





## The content

# Debt Advice Handbook 15th edition

## Description

With living costs and unemployment rising, budgets squeezed and problem debt on the increase, no adviser should be without this essential guide to the practice and process of giving money advice in England and Wales.

Who's this book for?

It is essential for debt advisers, welfare rights advisers, lawyers, local authority and housing association staff, social workers and union official.

What does it do?

The handbook provides the most comprehensive information needed by advisers on the key stages of money advice, including interviewing clients, establishing liability, prioritising debts, preparing a financial statement, negotiating with creditors and dealing with bailiffs. Fully indexed and cross-referenced to law, regulations and official guidance, and to court and tribunal decisions Includes tactical guidance and examples

What's new?

Fully updated to cover all recent changes to legislation, caselaw and court procedure and practice Emphasis is placed on taking due care of vulnerable clients and making sure that any payment arrangements agreed are appropriate. There is a focus on sustainable credit arrangements that do not affect a client's abilities to pay essential living expenses and priority debts.

## Properties

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Before a landlord can take court action to repossess the client's home, it must serve a formal notice on the client that contains the date after which court action can be started (usually four weeks or longer for a section 21 notice). <sup>1</sup> In the case of rent arrears, the client should try to come to an arrangement with their landlord before court action begins to pay the arrears in addition to the ongoing rent.

In Wales, from 1 December 2022, most tenants and licensees became 'contract holders' and occupy their properties under an 'occupation contract'. <sup>2</sup> Landlords now fall into two groups:

- community landlords (which include local authorities and housing associations; *and*
- private landlords (which includes all landlords who are not community landlords).

Community landlords generally provide what are called 'secure contracts'. Private landlords generally provide what are called 'standard contracts' but can choose to provide secure contracts. Secure contracts are always periodic, but standard contracts may be periodic or fixed term. Most existing tenants and licensees automatically converted to a secure or standard occupation contract on 1 December 2022. These are known as 'converted contracts'. It is important to differentiate between converted and new contracts due to the 'grace periods' allowed for converted contracts to comply with the new legislation.

Tenancy agreements and licences are replaced by a written statement of the occupation contract's terms. The landlord must provide this written statement to the contract holder *either*:

- within 14 days where the contract started on or after 1 December 2022; *or*
- by 1 June 2023 where existing tenancies or licences were converted to occupation contracts.

There are penalties for non-compliance and the client can apply to the court for a declaration of the terms of the contract.

To terminate an occupation contract, the landlord is required to serve a notice on one or more of the relevant prescribed grounds in a prescribed form. Once the notice has expired, the landlord must apply to the court in order to obtain possession of the property. 'Serious rent arrears' (ie, rent arrears of more than two months or eight weeks) is a mandatory ground which means the court must make a possession order if there were serious rent arrears both at the date of the notice and the date of hearing. In other rent arrears cases, the notice is served on the ground of a breach of contract and is a discretionary ground which means the court can only make a possession order if it considers it reasonable to do so and can postpone or suspend any order made.

In the case of a breach of contract, the landlord must give the contract holder one month's notice of their intention to make a possession claim, but, in the case of serious rent arrears, the notice period is 14 days. The landlord must bring possession proceedings no later than six months after the date of expiry of the notice. If the landlord fails to do so, they must give the contract holder a new notice with a fresh notice period.

Possession actions started before 1 December 2012 continue under the old rules. Notices given prior to 1 December 2012 under the old grounds expired within 12 months of being given or on 1 June 2023, whichever was earlier and so the landlord can no longer rely on such notices. Since 1 June 2023:

- in most cases, the landlord is required to provide at least six months' notice when issuing a 'no fault' notice;
- the landlord can no longer rely on notices served under sections 8 or 21 Housing Act 1988 to apply for a possession order;
- for most converted contracts, the landlord had until 1 June 2023 to issue a written statement (for new contracts started after 1 December 2022, the landlord must issue a written statement within 14 days of the contract starting).

For further information, you can read the on-going series of articles written by the housing specialists in the Citizens Advice Expert Advice Team at <https://medium.com/adviser/housing/home>. See also Part 55 CPR sections IV and V and CPR PD 55A section V.

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1 See [england.shelter.org.uk/professional\\_resources/legal/possession\\_and\\_eviction/notices\\_in\\_possession\\_proceedings](https://england.shelter.org.uk/professional_resources/legal/possession_and_eviction/notices_in_possession_proceedings)

2 See [gov.wales/standard-occupation-contracts-guidance](https://gov.wales/standard-occupation-contracts-guidance)

## Guidance to social landlords

Social landlords (ie, local authorities and housing associations) must follow certain steps before issuing claims for possession based on rent arrears alone. The aim of this rent arrears pre-action protocol (part of the Civil Procedure Rules) is to reduce homelessness by encouraging social landlords to work with their tenants to deal with rent arrears. The protocol does not apply to the private-rented sector.

The *Pre-action Protocol for Possession Claims by Social Landlords* requires the following.

- The landlord should contact the client as soon as reasonably possible to discuss the reason

for the arrears, the client's financial circumstances (including any entitlement to benefits) and repayment of the arrears by affordable amounts based on their ability to repay. The landlord should signpost to the free money advice sector.

- The landlord must provide comprehensible rent statements quarterly.
- If the landlord is aware that the client is under 18 or particularly vulnerable (eg, has mental health issues or a disability), it should take appropriate steps to ensure the client's rights are protected and, in particular, whether or not any issues arise under the Equality Act 2010 and, in the case of local authority landlords, whether or not there is a need for a community care assessment in accordance with the Community Care Act 2014.
- If the client meets the appropriate criteria, the landlord should apply for the arrears to be paid by the DWP by deductions from the client's benefit.
- If there is an outstanding universal credit (UC) housing element or housing benefit (HB) claim, the landlord should work with the client to resolve any problems and, in most circumstances, should not issue possession proceedings (see here).
- After serving the statutory notice seeking possession, the landlord should continue to try to contact the client to discuss the matter and, if an arrangement is made for payment of the current rent and an amount towards the arrears, should agree to postpone the issue of proceedings provided the client complies with the agreement.
- At least 10 days before the possession hearing, the landlord must provide the client with an up-to-date rent statement, confirm the details of the court hearing and of the order the landlord is seeking, and advise the client to attend the hearing.
- If, after the issue of proceedings, an arrangement is made for the payment of the current rent and an amount towards the arrears, the landlord should agree to adjourn the hearing, provided the client complies with the agreement.
- If the client fails to comply with any payment arrangement, the landlord should warn them of its intention to start, or continue with, possession proceedings and give the client a clear time limit within which to bring their payments up to date.

Courts should take into account the conduct of both landlord and client when considering whether the protocol has been followed and what orders to make. If the landlord has unreasonably failed to comply, the court may:

- order the landlord to pay the client's costs; *and/or*
- adjourn, strike out or dismiss the claim (unless it is brought on a mandatory ground).

If a client has unreasonably failed to comply, the court may take this into account when considering whether it is reasonable to make a possession order.

Be prepared to bring the terms of the protocol to the attention of landlords and district judges

and point out that it is not a voluntary code of practice, but part of the Civil Procedure Rules. Advisers can download a copy from [justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-possession-claims-by-social-landlords](https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-possession-claims-by-social-landlords).

**Note:** some housing advisers have suggested that, because landlords routinely apply for money judgments in possession claims on the ground of rent arrears, the protocol for debt claims applies to that part of the claim. Although this is arguable, it has not yet been tested but it might be a useful negotiating tactic. However, if the pre-action protocol for rent arrears already applies to the claim, the pre-action protocol for debt claims cannot also apply. <sup>1</sup>

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<sup>1</sup> See para 1.4(a) Pre-action protocol for debt claims

## The claim form

The particulars of claim, on Form N119, in a possession action for rented property must include: <sup>1</sup>

- what property is to be recovered;
- whether the claim relates to a dwelling house;
- full details of the tenancy agreement;
- the grounds on which possession is claimed;
- details of every person living in the property;
- the amount due at the start of proceedings;
- a schedule ('rent statement') showing all amounts of rent due and payments made over the previous two years, or from the date of first default if within the two-year period;
- the daily rate of rent and any interest;
- any previous steps the landlord has taken to recover the arrears, including dates of any court proceedings, and the dates and terms of any order made;
- the date notice to quit or other notice was given to the tenant, specifying the type of notice;
- any relevant information known about the tenant's circumstances, including any benefits they get and any deductions from benefit being paid directly to the landlord.

If the landlord uses the 'possession claim online' process (see [here](#)), the particulars must contain the same information as above with one exception. If, before proceedings are issued, the landlord has provided the client with a schedule of arrears showing all amounts due and payments made,

together with dates and a running total of the arrears, either for the previous two years or from the date of default (if later), the particulars of claim may contain a summary of the arrears stating:

- the amount of the arrears on the date of the landlord's notice of seeking possession; *and*
- the dates and amounts of the last three payments or, if fewer than three payments have been made, the dates and amounts of those payments; *and*
- the arrears at the date of issue of the possession proceedings.

As a notice of intending to bring proceedings for possession is a statutory requirement for secure and assured tenancies, most landlords should be able to take advantage of the provision allowing the arrears to be summarised. However, if the landlord only includes the summary information in the particulars of claim, it must serve a full arrears history on the client within seven days after the issue of the claim and verify this by a witness statement or verbally at the hearing.

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1 CPR PD 55A, para 2

## Responding to the claim

The client should reply to the claim on Form N11R.

- **Question 1** requests details of the client's personal circumstances.
- **Question 2** relates to paragraphs 2 and 3 of Form N119 and should either be confirmed as correct or details given of any disagreement.
- **Question 3** asks about the service of the 'notice seeking possession' or equivalent. Check that this has been done in the prescribed manner.
- **Question 4** asks the client to check the rent arrears as stated by the landlord. This should be done carefully.
- **Question 5** only needs completing if possession is being sought on grounds other than rent arrears – eg, for nuisance.
- **Question 6** asks for any counterclaims that the client may have. There are a series of counterclaims or 'set-offs' that can be made by a tenant when a landlord claims possession.
  - Under a tenancy created before 15 January 1989, a landlord may be charging more than the fair rent set by the rent officer. In such cases, not only is the excess over the fair rent not recoverable or counted as arrears for the purposes of seeking possession of the property, but the client can also claim back all the overpaid money for up to two years. <sup>1</sup>

- A counterclaim can be made for disrepair if a landlord has failed to keep statutory obligations to repair the exterior or main structure of the property or facilities for the supply of water, gas, electricity or removal of sewage. The client can claim the rent arrears should be reduced by an amount to compensate for this loss, which can be done by completing the defence part of the reply to the possession claim form. However, to safeguard their rights, a client should either pay the rent or open an account into which to pay it. In one case, a county court judge still made an order for possession because of rent arrears despite awarding an amount for damages for disrepair that was greater than the actual arrears. The decision to order possession was subsequently overturned by the Court of Appeal. <sup>2</sup>

Consider obtaining the advice of a specialist housing adviser if a landlord has failed in some contractual obligation – eg, has not provided furniture as agreed or redecorated a property as regularly as promised. In such cases, it may be necessary to refer the matter to a solicitor before proceeding.

- **Question 7** asks for details of payments made since the claim form was issued.
- **Question 8.** If an agreement has been reached, details should be included and the reply should ideally be accompanied by a letter requesting a general adjournment. The landlord should be asked to write separately, if it can be persuaded to agree to this course of action rather than to an order suspended on payment of whatever sum has been agreed. If an unrealistic offer was previously made (perhaps under pressure) and broken, this should be made clear. If the landlord is a social landlord, refer to the rent arrears pre-action protocol to check whether it has complied with it (see here).
- **Question 9.** The client should answer 'yes' if agreement has not been reached. Note that clients who fail to ask the court to consider instalments might later find this used against them if a local authority is considering the question of the intentionality of their homelessness.
- **Question 10** asks for the amount in addition to the rent that is being offered. If money is not yet available for the arrears, the court can be asked (probably on a separate sheet) to make an order suspended on payments of £x extra each week or month, with the first payment on a specified date in the foreseeable future. Alternatively, a token offer could be suggested for the first months' payments, followed by something more realistic.
- **Questions 11–15** relate to income support or HB. In preparation for any hearing, it is important to know the up-to-date position with regards to any HB (or discretionary housing payment) claims (particularly if rent is paid directly to a landlord or if non-dependant deductions vary with the movement of non-dependants). If the landlord is a social landlord and is aware that an HB claim is pending, refer to the rent arrears pre-action protocol (see here). **Note:** the form has not been updated to include UC. Until it is, amend the form by hand



to provide information relevant to the client.

- **Questions 16–27** relate to dependants (and non-dependants), bank accounts and savings, income and expenditure, priority debts, court orders and credit debts similar to those required on Form N9A (see here) and should be completed in the same way.
- **Question 28.** The client should not answer 'yes' to this question unless the new accommodation is absolutely certain. The date given, even in such cases, should always allow for 'slippage'.
- **Question 29** is important because it gives the client the opportunity to explain:
  - why the arrears arose;
  - what circumstances were beyond their control;
  - why it would cause particular hardship if eviction were ordered;
  - why an expensive property was rented (if applicable).

If a social landlord breaches the rent arrears pre-action protocol, it can be pointed out here (see here).

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1 ss44 and 57 RA 1977

2 *Trevantos v McCullough* [1991] 19 EG 18

## What counts as rent arrears

In many cases, particularly when the local authority is the landlord, some of what is claimed as rent arrears may not, in fact, be so. For example, amounts of overpaid HB that an authority wishes to recover may be added to a client's rent account as though they were arrears. In fact, even where such an amount has properly become payable (and the client has been given the right of appeal), such amounts do not constitute rent lawfully due for the purpose of bringing possession proceedings. They can be included in a rent account, provided they are clearly distinguished from rent that is owed to the local authority, but should not appear on a claim form as rent arrears.

However, in non-local authority tenancy cases, if HB has been paid directly to the landlord and the local authority has exercised its right to recover any HB overpayment directly from the landlord, the amount recovered can be treated as rent arrears. <sup>1</sup>

In some cases, a client may also have amounts of water charges, rent arrears from a previous tenancy or other non-rent charges included in their rent arrears. These amounts should not appear on a claim form, unless they are specifically included in the rent for the client's home. If

the tenancy agreement provides for water charges to be collected by the landlord and for them to be treated as rent, it may be possible to argue that this is an unfair term under the Consumer Rights Act 2015 (see here) because it creates the possibility of the client being evicted on the basis of arrears of water charges. As an unfair term is unenforceable, this is a defence to the possession proceedings, depending on whether the arrears also include any 'true' rent.

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1 Reg 93(2) HB Regs

## Powers of the court to deal with possession action

### Assured tenants

There are a number of grounds on which possession may be sought when rent is unpaid, and these differ slightly according to whether the client has a private or social landlord and whether their tenancy began before or after 15 January 1989. **Note:** you must be certain about the status of the client's occupancy before giving advice about a possession claim. <sup>1</sup>

A client may receive a possession claim form on grounds that are not connected to a debt. This *Handbook* does not cover these matters. For a detailed explanation of all the grounds upon which possession might be sought, see *Defending Possession Proceedings* (see Appendix 2), or consult Legal Action Group or a specialist housing advice service, such as Shelter.

The court's role in every case of arrears, except those of some assured tenants who are more than eight weeks in arrears (see here), is to decide whether or not it is 'reasonable' to make an order for possession and whether or not to suspend this on particular terms (usually payment of the normal rent plus an amount towards the arrears). This means that, as long as the client keeps to the payment ordered by the court, the landlord cannot regain possession of the property. If a client is in receipt of a means-tested benefit, an amount equivalent to the rate of direct deductions from benefits (see here) may be accepted by the court. If the client does not attend the hearing or there is no request for time to pay the arrears from them, the order may be made for possession to be given up in a certain period of time – for a minimum of 14 days or a maximum of 42 days, but usually for 28 days.

Courts can award fixed costs in all cases where a possession order is made.

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1 For further information, see [england.shelter.org.uk/professional\\_resources/legal/renting/tenancy\\_status\\_checker](https://england.shelter.org.uk/professional_resources/legal/renting/tenancy_status_checker)

## Assured tenants

The court must grant a possession order to a landlord if the client is an assured tenant and, at the date of the hearing, at least eight weeks' or two months' rent (three months' if paid quarterly) is unpaid (ground 8). <sup>1</sup> The landlord must prove there was two months' rent in arrears (or three months' if paid quarterly) both at the time when the notice of intention was served and at the date of the hearing.

There are two other grounds for possession for rent arrears: grounds 10 (if there is any amount of rent arrears) and 11 (if the client is regularly late paying the rent). Most notices and claim forms issued on rent arrears grounds are issued on grounds 8, 10 and 11. The landlord can decide on which ground(s) to proceed at the hearing.

The court cannot consider reasonableness if ground 8 is being used, so even if delays in the payment of HB caused the arrears (see here), this is not a defence to a possession order being granted. The court has no power to adjourn, except for procedural reasons or in exceptional circumstances. <sup>2</sup> However, the court has no power to dispense with notice or defects in the claim if the landlord brings a claim on ground 8. This means the claim must be struck out and no possession order made. A housing specialist can help to identify when a notice is defective. You should pressure the local authority to make an emergency payment before the hearing and, if it fails to do so, local politicians and the Local Government and Social Care Ombudsman or Public Services Ombudsman for Wales should be informed.

The court will not grant a possession order if, by the date of the hearing, the arrears are reduced to even a nominal amount (eg, £1) below two or three months' rent. It may sometimes be worthwhile for a client to borrow money, particularly from family or friends, to ensure they do not become subject to this mandatory ground. See also Chapter 7 for ways of maximising income.

In practice, social landlords rarely use ground 8 but tend to use grounds 10 and 11. Always check which ground(s) the landlord is using. Landlords tend to use section 21 'no fault' proceedings for assured shorthold tenancies.

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<sup>1</sup> Sch 2 Housing Act 1988

<sup>2</sup> *North British Housing Association v Matthews* [2004] EWCA Civ 1736

## The warrant of possession

Tenants of properties with mortgage arrears

A warrant of possession gives county court enforcement agents (bailiffs) the power to evict the occupiers and change the locks. The court issues a warrant following a request from the landlord if the client has not voluntarily left the property by the date ordered by the court at a possession hearing or has not kept to the terms of a suspended order for possession. To prevent eviction, an application must be made for the warrant to be suspended (see here). The notice of eviction (Form N54) informs the client about this. However, enforcement agents are now required to give 14 days' notice of evictions and, from 7 August 2021, if an eviction does not take place on the date specified in the notice, a further notice of eviction must be delivered to the premises at least seven days before the new eviction date. <sup>1</sup>

With effect from 23 August 2020, the procedure for transferring a possession order to the High Court for enforcement is subject to increased regulation. It provides clients (borrowers or tenants) with a greater degree of protection. An application for transfer of an order for possession to the High Court must certify that the property or land in question has not been vacated. If the order for possession has been suspended on condition that the client makes payments by instalments, the application for transfer must certify the amount remaining due under the order and that the whole or part of any instalment remains unpaid. The High Court enforcement agent must give 14 days' notice of eviction; so, the practice of High Court enforcement agents turning up without any notice to carry out an eviction is no longer lawful. An updated version of Form N54 (Notice of Eviction) is being produced for use in the High Court as well as the county court. If a possession order is transferred to the High Court for enforcement and the land or property is situated in the area of a District Registry, the transfer is to that District Registry and any applications to the High Court in relation to the proceedings – eg, an application for a stay of the writ – must be made to that District Registry. <sup>2</sup> HM Courts and Tribunals Service has produced a short explanatory note on the changes to writs of possession. <sup>3</sup>

If a landlord who obtained an outright possession order wishes to use High Court enforcement agents to execute a writ of possession, the landlord must first obtain the court's permission. The court can only grant permission if it is satisfied that the occupant(s) received sufficient notice of the possession proceedings and so had the opportunity to apply to the court – eg, to suspend the possession order. <sup>4</sup>

**Note:** you should check the wording of any suspended (Form N28) or postponed (Form N28A) possession order carefully to see whether it provides for the order to cease to have effect once the client has paid the arrears in accordance with its terms. If the client then falls into arrears again, the landlord must obtain a further order and cannot just issue a warrant of possession.

Generally, a warrant of possession cannot be issued without the court's permission if a tenant has breached the terms of a suspended possession order. However, since 1 October 2018, a landlord has not needed the permission of the court to issue a warrant of possession where the

breach of the suspended possession order is the failure to pay rent or rent arrears. <sup>5</sup>

Form N325A (request for a warrant of possession following suspended possession order) and Form N445 (request for reissue of warrant) require the landlord to certify that: <sup>6</sup>

- the whole or part of any instalments due under the judgment or order have not been paid, and the balance now due is as shown; *and*
- the land which is the subject of the judgment or order has not been vacated.

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<sup>1</sup> r83.8A(2)(b) & (3) CPR

<sup>2</sup> r6 Civil Procedure (Amendment No.3) Rules 2020

<sup>3</sup> [assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/911646/Writs\\_of\\_Possession.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/911646/Writs_of_Possession.pdf)

<sup>4</sup> s42 CCA 1984

<sup>5</sup> r83.2(3)(e) CPR

<sup>6</sup> *Cardiff City Council v Lee (Flowers)* [2016] EWCA Civ 1034

## Tenants of properties with mortgage arrears

A client may pay rent to someone who is buying a property with a mortgage. If the client became a tenant after the date the mortgage started but the lender's permission was not sought or granted in accordance with the terms of the mortgage, they are known as an 'unauthorised' tenant of a mortgage borrower and an authorised tenant cannot defend the proceedings and can be evicted as part of the mortgage lender's possession action. **Note:** an 'authorised' tenant cannot defend such proceedings either.

However, an affected client can apply to the court to 'stay' or suspend the execution of a possession order for up to two months to allow sufficient time to obtain suitable alternative accommodation. <sup>1</sup> The client can apply at the hearing of the possession claim or subsequently. They must have first approached the lender for a written undertaking not to enforce the order for two months and the lender must have refused to give this. It is arguable that a failure to respond, even after reminders, counts as a refusal as there is no time limit within which the lender is required to respond. Such a request could be made verbally or in writing. The client's application should be made on Form N244 (see here). The fee currently remains £15 (court fee 2.7) on the basis this is 'an application to vary a judgment or suspend enforcement'. See here for details on applying for full or partial fee remission.

The court can only postpone the execution of the order once. The court must take account of

the client's circumstances, including any breaches of the tenancy agreement. The court can order the client to make payments to the lender. The application may have a better prospect of success if it includes payment of rent to the lender.

For buy-to-let lending, the loan's terms and conditions usually incorporate consent to tenancies being created. Provided the terms and conditions have been complied with, guidance from the Council of Mortgage Lenders issued in June 2009 on buy-to-let arrears and possessions advises lenders that the tenancy is binding and the lender will take possession of the property, subject to the tenancy's terms and conditions. The lender can only evict the tenant in accordance with landlord and tenant law. The position is the same for other tenancies created after the loan was entered into to which the lender has specifically consented. <sup>2</sup>

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<sup>1</sup> Mortgage Repossessions (Protection of Tenants etc) Act 2010

<sup>2</sup> See [england.shelter.org.uk/professional\\_resources/legal/renting/change\\_of\\_landlord/when\\_a\\_landlord\\_is\\_reposessed](http://england.shelter.org.uk/professional_resources/legal/renting/change_of_landlord/when_a_landlord_is_reposessed)

## Arguing against a possession order

Arrears because of non-payment of housing costs

Postponing possession

Unless the claim is brought on the mandatory rent arrears ground, it may be possible to argue that it is not reasonable to make a possession order. Courts take into account the view that a landlord is entitled to the increase in capital value of the property and to revenue from rent. Argue that the existence of an agreement to clear the arrears or even a reasonable offer coupled with an ability to pay the ongoing rent makes a possession order unnecessary and therefore not reasonable.

Arguments can be based on the client's circumstances (eg, having children, or being sick or disabled) or their finances – eg, being dependent on benefits for some time. If an improvement in circumstances can be shown (eg, they are about to get a job), this will probably help convince the court that it is unreasonable to make a possession order. Other arguments could be based on the position of the landlord – eg, the landlord's identity was unknown or it had failed to collect rent or arrange for an agent to do so.

**Note:** an outright possession order is not necessarily a breach of a client's human rights under Article 8 of the European Convention on Human Rights (respect for family and private life). <sup>1</sup> Human rights defences are normally only possible if the court does not have discretion to

suspend possession and, even then, in very rare cases.

If the client starts to pay the contractual rent and something towards the arrears by the time the hearing takes place, it can help their defence. Such payments should have been recorded by the landlord or, if the landlord has refused to accept payments before the court hearing, the money should have been paid into a separate account. Proof of payment made should be taken to the hearing.

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**1** *Lambeth LBC v Howard*, [2001] 33 HLR 636, [2001] EWCA Civ 468

## **Arrears because of non-payment of housing costs**

If a client's rent arrears are because they have not been paid UC housing element or HB, or they have arisen while waiting for a decision on UC housing element, HB or a discretionary housing payment (see here), this can be a powerful argument for saying it is unreasonable for the court to make an order, especially if it is a social landlord. In addition, the rent arrears pre-action protocol (see here) says that the landlord should make every effort to establish effective, ongoing liaison with the DWP or HB department and should also offer to assist the client with their UC housing element or HB claim, particularly if they have:

- provided all the evidence required to process the claim; *and*
- a reasonable expectation of eligibility for UC housing element or HB; *and*
- paid any other sums due to the landlord that are not covered by the UC housing element claim or HB (or has applied for a discretionary housing payment to cover the shortfall).

The landlord should not issue possession proceedings on the grounds of rent arrears, but should (with the client's consent) make direct contact with the DWP or the HB department.

If the landlord is not a local authority, the client can ask the court to consider making a third-party costs order against the DWP or local authority – ie, for to pay the landlord's costs. This can only be done if the DWP or local authority is: **1**

- made a party to the proceedings for the purposes of costs only; *and*
- given a reasonable opportunity of attending the hearing for the court to consider the question.

This requires action to be taken before the possession hearing itself and you should consider obtaining specialist housing advice. A threat to seek an order for costs may prompt the DWP or local authority to expedite the claim for UC housing element or HB and clear the arrears.

Otherwise, if possible, the client should obtain a letter from the DWP or local authority explaining when UC housing element or HB will be paid and take the letter to the hearing.

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**1** r46.2 CPR; Part 19 contains the procedure for adding parties

## Postponing possession

The standard form for a 'suspended' possession order in rent arrears cases is Form N28A. This is, in fact, a postponed possession order. It does not set a date for possession, but allows the landlord to apply to the court to fix a possession date if the client defaults on the order. However, the landlord must first give the client 14 days' notice of its intention to apply and invite them to bring the arrears up to date or explain their non-payment. The landlord's application can be dealt with without a hearing, although the court could list it for a hearing. If the court grants the application, a date for possession is fixed (usually the next working day). The landlord still needs to issue a warrant of possession if the client does not leave the property voluntarily, and the client can still apply to suspend the warrant (see here). <sup>1</sup>

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**1** CPR PD 55, paras 10.1-10.10

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Please be aware that welfare rights law and guidance change frequently. This page was printed on Friday, October 17, 2025 and may go out of date.