

**Office of the Lord Chief Justice  
Proposed Practice Direction: County Court in NI**

**Draft Pre-Action Protocol for Ejectment Proceedings  
Based on Non-Payment of Rent in the Social Housing  
Sector**

## Introduction

Housing Rights Service (HRS) works to promote positive change by promoting and protecting the rights of people in housing need in Northern Ireland (NI) including:

- People who are homeless
- People at risk of becoming homeless (including as a result of debt related possession action)
- Low income households
- People in receipt of benefits
- People with disabilities
- Older people
- Prisoners and ex offenders
- Ethnic minority groups

HRS has been providing housing debt advice to tenants and homeowners since the early 1990s. We are currently contracted by the DSD to provide the **Mortgage Debt Advice Service** for NI. We also provide a **Housing Possession Court Duty Scheme** in High Court and county courts. This 'emergency' service provides free advice and representation to people at court who are about to go into a possession hearing. As well this, we operate a **Tenant Debt Advice Service** for number of social housing providers. Landlords who have signed up to this rent arrears management service can refer tenants to us for specialist assistance. We then contact the tenant, establish what has caused the arrear and work out the best way of clearing the arrear. Our advisers:

- work out what benefit entitlement
- deal with any benefit calculation problems
- represent the tenant at court, if necessary
- identify benevolent funds or other sources of income which the tenant may be entitled to
- work out a realistic and affordable repayment plan to address the arrear.

Through the provision of these services we have become acutely aware of the issues facing tenants experiencing arrears problems; the need for greater pre court action contact between both parties; and the vital role which good quality independent advice has in preventing court action in the first place.

## Comments

HRS supports the introduction of a pre action protocol for rent arrears. In our view, the draft protocol is a very positive and a much needed development. The problem of rent arrears in social housing is growing steadily. At the end of March 2013 the Housing Executive's total rent and rates arrears were £14.6m, an increase of £616k. The picture is similar within the housing association movement where levels of [non technical] arrears grew by over 15% between 2010-11 and 2011-12. Unfortunately we foresee the problem getting worse. This proposed practice direction is timely and in our opinion will help to reinforce the need for landlords to act fairly and reasonably when considering taking possession of someone's home. The following summaries our views on the proposals:

- HRS supports the aims of the protocol (paragraph 2) and the fact that it will place social housing tenants on a more equal footing with homeowners facing possession proceedings.
- HRS agrees with the courts' expectations as set out in the 'Initial Contact' section (paragraph 5) but believes paragraph 5.9 (outlining cases where rent arrears proceedings should not be taken) could be strengthened by including '**or**' after each of the points outlined in 5.9.1, 5.9.2 and 5.9.3 and also by adding the following:
  - Where direct deductions can be taken from social security benefits towards the arrear
  - Where the tenant owes less than the equivalent of three months rent.
- HRS agrees with the steps outlined in the 'Court Proceedings' section (paragraph 6).

- HRS supports the checklist for compliance but recommends that item 21 could be strengthened to include the following (indicated in bold): “Has T been informed of the date and time of the hearing, advised the importance of attending and **any possible consequences of not attending** the court hearing?”.

## Summary

HRS is fully supportive of the aims of this pre action protocol. It is a very positive step which we hope will encourage more pre action contact; promote the benefits of getting good independent advice; and, above all, help to avoid costly and unnecessary legal action. In our experience, tenants whose cases have ended up in court are generally unaware of the legal consequences of a court order. Even where a repayment agreement has been reached at court, in most rent arrears cases an Order for Possession with a Stay (of Enforcement) will be made. There are clearly legal implications arising from this judgment which are potentially very serious. For example, it raises questions around the legal status of the tenancy. HRS is therefore wholly supportive of the Lord Chief Justice’s decision to issue a Practice Direction in cases of social housing rent arrears. As the protocol states “Eviction should always be viewed as a last resort and should only be used when all other avenues have been exhausted.”

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