

**PRE-ACTION PROTOCOL FOR POSSESSION CLAIMS BY SOCIAL LANDLORDS
AND
PRE-ACTION PROTOCOL FOR HOUSING DISREPAIR CASES**

The Master of the Rolls as Head of Civil Justice approves—

- the substitution for the Pre-Action Protocol for Housing Disrepair Cases of the Pre-Action Protocol for Housing Condition Cases (England); and the Pre-Action Protocol for Housing Disrepair Cases (Wales); and
- the substitution for the Pre-Action Protocol for Possession Claims by Social Landlords of a new Pre-Action Protocol for Possession Claims by Social Landlords, as set out in this Update.

The new Pre-Action Protocols come into force on 13th January 2020.

Signed by:

The Right Honourable Sir Terence Etherton
Master of the Rolls and Head of Civil Justice

Date: 20 December 2019

SUBSTITUTION FOR THE PRE-ACTION PROTOCOL FOR HOUSING DISREPAIR CASES OF THE PRE-ACTION PROTOCOL FOR HOUSING CONDITION CASES (ENGLAND) AND THE PRE-ACTION PROTOCOL FOR HOUSING DISREPAIR CASES (WALES)

- 1) The Pre-Action Protocol for Housing Disrepair Cases ceases to apply in relation to England, and the new Pre-Action Protocol for Housing Disrepair Cases (England) set out in Schedule 1 to this Update applies instead.
- 2) The Pre-Action Protocol for Housing Disrepair Cases ceases to apply in relation to Wales, and the new Pre-Action Protocol for Housing Disrepair Cases (Wales) set out in Schedule 2 to this Update applies instead.

NEW PRE-ACTION PROTOCOL FOR POSSESSION CLAIMS BY SOCIAL LANDLORDS

- 1) For the Pre-Action Protocol for Possession Claims by Social Landlords, substitute the Pre-Action Protocol for Possession Claims by Social Landlords set out in Schedule 3 to this Update.

SCHEDULE 1

PRE-ACTION PROTOCOL FOR HOUSING CONDITION CASES (ENGLAND)*

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****This Protocol was previously the Pre-Action Protocol for Housing Disrepair Cases. It has been revised to embrace claims based on the new section 9A in Landlord and Tenant Act 1985 (implied term as to fitness for human habitation) which applies only in England. Accordingly, the Protocol itself now applies only to claims made in England.***

1 INTRODUCTION

1.1 This Protocol applies to residential property situated in England. It relates to claims by tenants and others in respect of poor housing conditions. Before using the Protocol, tenants should ensure that their landlord is aware of those conditions. The Protocol is intended for those cases where, despite the landlord's knowledge of the poor conditions, matters remain unresolved.

1.2 This Protocol describes the conduct that the court will normally expect prospective parties in a housing conditions claim to engage in, prior to the start of proceedings. It is intended to encourage the exchange of information between parties at an early stage and to provide a clear framework within which parties in a housing conditions claim can attempt to achieve an early and appropriate resolution of the issues.

1.3 If a claim proceeds to litigation, the court will expect all parties to have complied with the Protocol as far as possible. The court has power to order parties who have unreasonably failed to comply with the Protocol to pay costs or to be subject to other sanctions.

2 AIMS

2.1 The aims of this Protocol are to—

- (a) avoid unnecessary litigation;
- (b) promote the speedy and appropriate carrying out of any remedial works which are the landlord's responsibility;
- (c) ensure that tenants receive any compensation to which they are entitled as speedily as possible;
- (d) promote good pre-litigation practice, including the early exchange of information;
- (e) give guidance about the instruction of experts; and
- (f) keep the costs of resolving disputes down.

3 THE SCOPE OF THE PROTOCOL

3.1 A housing conditions claim is a civil claim arising from the condition of residential premises and may include a related personal injury claim (see 3.5 below). Although most claims are brought by a tenant against their landlord, this Protocol is

not limited to such claims. It covers claims by any person with a housing conditions claim including tenants, lessees and members of the tenant's family. The use of the word “tenant” in this Protocol is intended to cover all such people.

3.2 The types of claim which this Protocol is intended to cover include those brought under sections 9A and/or 11 of the Landlord and Tenant Act 1985, section 4 of the Defective Premises Act 1972, common law nuisance and negligence, and those brought under the express or implied terms of a tenancy agreement or lease. It does not cover claims brought under section 82 of the Environmental Protection Act 1990 (which are heard in the Magistrates' Court).

3.3 This Protocol does not cover housing conditions claims which originate as counterclaims or set-offs in other proceedings i.e. where the tenant is seeking to have the compensation due for adverse housing conditions set against money claimed by the landlord (typically in a possession claim for rent arrears). In such cases, the landlord and tenant will still be expected to act reasonably in exchanging information and trying to settle the case at an early stage.

3.4 The Protocol should be followed in all cases, whatever the value of the damages claim.

3.5 Housing conditions claims may contain a personal injury element. If the personal injury claim requires expert evidence other than a General Practitioner's letter, the *Personal Injury Pre-Action Protocol* should be followed for that element of the housing conditions claim. If the personal injury claim is of a minor nature, and will only be evidenced by a General Practitioner's letter, it is not necessary to follow the *Personal Injury Pre-Action Protocol*. If the situation is urgent, it would be reasonable to pursue separate housing conditions and personal injury claims, which could then be case managed together or consolidated at a later date.

THE PROTOCOL

4 Alternative dispute resolution

4.1 The parties should consider whether some form of alternative dispute resolution (ADR) procedure would be more suitable than litigation and if so, try to agree which form of ADR to use. Both the landlord and the tenant may be required by the court to provide evidence that alternative means of resolving their dispute were considered.

The courts take the view that litigation should be a last resort, and that claims should not be issued while a settlement is still actively being explored. Parties should be aware that the court will take into account the extent of the parties' compliance with this Protocol when making orders about who should pay costs.

4.2 Options for resolving a dispute include the following—

(a) mediation: information about mediation can be found at <http://www.civilmediation.org/contact.php>

(b) for council tenants—

- The council's own complaints and/or arbitration procedures.

- The *Right to Repair Scheme*. The scheme is only suitable for small, urgent repairs of less than £250 in value. Information about the scheme in England can be obtained from the Ministry for Housing, Communities and Local Government <https://www.gov.uk/repair-council-property>
- The Housing Ombudsman Service deals with complaints from council tenants in England about housing conditions <http://www.housing-ombudsman.org.uk/>

(c) for housing association tenants and for tenants of other social landlords—

- Any complaints/arbitration procedure operated by the landlord.
- The Housing Ombudsman Service deals with complaints from tenants of social housing in England about housing conditions <http://www.housing-ombudsman.org.uk/>

(d) for private tenants, the landlord, the letting agent or the property manager may be a member of a redress scheme enabling unresolved complaints about housing conditions to be independently resolved.

Information about repair rights generally is available at http://england.shelter.org.uk/get_advice/repairs_and_bad_conditions

and at

<https://www.citizensadvice.org.uk/housing/repairs-in-rented-housing/>

Private sector landlords and tenants in England can find out more about their respective rights and responsibilities for housing conditions from the UK Government's publication *Landlord and tenant rights and responsibilities in the private rented sector* (April 2019)

<https://www.gov.uk/government/publications/landlord-and-tenant-rights-and-responsibilities-in-the-private-rented-sector>

Social housing landlords and tenants may be assisted by the UK Government's guidance in *Good Practice Guidance on Housing Disrepair Legal Obligations* (January 2002).

<http://www.communities.gov.uk/publications/housing/deliveringhousingadaptation2>

5 Tenant's Letter of Claim

5.1 It is recognised that cases about housing conditions can range from straightforward to highly complex, and that it is not always possible to obtain

detailed information at an early stage. In order to avoid unnecessary delay and to ensure that notice of the claim is given to the landlord at the earliest possible opportunity, particularly where the situation is urgent, it may be appropriate for the tenant to send a letter notifying the landlord of the claim before a detailed Letter of Claim is sent.

5.2 The tenant should send to the landlord a Letter of Claim at the earliest reasonable opportunity. A specimen Letter of Claim is at Annex A. The letter may be suitably adapted as appropriate. The Letter of Claim should contain the following details—

- (a) the tenant's name, the address of the property, the tenant's address if different, the tenant's telephone number and when access is available;
- (b) details of the defects, including any defects outstanding, in the form of a schedule, if appropriate (See Annex C for a specimen schedule of conditions which can be used to inform the landlord of the defects);
- (c) history of the defects, including any attempts to rectify them;
- (d) details of any notification previously given to the landlord of the poor housing conditions or information as to why the tenant believes that the landlord has knowledge of those conditions;
- (e) the effect of the defects on the tenant (including any personal injury claim by the tenant);
- (f) the identities of all other persons who plan to make a personal injury claim and brief details of their personal injury claims;
- (g) the details of any special damages (see the form at Annex D);
- (h) the proposed expert (see paragraph 7);
- (i) the proposed letter of instruction to the expert (see Annex B); and
- (j) relevant documents disclosed by the tenant.

5.3 The Letter of Claim should also request disclosure from the landlord of all documents relevant to the poor housing conditions including—

- (a) a copy of the tenancy agreement including the tenancy conditions;
- (b) the tenancy file;
- (c) any documents relating to notice of poor housing conditions given, including copies of any notes of meetings and oral discussions;
- (d) any inspection reports or documents relating to works required to the property; and
- (e) any computerised records.

5.4 Documents relating to rent arrears or other tenancy issues will not normally be relevant. Nothing in the Protocol restricts the right of the tenant to look personally at their file or to request a copy of the whole file. Neither is the landlord prevented from sending to the tenant a copy of the whole file, should the landlord wish.

5.5 A copy of the Protocol should be sent to the landlord if the tenant has reason to believe that the landlord will not have access to the Protocol e.g. because the landlord is an individual or small organisation. If in doubt, a copy should be sent.

6 Landlord's Response

6.1 Where a landlord is not an individual, a person should be designated to act as a point of contact for the tenant (and their solicitor, if one is involved). The designated person's name and contact details should be sent to the tenant and their solicitor as soon as possible after the landlord receives the Letter of Claim from the tenant.

6.2 The landlord should normally reply to the Letter of Claim within 20 working days of receipt. Receipt is deemed to have taken place two days after the date of the letter. The landlord's response should include at least the following—

- (a) copies of all relevant records or documents requested by the tenant; and
- (b) a response to the tenant's proposals for instructing an expert including—
 - i. whether or not the proposed single joint expert is agreed;
 - ii. whether the letter of instruction is agreed;
 - iii. if the single joint expert is agreed but with separate instructions, a copy of the letter of instruction; and
 - iv. if the appointment of a single joint expert is not agreed, whether the landlord agrees to a joint inspection.

6.3 The landlord must also provide a response dealing with the issues set out below, as appropriate. This can be provided either within the response to the Letter of Claim or within 20 working days of receipt of the report of the single joint expert or receipt of the experts' agreed schedule following a joint inspection—

- (a) whether liability is admitted and, if so, in respect of which defects;
- (b) if liability is disputed in respect of some or all of the defects, the reasons for this;
- (c) any point which the landlord wishes to make regarding lack of notice of the defects or any difficulty in gaining access;
- (d) a full schedule of intended works, including anticipated start and completion dates and a timetable for the works;
- (e) any offer of compensation; and
- (f) any offer in respect of costs.

6.4 Failure to respond within 20 working days of receipt of the Letter of Claim or at all, is a breach of the Protocol (see paragraph 1.3) and the tenant is then free to issue proceedings.

6.5 The Letter of Claim and the landlord's response are not intended to have the same status as a statement of case in court proceedings. Matters may come to light

subsequently which mean that the case of one or both parties may be presented differently in court proceedings. Parties should not seek to take advantage of such discrepancies, provided that there was no intention to mislead.

7 Experts

General

7.1 (a) Parties are reminded that the Civil Procedure Rules provide that expert evidence should be restricted to that which is necessary and that the court's permission is required to use an expert's report. The court may limit the amount of experts' fees and expenses recoverable from another party.

(b) When instructing an expert, the parties must have regard to CPR 35, CPR Practice Direction 35 and the *Guidance for the Instruction of Experts in Civil Claims* (2014) <https://www.judiciary.uk/wp-content/uploads/2014/08/experts-guidance-cjc-aug-2014-amended-dec-8.pdf>

(c) In some cases, it might not be necessary to instruct an expert to provide evidence of the housing conditions, for example, if the only issue relates to the level of any damages claimed. It may be advisable for tenants to take photographs or video footage of any defects before and after works.

(d) The expert should be instructed to report on all adverse housing conditions which the landlord ought reasonably to know about, or which the expert ought reasonably to report on. The expert should be asked to provide a schedule of works, an estimate of the costs of those works, and to list any urgent works.

Single Joint Expert

7.2 (a) If the landlord does not raise an objection to the proposed expert or letter of instruction within 20 working days of receipt of the Letter of Claim, the expert should be instructed as a single joint expert, using the tenant's proposed letter of instruction. (See Annex B for a specimen letter of instruction to an expert.)

(b) Alternatively, if the parties cannot agree joint instructions, the landlord and tenant should send their own separate instructions to the single joint expert. If sending separate instructions, the landlord should send the tenant a copy of the landlord's letter of instruction with their response to the Letter of Claim.

Joint Inspection

7.3 (a) If it is not possible to reach agreement to instruct a single joint expert, even with separate instructions, the parties should attempt to arrange a joint inspection, meaning an inspection by different experts instructed by each party to take place at the same time. If the landlord wishes their own expert to attend a joint inspection, they should inform both the tenant's expert and the tenant's solicitor.

(b) Should a case come before the court, it will be for the court to decide whether the parties have acted reasonably in instructing separate experts and whether the costs of more than one expert should be recoverable.

Time Limits

7.4 (a) Whether a single joint expert or a joint inspection is used, the property should be inspected within 20 working days of the date that the landlord responds to the tenant's Letter of Claim.

(b) If a single joint expert is instructed, a copy of the expert's report should be sent to both the landlord and the tenant within 10 working days of the inspection. Either party can ask relevant questions of the expert who should send the answers to both parties.

(c) If there is a joint inspection, the experts should produce an agreed schedule of works detailing–

i. the defects and required works which are agreed and a timetable for the agreed works; and

ii. the areas of disagreement and the reasons for disagreement.

(d) The agreed schedule should be sent to both the landlord and the tenant within 10 working days of the joint inspection.

Urgent Cases

7.5 The Protocol does not prevent a tenant from instructing an expert at an earlier stage if this is considered necessary for reasons of urgency. Appropriate cases may include–

(a) where the tenant reasonably considers that there is a significant risk to health and safety;

(b) where the tenant is seeking an interim injunction; or

(c) where it is necessary to preserve evidence.

Access

7.6 Tenants must allow the landlord reasonable access for inspection and the carrying out of works in accordance with the tenancy agreement. The landlord should give reasonable notice of the need for access, except in the case of an emergency. The landlord must give access to common parts as appropriate, for example, for the inspection of a shared heating system. If the tenant is no longer in occupation of the premises, the landlord should take all reasonable steps to give access to the tenant for the purpose of an inspection.

Expert's fees

7.7 (a) Experts' terms of appointment should be agreed at the outset, including the basis of charging and time for delivery of the report.

(b) If a single joint expert is instructed, each party will pay one half of the cost of their inspection and report.

(c) If separate experts are instructed, each party will pay the full cost of the inspection and report by their own expert.

7.8 Information about independent experts can be obtained from—

(a) The Chartered Institute of Environmental Health, Consultants Directory
<http://www.ehn-online.com/consultantsdirectory/consultants.aspx?cdid=5548>

(b) The Royal Institution of Chartered Surveyors' *Find a Surveyor*
<https://www.ricsfirms.com/>

(c) The Expert Witness Directory (2015)
<https://www.sweetandmaxwell.co.uk/our-businesses/directories.aspx>

Taking stock

8 Where the procedure set out in this Protocol has not resolved the dispute between the landlord and the tenant, they should undertake a review of their respective positions to see if proceedings can be avoided and, at the least, to narrow the issues between them.

Time limits

9 (a) The time scales given in the Protocol are long stops and every attempt should be made to comply with the Protocol as soon as possible. If parties are able to comply earlier than the time scales provided, they should do so.

(b) Time limits in the Protocol may be changed by agreement. However, it should always be borne in mind that the court will expect an explanation as to why the Protocol has not been followed or has been varied and breaches of the Protocol may lead to costs or other orders being made by the court.

Limitation period

10 (a) There are statutory time limits for starting proceedings ('the limitation period'). If a tenant starts a claim after the limitation period applicable to that type of claim has expired, the landlord will be entitled to use that as a defence to the claim. In cases where the limitation period is about to expire, the tenant should ask the landlord to agree not to rely on a limitation defence, so that the parties can comply with the Protocol.

(b) If proceedings have to be started before the parties have complied with the Protocol, they should apply to the court for an order to stay (i.e. suspend) the proceedings until the steps under the Protocol have been completed.

Costs

11 If the tenant's claim is settled without litigation on terms which justify bringing it, the landlord will pay the tenant's reasonable costs. The Statement of Costs Form N260 can be used to inform the landlord of the costs of the claim.

<https://www.gov.uk/government/publications/form-n260-statement-of-costs-summary-assessment>

ANNEXES

12 The following documents are annexed to this pre-action protocol—

Annex A

Letter of Claim

- (a) for use by a solicitor; and
- (b) for use by the tenant.

Annex B

Letter of Instruction to Expert

- (a) for use by a solicitor, and
- (b) for use by the tenant.

Annex C

Schedule of Conditions

Annex D

Special Damages Form

ANNEX A - LETTER OF CLAIM

(a) Letter from tenant's solicitor to landlord

Dear Sirs,

RE: (TENANT'S NAME AND ADDRESS OF PROPERTY)

We are instructed by your above-named tenant. (Where the tenant has legal aid or is a party to a conditional fee agreement entered into before 1 April 2013 insert a sentence stating how their case is being funded.) We are using the *Pre-Action Protocol for Housing Conditions Claims - England*. We enclose a copy of the Protocol for your information.*

Housing Conditions

Your tenant complains of the following defects at the property (set out nature of defects).

We enclose a schedule of conditions which sets out the defects in each room.*

The history is as follows: (set out history of defects)

You received notice of the defects as follows: (list details of notice relied on).

The defects at the property are causing (set out the effects of the defects on the client and their family, including any personal injury element. Specify if there will be any additional claimants).

Please arrange to inspect the property as soon as possible. Access will be available on the following dates and times: (list dates and times as appropriate)

Please confirm whether you intend to carry out remedial works at this stage or whether you wish to wait until the property has been inspected by the expert(s) as set out below.

If you intend to carry out works at this stage, please set out a full schedule of intended works including anticipated start and completion dates and a timetable for the works

Disclosure

Please also provide within 20 working days of this letter the following:

All relevant records or documents including:

- (i) a copy of the tenancy agreement including the tenancy conditions;
- (ii) the tenancy file;
- (iii) documents relating to notice of defects given, including copies of any notes of meetings and oral discussions;

(iv) inspection reports or documents relating to works required to the property; and

(iv) relevant computerised records

We enclose a signed authority from our client for you to release this information to us.

We also enclose copies of the following relevant documents from our client: (set out list)

Expert

If agreement is not reached about the carrying out of works within 20 working days of this letter, we propose that the parties agree to jointly instruct a single joint expert (insert expert's name and address) to carry out an inspection of the property and provide a report. We enclose a copy of their CV, plus a draft letter of instruction.

Please let us know if you agree to his/her appointment. If you object, please let us know your reasons within 20 working days.

If you do not object to the expert being instructed as a single joint expert, but wish to provide your own instructions, you should send those directly to (insert expert's name) within 20 working days of this letter. Please send us a copy of your letter of instruction. If you do not agree to a single joint expert, we will instruct (insert expert's name) to inspect the property in any event. In those circumstances, if you wish to instruct your expert to attend at the same time, please let us and (insert expert's name) know within 20 working days.

Claim

We take the view that you are in breach of your obligations in respect of housing conditions. Please provide us with your proposals for compensation. (Alternatively, set out suggestions for general damages i.e. £x for x years).

Our client also requires compensation for special damages, and we attach a schedule of the special damages claimed.*

Yours faithfully,

* *Delete as appropriate*

(b) Letter from tenant (without a solicitor) to the landlord

Dear Sirs,

RE: (YOUR NAME AND ADDRESS OF PROPERTY)

I write regarding housing conditions at the above address. I am using the *Pre-Action Protocol for Housing Conditions Claims - England*.

I enclose a copy of the Protocol for your information. *

Housing Conditions

The following defects exist at the property (set out nature of defects).

I enclose a schedule of conditions which sets out the defects in each room.*

The history is as follows: (set out history of defects)

You received notice of the defects as follows: (list details of notice relied on).

The defects at the property are causing (set out the effects of the defects on you and your family, including any personal injury element. Specify if there will be any additional claimants).

Please arrange to inspect the property as soon as possible. Access will be available on the following dates and times: (list dates and times as appropriate)

Please confirm whether you intend to carry out remedial works at this stage or whether you wish to wait until the property has been inspected by the expert(s) as set out below.

If you intend to carry out works at this stage, please set out a full schedule of intended works including anticipated start and completion dates and a timetable for the works.

Disclosure

Please also provide within 20 working days of this letter all relevant records or documents including:

- (i) a copy of the tenancy agreement including the tenancy conditions;
- (ii) the tenancy file;
- (iii) documents relating to notice of defects given, including copies of any notes of meetings and oral discussions;
- (iv) inspection reports or documents relating to works required to the property; and
- (iv) relevant computerised records.

I enclose copies of the following relevant documents: (set out list)

Expert

If agreement is not reached about the carrying out of works within 20 working days of this letter, I propose that we jointly instruct a single joint expert (insert expert's name and address) to carry out an inspection of the property and provide a report. I enclose a copy of their CV, plus a draft letter of instruction. Please let me know if you agree to his/her appointment. If you object, please let me know your reasons within 20 working days.

If you do not object to the expert being instructed as a single joint expert, but wish to provide your own instructions, you should send those directly to (insert expert's name) within 20 working days of this letter. Please send me a copy of your letter of instruction. If you do not agree to a single joint expert, I will instruct (insert expert's name) to inspect the property in any event. In those circumstances, if you wish to instruct your expert to attend at the same time, please let me and (insert expert's name) know within 20 working days.

Claim

I take the view that you are in breach of your obligations relating to housing conditions. Please provide me with your proposals for compensation. (Alternatively, set out suggestions for general damages i.e. £x for x years). I also require compensation for special damages, and I attach a schedule of the special damages claimed.*

Yours faithfully,

* *Delete as appropriate*

ANNEX B: LETTER OF INSTRUCTION TO EXPERT

(a) Letter from tenant's solicitor to expert

Dear

RE: (TENANT'S NAME AND ADDRESS OF PROPERTY)

We act for the above named in connection with a housing conditions claim at the above property. We are using the *Pre-Action Protocol for Housing Conditions Claims - England*.

We enclose a copy of the Protocol for your information.*

Please carry out an inspection of the above property by (date)** and provide a report covering the following points:

- (a) whether you agree that the defects are as claimed;
- (b) whether any of the defects is structural;
- (c) the cause of the defect(s);
- (d) the age, character and prospective life of the property;
- (e) a schedule of works; and
- (f) an estimate of the costs of those works.

Access will be available on the following dates and times: (list dates and times as appropriate).

You are instructed as a single joint expert / The landlord is (landlord's name and details) / The landlord will be providing you with their own instructions direct / The landlord will contact you to confirm that their expert will attend at the same time as you to carry out a joint inspection.*

Please provide the report within 10 working days of the inspection. Please contact us immediately if there are any works which require an interim injunction.

If the case proceeds to court, the report may be used in evidence. Please ensure that the report complies with Civil Procedure Rules Practice Direction 35.3 and the *Guidance for the Instruction of Experts in Civil Claims (2014)*
<https://www.judiciary.uk/wp-content/uploads/2014/08/experts-guidance-cjc-aug-2014-amended-dec-8.pdf>

If you do not have a copy please let us know.

Insert details as to cost and payment

Yours sincerely,

* Delete as appropriate

** The date to be inserted should be 20 working days from the date of the letter

(b) Letter from tenant (without a solicitor) to expert

Dear

RE: (YOUR NAME AND ADDRESS OF PROPERTY)

I am currently in dispute with my landlord about housing conditions at the above property. I am using the *Pre-Action Protocol for Housing Conditions Claims - England*.

I enclose a copy of the Protocol for your information.*

Please carry out an inspection of the above property by (date)** and provide a report covering the following points:

- (a) whether you agree that the defects are as claimed;
- (b) whether any of the defects is structural;
- (c) the cause of the defect(s);
- (d) the age, character and prospective life of the property;
- (e) a schedule of works;
- (f) an estimate of the costs of those works.

Access will be available on the following dates and times: (list dates and times as appropriate)

You are instructed as a single joint expert / The landlord is (landlord's name and details) / The landlord will be providing you with their own instructions direct / The landlord will contact you to confirm that their expert will attend at the same time as you to carry out a joint inspection.*

Please provide the report within 10 working days of the inspection. Please contact me immediately if there are any works which require an interim injunction.

If the case proceeds to court, the report may be used in evidence. Please ensure that the report complies with Civil Procedure Rules Practice Direction 35.3 and the Guidance for the Instruction of Experts in Civil Claims (2014)

<https://www.judiciary.uk/wp-content/uploads/2014/08/experts-guidance-cjc-aug-2014-amended-dec-8.pdf> If you do not have a copy please let me know.

Insert details as to cost and payment

Yours sincerely,

* Delete as appropriate

** The date to be inserted should be 20 working days from the date of the letter

ANNEX C: SCHEDULE OF HOUSING CONDITIONS

Schedule of Conditions



housing-condition-
protocol-annex-c-sc

ANNEX D: SPECIAL DAMAGES FORM

Special Damages Form



housing-condition-
protocol-annex-d-sp

SCHEDULE 2

Pre-Action Protocol for Housing Disrepair Cases (Wales)*

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****This Protocol was previously the Pre-Action Protocol for Housing Disrepair Cases. Following its replacement for England with a new Protocoll embracing claims based on the new section 9A in Landlord and Tenant Act 1985 (implied term as to fitness for human habitation) which applies only in England, it has been revised for Wales to update certain references and make it clear that it now applies only to claims made in Wales.***

1 INTRODUCTION

1.1 This Protocol applies to residential property situated in Wales. It relates to claims by tenants and others in respect of housing disrepair. Before using the Protocol tenants should ensure that their landlord is aware of the disrepair. The Protocol is intended for those cases where, despite the landlord's knowledge of the disrepair, the matter remains unresolved.

1.2 This Protocol describes the conduct the court will normally expect prospective parties in a housing disrepair claim to follow prior to the start of proceedings. It is intended to encourage the exchange of information between parties at an early stage and to provide a clear framework within which parties in a housing disrepair claim can attempt to achieve an early and appropriate resolution of the issues.

1.3 If a claim proceeds to litigation, the court will expect all parties to have complied with the Protocol as far as possible. The court has power to order parties who have unreasonably failed to comply with the Protocol to pay costs or to be subject to other sanctions.

2 AIMS

2.1 The aims of this Protocol are to–

- (a) avoid unnecessary litigation;
- (b) promote the speedy and appropriate carrying out of any repairs which are the landlord's responsibility;
- (c) ensure that tenants receive any compensation to which they are entitled as speedily as possible;
- (d) promote good pre-litigation practice, including the early exchange of information and to give guidance about the instruction of experts; and
- (e) keep the costs of resolving disputes down.

3 THE SCOPE OF THE PROTOCOL

3.1 A disrepair claim is a civil claim arising from the condition of residential premises and may include a related personal injury claim (see 3.5 below). Although most claims are brought by a tenant against their landlord, this Protocol is not limited to such claims. It covers claims by any person with a disrepair claim including tenants, lessees and members of the tenant's family. The use of the word “tenant” in this Protocol is intended to cover all such people.

3.2 The types of claim which this Protocol is intended to cover include those brought under Section 11 of the Landlord and Tenant Act 1985, Section 4 of the Defective Premises Act 1972, common law nuisance and negligence, and those brought under the express terms of a tenancy agreement or lease. It does not cover claims brought under Section 82 of the Environmental Protection Act 1990 (which are heard in the Magistrates' Court).

3.3 This Protocol does not cover disrepair claims which originate as counterclaims or set-offs in other proceedings i.e. where the tenant is seeking to have the compensation due for disrepair set against money claimed by the landlord (typically in a possession claim for rent arrears). In such cases the landlord and tenant will still be expected to act reasonably in exchanging information and trying to settle the case at an early stage.

3.4 The Protocol should be followed in all cases, whatever the value of the damages claim.

3.5 Housing disrepair claims may contain a personal injury element. If the personal injury claim requires expert evidence other than a General Practitioner’s letter, the Personal Injury Protocol should be followed for that element of the disrepair claim. If the personal injury claim is of a minor nature and will only be evidenced by a General Practitioner’s letter, it is not necessary to follow the Personal Injury Protocol. If the disrepair claim is urgent, it would be reasonable to pursue separate disrepair and personal injury claims, which could then be case managed together or consolidated at a later date.

THE PROTOCOL

4 Alternative dispute resolution

4.1 The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation and if so, try to agree which form to use. Both the landlord and the tenant may be required by the court to provide evidence that alternative means of resolving their dispute were considered.

The courts take the view that litigation should be a last resort, and that claims should not be issued while a settlement is still actively being explored. Parties should be aware that the court will take into account the extent of the parties’ compliance with this Protocol when making orders about who should pay costs.

4.2 Options for resolving a dispute include the following—

(a) mediation: information about mediation can be found at <http://www.civilmediation.org/contact.php>

(b) for council tenants—

Local authority repairs, complaints and/or arbitration procedures.

The Right to Repair Scheme. The scheme is only suitable for small, urgent repairs of less than £250 in value.

Information about the scheme in Wales can be obtained from the National Assembly for Wales, Cardiff Bay, Cardiff, CF99 1NA. Tel. 0845 010 5500

<http://www.assemblywales.org/index.htm>

The Public Services Ombudsman for Wales. Tel. 0300 790 0203

<http://www.ombudsman-wales.org.uk>

(c) for housing association tenants and for tenants of qualifying private landlords—

Any complaints procedure operated by the landlord.

The National Assembly for Wales, Cardiff Bay, Cardiff, CF99 1NA. Tel. 0845 010 5500 <http://www.assemblywales.org/index.htm>

Information about repair rights generally is available free of charge from:

<https://sheltercymru.org.uk/get-advice/repairs-and-bad-conditions/>

5 Tenant's Letter of Claim

5.1 It is recognised that disrepair cases can range from straightforward to highly complex, and that it is not always possible to obtain detailed information at an early stage. In order to avoid unnecessary delay and to ensure that notice of the claim is given to the landlord at the earliest possible opportunity, particularly where repairs are urgent, it may be appropriate for the tenant to send a letter notifying the landlord of the claim before a detailed Letter of Claim is sent.

5.2 The tenant should send to the landlord a Letter of Claim at the earliest reasonable opportunity. A specimen Letter of Claim is at Annex A. The letter may be suitably adapted as appropriate. The Letter of Claim should contain the following details—

(a) the tenant's name, the address of the property, the tenant's address if different, the tenant's telephone number and when access is available;

(b) details of the defects, including any defects outstanding, in the form of a schedule, if appropriate (See Annex C for a specimen schedule which can be used to inform the landlord of the disrepair);

- (c) history of the defects, including any attempts to rectify them;
- (d) details of any notification previously given to the landlord of the need for repair or information as to why the tenant believes that the landlord has knowledge of the need for repair;
- (e) the effect of the defects on the tenant (including any personal injury claim by the tenant);
- (f) the identities of all other persons who plan to make a personal injury claim and brief details of their personal injury claims;
- (g) the details of any special damages (see the form at Annex D);
- (h) the proposed expert(see paragraph 7);
- (i) the proposed letter of instruction to the expert (See Annex B); and
- (j) relevant documents disclosed by the tenant.

5.3 The Letter of Claim should also request disclosure from the landlord of all documents relevant to the disrepair including—

- (a) a copy of the tenancy agreement including the tenancy conditions;
- (b) the tenancy file;
- (c) any documents relating to notice of disrepair given, including copies of any notes of meetings and oral discussions;
- (d) any inspection reports or documents relating to works required to the property; and
- (e) any computerised records.

5.4 Documents relating to rent arrears or other tenancy issues will not normally be relevant. Nothing in the Protocol restricts the right of the tenant to look personally at their file or to request a copy of the whole file. Neither is the landlord prevented from sending to the tenant a copy of the whole file, should the landlord wish.

5.5 A copy of the Protocol should be sent to the landlord if the tenant has reason to believe that the landlord will not have access to the Protocol e.g. because the landlord is an individual or small organisation. If in doubt, a copy should be sent.

6 Landlord's Response

6.1 Where a landlord is not an individual, a person should be designated to act as a point of contact for the tenant (and their solicitor, if one is involved). The designated person's name and contact details should be sent to the tenant and their solicitor as soon as possible after the landlord receives the Letter of Claim from the tenant.

6.2 The landlord should normally reply to the Letter of Claim within 20 working days of receipt. Receipt is deemed to have taken place two days after the date of the letter. The landlord's response should include at least the following—

- (a) copies of all relevant records or documents requested by the tenant; and

- (b) a response to the tenant's proposals for instructing an expert including—
- i. whether or not the proposed single joint expert is agreed;
 - ii. whether the letter of instruction is agreed;
 - iii. if the single joint expert is agreed but with separate instructions, a copy of the letter of instruction; and
 - iv. if the appointment of a single joint expert is not agreed, whether the landlord agrees to a joint inspection.

6.3 The landlord must also provide a response dealing with the issues set out below, as appropriate. This can be provided either within the response to the Letter of Claim or within 20 working days of receipt of the report of the single joint expert or receipt of the experts' agreed schedule following a joint inspection—

- (a) whether liability is admitted and, if so, in respect of which defects;
- (b) if liability is disputed in respect of some or all of the defects, the reasons for this;
- (c) any point which the landlord wishes to make regarding lack of notice of the disrepair or any difficulty in gaining access;
- (d) a full schedule of intended works, including anticipated start and completion dates and a timetable for the works;
- (e) any offer of compensation; and
- (f) any offer in respect of costs.

6.4 Failure to respond within 20 working days of receipt of the Letter of Claim or at all, is a breach of the Protocol (see paragraph 1.3) and the tenant is then free to issue proceedings.

6.5 The Letter of Claim and the landlord's response are not intended to have the same status as a statement of case in court proceedings. Matters may come to light subsequently which mean that the case of one or both parties may be presented differently in court proceedings. Parties should not seek to take advantage of such discrepancies provided that there was no intention to mislead.

7 Experts

General

7.1

(a) Parties are reminded that the Civil Procedure Rules provide that expert evidence should be restricted to that which is necessary and that the court's permission is required to use an expert's report. The court may limit the amount of experts' fees and expenses recoverable from another party.

(b) When instructing an expert, the parties must have regard to CPR Practice Direction 35 and the Guidance for the Instruction of Experts in Civil Claims 2014 at <http://www.judiciary.gov.uk>.

(c) In some cases it might not be necessary to instruct an expert to provide evidence of disrepair, for example, if the only issue relates to the level of any damages claimed. It may be advisable for tenants to take photographs or video footage of any defects before and after works.

(d) The expert should be instructed to report on all items of disrepair which the landlord ought reasonably to know about, or which the expert ought reasonably to report on. The expert should be asked to provide a schedule of works, an estimate of the costs of repair, and to list any urgent works.

Single Joint Expert

7.2

(a) If the landlord does not raise an objection to the proposed expert or letter of instruction within 20 working days of receipt of the Letter of Claim, the expert should be instructed as a single joint expert, using the tenant's proposed letter of instruction. (See Annex B for a specimen letter of instruction to an expert.)

(b) Alternatively, if the parties cannot agree joint instructions, the landlord and tenant should send their own separate instructions to the single joint expert. If sending separate instructions, the landlord should send the tenant a copy of the landlord's letter of instruction with their response to the Letter of Claim.

Joint Inspection

7.3

(a) If it is not possible to reach agreement to instruct a single joint expert, even with separate instructions, the parties should attempt to arrange a joint inspection, meaning an inspection by different experts instructed by each party to take place at the same time. If the landlord wishes their own expert to attend a joint inspection, they should inform both the tenant's expert and the tenant's solicitor.

(b) Should a case come before the court, it will be for the court to decide whether the parties have acted reasonably in instructing separate experts and whether the costs of more than one expert should be recoverable.

Time Limits

7.4

(a) Whether a single joint expert or a joint inspection is used, the property should be inspected within 20 working days of the date that the landlord responds to the tenant's Letter of Claim.

(b) If a single joint expert is instructed, a copy of the expert's report should be sent to both the landlord and the tenant within 10 working days of the inspection. Either party can ask relevant questions of the expert who should send the answers to both parties.

(c) If there is a joint inspection, the experts should produce an agreed schedule of works detailing—

i. the defects and required works which are agreed and a timetable for the agreed works

ii. the areas of disagreement and the reasons for disagreement.

(d) The agreed schedule should be sent to both the landlord and the tenant within 10 working days of the joint inspection.

Urgent Cases

7.5 The Protocol does not prevent a tenant from instructing an expert at an earlier stage if this is considered necessary for reasons of urgency. Appropriate cases may include—

(a) where the tenant reasonably considers that there is a significant risk to health and safety;

(b) where the tenant is seeking an interim injunction;

(c) where it is necessary to preserve evidence.

Access

7.6 Tenants must allow the landlord reasonable access for inspection and repair in accordance with the tenancy agreement. The landlord should give reasonable notice of the need for access, except in the case of an emergency. The landlord must give access to common parts as appropriate, for example, for the inspection of a shared heating system. If the tenant is no longer in occupation of the premises the landlord should take all reasonable steps to give access to the tenant for the purpose of an inspection.

Expert's fees

7.7

(a) Experts' terms of appointment should be agreed at the outset, including the basis of charging and time for delivery of the report.

(b) If a single joint expert is instructed, each party will pay one half of the cost of the report. If a joint inspection is carried out, each party will pay the full cost of the report from their own expert.

7.8 Information about independent experts can be obtained from—

(a) The Chartered Institute of Environmental Health, Chadwick Court, 15 Hatfields, London. SE1 8DJ Tel: 020 7928 6006 http://www.cieh.org/about_us.html. Ask for a copy of the Consultants and Trainers Directory;

(b) The Expert Witness Directory <http://www.sweetandmaxwell.co.uk/our-businesses/directories.aspx>

(c) The Royal Institution of Chartered Surveyors, 12 Great George Street, Parliament Square, London. SW1P 3AD, Tel: 024 7686 8555 <http://www.ricsfirms.com/> Ask for a copy of the relevant regional directory.

Taking stock

8 Where the procedure set out in this Protocol has not resolved the dispute between the landlord and the tenant, they should undertake a review of their respective

positions to see if proceedings can be avoided and, at the least, to narrow the issues between them.

Time limits

9

(a) The time scales given in the Protocol are long stops and every attempt should be made to comply with the Protocol as soon as possible. If parties are able to comply earlier than the time scales provided, they should do so.

(b) Time limits in the Protocol may be changed by agreement. However, it should always be borne in mind that the court will expect an explanation as to why the Protocol has not been followed or has been varied and breaches of the Protocol may lead to costs or other orders being made by the court.

Limitation period

10

(a) There are statutory time limits for starting proceedings ('the limitation period'). If a tenant starts a claim after the limitation period applicable to that type of claim has expired, the landlord will be entitled to use that as a defence to the claim. In cases where the limitation period is about to expire, the tenant should ask the landlord to agree not to rely on a limitation defence, so that the parties can comply with the Protocol.

(b) If proceedings have to be started before the parties have complied with the Protocol, they should apply to the court for an order to stay (i.e. suspend) the proceedings until the steps under the Protocol have been completed.

Costs

11 If the tenant's claim is settled without litigation on terms which justify bringing it, the landlord will pay the tenant's reasonable costs. The Statement of Costs Form N260 available on the HMCTS website can be used to inform the landlord of the costs of the claim.

ANNEXES

12 The following documents are annexed to this pre-action protocol—

Annex A

Letter of Claim

(a) for use by a solicitor; and

(b) for use by the tenant.

Annex B

Letter of Instruction to Expert

(a) for use by a solicitor, and

(b) for use by the tenant.

Annex C

Schedule of Disrepair

Annex D

Special Damages Form

ANNEX A - LETTER OF CLAIM

(a) Letter from solicitor

To Landlord

Dear Sirs,

RE: TENANT'S NAME AND ADDRESS OF PROPERTY

We are instructed by your above named tenant. (Where the tenant is legally aided or a party to a conditional fee agreement entered into before 1 April 2013 insert a sentence stating how their case is being funded.) We are using the Housing Disrepair Protocol. We enclose a copy of the Protocol for your information.*

Repairs

Your tenant complains of the following defects at the property (set out nature of defects).

We enclose a schedule which sets out the disrepair in each room.*

The history of the disrepair is as follows: (set out history of defects)

You received notice of the defects as follows: (list details of notice relied on).

The defects at the property are causing (set out the effects of the disrepair on the client and their family, including any personal injury element. Specify if there will be any additional claimants).

Please arrange to inspect the property as soon as possible. Access will be available on the following dates and times: (list dates and times as appropriate)

Please confirm whether you intend to carry out repairs at this stage or whether you wish to wait until the property has been inspected by the expert(s) as set out below.

If you intend to carry out repairs at this stage, please set out a full schedule of intended works including anticipated start and completion dates and a timetable for the works

Disclosure

Please also provide within 20 working days of this letter the following:

All relevant records or documents including:

- (i) a copy of the tenancy agreement including the tenancy conditions
- (ii) the tenancy file
- (iii) documents relating to notice of disrepair given, including copies of any notes of meetings and oral discussions
- (iv) inspection reports or documents relating to works required to the property.
- (iv) computerised records

We enclose a signed authority from our client for you to release this information to us.

We also enclose copies of the following relevant documents from our client:

Expert

If agreement is not reached about the carrying out of repairs within 20 working days of this letter, we propose that the parties agree to jointly instruct a single joint expert (insert expert's name and address) to carry out an inspection of the property and provide a report. We enclose a copy of their CV, plus a draft letter of instruction.

Please let us know if you agree to his/her appointment. If you object, please let us know your reasons within 20 working days.

If you do not object to the expert being instructed as a single joint expert, but wish to provide your own instructions, you should send those directly to (insert expert's name) within 20 working days of this letter. Please send us a copy of your letter of instruction. If you do not agree to a single joint expert, we will instruct (insert expert's name) to inspect the property in any event. In those circumstances, if you wish to instruct your expert to attend at the same time, please let us and (insert expert's name) know within 20 working days.

Claim

We take the view that you are in breach of your repairing obligations. Please provide us with your proposals for compensation. (Alternatively, set out suggestions for general damages i.e. £x for x years).

Our client also requires compensation for special damages, and we attach a schedule of the special damages claimed.*

Yours faithfully,

* Delete as appropriate

ANNEX A: LETTER OF CLAIM

(b) Letter from tenant

To Landlord

Dear Sirs,

RE: YOUR NAME AND ADDRESS OF PROPERTY

I write regarding disrepair at the above address. I am using the Housing Disrepair Protocol.

I enclose a copy of the Protocol for your information. *

Repairs

The following defects exist at the property (set out nature of defects).

I enclose a schedule which sets out the disrepair in each room.*

The history of the disrepair is as follows: (set out history of defects)

You received notice of the defects as follows: (list details of notice relied on).

The defects at the property are causing (set out the effects of the disrepair on you and your family, including any personal injury element. Specify if there will be any additional claimants).

Please arrange to inspect the property as soon as possible. Access will be available on the following dates and times: (list dates and times as appropriate)

Please confirm whether you intend to carry out repairs at this stage or whether you wish to wait until the property has been inspected by the expert(s) as set out below.

If you intend to carry out repairs at this stage, please set out a full schedule of intended works including anticipated start and completion dates and a timetable for the works.

Disclosure

Please also provide within 20 working days of this letter the following:

All relevant records or documents including:

- (i) a copy of the tenancy agreement including the tenancy conditions;
- (ii) the tenancy file;
- (iii) documents relating to notice of disrepair given, including copies of any notes of meetings and oral discussions;
- (iv) inspection reports or documents relating to works required to the property;
- (iv) computerised records.

I enclose copies of the following relevant documents:

Expert

If agreement is not reached about the carrying out of repairs within 20 working days of this letter, I propose that we jointly instruct a single joint expert (insert expert's name and address) to carry out an inspection of the property and provide a report. I enclose a copy of their CV, plus a draft letter of instruction. Please let me know if you agree to his/her appointment. If you object, please let me know your reasons within 20 working days.

If you do not object to the expert being instructed as a single joint expert, but wish to provide your own instructions, you should send those directly to (insert expert's name) within 20 working days of this letter. Please send me a copy of your letter of instruction. If you do not agree to a single joint expert, I will instruct (insert expert's name) to inspect the property in any event. In those circumstances, if you wish to instruct your expert to attend at the same time, please let me and (insert expert's name) know within 20 working days.

Claim

I take the view that you are in breach of your repairing obligations. Please provide me with your proposals for compensation. (Alternatively, set out suggestions for general damages i.e. £x for x years). I also require compensation for special damages, and I attach a schedule of the special damages claimed.*

Yours faithfully,

* Delete as appropriate

ANNEX B: LETTER OF INSTRUCTION TO EXPERT

(a) Letter from solicitor

Dear

RE: TENANT'S NAME AND ADDRESS OF PROPERTY

We act for the above named in connection with a housing disrepair claim at the above property. We are using the Housing Disrepair Protocol.

We enclose a copy of the Protocol for your information.*

Please carry out an inspection of the above property by (date)** and provide a report covering the following points:

- (a) whether you agree that the defects are as claimed;
- (b) whether any of the defects is structural;
- (c) the cause of the defect(s);
- (d) the age, character and prospective life of the property;
- (e) a schedule of works;
- (f) an estimate of the costs of repair.

Access will be available on the following dates and times: (list dates and times as appropriate).

You are instructed as a single joint expert / The landlord is (landlord's name and details) / The landlord will be providing you with their own instructions direct / The landlord will contact you to confirm that their expert will attend at the same time as you to carry out a joint inspection.*

Please provide the report within 14 days of the inspection. Please contact us immediately if there are any works which require an interim injunction.

If the case proceeds to court, the report may be used in evidence. Please ensure that the report complies with Civil Procedure Rules Practice Direction 35.3 and the Guidance for the Instruction of Experts in Civil Claims 2014 at

<http://www.judiciary.gov.uk>.

If you do not have a copy please let us know.

Insert details as to cost and payment

Yours sincerely,

* Delete as appropriate

** The date to be inserted should be 20 working days from the date of the letter

ANNEX B: LETTER OF INSTRUCTION TO EXPERT

(b) Letter from tenant

Dear

RE: YOUR NAME AND ADDRESS OF PROPERTY

I am currently in dispute with my landlord about disrepair at the above property. I am using the Housing Disrepair Protocol.

I enclose a copy of the Protocol for your information.*

Please carry out an inspection of the above property by (date)** and provide a report covering the following points:

- (a) whether you agree that the defects are as claimed;
- (b) whether any of the defects is structural;
- (c) the cause of the defect(s);
- (d) the age, character and prospective life of the property;
- (e) a schedule of works;
- (f) an estimate of the costs of repair.

Access will be available on the following dates and times: (list dates and times as appropriate)

You are instructed as a single joint expert / The landlord is (landlord's name and details) / The landlord will be providing you with their own instructions direct / The landlord will contact you to confirm that their expert will attend at the same time as you to carry out a joint inspection.*

Please provide the report within 14 days of the inspection. Please contact me immediately if there are any works which require an interim injunction.

If the case proceeds to court, the report may be used in evidence. Please ensure that the report complies with Civil Procedure Rules Practice Direction 35.3 and the Guidance for the Instruction of Experts in Civil Claims 2014 at <http://www.judiciary.gov.uk>. If you do not have a copy please let me know.

Insert details as to cost and payment

Yours sincerely,

* Delete as appropriate

** The date to be inserted should be 20 working days from the date of the letter

ANNEX C: SCHEDULE OF DISREPAIR

[Schedule of disrepair](#)

ANNEX D: SPECIAL DAMAGES FORM

[Special damages form](#)

SCHEDULE 3

PRE-ACTION PROTOCOL FOR POSSESSION CLAIMS BY SOCIAL LANDLORDS

PART 1

AIMS AND SCOPE OF THE PROTOCOL

1.1 This Protocol applies to residential possession claims in England and Wales brought by social landlords (such as local authorities and housing associations). This Part sets out the aims and scope of the protocol. Part 2 relates to claims which are based solely on rent arrears. Part 3 applies to claims brought by social landlords where the court must, in principle, grant possession and where s89(1) Housing Act 1980 applies. The protocol does not apply to claims in respect of long leases .

1.2 Part 2 reflects the guidance on good practice given to social landlords in the collection of rent arrears. It recognises that it is in the interests of both social landlords and tenants to ensure that rent is paid promptly and that difficulties are resolved, wherever possible, without court proceedings.

1.3 Part 3 seeks to ensure that, in cases where human rights, public law or equality law matters are or may be raised, the necessary information is before the Court at the first hearing so that issues of proportionality may be dealt with summarily, if appropriate, or that appropriate directions for trial may be given.

1.4 The aims of the protocol are:

(a) to encourage more pre-action contact and exchange of information between landlords and tenants;

(b) to enable the parties to avoid litigation by settling the matter, if possible; and

(c) to enable court time to be used more effectively if proceedings are necessary.

1.5 Courts should take into account whether this protocol has been followed when considering what orders to make. Social landlords should also comply with guidance issued from time to time by the Regulator of Social Housing, the Ministry for Housing, Communities and Local Government and, in Wales, the Welsh Ministers.

(a) If the landlord is aware that the tenant has difficulty in reading or understanding information given, the landlord should take reasonable steps to ensure that the tenant understands any information given. The landlord should be able to demonstrate that reasonable steps have been taken to ensure that the information has been appropriately communicated in ways that the tenant can understand.

(b) If the landlord is aware that the tenant is particularly vulnerable, the landlord should consider at an early stage–

i. whether or not the tenant has the mental capacity to defend possession proceedings and the extent to which CPR 21 applies;

ii. whether or not any issues arise under the Equality Act 2010; and

iii. in the case of a local authority landlord, whether or not there is a need for a community care assessment in accordance with the Care Act 2014.

PART 2

POSSESSION CLAIMS BASED UPON RENT ARREARS

Initial contact

2.1 If the tenant falls into arrears, the landlord should contact the tenant, as soon as reasonably possible, to discuss: the cause of the arrears; the tenant's financial circumstances; the tenant's entitlement to benefits; and repayment of the arrears. Where contact is by letter, the landlord should write separately to each named tenant.

2.2 The landlord and tenant should try to agree affordable sums for the tenant to pay towards the arrears, based upon the tenant's income and expenditure (where such information has been supplied in response to the landlord's enquiries). The landlord should clearly set out, in pre-action correspondence, any time limits with which the tenant should comply.

2.3 The landlord should provide, on a quarterly basis, rent statements in a comprehensible format showing rent due and sums received for the past 13 weeks. The landlord should, upon request, provide the tenant with copies of rent statements in a comprehensible format, from the date when arrears first arose, showing all amounts of rent due, the dates and amounts of all payments made (whether through housing benefit, discretionary housing payments or directly by the tenant) and a running total of the arrears.

2.4 If the tenant meets the appropriate criteria, the landlord should apply for arrears to be paid by the Department for Work and Pensions ['DWP'] by deductions from the tenant's benefit.

2.5 The landlord should offer to assist the tenant in any claim that the tenant may have for housing benefit, discretionary housing payments or universal credit (housing element).

2.6 Possession proceedings for rent arrears should not be started against a tenant who can demonstrate that –

(a) the local authority or DWP have been provided with all the evidence required to process a housing benefit or universal credit (housing element) claim;

(b) there is a reasonable expectation of eligibility for housing benefit or universal credit (housing element); and

(c) they have paid other sums due that are not covered by housing benefit or universal credit (housing element).

The landlord should make every effort to establish effective ongoing liaison with housing benefit departments and the DWP and, with the tenant's consent, make direct contact with the relevant housing benefit department or DWP office before taking enforcement action.

The landlord and tenant should work together to resolve any housing benefit or universal credit (housing element) problems.

2.7 Bearing in mind that rent arrears may be part of a general debt problem, the landlord should advise the tenant to seek assistance from citizens advice bureaux, debt advice agencies or other appropriate agencies as soon as possible. Information on debt advice is available on the Money Advice Service website <https://www.moneyadviceservice.org.uk>.

After service of statutory notices

2.8 After service of a statutory notice, but before the issue of proceedings, the landlord should make reasonable attempts to contact the tenant to discuss: the amount of the arrears; the cause of the arrears; repayment of the arrears; and the housing benefit or universal credit (housing element) position. The landlord should send the tenant a copy of this protocol.

2.9 If the tenant complies with an agreement to pay the current rent and a reasonable amount towards arrears, the landlord should agree to postpone issuing court proceedings for so long as the tenant keeps to such agreement. If the tenant ceases to comply with such an agreement, the landlord should warn the tenant of the intention to bring proceedings and give the tenant clear time limits within which to comply again and avoid proceedings.

Alternative dispute resolution

2.10 The parties should consider whether it is possible to resolve the issues between them by discussion and negotiation without recourse to litigation. The parties may be required by the court to provide evidence that alternative means of resolving the dispute were considered. Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored.

2.11 The Civil Justice Council and the Judicial College have endorsed *The Jackson ADR Handbook* by Susan Blake, Julie Browne and Stuart Sime (2013, Oxford University Press). The Citizens Advice Bureaux website also provides information about ADR:

http://www.adviceguide.org.uk/england/law_e/law_legal_system_e/law_taking_legal_action_e/alternatives_to_court.htm.

Information is also available at: <http://www.civilmediation.justice.gov.uk/>

Court proceedings

2.12 Not later than ten days before the date set for the hearing of the possession claim, the landlord should–

(a) provide the tenant with up-to-date rent statements; and

(b) disclose what knowledge it possesses of the tenant's housing benefit or universal credit (housing element) position to the tenant.

2.13 (a) The landlord should inform the tenant of the date and time of any court hearing and provide an up-to-date rent statement and the terms of the order that will be applied for. The landlord should advise the tenant to attend the hearing as the tenant's home is at risk. Records of such advice should be kept.

(b) If the tenant complies with an agreement made, after the issue of proceedings, to pay the current rent and a reasonable amount towards arrears, the landlord should agree to adjourn the court proceedings for so long as the tenant keeps to such agreement.

(c) If the tenant ceases to comply with such agreement, the landlord should warn the tenant of the intention to restore the proceedings and give the tenant clear time limits within which to comply again and avoid restoration of the proceedings.

2.14 If the landlord unreasonably fails to comply with the terms of this protocol, the court may make one or more of the following orders–

(a) an order for costs;

(b) an order adjourning the claim; or

(c) an order striking out or dismissing the claim (other than a claim based on a mandatory ground).

2.15 If the tenant unreasonably fails to comply with the terms of this protocol, the court may take such failure into account when considering whether it is reasonable to make a possession order.

PART 3

MANDATORY GROUNDS FOR POSSESSION

3.1 This Part applies in cases where, if a social landlord proves its case, the court must, in principle, grant possession and where s.89(1) Housing Act 1980 applies

3.2 Before issuing any such possession claim a social landlord—

(a) should write to the occupants explaining why it currently intends to seek possession and requiring the occupants, within a specified time, to notify the landlord in writing of any personal circumstances or other matters which they wish to have taken into account. In appropriate cases, such a letter could accompany any notice to quit or notice seeking possession and so would not necessarily delay the issue of proceedings; and

(b) should consider any representations received and, if they decide to proceed with a claim for possession, give brief written reasons for doing so.

3.3 The social landlord should include with its claim form, or in any witness statement filed under CPR 55.8(3), a schedule stating—

(a) whether it has (by a statutory review procedure or otherwise) invited the defendant to make representations of any personal circumstances or other matters which they wished to be taken into account before the social landlord issued the proceedings;

(b) if representations were made, whether and how they were considered and with what outcome; and

(c) brief reasons for bringing proceedings.

Copies of any relevant documents which the social landlord wishes the court to consider in relation to the proportionality of the landlord's decision to bring the proceedings should be attached to the schedule.