

Avoiding Possession Claims

by managing rent arrears and following Pre-Action Protocol

New protection rules and updates to legislation have been brought in to protect tenants and landlords, and the courts will consider the impact Coronavirus may have had in proceedings.

Below is a summary of best practice which should be considered before starting the evictions process. An important part of this process is that all parties involved should communicate with each other effectively in the first instance before taking any action for repossession through the courts.

Key Points to be aware of Communication

If the tenants are behind on rent or are experiencing financial difficulties, you need to address this as soon as possible, being prepared to offer benefit of the doubt. At some point in proceedings you will be required to demonstrate an awareness of the following:



- A. Have you tried to work with/support the tenant and negotiate repayment?
- B. Has the tenant, their dependants or any other occupiers been affected by COVID?
- C. Has the tenant worked throughout COVID?
- D. Have you tried to apply for Direct Deductions for rental payments?
- E. Are they able to claim any benefits or support?
- F. Is the tenant in employment now or likely to be in employment shortly?

- G. Are the tenant's financial circumstances likely to change soon for the better?
- H. Is the tenant likely to need rehoming from the local authority/Council?
- I. Have you tried to take a mortgage break or tried to obtain other financial support?
- J. Does the tenant fall within the scope of a vulnerable category?
- K. Have you tried to arrange a settlement with the tenant or surrender of the tenancy?

Clarification

You need to be **clear within your communication** about how you can support the tenant and/or explain why you are unable to do so. Make sure that any payment plans are **confirmed in writing** and that you provide a summary of how the arrears have built up by providing a rent statement. Make sure that you **set the expectation early** of any potential consequences if all actions to resolve matters have been exhausted. You should set a **clear timeline** of any proposed action and commit to it. If the last option is to issue a legal notice or commence proceedings, then you should continue to try and work with the tenant.

An alternative option to assist tenants with a short cash flow

Managing Agents can consider an insurance-based deposit solution with **Reposit**. This option covers the landlord for 8 weeks' rent for the cost of only one week's rent chargeable to the tenant. The tenant can buy the policy online and it only requires a quick inspection and small amendment on the AST. Once sorted, the Managing Agent can return the full original deposit to the tenant, which is usually 5 weeks' rent.



If agreement cannot be reached

If an agreement on how to move forward cannot be reached, resulting in a new claim for possession being considered or an existing claim in progress being reactivated, **it is essential that landlords and tenants continue to communicate**, discussing the level of arrears, the tenant's financial situation and repayment of arrears.



The next steps for taking on a case

- ✓ Pre-court Action letter with COVID advice
- ✓ Section 8/Section 21
- ✓ Mediation during the 6-month period to agree settlement or surrender
- ✓ Step 2 Application

If payment of rent is resumed by the tenant, or the tenant's circumstances have changed and a reasonable plan to repay arrears is agreed, then the landlord should postpone issuing new court proceedings, or reactivating an existing claim, whilst the tenant meets the terms of such an agreement.

Should the tenant break the terms of the agreement, the landlord should inform the tenant if they intend to start or resume proceedings. It is important that both the landlord and tenant fully engage in the court process thereafter.

How the courts will handle cases going forward

When listing cases, the court will give priority to claims issued before the stay commenced, but that will be subject to priority given to types of case (see list below).

What you need to know:

- Claims issued before 3 August 2020 must be reactivated by 29 January 2021.
- Claims issued after 3 August 2020 - no need for a reactivation notice. Claims will be processed by the Court in due course. Landlords should provide information about the impact of the coronavirus pandemic on their tenants to the Court as soon as possible.

At the review stage of a Standard Possession Procedure (i.e. not accelerated), landlords will receive a communication providing the date of the review and the date of the substantive possession hearing (review will be allocated at least 28 days before the hearing).

14 days prior to the hearing, landlords must email the Court an electronic bundle of all case documents, including - but not limited to - the claim form, information about how the tenant has been affected by coronavirus and confirmation that the tenant has been provided with a hard copy of said bundle.

The following cases will be listed as priority:

- A.** cases with allegations of anti-social behaviour.
- B.** cases with extreme alleged arrears accrued (equal to at least 12 months' rent.)
- C.** cases involving alleged squatters, illegal occupiers, or persons unknown.
- D.** cases involving an allegation of domestic violence where the claimant is a Social Landlord and possession of the property is alleged to be important for particular reasons which are set out in the claim form (and with domestic violence agencies alerted).
- E.** cases with allegations of fraud or deception.
- F.** cases with allegations of unlawful subletting.
- G.** cases with allegations of abandonment of the property, non-occupation or death of defendant; and
- H.** cases concerning what was allocated by an authority as 'temporary accommodation' and is specifically needed by the authority for reallocation as 'temporary accommodation'.