be applied at the time the applicant left the accommodation in question, not at the time the decision is made by the authority, even if this led to unfairness where a person anticipating actual homelessness moved out in advance.

Facts in *Haile*

Ms Haile (H) was the assured shorthold tenant of a single room in a hostel. The letting agreement provided that only one person could occupy the room. In October 2011 she left the hostel because she said that she was being affected by unpleasant smells caused by other hostel residents' cooking.

In November 2011, H applied to the council for homelessness assistance and, in February 2012, she gave birth to her daughter.

The council's decision

In August 2012, the council decided that H was intentionally homeless. H contended that she could not be held intentionally homeless after February 2012, as the single occupancy agreement meant she could not have returned to the hostel after the birth of her child. She argued that the test of intentional homelessness had to be applied on the basis of the circumstances at the date of the decision. However, the council's decision was upheld by the county court and then by the Court of Appeal.

Appeal to the Supreme Court

The Supreme Court was asked to decide whether the council's review officer was entitled to be satisfied that H became homeless intentionally, given that she would have been homeless in any event by the time her application was considered. In the light of *Din*, her representatives appeared to have an uphill task.

However, by a majority of 4:1, the Court decided in favour of H. Giving the main judgment, Lord Reed was at pains to stress that the decision in *Din* remained good law: thus, the test was to be applied as at the time when the applicant ceased to occupy accommodation. But there was an overriding factor, because the House of Lords in *Din* had accepted that there had to be a continuing causal connection between the deliberate act and the homelessness existing at the date of the homeless application.

Cases subsequent to the decision in *Din* had provided examples of events that could interrupt this causal connection.

Case law on 'intervening events'

The case law reviewed in *Haile* considered events that could 'break the chain' of causation, including marital breakdown,³ a cut in housing benefit⁴ and the breakdown of an arrangement for the payment of rent.⁵ Accordingly, it was possible for a later event which amounted to an involuntary cause of homelessness to be regarded as superseding the applicant's earlier deliberate conduct.

Reviewing the intentionality test

The Supreme Court posed the question as follows: could it reasonably be said that H would not have become homeless but for her deliberate conduct in leaving the hostel? The answer was clearly no: she would have become homeless anyway after her daughter was born because of the hostel's single occupancy rule.

The Court, therefore, proceeded on the basis that the wrong question had been asked. It was not a matter of the correct date on which intentional homelessness should be judged. It was a question of what was the true cause of the present homelessness. Was it in fact the act of leaving the last settled accommodation, or was there a superseding event which would inevitably have caused H to have become homeless in time anyway through no fault of her own?

Need for an event

It seems that in order for the chain of causation to be broken there must be an actual event of some kind, not merely the possibility or even the probability of one.

Where a property is unheated or is in such poor condition that it would have become uninhabitable during winter, and the occupier leaves during the autumn in anticipation of this, this would probably not be sufficient to break the chain of causation. This is partly because the degree of harm is a matter of speculation; and partly because something unforeseen may occur to improve the situation.

Applying *Haile*

The Supreme Court's decision is a welcome modification of the rigid *Din* position, but it does leave some questions open. What other circumstances might count as an intervening cause of homelessness and break the chain of causation? In *Haile*, that event was the birth of the baby, which would have made it unreasonable for H to continue to occupy the hostel room.

Other examples might be where an assured shorthold tenant leaves a property following a section 21 notice and possession order but before the date on which the bailiffs are due to carry out the eviction, or where the tenant leaves a property shortly before a change in benefit rules takes effect (such as the introduction of the benefits cap) which would have made the property unaffordable.

Proximity of events

For an intervening event to break the continuing causal connection between the circumstances of leaving and current homelessness, it is likely that both the two events and the homelessness decision will need to be relatively closely connected in time. An event, for example the destruction of a property by fire, that occurs years after departing the property is not likely to be regarded as breaking the chain of causation.

Whether the person must leave because of the foreseeable effect of an event is not clear from *Haile*, and some events of course cannot be anticipated, whether natural disasters, or personal traumas such as a relationship breakdown.

Implications for decision makers

Although the Code of Guidance⁶ recommends that councils do not insist on a landlord obtaining and executing a possession order following expiry of a two months' section 21 notice, many do not accept that a person is homeless until after the execution of the bailiff's warrant.

However, in light of *Haile*, where a tenant has given up possession without waiting for a possession order, it is suggested that a finding of intentional homelessness will not usually be justified.

It may be argued that *Haile* has no impact in this scenario because there is only the prospect of an intervening event, namely, that the landlord would have executed a possession order.

In the vast majority of cases, however, the course of action the landlord would have taken is more than probable and it should be regarded as certain.

It cannot be long before we have a test case on these facts.

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11.1.1.48 Intentional homelessness - the act or omission that cause you to leave your home.

Footnotes

¹ [2015] UKSC 34.

² [1981] UKHL 14.

³ R v Basingstoke and Deane BC ex p Bassett (1983) 10 HLR 125; R v Camden LBC ex p Aranda (1998) 30 HLR 76.

⁴ R v Harrow LBC ex p Fahia (1998) 30 HLR 1124.

⁵ Stewart v Lambeth LBC [2002] EWCA Civ 753.

⁶ para 8.32 Homelessness Code of Guidance for Local Authorities, DCLG, July 2006.

Women's refuges

Refuges are a vital housing option for people experiencing domestic abuse.

In this feature, Jools Ramsey looks at what a refuge offers, how to find one, and moving on.

Although it focuses on women's refuges, because women are more likely to experience domestic abuse, men can also be victims.¹

Jools Ramsey is a senior manager at Solace Women's Aid, a major provider of refuge places for women in London.

Solace also provides support to agencies supporting abused women.

A women's refuge provides emergency supported accommodation for women and children fleeing immediate domestic and sexual abuse. A refuge is a place to live, and a place where a woman can understand what has happened to her, find resources to cope, rebuild damaged relationships such as those with her children, and eventually move on.

Types of accommodation

Refuges range from small converted houses to large purpose-built blocks. The accommodation varies from refuge to refuge, but usually consists of a private bedroom, with shared bathroom and kitchen and some play facilities for children. Some refuges offer self-contained units for families or women with disabilities.

Finding the right place

There are a number of refuge providers in England. Some cater for women with additional needs, such as alcohol or drug use, while others can meet specialist cultural or religious needs.

To find a place in a refuge, or to talk to someone about experiencing abuse, a woman or her adviser can ring the 24 hour Freephone National Domestic Violence Helpline (NDV helpline) on **0808 2000 247**.² The NDV helpline is run in partnership by Refuge and Women's Aid and can:

- refer women (with or without children) to a refuge
- provide information about legal, housing or welfare rights and options, and refer to relevant services and professions
- carry out crisis and safety planning
- offer emotional support and (if appropriate) refer to counselling services
- refer to face-to-face support via community based drop-in or outreach domestic violence services.

The police, social services, GPs and hospitals may also provide details of local refuge spaces. Some providers accept self-referrals.

Referrals

Referrals and self-referrals are usually taken on a first-come, first-served basis. As long as a woman meets the referral criteria for the advertised space, she will be accepted.

Some refuges may restrict referrals to women from a particular region, depending on funding arrangements. Where no space is available on the day, advice on other options will be offered until a space can be found. This could mean approaching the council if there are children, finding a space further away, or staying with a friend.

Confidential address

The address of a refuge is confidential, so a woman who is offered a place will be told only the nearest bus or train station and be met from there to be taken to the house. Residents must not divulge the address and will have to use a Post Office box address for written communication.

On arrival

The refuge will provide a welcome pack including dry food items, bedding, toiletries and an appropriate toy for a child. These items are usually donated to the refuge.

Women who arrive at the refuge without ID will be helped by either arranging for police to escort them back to their home to retrieve it, or to apply for new documentation.

Support services

Refuge staff help women make sense of what has happened and to see a better future. Each woman will have a support plan based around her individual needs. This will typically consist of emotional and practical support offered through intensive one-to-one or group sessions with a named worker.

Some refuge providers also run outreach services for women who have not left home but want advice on how to remain there safely or on planning to leave.

Where required, women in need of legal support, for example to obtain an injunction against their perpetrators, can be referred to the National Centre for Domestic Violence,³ or an other specialist legal advice service.

Complex needs support

Some refuges are able to support women with complex needs, where mental health and problematic substance use has increased their vulnerability. Women are supported to engage with other specialist services to manage these issues in the longer term.

Children and family support

Children coming into a refuge can feel frustrated, isolated and confused. Family support workers are able to support them to understand the situation and recognise that they are not to blame. They are offered help to express their feelings. They are also helped to resettle into education.

The relationship between children and their mother may be damaged when a woman takes her children away from their father and into a refuge, so there is a focus on rebuilding their relationship through play and social activities that can also be maintained after moving on from the refuge.

Refuges accept both girls and boys. Where a boy is 12 or older, a risk assessment is carried out to assess whether the safety of other women and children in the refuge would be compromised if he continues to live there, and if so, the family is given support to find an alternative place to stay.

Length of stay

A woman can stay in a refuge for between six to 12 months, depending on her individual needs and the contract between the council and the refuge provider.

28 days' notice to quit is given when the period is coming to an end.

Refuge rules

Refuge residents have a contractual licence with the provider and must agree to comply with the refuge rules. The safety of residents is of paramount concern so the primary rule of all refuges is not to divulge its address or invite anyone to the refuge.

Women are expected to engage with support whilst in the refuge, and pay the rent and other charges for utilities. Refuges do not allow smoking or drug use, and alcohol is usually only permitted in individual rooms.

Living in a refuge together with other families can be difficult and arguments can break out. Women are encouraged to resolve issues between themselves at regular meetings and discuss disputes, such as use of the kitchen, food going missing and cleaning rotas.

Paying for the accommodation

The main charges in a refuge are the rent and a personal charge to cover utilities.

Personal charges are kept as low as possible to help make refuges affordable.

Residents may have to pay the rent and charges from their earnings if they are working, or may claim housing benefit/universal credit to pay or make up any shortfall in their rent. The cost of providing support services is generally paid for through the council's supporting people funding.

No recourse to public funds

Women whose immigration status imposes a no recourse to public funds (NRPF) condition make up a significant proportion of those seeking a refuge place but, unless they have an income, women with NRPF will have great difficulty in securing a place. A tiny number of bed spaces nationally are available for NRPF women. In London, there is a specialist project for this group run by Ashiana and funded by London Councils.⁴

Moving on

For all women entering a refuge, successful move on is an important outcome. They are supported from early on to consider how this might look, and where this might be. Staff will support women to apply to join the housing register of the council of their choice to begin this process.

Where no permanent accommodation has been secured by the time the woman has to leave the refuge, she will be informed of her option to apply as homeless. In this case, she will be told that in areas of high demand, if she is accepted as eligible and in priority need, she is likely to be placed in temporary accommodation for a period of time before moving somewhere more permanent. For some women, the prospect of moving to temporary accommodation is not acceptable and they may choose to look for more settled accommodation personally.

Resettlement support

For a short period of time after they have been rehoused, usually around 12 weeks, refuge staff can support women to settle into their new life. Where a woman decides to return to her partner, resettlement support is not offered for obvious safety reasons. However, a woman may return to refuge again if she chooses to do so, and may also access any other advice or support service offered by the provider.

Solace provides support for agencies supporting abused women.⁵ Further information on surviving domestic abuse can be found in the 'Survivor's Handbook' published by Women's Aid.⁶

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8.22.4.0 Domestic violence and abuse.

Footnotes

¹ Abused men can find sources of help and information at tinyurl.com/DA-men-adviceline and at tinyurl.com/DA-help4men

² Information about the NDV helpline can also be found at tinyurl.com/ndv1-info

³ www.ncdv.org.uk

⁴ See Ashiana website at www.ashiana.org.uk/refuge

⁵ Solace Women's Aid can be contacted on freephone 0808 802 5565

⁶ tinyurl.com/surviveDA

Pre-action protocol for social landlords

In this article, Kathy Meade looks in detail at the provisions of the new Pre-action Protocol for Possession Claims by Social Landlords and highlights the requirements they must satisfy before and after issuing possession claims against their residential tenants.

Kathy Meade is a professional support lawyer at Shelter.

The new Pre-action Protocol for Possession Claims by Social Landlords came into force on 6 April 2015.¹ It applies to local authorities, Housing Action Trusts and private registered providers of social housing (Registered Social Landlords in Wales). While much remains the same as in the previous Pre-action Protocol for Possession Claims based on Rent Arrears, the new Protocol contains additional requirements in relation to possession claims brought on mandatory grounds, including defences raised under Article 8 of the European Convention on Human Rights (ECHR).

Aims and scope

The Protocol aims to encourage more pre-action contact and exchange of information between the parties, and good practice which will, if possible, avoid bringing the tenant to court. Especially in rent arrears cases, litigation should be a last resort and claims for possession should not be issued prematurely, particularly when a settlement is still actively being explored.² The Protocol applies to residential possession claims although, as before, it does not apply to claims in respect of long leases or to claims where there is no security of tenure. Part 2 applies to claims brought solely on rent arrears grounds.³ Part 3 applies to claims brought on mandatory grounds.⁴

Part 1 - vulnerable tenants

Regardless of whether the claim is brought on rent arrears or mandatory grounds, the landlord should take reasonable steps (and be able to demonstrate this in court) to ensure that the tenant understands any information provided. There are additional requirements where the landlord is aware that the tenant is aged under 18 or is otherwise particularly vulnerable, such as considering whether there are Equality Act issues, and whether an application for a litigation friend should be made.⁵

Part 2 - rent arrears claims

Part 2 essentially replicates the previous guidance on good practice in the collection of rent arrears, updated to take account of universal credit. An important additional requirement is that the landlord must send

to the tenant a copy of the Protocol after serving notice of seeking possession but before issuing proceedings.

Pre-action contact

Before serving notice of seeking possession, the landlord should contact the tenant (and each joint tenant) as early as possible to discuss their financial circumstances, any entitlement to benefits, and the reason for the arrears.⁶ The landlord should also:⁷

- try to agree an affordable plan with the tenant for paying current rent and reducing arrears
- provide clear quarterly rent statements
- arrange for arrears to be paid from the tenant's benefits, if they meet the criteria
- offer to help with any claim for benefits
- not start proceedings where the tenant can demonstrate that they have applied for benefits, are likely to be eligible, and have paid other sums owed which will not be covered by benefits
- liaise effectively with benefits authorities, and, with the tenant's consent, make direct contact with the housing benefit office or the DWP
- advise the tenant to seek debt advice.

After service of notice

Once notice has been served but before starting proceedings, the landlord should:⁸

- make further attempts to contact the tenant to discuss the situation
- send them a copy of the Protocol
- postpone issuing proceedings while the tenant keeps to a payment agreement
- if the tenant fails to make the agreed rent payments, warn them of the intention to start proceedings and give clear time limits within which to comply.

Alternative dispute resolution (ADR)

Landlords and tenants are required to try to resolve issues without recourse to litigation by engaging in negotiations. They may be later required by the court to provide evidence that ADR was actively considered.⁹

Court proceedings

No later than 10 days before the hearing, the landlord should provide the tenant with an up-to-date rent statement and information the landlord has about the availability of benefits. The landlord should also:¹⁰

- inform the tenants of the date and time of the possession hearing, of any orders applied for, and advise them to attend the hearing because their home is at risk (and keep a record of this advice)
- agree to postpone proceedings for so long as the tenant complies with a rent payment agreement
- if the tenant ceases to comply, warn that proceedings will be restored, and give clear deadlines within which to act.

The court may find a tenant's failure to comply with the Protocol relevant when considering making a possession order.

Part 3 - mandatory grounds

The scope of this new part of the Protocol is not entirely clear. Para 3.1 states:

'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)'.¹¹

So, the Protocol would apply to claims brought under Grounds 1 to 8 of Schedule 2 of the Housing Act 1988,¹² or under section 21, as well as to claims in relation to demoted or introductory tenancies.

However, we are confused to see that at para 1.1, the Protocol states that it does not apply to claims where there is no security of tenure, yet all the examples set out in para 3.1 are cases where the landlord is claiming that there is no security of tenure.

If cases brought solely on mandatory grounds are not within scope, then it would follow that none of the examples in para 3.1 can come within the scope of Part 3, unless the possession claim also includes a discretionary ground. Thus a claim for rent arrears brought solely on Ground 8 of the Housing Act 1988 would only come within Part 3 if it was also brought on Grounds 10 and 11.

Until there is further clarification from the Ministry of Justice, it would seem prudent for all parties to comply with Part 3 in any event.

Pre-action contact

Before issuing a possession claim on a mandatory ground, the landlord should:¹³

- write to tenants/occupiers explaining why the landlord intends to seek possession and asking them to let the landlord know, in writing and within a specified time, if there are any personal or special circumstances which should be taken into account (the landlord's letter can be sent with any relevant statutory notice to quit)
- consider any representations received and, if going ahead with the claim, give written reasons why.

Court proceedings

If proceeding with the claim, the landlord should include in the particulars of claim or supporting witness statement:¹⁴

- a summary confirming that the tenant/occupier has been invited to make representations, that such representations were duly considered, and providing brief reasons for bringing the proceedings
- any relevant documentation which the landlord wishes the court to consider in relation to the proportionality of the decision to bring proceedings.

Compliance with Part 3 will arguably provide the court with more information about the tenant's personal circumstances, leaving it better able at the first hearing to assess whether the tenant has an arguable discrimination defence under the Equality Act 2010, or if any other defence on public law grounds and proportionality under Article 8 should be dealt with immediately via a summary judgment. If the tenants/occupiers did not make representations to the landlord before the issue of proceedings, they can still raise such potential defences at the initial hearing and seek permission to file a full defence.

Sanctions for non-compliant landlords

If landlords fail to follow any applicable part of the Protocol, the court may:

- take this into account when considering what orders to make
- dismiss or strike out a claim on discretionary grounds
- penalise the landlord with costs.

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11.8.3.10 Rent arrears.

Footnotes

¹ Pre-action Protocol for possession claims by social landlords (PAP) available at tinyurl.com/PAPsocialrent

² PAP 2.10

³ PAP 1.1

⁴ PAP 1.2

⁵ PAP 1.6

⁶ PAP 2.1

⁷ PAP 2.2-2.7

⁸ PAP 2.8-2.9

⁹ PAP 2.10-2.11

¹⁰ PAP 2.11- 2.14

¹¹ s.89 relates to cases brought on mandatory grounds where the court can only postpone possession for a maximum of 14 days from the date of the order, or six weeks in exceptional circumstances.

¹² Grounds for possession of dwelling-houses let on assured tenancies – Part 1, Grounds on which Court must order possession.

¹³ PAP 3.2

¹⁴ PAP 3.3

Possession proceedings: Going to court

This is the first of a series of three leaflets about landlords' possession proceedings and eviction process.

This first leaflet advises you about what you should do when your landlord starts the eviction process and looks at what happens at court.

A Shelter and Citizens Advice service. Funded by UK Gov.



Registered charity number 279057.

Shelter

Registered charity in England and Wales (263710) and in Scotland (SC002327).



Funded by
UK Government



Note
Information contained in this leaflet is correct at the time of publication. Please check details before use.

The eviction process begins with the landlord giving you written notice to vacate the property by a certain date. If you do not sort out any problems such as rent arrears and/or you don't leave the property, your landlord must normally apply to court for a possession order to lawfully evict you. This doesn't apply to lodgers and 'excluded occupiers'. Get advice on your situation but, usually, until the court makes an order telling you to leave and the bailiffs have a warrant to evict you, you can lawfully stay in the property.

Seek advice straight away

If you don't come to an agreement with your landlord, it's likely that the landlord will start possession proceedings. The court will send you a letter giving you details of your landlord's claim, and the time, date and address of the first hearing.

You'll also be sent a form to complete. This is your chance to explain why you think that you should be allowed to keep your home. You may have a defence to your landlord's claim so it's very important you seek legal advice as soon as possible.

Legal aid

If you're on a low income or in receipt of benefits, you may be eligible for legal aid. A housing solicitor may be able to represent you at court. You can check if you're eligible by calling the Civil Legal Advice helpline on 0345 345 4 345.

Do I have to go?

The hearing will usually be in your local county court, if not you can contact the court and ask to move it nearer you. Turn up even if your landlord says you don't need to. It's best to be there so the judge can hear what you have to say before making a decision on your landlord's claim.

Court duty desk scheme

Many courts have a scheme where an adviser can give you free last-minute advice and, sometimes, negotiate with your landlord and speak on your behalf to the judge. Always try to get legal advice before you go to court because the service isn't always available.

On arrival

When you arrive, check in with the court staff so that your name is called when your case comes up. They will tell you where your case will be heard. Don't be late or your case could be decided before you arrive.

What should I bring with me?

Bring along your current tenancy agreement (and any previous agreements you've had with your landlord, together with any related correspondence). You should also bring any relevant paperwork, such as:

- letters about your benefits
- evidence of any disrepair in the property
- details of any tenancy deposit you paid
- medical letters if you haven't been well
- proof of your earnings and expenses
- bank statements.

Who will be there?

The possession claim is heard in front of a judge in private. Only you, your landlord and the legal representatives can attend. You may be accompanied by a friend or by someone helping you. They can only speak for you if the judge gives them permission, or if they are part of the court duty desk scheme.

How long will it take?

A hearing normally takes less than ten minutes. However, your case will probably be listed for the same time as other hearings, so you could have to wait for up to a couple of hours before your case is heard.

What happens next?

At the end of the hearing the judge may make an order for possession and an order for you to pay money to your landlord, or adjourn (postpone) the hearing to another date, or dismiss the claim.

Further advice

You can get further advice from Shelter's free* housing advice helpline (0808 800 4444), a local Shelter advice service or Citizens Advice bureau, or by visiting shelter.org.uk/advice or adviceguide.org.uk

*Calls are free from UK landlines and main mobile networks.