



## FACT SHEET NO. 2

# DOMESTIC RENT ARREARS

This fact sheet is for people who have missed rent payments. It explains more about arrears, what you can do to repay them, and what your landlord can do.

### **WARNING**

Rent arrears are very important because you could lose your home if you do not repay them.

There are several types of tenancy. Each type gives different rights. Your right to stay in your home depends on the type of tenancy. So it's important for you to find out what type of tenancy you have.

**There are two sections on rent arrears – Rent arrears 1 and Rent arrears 2**

### Go to Rent arrears 1 if;

- you are a housing association tenant and you started renting your home before 15 January 1989;
- you rent from a private landlord and started renting your home before 15 January 1989;
- you have a shorthold tenancy that began before January 1989; **or**
- you are a council tenant.

### Go to Rent arrears 2 if:

- you are a housing association tenant and you started renting your home on or after 15 January 1989; **or**

- you rent from a private landlord and you started renting your home on or after 15 January 1989.

### **ADVICE**

If you are not sure which type of tenancy you have, read the first parts of Rent arrears 1 and 2 or contact Shelter, specialists in housing advice on free phone 0808 800 4444, your local citizens advice bureau or **phone us for more advice**.

### **REMEMBER**

You cannot be evicted for rent arrears without a court order. If you have a licence or are a squatter, you do not have the same rights as a tenant.

## RENT ARREARS 1

### The following advice is for:

- all council tenants; **and**
- private tenants and housing association tenants who started renting their homes before 15 January 1989.

### It covers topics including:

- Housing Benefit (rent rebate);
- how to pay off rent arrears;
- whether your landlord is refusing to agree to your offer;
- if your landlord take court action; **and**
- eviction what you can do.

## Housing Benefit (rent rebate)

Rent arrears often build up when you don't claim all the benefits you can. Claiming Housing Benefit can reduce the rent you pay.

- To make a claim, ask your council's housing benefit office for a form.
- When you make a claim, keep a copy of your claim form and any letters you send or receive.
- Pay as much as you can towards your rent until your benefit comes through. The housing benefit office or a local advice centre should be able to tell you how much you need to pay.

## Payment of housing benefit

If you are a council tenant, your Housing Benefit will be paid directly to the rent office of your council's housing department. It is usually known as a 'rent rebate'.

If you are a housing association or private tenant, Housing Benefit will be paid direct to you. You can arrange to have it paid direct to your landlord if you want. Doing this may make them more willing to come to an arrangement over your arrears because they will be sure of receiving a regular payment.

Arrange this with your landlord and ask the housing benefit office to start making payments to the landlord. In some circumstances your landlord and the housing benefit department can agree for Housing Benefit to go directly to the landlord without your agreement.

## Is your rent registered as a fair rent?

If you pay rent to a private landlord (not a council or housing association), and feel your rent is very high, it may be worth having a fair rent registered on your home. A rent officer

from the Rent Service will decide what a fair rent for your home is and fix it at that. Your landlord cannot then increase the rent unless the rent officer agrees. For details see the Rent Service website on [www.therentservice.gov.uk](http://www.therentservice.gov.uk) in England and [www.wales.gov.uk](http://www.wales.gov.uk) in Wales



### WARNING

Before you apply to the rent officer, check how much rent other people are paying in your area for similar flats or houses to see if your rent is above average. The rent officer can **increase** the rent on your home as well as reduce it.

## HOW CAN I PAY OFF MY RENT ARREARS?

It is never too early or too late to come to an arrangement to pay off your arrears. You may not be in arrears yet, or your landlord may have started court action. Whatever the situation, **don't delay**; contact your landlord as soon as possible.

If you are a private or housing association tenant and:

- you are waiting for a Housing Benefit claim to be sorted out;
- Fourteen days have gone by; **and**
- this is making your rent arrears worse.

Explain this to the housing benefit office. Ask for an interim payment of Housing Benefit. **Phone us for advice.**

## Have the rent arrears been worked properly?

Get a breakdown of your rent account from your landlord. Check that all the payments you have made have been added to your account. Ask for regular statements. Keep your receipts.

In particular, check whether you have been overpaid any Housing Benefit (rent rebate). Sometimes Housing Benefit that has been claimed back by the council is included as rent arrears on your rent account. If you are a council tenant, the council cannot treat Housing Benefit overpayments as rent arrears and they should keep them in a separate account.

### REMEMBER

You cannot be evicted from your home for receiving too much Housing Benefit.

If you are not sure if your rent arrears include Housing Benefit overpayments, or the council refuses to separate the two, **phone us for advice**.

If you are not a council tenant, the rules are complicated as to whether or not a Housing Benefit overpayment is treated as rent arrears. **Phone us for advice** if this applies to you.

### Extra weekly payments

- Use your personal budget to work out how much to pay off the arrears each week.
- Don't be afraid to offer only a small amount if that is all you can afford.
- If you get Housing Benefit, offer to have it paid direct to your landlord. This might make them more willing to agree to your offer.
- Start paying the amount you are offering immediately to the landlord or agent.

If you can't afford to pay anything, **phone us for advice**.

### Direct payment of rent arrears

If you get Income Support, Pension Credit or Jobseeker's Allowance, you can have a standard amount taken out of your benefit each week and

paid direct to your landlord for rent arrears. This way you can point out to your landlord that you will pay the arrears even though it may take a long time.

## IS YOUR LANDLORD REFUSING TO AGREE TO YOUR OFFER?

Just because your landlord refuses your offer of payment, that does not mean you will automatically lose your home. If your landlord refuses to accept your offer:

- start paying your rent immediately plus the amount you have offered off the arrears;
- contact your landlord – use your personal budget to show that the amount you have offered is all you can afford;
- keep a record of all payments and letters to and from your landlord; **and**
- keep paying your rent and arrears payments.

If your landlord still takes action against you, **phone us for advice**.

Your landlord might make it difficult for you to pay, for example, by not calling for the rent. If this is happening, **phone us for advice**.

If your landlord threatens to use bailiffs against you to recover the rent arrears, **phone us for advice** immediately.



### WARNING

You cannot be evicted without a court order. If your landlord threatens to throw you out without going to court or harasses you to make you leave, they may be acting illegally. If this is happening to you, contact your local council. Ask for the person who deals with tenants who are being harassed.

## WHAT IF MY LANDLORD TAKES COURT ACTION?

### Before court action

These are the usual stages leading to county court action. The landlord will normally send a letter asking you to pay off the arrears. If you have not already contacted your landlord to try to reach an agreement, do it now. Keep paying the rent and what you have offered off the arrears.

If you haven't made an arrangement to pay off the arrears, some landlords may send a second letter or may get their solicitor to write to you. Before landlords can take court action, they must send you a formal letter which is called a 'notice of seeking possession' (council and housing association landlords) or a 'notice to quit' (private landlords). These must be served on the tenant before court proceedings can be started. **They do not mean you have to leave your home.**

Contact your landlord straight away and try to reach an agreement. Keep paying your rent and what you have offered off the arrears.

### Court action – the claim

If you've not been able to make an arrangement with your landlord and the time limit on the notice has run out (normally twenty-eight days after you receive it), your landlord can then ask the court to send you a claim. This will give you a date and time for a hearing in the county court. You should have at least twenty-eight days notice of the hearing date.

Even if you are taken to the county court, this does not mean you will automatically lose your home. Even if the court decides you cannot afford to stay there, you will not be evicted from your home on the date of the hearing.

Keep paying your rent and the amount offered off the arrears. This will show the court that you are now able to pay.

The court will send you a form called 'particulars of claim' as well. This sets out your landlord's case for taking possession of your home. You will also get form N11R, called a 'defence form' **which you should fill in and return to the court within fourteen days.**

### Filling in the defence form

It is important to fill in the defence form as you can give the court a full picture of your finances and what you can afford to pay as well as say if you disagree with the amount claimed.

Read through the particulars of claim. It should give:

- the amount of rent arrears;
- details of any arrangements that you have made with your landlord to repay the arrears; **and**
- information about your circumstances that your landlord is aware of, such as whether you receive Housing Benefit.

If you do not agree with any of the details, say so on the first page of the form.

You are asked whether you can pay anything towards the arrears. Put down the amount which you have worked out that you can pay using your budget, even if your landlord has already refused to accept this amount. It is better to put down an amount that you can realistically afford to pay.

If you cannot afford to pay anything, **phone us for advice.**

The form asks if you have a counterclaim against your landlord. In this section you could include

details of any claim for money that you have against your landlord. For example; if

- you have been made ill by damp or dangerous conditions;
- any repairs need doing; **or**
- your belongings have been damaged, for instance by a leaking roof.

If this has happened to you, **phone us for advice.**

Fill in the financial details. This will allow the court to see how you have worked out how much you can afford to pay towards the arrears. Use the spare boxes for items which are not on the form but which appear on your personal budget.

You are asked for details about your bank account. If you have money in your account to pay household bills, do not include this in the credit balance on the form.

At the bottom of the form there is a space for giving your side of the case. Explain why you got into arrears. Ask here if you want the court to give you more time to find somewhere else to live.

#### **REMEMBER**

If you have arrears, it is important to start paying the amount you have offered. You can still come to an agreement with your landlord or their solicitor. If you can reach an agreement, the hearing date can be put off 'adjourned' to give the agreement a chance to work.

If your landlord says they can evict you without a court order or is threatening you, **phone us for advice.**

## The hearing

#### **REMEMBER**

You will not be evicted from your home on the day of the hearing.

You must go to the court hearing even if you have already made an agreement with your landlord.

If you will not be able to go to the hearing because of illness or disability, write to the court to explain your circumstances and ask if a relative or friend can represent you. **Don't forget to include the case number on the letter.**

The purpose of the hearing is not to find anyone guilty or innocent but to come to a fair decision for both sides. Rent arrears cases should be dealt with in private. At the hearing you, your landlord or their representative and the district judge will be present. The district judge is the person who decides your case. Call the district judge 'Sir' or 'Madam'.

## When you go to court

- Make short notes about what you want to say at the hearing. Take these with you and refer to them if you need to.
- If your circumstances have changed since you filled in the form, work out a new personal budget sheet. Take three copies of your personal budget with you, one for you, one for the district judge and one for your landlord's representative.
- If English is not your first language, you could take an interpreter with you.
- Don't be afraid to approach the landlord's representative before the hearing to see if you can come to an agreement to present to the district judge. Don't be pressed into

offering more than you can afford. The district judge may agree with you and allow you to pay less than your landlord's representative wants.

- Answer questions clearly, calmly and fully. This will help the district judge make his or her decision.

### REMEMBER

You have as much right to put your case as the landlord.

## Orders the district judge might make

At the hearing the district judge can make one of the following orders.

- An order dismissing your landlord's action, for example, if you have paid off all the arrears before the hearing date.
- An order putting off (adjourning) the case. The court may do this to give you time to provide extra information to support your case, or to pay off your arrears in full, for example, by sorting out your Housing Benefit claim.
- An order for possession of the property to be given to your landlord but suspended on conditions the courts feels are right. This means that if you keep to the court's order (normally that you pay the rent plus a set amount off the arrears each week or month), the court will not allow your landlord to take your home.
- An order for outright possession of the property. This means that at the end of a set period (usually twenty-eight days), your landlord can take the next step towards repossessing your home. See the section on Eviction.

## What you should ask for

- If you can show the court that it would be unreasonable to make a possession order, you should ask the district judge to dismiss the landlord's action. This might be because you have been paying the rent plus a regular amount off the arrears for several months, or your arrears are due to a delay in your Housing Benefit claim. If you think this may apply to you, **contact us for advice** before you go to court.
- If you can pay all the arrears in a short time, for instance by sorting out your Housing Benefit claim, ask for an adjournment.
- If you can't pay the arrears in a short time and the amount of arrears is correct, you should make an offer of repayment that you can afford.
- If you are on Income Support, Pension Credit, Jobseeker's Allowance or a low income, do not be afraid to offer a very small amount if that is all you can afford. Use the Department for Works and Pensions (DWP) standard amount for direct payments guide. This amount changes each April so **phone us for advice**.
- If the district judge thinks your offer is fair, he or she is likely to make an order for possession. This would normally allow you at least twenty-eight days before your landlord could take further action. Ask the district judge to give you more time to find somewhere else to live (for example, two months).

### REMEMBER

If at any time you find you cannot pay the amount which the court has ordered, you must go back to the court and ask for the order to be changed. Use the form N244, which you can get from the court office. There is a fee to pay unless you are on certain benefits or the fee will

cause you hardship. See “Eviction – what can I do?” You should also contact your landlord and try to make a new arrangement.

## EVICTIION – WHAT CAN I DO?

The court will not take action to evict you unless your landlord asks it to. Contact your landlord immediately if:

- you have not kept up the payments under a suspended order for possession; **or**
- the time given on an outright order for possession has run out.

Try to make an arrangement with them. If you cannot reach an agreement, your landlord can apply to the court for a warrant of possession’. This is a letter from the court bailiffs giving you a date and time when they will be coming to evict you. **You may be able to stop this, but you must act quickly.**

If you need further time or you want to make a new offer to pay the arrears by monthly instalments, you should apply for the warrant to be suspended on form N244. You will have to pay a fee to do this. (See below).

### Fees to pay to the court

If you want to ask the court to suspend the warrant of possession, you will need to pay a fee, unless you are on Income Support, income based Jobseeker’s Allowance or if you receive the guarantee element of Pension Credit. You don’t have to pay the fee if you get Working Tax Credit with Child Tax Credit or if it includes a disability element and your income is below a set amount. There is an application form called an EX160 to fill in to ask for the court to agree for you not to pay the court fee if it will cause you hardship or because you are on benefits.

Fill in the N244 showing;

- the claim number of the case;
- the warrant number; **and**
- the reason you’ve not been able to pay and your new offer, in **part A** on the front of the form.
  - In **part B** you should tick the box saying you rely on “evidence” in **part C**.
  - In **part C**, attached your personal budget or write it out on the form.
  - Sign the “statement of truth” at the end of the form.

Do this as soon as possible to allow the court time to arrange a hearing. If the court refuses your application because it is late, **phone us for advice.**

### REMEMBER

You can apply to suspend the warrant for the following reasons:

To make a new offer of payment on your arrears. Make sure you don’t offer more than you can afford. Work out a new personal budget and send it with the form.

To ask the court to give you more time to find somewhere to live.

The court will then fix a new hearing, usually before the eviction date, which you must go to. If you don’t the court is unlikely to suspend the warrant.

If any further warrants are issued, you may still be able to ask for more time or ask the court to suspend the warrants.

If all your efforts to stay in the property fail, you will be given an eviction date. If you are in this position, **phone us for advice.**

Try and move out before the eviction date because the bailiffs can force their way into your home if they have to. They might remove your possessions from the house.

After the eviction your landlord may:

- ask you to pay the rent you still owe;
- ask you to pay for repairing any damage done to your home while you were renting it.

## RENT ARREARS 2

The following advice is for private tenants and the housing association tenants who started renting their homes on or after 15 January 1989.

**If you are a council tenant, this information does not apply to you. Go to Rent arrears I**

**If you started renting your home before 15 January 1989 this information does not apply to you. Go to Rent arrears I.**

This section covers topics including:

- what type of tenancy you have;
- housing benefit (rent rebate);
- your landlord increases your rent;
- how you can pay off your rent arrears;
- whether your landlord refuses to agree to your offer;
- if your landlord takes court action; **and**
- eviction – what you can do.

## WHAT TYPE OF TENANCY DO I HAVE?

It is very important to check exactly what sort of tenancy agreement you have. It is a lot easier for a landlord to evict you from your home if you have an 'assured shorthold tenancy' (see below).

If your tenancy agreement has run out, the court must give your home back to the landlord as long as you have had two months notice in writing.

If you have any assured tenancy, in most cases the court can decide if it is reasonable to make you leave your home, unless you have over two months or eight weeks rent arrears.

## Assured shorthold tenancies

From 28 February 1997 new tenancies will normally be assured shorthold tenancies, unless you are given a notice by the landlord to say you have an "assured tenancy".

- For assured shorthold tenancies that begun before 28 February 1997 your landlord must have given you a written notice that your tenancy is an assured shorthold tenancy before the tenancy began. The tenancy must have been for a fixed term of more than six months.
- If your tenancy started on or after 28 February 1997, your landlord does **not** have to give you any written notice of the tenancy. All tenancies will **automatically** be assured shorthold tenancies. Even if your tenancy is not for a fixed term, it will still be an assured shorthold tenancy.

## Assured tenancies

Assured tenancies usually have no time limits although some may last for a fixed time. Housing association tenants will normally have this sort of tenancy as well as some tenants of private landlords.

From 28 February 1997 you will not be an assured tenant unless your landlord gives you notice to say so.

If you are not sure what sort of tenancy you have, **phone us for advice.**



## WARNING

If you are already an assured tenant, your landlord cannot make your tenancy an assured shorthold tenancy. If your landlord tries to do this, **phone us for advice.**

## Housing benefit (rent rebate)

Rent arrears often build up when tenants don't claim all the benefits they can. Claiming Housing Benefit can reduce the rent you pay.

- To make a claim, ask your council's housing benefit office for a form.
- When you make a claim, keep a copy of your claim form and any letters you send or receive.
- Pay as much as you can towards your rent until your benefit comes through. The housing benefit office or a local advice centre should be able to tell you how much you need to pay.

**Phone us for advice** if you are having problems with Housing Benefit.

## New rules for housing benefit

From 2 January 1996, if you make a new claim for housing benefit you may not have your rent covered in full. These new rules could affect you if:

- you rent from a private landlord; **and**
- your tenancy began on or after 15 January 1989.

If you were already claiming Housing Benefit, the new rules will only affect you if you move or you make a new claim after a gap of more than four weeks.

These rules do not apply to housing-action-trust tenancies, council tenants or certain hostel

accommodation. If you rent from a housing association, the council can only refuse to cover the full rent if they decide your accommodation is 'unreasonably' large or expensive.

Housing Benefit may only cover a 'single-room rent' if you are single and aged under 25 and in a private tenancy. From 2 July 2001 this covers a bedroom, bathroom and living room.

## How will my benefit be worked out?

The council will have your rent assessed by the Rent Officer Service which will decide if your rent is reasonable taking your needs and the size of your property into account. They will also work out the average rent charged in your area for similar homes.

If your rent is higher than the average for the area, the council may decide the rent you are being charged is too high and set a maximum rent that will be paid for out of Housing Benefit. There is a calculation they use to decide this. For details see the Rent Service website on [www.therentservice.gov.uk](http://www.therentservice.gov.uk) in England and [www.wales.gov.uk](http://www.wales.gov.uk) in Wales.

## What can I do if the council does not pay all my rent?

- You may be able to ask the landlord to charge less rent.
- Pay the extra rent yourself out of your income.
- Take in a lodger but get advice to see how this would affect your tenancy and benefits first.
- Ask the council to review their decision. You can appeal against the decision to an independent tribunal within a month of the review decision, but only if you think a mistake has been made.

- Payments made directly to your landlord for the extra rent by friends or relatives or a charity does not affect your benefits.
- Councils can pay all your rent out of a limited fund called a 'discretionary housing payment'. They will only help if you can show you will be in hardship due to exceptional circumstances. If the fund has no money left in it, they can refuse to pay. You can ask the council to review their decision. There is no right of appeal.
- Write to the housing benefit department and ask them to top up your rent explaining your circumstances fully.

You can ask the council to let you know how much of your rent they will pay before you decide to move. This is called a 'pre-tenancy determination' and is decided by a rent officer. It is valid for a year.



### INFORMATION

There are new rules for Housing Benefit being tested in some areas. This might affect you if you are a private tenant and your tenancy began on or after 15 January 1989. It does not apply to housing association or council tenants. Your housing benefit will be paid at a flat rate depending on the area you live and the size of your household. If your rent is less than the allowance you can keep the difference but if your rent is higher, you may have to top up your rent payments from your income. If you want to know if you are in a pathfinder area, ask your local council or **phone us for advice**.

### Paying housing benefit

It can sometimes take several weeks for a housing benefit claim to be sorted out.

If you are either an assured or an assured shorthold tenant, it is very important that your housing benefit is paid quickly because if you

have more than two months or eight weeks rent arrears and your landlord takes you to court, the court cannot allow you to stay in your home.

The council should start paying your housing benefit within fourteen days. So if your claim has been delayed, ask for an interim payment. You should get a 'payment on account' unless you haven't given all the information asked for to deal with your claim. **Phone us for advice.**

You will normally receive your Housing Benefit by cheque. It is paid every four weeks for the four weeks just passed. But you can arrange to have it paid direct to your landlord if you want. Doing this may make them more willing to come to an arrangement over your arrears because they will be sure of receiving a regular payment.

Arrange this with your landlord and ask the housing benefit office to start making payments to the landlord.

### WHAT IF MY LANDLORD INCREASES MY RENT?

With assured and assured shorthold tenancies there is no fixed limit on rent. If your landlord increases it, you may be able to challenge the increase by appealing to a rent assessment committee.

If your landlord wants to increase your rent and you think it is too much you can do the following.

- Write to your landlord and tell them you do not agree to the increase (keep a copy of the letter).
- Appeal to the rent assessment committee (their number is in the phone book under 'rent assessment committee' or 'rent assessment panel'). Contact the Residential Property Tribunal Service on **0845 600 3178** if you live in England or **029 2023 1687** if you live in Wales.

- Keep paying your old rent, but put money aside to pay the increase in case the rent assessment committee decides the new rent is correct.
- Contact your housing benefit office immediately. Tell them that your landlord has increased your rent but you have appealed to the rent assessment committee. Don't wait until the committee decides your appeal, or you may lose benefit. If you are not already claiming Housing Benefit, the increase in rent may mean you will now qualify.

Appealing to the rent assessment committee is complicated. Contact a local housing advice centre.

### How can I pay off my rent arrears?

It is never too early or too late to come to an arrangement to pay off your arrears. You may not be in arrears yet, or your landlord may have started court action. Whatever the situation, **don't delay**; contact your landlord as soon as possible.

Explain to the housing benefit office if you are waiting for a housing benefit claim to be sorted and this is making your rent arrears worse. Ask for an interim payment if you have been waiting more than fourteen days. **Phone us for advice.**

### Have the rent arrears been worked out properly?

Get a breakdown of your rent account from your landlord. Check that all the payments you have made have been to your account. Ask for regular statements. Keep receipts.

If Housing Benefit is paid direct to your landlord and there has been an overpayment, the rules on whether or not a Housing Benefit overpayment

should be treated as rent arrears are complicated. **Phone us for advice** if this applies to you.

If you are not sure if your rent arrears include housing benefit overpayments, or the landlord refuses to separate the two, **phone us for advice.**

### Extra weekly payments

Use your personal budget to work out how much you can afford to pay each week off the arrears. Don't be afraid to offer only a small amount if that is all you can afford.

If you get Housing Benefit, offer to have it paid directly to your landlord. This might make them more willing to agree to your offer. The council must pay your Housing Benefit directly to your landlord if you have eight weeks rent arrears or more.

Start paying the amount you are offering immediately. If you cannot afford to pay anything, **phone us for advice.**

### Paying rent arrears direct

If you Get Income Support, Pension Credit or Jobseeker's Allowance, you can have a standard amount taken out of your benefit each week and paid direct to your landlord for rent arrears along with your Housing Benefit. This way you can point out to your landlord that they are sure of getting their money back even though it may take a long time.

## IS YOUR LANDLORD REFUSING TO AGREE YOUR OFFER?

Just because your landlord refuses your offer of payment, this does not mean you will automatically lose your home. If your landlord refuses to accept your offer;

- start paying your rent immediately plus the amount you have offered off the arrears;
- contact your landlord. (Use your personal budget to show that the amount you have offered is all you can afford);
- keep a record of all payments and letters to and from your landlord; **and**
- keep paying your rent and arrears payment.

**If your landlord still takes action against you, phone us for advice.**

**Your landlord might make it difficult for you to pay, for example, by not calling for the rent. If this happens, phone us for advice.**

## REMEMBER

You cannot be evicted without a court order but your landlord may be able to use the accelerated possession procedure. If you are an assured shorthold tenant and your landlord starts court action because your tenancy has come to an end the court cannot allow you to stay in your home. If this applies to you contact a local advice centre, **or contact us.**

## FACT SHEET

For a factsheet on 'How can my landlord end my assured tenancy?' phone Business Debtline on **0800 197 6026**

## WHAT IF MY LANDLORD TAKES COURT ACTION?

Your landlord can take court action if:

- you have any rent arrears;
- you have rent arrears of more than two months or eight weeks; or
- you have 'persistently delayed' in paying your rent. You do not have to be in arrears when your landlord starts court action for this reason. (For example, if your Housing Benefit always arrives after the date the rent is due).

If you have an assured shorthold tenancy that has run out, see Renewing assured shorthold tenancies above.

## Before court action

There are the usual stages leading to county court action.

The landlord will normally send a letter asking you to pay off the arrears. If you have not already contacted your landlord, do so now and try to reach an agreement. Keep paying your

## INFORMATION

If your landlord threatens to use bailiffs against you to recover the rent arrears, phone us immediately.

You cannot be evicted without a court order. If your landlord threatens to throw you out without going to court or harasses you to make you leave, they may be acting illegally.

If this is happening to you, contact your local council. Ask for the person who deals with tenants who are being harassed.

## Renewing assured shorthold tenancies

If you have an assured shorthold tenancy, your landlord does not have to renew your tenancy when it runs out. They are not likely to let you stay if you are behind with your rent. You must try to come to an agreement with your landlord and pay the amount you have offered off your rent arrears. If you pay regularly, your landlord may be willing to renew your tenancy.

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If you haven't made an arrangement to pay off the arrears, some landlords may send a second letter or may get their solicitors to write to you.

Before landlords can take court action, they must send you a formal letter which is called a 'notice of possession proceedings'. This must be served on you before court proceedings can start. **It does not mean you have to leave your home.**

Contact your landlord straight away and try to reach an agreement. Keep paying your rent and the amount you have offered off the arrears.

### If you have two months or eight weeks arrears

If you have two months or eight weeks rent arrears when you receive your notice of possession proceedings, **you must start paying your rent and something off the arrears now.**



#### **WARNING**

If your landlord goes to court and you still have two months or eight weeks rent arrears at the date of the hearing, the court cannot allow you to make an arrangement to pay the arrears. The only protection the court can give you is to allow you fourteen days, or up to six weeks, in very rare circumstances, to find somewhere else to live.

- If you have two months or eight weeks rent arrears, start paying your rent and something off the arrears immediately. The amount you pay must reduce your arrears to under two months or eight weeks by the date of the court hearing.
- If you are in arrears because you are waiting for Housing Benefit to be paid, contact your

housing benefit office. Explain why you claim is urgent and ask for an interim payment.

- If you can't start paying immediately or if you can't reduce your arrears quickly enough, **phone us for advice.**

### Court action – the possession claim

If you have not been able to make an arrangement with your landlord and the time limit on the notice has run out, your landlord can then ask the court to send you a 'possession claim' form N5. This will give you a date and time for a hearing in the county court. You should have at least twenty-eight days notice of the hearing date.

- Your landlord can start court action even if you have no rent arrears, but have had arrears in the past.
- Even if your landlord takes you to the county court, **you will not lose your home on the date of the court hearing.**
- Keep paying your rent and the amount you have offered off the arrears. This shows the court you are now able to pay.
- Even if you have managed to clear your arrears by the date of the court hearing, the landlord can still go ahead with the court action. **So you must fill in the court papers and go to any court hearing.**

The court will send you a form called a "particulars of claim" as well. This sets out the landlord's case for taking possession of your home. You will also get form N11R called a "defence form" which you should fill in and return to the court within fourteen days.

### Filling in the defence form

It is important to fill in the defence form as you can give the court a full picture of your finances and what you can afford to pay as well as say if

you disagree with the amount claimed. Read through the particulars of claim. It should give;

- the amount of the rent arrears;
- details of any arrangements that you have made with your landlord to repay the arrears; **and**
- information about your circumstances that your landlord is aware of, such as whether you receive Housing Benefit.

If you do not agree with any of the details, say so on the first page of the form.

- You are asked whether you can pay anything towards the arrears. Use your personal budget to work out what you can afford to pay. If your landlord is asking for possession because you have two months or eight weeks rent arrears, it could be very important to reduce them to less than this by the date of the hearing.
- If you cannot afford to pay anything off the arrears, **phone us for advice.**
- The form asks if you have a counterclaim against your landlord. In this section you could include details of any claim for money that you have against your landlord. For example;
  - you have been made ill by damp or dangerous conditions;
  - any repairs need doing; **or**
  - your belongings have been damaged, for instance by a leaking roof.

If this is happening to you, **phone us for advice.**

- Fill in the financial details. This will allow the court to see how you have worked out how much you can afford to pay towards the arrears. Use the spare boxes for items which are not on the form but which appear on your personal budget. You are asked for

details about your bank account. If you have money in your account to pay household bills, do not include this in the credit balance on the form.

- At the bottom of the form there is a space for giving your side of the case. If you are not in rent arrears now, but have been in the past, explain why you got into rent arrears and why you can now afford to pay your rent. If you are going to find it difficult to find somewhere else to live, ask the court if you can be given some extra time.

## The hearing

### REMEMBER

You must go to the hearing even if you have no rent arrears or if you have already made an agreement with your landlord.

If you will not be able to go to the hearing because of illness or disability, write to the court to explain your circumstances and ask if a relative or friend can represent you. **Don't forget to include the case number in the letter.**

The purpose of the hearing is not to find anyone guilty or innocent but to come to a fair decision for both sides. As long as your arrears are under two months or eight weeks, the court should consider any offer of payment you make on your rent arrears.

Rent arrears should be dealt with in private. At the hearing you, your landlord or their representative and the district judge will be present. The district judge is the person who decides your case. Call the district judge 'Sir' or 'Madam'.

## When you go to court

- Make short notes about what you want to say at the hearing. Take these with you and refer to them if you need to.
- If your circumstances have changed since you filled in the court form, work out a new personal budget sheet. Take three copies of your personal budget with you – one for you, one for the district judge and one for the landlord's representative.
- If English is not your first language, you could take an interpreter with you.
- Don't be afraid to approach the landlord's representative before the hearing to see if you can come to an agreement to present to the district judge. But don't be pressed into offering more than you can afford. The district judge may agree with you and allow you to pay less than the landlord's representative wants.
- Answer questions clearly, calmly and fully. This will help the district judge make his or her decision. Remember you have as much right to put your case as the landlord.

## Orders the district judge might make

At the hearing the district judge can make one of the following orders.

- An order putting off (adjourning) the case. The court may do this to give you time to provide extra information to support your case. For example, the court can tell the landlord to provide full details of your rent arrears if you have not had these.
- An order in your favour (for example, if you have a counterclaim for repairs for the same amount or more than the arrears).
- An order for possession of the property to be given to your landlord but suspended on

conditions that the court feels are right. This means that if you keep to the court's order (normally that you pay the rent plus a set amount off any arrears each week or month), the court will not allow your landlord to take your home.

- An outright possession order of the property. This means that at the end of a set period, your landlord can take the next step towards repossessing your home (see the section on 'Eviction what can I do?').

## What you should ask for

If you are **not in arrears**, ask the court to adjourn the hearing because you can now afford to pay your rent regularly. If at any time in the future you have problems paying your rent, you must contact your landlord to make an arrangement.

If you **are in arrears**, ask the district judge to adjourn the hearing if you can pay all the arrears in a short space of time, for example, by sorting out your Housing Benefit claim. The court may not be prepared to do this unless you can show 'exceptional circumstances'.

## REMEMBER

If your arrears are two months or eight weeks at the date of the hearing, the district judge may not be able to give you time to pay.

- If you can't pay the arrears in a short time and you agree that the amount of the arrears is correct, you should make an offer of repayment that you can afford.
- If you are on Income Support, Pension Credit, Jobseeker's Allowance or a low income, don't be afraid to offer a very small amount if that is all you can afford. Use the DWP standard amount for direct payments as a guide. This amount changes each April.  
**Phone us for advice.**

- If the district judge thinks your offer is fair, he or she is likely to grant a suspended order for possession unless your arrears are for more than two months or eight weeks. This means that as long as you keep paying the normal rent plus the amount ordered each week or month off the arrears, the landlord can take no further action.
- If the court will not accept any of these, the district judge can make an outright order for possession. As long as your arrears are for less than two months or eight week, this will normally allow you at least twenty-eight days before your landlord could take further action. Ask the district judge to give you more time to find somewhere else to live (for example, two months).

#### REMEMBER

If at any time you find you cannot pay the amount which the court has ordered, you must go back to the court and ask for the order to be changed. Use the form N244 which you can get from the court office. There is a fee to pay unless you are on certain benefits or the fee will cause you hardship. See “Eviction – what can I do?”. You should also contact your landlord and try to make a new arrangement.

## EVICTIION – WHAT CAN I DO?

The court will not take action to evict you unless your landlord asks it to. Contact your landlord immediately if:

- you have not kept up the payments under a suspended order for possession; **or**
- the time given on an outright order for possession has run out. Also try to make an arrangement with them.

If you cannot reach an agreement, your landlord can apply to the court for a ‘warrant of possession’. This is a letter from the court bailiffs giving you a date and time when they will

come to evict you. **You may be able to stop this, but you must act quickly.**

If you need further time or you want to make a renewed offer to pay the arrears by monthly instalments, you should apply for the warrant to be suspended on form N244. You will need to pay a fee to do this.

#### REMEMBER

If you want to ask the court to suspend the warrant of possession, you will need to pay a fee, unless you are on Income Support, income based Jobseeker’s Allowance or if you receive the guarantee element of Pension Credit. You don’t have to pay the fee if you get Working Tax Credit with Child Tax Credit or if it includes a disability element and your income is below a set amount. There is an application form called an EX160 to fill in to ask for the court to agree for you not to pay the court fee if it will cause you hardship or because you are on benefits.

Fill in the N244 showing:

- the claim number of the case;
- the warrant number; **and**
- the reason you’ve not be able to pay and your new offer, in **part A** on the front of the form.
  - In **part B** you should tick the box saying you rely on “evidence in **part C**”.
  - In **part C**, attach your personal budget or write it out on the form.
  - Sign the “statement of truth” at the end of the form.

Do this as soon as possible to allow the court time to arrange a hearing. If the court refuses your application because it is late, **phone us for advice.**

## REMEMBER

You can apply to suspend the warrant for the following reasons.

To make a new offer of payment on your arrears. Make sure you don't offer more than you can afford. Work out a new personal budget and send it with the form.

To ask the court to give you more time to find somewhere to live.

The court will then fix a new hearing date, usually before the eviction date, **which you must go to**. If you don't the court is unlikely to suspend the warrant.

If any further warrants are issued, you may still be able to ask for more time or ask the court to suspend the warrants.

If all your efforts to stay in the property fail, you will be given an eviction date. If you are in this position, **phone us for advice**.

Try and move out before the eviction date because the bailiffs can force their way into your home if they have to. They might remove your possessions from the house.

After you are evicted your landlord may:

- ask you to pay the rent you still owe;
- ask you to pay for repairing any damage done to your home while you were renting it.

## WARNING

If you have an assured shorthold tenancy, your landlord may be able to ask the court to make a possession order without a court hearing. This only happens if your tenancy has come to an end. You must have had two months notice in writing from the landlord. The landlord cannot use this procedure for any other reason. The court will send you details of your

landlord's claim on form N5B and ask you to fill in a reply form on N11B.

It is very important that you reply with any defence you have. Also you can ask to stay in the tenancy or up to six weeks if leaving after fourteen days will cause you and your family severe hardship. The court will then set a hearing date to decide what will happen.

If you do not reply to the claim your landlord can get a possession order after fourteen days without a hearing. If your landlord is asking for possession in this way, contact a local advice agency, housing aid centre or **phone us for advice**.

If a possession is made with a court hearing, your landlord will need to take separate court action to recover any rent arrears you had at the end of the tenancy.

## FACT SHEET

For a fact sheet on 'How can my landlord end my assured tenancy', call Business Debtline on **0800 197 6026**.

## GETTING REHOUSED

If you think you may lose your home, you should contact your local council for help as a homeless person. The council only has to offer you permanent rehousing as homeless under certain circumstances.

The council has to look at whether you:

- are homeless and eligible for help;
- are in priority need group;
- deliberately did something that made you lose your home (this is called "intentionally homeless"); **or**
- have a local connection with the area in which you have applied for help.

If your council has to offer you another home, you may not have any choice about where it is in your local area as long as it is 'suitable' under the rules.

If you think you may eventually lose your home, it is very important to get advice beforehand. We can advise you on how to approach your local housing department for rehousing and whether you are likely to be rehoused.

The council must follow certain procedures to deal with homelessness applications. If you do not think they have dealt with your application properly or taken all your circumstances into account, you can ask for a review then appeal to the county court. Contact a local housing aid centre or **phone us for advice**.

You should also contact housing associations in your area. They may have different policies from the council and be able to offer you somewhere to live. Contact the Housing Corporation on 0845 230 7000 for list of local housing associations.

You should go on the ordinary waiting list for council rehousing. This is not the same as applying for help as a homeless person. Make sure you do both.

Your local citizens advice bureau or a housing aid centre such as Shelter may be able to help you. They will not be able to give you a home but they can offer advice on getting rehoused and information on private landlords.

Shelter publish a booklet about housing rights called 'Homeless ? Read this'. For a copy of the booklet contact Shelter's free housing advice helpline on 0808 800 4444. They will also be able to tell you the address of your nearest housing aid centre.

## FACT SHEET

For a fact sheet on 'Homelessness' call Business Debtline on **0800 197 6026**.

## BAILIFFS AND RENT ARREARS

Landlords cannot take possession of your home for rent arrears without a court order, but without going to court, some landlords may use a procedure called 'distrain'. This is not used very often.

Distrain means the landlord can get a private bailiff to visit your home, take your belongings and sell them to pay off the rent arrears. The bailiff can arrange to sell your belongings at an auction house if you haven't paid the arrears within a set length of time (normally seven days). The money raised at the sale pays the auctioneer's costs, the bailiff's costs and the rent arrears.

If you have already received a bailiff's visit, or one is threatened, you must contact the bailiff's office and your landlord at once. Make an offer of payment using your personal budget to support your offer. Once the bailiffs have removed your belongings, an offer to pay off most of the arrears quickly will prevent the sale taking place. If this is happening, **phone us for advice** immediately.

**If you have a private landlord who is threatening to use distraint against you, contact us immediately for advice.** Most private landlords can only use distraint after going to a court hearing and asking for permission.

## REMEMBER

The bailiffs cannot force their way into your home unless you have already let them in on a previous visit. If a bailiff calls, don't let them in or agree anything on the first visit. **Phone us for advice.**

**Remember: You can always contact us for advice about any difficulty you have in dealing with your debts.**

**Freephone 0800 197 6026 Website [www.bdl.org.uk](http://www.bdl.org.uk)**

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