

Possession action- the last resort?

CAB evidence on court action by social landlords to recover rent arrears

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1. Summary and recommendations

- 1.1 There is extensive evidence from Citizens Advice Bureaux throughout England and Wales that significant numbers of local authority and housing association tenants face possession action on grounds of rent arrears prematurely, before all other avenues, to recover the arrears, have been explored.
- 1.2 The number of outright possession orders granted to social landlords by the courts almost doubled between 1996 and 2001, and increased by 12 per cent in both 2000 and 2001. In 2001, social landlords were granted outright orders for possession against 30,350 tenants. Additionally, in more than twice that number of cases (70,293) suspended orders were granted.¹ This is despite the fact that it is explicit in the regulatory guidance for housing associations and the assessment criteria for local authority housing services that possession action for rent arrears should only be used as a last resort².
- 1.3 Citizens Advice believes that a new approach is needed to ensure possession action is only used as a last resort. The approach should comprise of three key elements. Firstly it is imperative that the administration of housing benefit is dramatically improved so that the needs of tenants and landlords for prompt payment are met. Secondly legislative reform is needed to provide a greater focus on debt recovery rather than possession.
- 1.4 The third element, which is the main focus of this report, relates to the need for a change in approach by some social landlords towards the recovery of rent arrears. Many social landlords rely too heavily on court action as a basic rent arrears recovery tool: housing managers spend time and resources pursuing arrears through court-based systems despite growing levels of arrears; tenants who are responsible for paying their rent, are often caught out by poverty, debt and personal problems or crises, leaving them unable to negotiate their way through the maze of agencies who may be involved; CAB advisers find themselves repeatedly advising tenants on the brink of losing their home on how they can navigate through the court to prevent homelessness. From all perspectives the present system is inadequate, ineffective and frustrating.
- 1.5 There is also pressure for change from other quarters. The Law Commission's review of housing law proposes fundamental changes to possession procedures which would reduce the current use of suspended possession orders, and the Homelessness Act 2002 charges local authorities with a more pro-active approach to homelessness prevention, including greater emphasis on sustaining tenancies rather than eviction.

¹ Statistics from Lord Chancellors Department - see Table 1, page 11

² Housing Corporation, 2002; *The way forward: our approach to regulation* - Audit Commission, 2002; *Housing Services – Key aspects of service delivery*

- 1.6 This report draws on case evidence submitted by 389 Citizens Advice Bureaux across England and Wales between January and December 2002 and from internal policy and procedural documentation kindly provided by housing associations and local authorities. The evidence is supplemented by a monitoring exercise carried out with CAB clients at 38 county courts throughout England and Wales over a four-week period between May and June 2002. Citizens Advice Bureaux are involved in running desks in 129 county courts, providing advice and representation for people attending court. Often these people have had no independent advice prior to attending court for a hearing.
- 1.7 CAB evidence suggests that the main factors which cause people to fall into rent arrears are:
- sudden changes in personal circumstances such as job loss or relationship breakdown which result in a drop in income
 - delays and failures in the housing benefit system, and
 - sheer poverty and the problems of trying to manage on a low income.
- 1.8 In addition, many tenants of social landlords have specific problems which make them vulnerable (for example poor physical or mental health, literacy or numeracy problems). These factors can make it particularly difficult to cope with the pressures of rent debt.
- 1.9 Despite this, CAB evidence demonstrates that many social landlords start possession action before all other avenues for recovering the arrears have been explored. Cases include:
- tenants facing possession action despite having agreed and kept to arrangements to repay their arrears in instalments
 - tenants facing possession action where their arrears could have been recovered through deductions from their income support or job seekers allowance
 - vulnerable tenants, for example people with learning difficulties or with mental health problems, facing possession action when they had got into arrears because of a lack of support with their housing benefit claim
 - tenants facing possession action for rent arrears where there were unresolved housing benefit issues.
- 1.10 Failure in housing benefit administration is a common cause of significant rent arrears. It is not unusual for CABx to report clients waiting three or four months between submitting a housing benefit claim and payment being made. But CAB evidence indicates that in too many cases social landlords make no allowance for the fact that rent arrears may be caused by problems in housing benefit administration, and pursue court action regardless. Tenants can then find themselves threatened with eviction for reasons which are beyond their control. Recent research by the National Assembly for Wales (ONS 2002) found that housing association landlords admitted that delays in housing

benefit payment were the **main** cause of arrears in 13 per cent of cases where a possession order was granted.

1.11 But the situation is not uniformly bleak. Analysis of over 40 social landlords' rent arrears policy documents found that some recognise that effective rent collection and arrears recovery cannot be isolated from providing wider tenancy support along with access to independent information and advice. Key good practices we have identified include:

- **early and sustained contact with tenants** including support throughout the housing benefit claims process, to prevent arrears getting out of hand
- **flexibility of response** both in when and how tenants are contacted and in agreeing and rescheduling repayment arrangements when circumstances change
- referral arrangements for tenants to **holistic independent debt advice** where appropriate
- close **liaison with housing benefit** departments and
- **clear and constructive communication with tenants.**

1.12 There is evidence that tenant-focussed housing management can result in financial benefits to both tenant and landlord in terms of reduced rent arrears and possession action.

Recommendations

1.13 **The Office of the Deputy Prime Minister and the Housing Corporation should draw up a joint statement of practice on preventing and recovering rent arrears, to which all social landlords should be expected to subscribe. The National Assembly for Wales should undertake a similar exercise in Wales.** The statement of practice should be drawn up in consultation with bodies representing the interests of social housing tenants and landlords. Compliance with the statement of practice should be a key element in the inspection of social landlords' rent arrears management undertaken by the Audit Commission's Housing Inspectorate.

1.14 The statement of practice should focus on the prevention and recovery of arrears, ensuring court action is the last resort. The content would be based on existing best practice and would build on the Housing Corporation's Regulatory Code and Guidance. It should include the following elements:

Prevention measures

Social landlords should:

- provide accessible information to tenants, particularly those with specific needs such as lack of basic skills in numeracy and literacy and people for whom English is not a first language
- adopt tenancy start-up procedures which include:
 - maximising housing benefit take up, providing any necessary support with benefit claims from form completion through to payment
 - identifying vulnerable tenants in order to ensure that rent payment and recovery procedures are tailored to their special needs and that any ongoing additional support needs are met
 - providing tenants with access to welfare rights advice across the full range of benefits
 - ensuring tenants know where to go should they need independent debt advice at any point
- offer customer friendly payment methods by providing a range of options including cash payments, which are easily accessible to all tenants wherever they live.

Dealing with rent arrears

Social landlords should:

- act promptly to contact tenants where rent arrears accrue and keep records of all steps taken
- make personal contact wherever possible, with home visits where necessary
- promote access to holistic independent advice where tenants have multiple debts
- offer affordable repayment arrangements which can be altered to allow for changes in circumstances
- seek and accept repayment of arrears by direct deductions from income support/job seekers allowance where appropriate
- establish close and effective liaison with housing benefit departments to ascertain housing benefit entitlement and resolve problems which delay payment.

Court action

Social landlords should:

- not take possession action where tenants have made and maintained repayment arrangements, including direct deductions from benefit
- not take possession action where housing benefit issues are outstanding
- encourage tenants to seek independent advice before appearing in court
- encourage tenants to attend at court.

continued overleaf...

Post court action

Social landlords should:

- continue to provide support to enable tenants to remain in their homes
- provide tenants with information on how to apply to vary a suspended order or suspend a warrant, and how to get independent advice
- liaise with homeless persons units and social services departments where eviction and subsequent homelessness appears inevitable.

1.15 Similar initiatives are already in place in other areas of arrears recovery. For example the Council of Mortgage Lenders has adopted a statement of practice in relation to recovery of mortgage arrears, and the Banking Code to which members of the British Bankers Association and Building Societies Association subscribe, has specific guidance on dealing with customers in financial difficulty³. Codes on the recovery of arrears and related guidance emphasising the need for debt prevention strategies, are also employed within utilities regulation.

1.16 Such a statement of practice on the prevention and recovery of rent arrears would have the following benefits:

- help to drive up standards towards accepted best practice
- ensure that all social landlords adopt accepted good practice
- increase transparency for all parties including tenants, advisers and the courts, about what steps landlords should take before resorting to possession action
- help ensure that possession action is genuinely used as the last resort.

1.17 A Best Value Performance Indicator should be introduced for all social landlords, on the number of tenants evicted for rent arrears along with targets for its reduction. This would parallel the data already published by the Council for Mortgage Lenders in relation to mortgage borrowers. This is crucial for effective monitoring of poverty, policies and policy development. It would also help to ensure that the existing performance indicators, which focus on the proportion of rent collected and on rent arrears of current tenants as a proportion of the rent roll, do not act as incentives to social landlords to evict tenants.

1.18 Social landlords should not take possession action for rent arrears where these are due to delays in processing housing benefit claims. As recommended in the Department for Work and Pensions housing benefit Performance Standards (Working with Landlords), housing benefit departments and local social landlords should establish liaison arrangements to include the provision of a certificate from the housing

³ Council of Mortgage Lenders, *Handling of arrears and possessions, Statement of Practice*, January 1997; *The Banking Code: Setting the Standards of Banking Practice*, January 2001.

benefit department accompanying all applications to the county court, to confirm that there are no outstanding housing benefit enquiries on the case. To underpin this and our proposed statement of practice, the **Lord Chancellors Department should amend the Civil Procedure Rules to provide that social landlords are liable for court fees in all cases where they have not checked prior to taking court action that there are no outstanding housing benefit enquiries on the case.** In this way, social landlords rather than tenants would bear the costs of inappropriate use of court action.

- 1.19 To support the above recommendation, **housing benefit departments should establish liaison arrangements with social landlords to enable the housing benefit claims of tenants with high rent arrears (who are most likely to face possession action) to be prioritised.** This should remove any need for social landlords to issue notices seeking possession simply to expedite an housing benefit claim.
- 1.20 The Law Commission has recently proposed changes to tenancy law which would have the effect of ending housing associations' option to use the mandatory Ground 8 when seeking possession. We welcome this. Until such reform is in place, **we recommend that housing associations cease taking possession action using Ground 8.**
- 1.21 The value of independent advice in helping tenants to maximise their incomes and to manage their debts is increasingly clear. **All social landlords should establish arrangements with local Citizens Advice Bureaux and other advice providers to ensure that tenants with rent arrears are able to obtain independent advice.**
- 1.22 There is strong evidence that county court advice desks are effective in ensuring that tenants threatened with possession action can obtain advice before appearing in court, thus reducing their risk of losing their homes. **The Lord Chancellors Department should take action to ensure that every county court has an advice desk, funded to provide advice and representation on benefits and debt to people facing court action for housing debt.** The reorganisation of the management of the courts into a single agency being brought in by the Courts Bill, may provide the opportunity to take this forward.

2. Introduction

- 2.1 When Lord Justice Woolf produced his report on Access to Justice in 1996 he concluded that:

‘The present procedure for possession of tenanted property on grounds of arrears is unsatisfactory. A ... fundamental point is that the procedure does not reflect claimants’ needs, because in most cases (especially those involving social landlords) the claimants primarily seek repayment of arrears rather than possession of the property. Under the present system, however, landlords’ options are limited, and it is often said that the threat of possession is the only effective weapon against tenants’ reluctance to pay’.

Lord Chancellors Department (1996)

- 2.2 Eight years later the Law Commission in their recent consultation document *Renting Homes: Status and Security*, raised similar points:

‘There have been concerns that suspended possession orders for rent have been too readily given out, made in hearings listed in bulk for only a matter of minutes each, with very low attendance rates and poor participation by occupiers.’

Law Commission (2002)

- 2.3 An over reliance on court action as a basic rent arrears management tool can be counter productive. Time and resources are spent pursuing arrears through court-based systems despite increasing levels of arrears. Whether claiming benefits, working, or getting tax credits to top up low wages, tenants have a responsibility to pay their rent. But they are often struggling to do so because of poverty, other debts and personal problems or crises. They are often ill equipped to negotiate their way through the maze of authorities and agencies who may be involved. CAB advisers spend hours negotiating between housing benefit departments and social landlords, putting in backdated housing benefit claims and advising tenants on the brink of losing their home how they can negotiate through the court to prevent homelessness.
- 2.4 From all perspectives, the present system is inadequate, ineffective and frustrating. The relationship between tenants and social landlords is undoubtedly weakened by the intimidating nature of most arrears recovery procedures. The CAB Service believes that there is a strong case for a new approach to the recovery of rent arrears by social landlords. Pressure for change also comes from the Law Commission review which proposes substantial changes to the court process, reducing the use of suspended possession orders, and also from the Homelessness Act 2002, which requires local authorities to have a more pro-active approach to homelessness prevention including greater emphasis on sustaining tenancies rather than eviction. Repossessions are also costly for social landlords, involving any legal costs not recovered from tenants, and management of void properties as well as

the increased difficulty of recovering former tenants' arrears. The Audit Commission (1998) has calculated that each tenancy failure can result in costs of over £2000 to a council.

Increased possession action

- 2.5 In recent years there has been a significant rise in outright possession orders for eviction by social landlords. This comes at a time when possession orders for mortgage arrears have actually been falling. Table 1 shows that the number of outright possession orders granted to social landlords has more than doubled between 1994 and 2001. This increase is not due to any increase in the number of households occupying social housing over the period – indeed between 1994/5 and 2001/2 that number fell from 4.4 million to 3.9 million (ODPM Survey of English Housing).

Table 1 Possession action by social landlords

| | Actions Entered | % change | Suspended orders | % change | Orders Made | % change |
|------------------|------------------------|-----------------|-------------------------|-----------------|--------------------|-----------------|
| 1994 | 65,394 | - | 36,251 | - | 13,499 | - |
| 1995 | 83,637 | 28% | 49,327 | 36% | 17,654 | 31% |
| 1996 | 91,522 | 9% | 54,728 | 11% | 15,869 | -10% |
| 1997 | 107,861 | 18% | 64,137 | 17% | 18,060 | 14% |
| 1998 | 132,032 | 22% | 72,357 | 13% | 22,281 | 23% |
| 1999 | 138,984 | 5% | 72,046 | 0 | 24,184 | 9% |
| 2000 | 147,519 | 6% | 69,352 | -4% | 27,168 | 12% |
| 2001 | 150,563 | 2% | 70,293 | 1% | 30,350 | 12% |
| 1994-2001 | - | 130% | - | 94% | - | 125% |

(ROOF Briefing August 2001 and ROOF March/April 2002, from Lord Chancellors Department statistics)

- 2.6 Recent additional analysis⁴ indicates that as many as 80 per cent of outright possession orders are on the grounds of rent arrears alone, with a combination of anti social behaviour and arrears, along with “other” reasons, accounting for the remainder. As Table 1 demonstrates, these outright possession orders are only the thin end of the wedge: far more people (over 70,000 in 2001) are taken to court and are subject to suspended possession orders. They then live with the shadow of homelessness hanging over them if they fail to keep up with the payments.

⁴ ROOF, Nov/Dec 2002

- 2.7 In many cases, a possession order is an excessively punitive tool to get people to pay their rent. The extent of its use is a critical measure of social landlords' policies and practices. Yet there are no regularly published figures (equivalent to those collated by the Council of Mortgage Lenders on mortgage possessions) to show how many possession orders actually result in eviction⁵. Whilst social landlords are required to provide performance indicators to the Housing Corporation and Audit Commission on levels of rent arrears, there is no reporting requirement in relation to numbers of tenants evicted. On the basis that what gets counted gets done, it is of concern that the chosen performance indicators might result in landlords adopting policies and practices which are not well rounded.
- 2.8 Another shortcoming in the data is that the Lord Chancellors Department possession figures do not distinguish between housing associations and local authorities. This is crucial for the development of policy because there are legal differences on the basis of tenancies, and different regulatory or advisory bodies ensure fair policy and practice. For example, it would be important to ascertain whether rising possession actions by housing associations relate to the transfer of council housing through large-scale voluntary transfers, which has increased the size of the housing association sector in recent years.
- 2.9 A survey of 924 CAB debt clients carried out in May 2001 (Citizens Advice, forthcoming), demonstrates the indebtedness of tenants of social landlords. Forty percent of the clients in the survey were tenants of social landlords and one third of these had rent arrears. They also had significantly lower incomes than the sample as whole. The survey also revealed a relatively high use of formal action to enforce debt taken by social landlords: whereas in the survey as a whole, formal action to recover debt was reported for only 21 per cent of the debts, landlords had taken formal action (including the service of a notice seeking possession) to enforce payment for 64 percent of the local authority rent arrears debts, and 79 per cent of housing association rent arrears debts.
- 2.10 CAB evidence of actual evictions throws light on the factors contributing to arrears and the consequences of eviction:

A CAB in Avon reported a single man who had been evicted from his housing association property. He had been receiving jobseekers allowance and then became eligible for income support. His housing benefit claim had been delayed and there was also an outstanding housing benefit overpayment. The client tried to resolve the issue himself and only sought help from the CAB after he had been evicted. As he was not considered a 'priority' under homelessness legislation, he ended up sleeping on his brother's floor.

⁵ Recent research by the National Assembly for Wales suggests that the majority of outright possession orders granted do result in eviction: in 2001/2, 1617 outright orders were granted to social landlords in Wales and 1171 warrants were executed (ONS 2002)

A CAB in Hertfordshire reported a single man with dyslexia, depression and mental health problems who was unable to understand correspondence sent to him about his rent arrears or benefits. He found some work but after two days was not well enough to continue. His jobseekers allowance and housing benefit were stopped and although he re-claimed, he became depressed and unable to deal with anything. He missed signing on dates and, therefore, his jobseekers allowance and housing benefit were stopped. His last remaining family member, an uncle, died around the same time. He did not approach the CAB until after he had been evicted. The CAB felt that, had they been approached earlier, they would have been able to help him prioritise his payments and apply for additional benefits, as well as being able to read correspondence for him. The client was then of no fixed abode.

The failure of the benefit safety net

- 2.11 The purpose of the housing benefit scheme is to ensure that people on low incomes are able to pay their rent. In recent years the housing benefits system has become increasingly central to the provision of social housing, as there has been a profound change in the employment status profile of social housing tenants. Statistics included in the Joseph Rowntree Foundation UK Housing Finance Review 2002/3 show that between 1981 and 2001 the percentage of tenants in full time employment almost halved – from 43 per cent of local authority tenants and 42 per cent of housing association tenants in 1981 to 23 per cent and 24 per cent respectively in 2001. Although this has been accompanied by an increase in the numbers of tenants in part time work, the overall balance in the composition of social tenancies has shifted from around 50 per cent being economically active in 1981 to less than a third being economically active in 2001.
- 2.12 In theory, this should make no difference to housing providers: where tenants' pay or other income is too low to be able to afford their housing costs, the benefits system should top-up any deficit. In practice, inadequacies in the housing benefit scheme together with the widespread failures in its administration are frequently a significant cause of rent arrears.
- 2.13 A large number of reports have documented the problem and put forward proposal for fundamental reform of housing benefit⁶ All point to the same thing: the system is in crisis, unable to deal fairly or effectively with the claims it has to process, despite a decline in the overall number of claims.
- 2.14 More recently there has been a number of welcome initiatives by the Department for Work and Pensions intended to address failures in

⁶ see for example NHF (1999), (2000), Audit Commission (1993), (2001), (2002d,e,f), Ford and Seavers (1998), Kemp (1998) NACAB (1993), (1999) IRRV (2002) and Wilcox (2001).

housing benefit administration. These include the establishment of a Help Team and a Help Fund for failing authorities, and the production of a comprehensive set of Performance Standards. A pilot scheme which enabled housing associations to be involved in the verification of housing benefit claims has proved successful in increasing from 20 per cent to 80 per cent the number of claims received by local authorities which could be processed immediately without referral back to the tenant. As a result the scheme is now available on a voluntary basis to all “verification framework compliant” authorities.

- 2.15 Clearly the Government wishes to improve the standard of housing benefit administration. However the extent to which this will result in a reduction in levels of rent arrears and possession action by social landlords remains to be seen. The evidence from Citizens Advice Bureaux is that the problem remains critical.
- 2.16 From both a tenant and a public policy perspective, it makes little sense if administrative failure is accompanied by hardening arrears recovery practices. Arrears which are the result of housing benefit delays will eventually get paid. The issue is one of cash flow rather than debt. The use of possession action in these cases merely adds costs to the whole process. It should not matter to the tenant whether “technical” arrears arise because housing benefit payments are made in arrears; the important point is that the rent will be paid.

A CAB in Essex reported a man who was long-term sick and claiming income support and disability living allowance. His housing association were threatening possession proceedings and a housing manager came to his home and was very pushy in trying to get him to make a repayment agreement, threatening eviction if he did not agree. When the CAB were contacted and examined his rent account more thoroughly, they found that the problem was simply that housing benefit was being paid in arrears, so outstanding rent always looked higher than it actually was. The man’s arrears turned out to be only £58.

- 2.17 However, where the tenant’s housing benefit entitlement does not cover 100 per cent of the rent owed, then delays in housing benefit payment make “true” rent arrears more likely. Tenants are left waiting to find out how much they should be paying out of their own pocket. By the time housing benefit has been calculated, the tenant can face a substantial debt which is then difficult to repay. Delays also make it difficult for landlords to take the early steps to recover the arrears which best practice would suggest.

The pressures on landlords

- 2.18 Social landlords face many challenges: the concentration of benefit claimants in the social housing sector and the myriad problems they are grappling with, the limitations of benefit and support mechanisms and

the administrative shortcomings of the housing benefit system. Social landlords are also under pressure from their regulatory authorities to meet rent arrears targets, which are seen as important barometers of their efficiency and effectiveness.

- 2.19 The Public Accounts Committee have also suggested that social landlords should be more proactive in their approach:

The [Housing] Corporation attributed the problem of rent arrears largely to local authorities' difficulties in processing Housing Benefit claims ... Some larger housing associations were able to overcome the problem, but the Corporation were concerned that some smaller housing associations would get into cash flow difficulties if matters did not improve soon.

The Corporation's regulatory staff 'routinely accepted that housing associations had problems with rent arrears and Housing Benefit receipts, without considering whether the housing associations were taking action to address the problems or at least reduce the financial impact on their business'

(House of Commons Public Accounts Committee, 2002)

- 2.20 Social landlords have to meet a variety of obligations, imposed both nationally and locally, which may restrict their discretion to act freely. Housing associations in particular are under considerable financial pressure. The National Housing Federation's annual global account for 2000/01 concludes that housing associations are 'showing deteriorating financial health', voicing concerns over the future attitude of lenders towards housing associations as their returns decline.
- 2.21 Data from the Survey of English Housing show that between 1996/7 and 1999/2000, the proportion of both council and housing association tenants in arrears increased steadily. Data from Performance Indicators suggest that some social landlords are struggling to maintain rent collection and arrears targets. In 1999/2000, when the Housing Corporation had set a minimum standard of 97 per cent collection of gross rental income, around one third of housing associations were unable to reach the target.

Use of Ground 8

- 2.22 The impact of pressures on social landlords is perhaps best illustrated by the increasing use of Ground 8, the mandatory ground open to housing associations (but not local authorities) which grants outright possession, without court discretion, when the tenant is in two months arrears at the time of the proceedings. The inclusion of Ground 8 in the 1988 Housing Act was originally aimed at the private rented sector in keeping with that Act's emphasis on stimulating the private rental market and making it easier for private landlords to recover their property.

2.23 However more recently, Citizens Advice Bureaux have reported the use of Ground 8 by social landlords.⁷ The advantages of Ground 8 for the landlord are that it makes eviction the tenant quicker and easier, avoiding the need to engage in a more protracted process which may enable a tenant, particularly if they seek help to reschedule the debt, to stay in their home. The Housing Corporation's regulatory code (Housing Corporation 2002) makes no specific reference to the use of Ground 8, although it does specify that

“Housing associations must offer good quality housing services ...by offering the most secure form of tenure compatible with the purpose of the housing and the sustainability of the community” (paragraph 3.5.2)

2.24 In conclusion, the increase in social landlord possession action appears likely to be the result of a number of different factors. First there are the financial and regulatory pressures faced by social landlords who have increased numbers of tenants relying on housing benefit to pay their rent. Secondly there are the pressures on low-income tenants coming from inefficiencies in benefit and support systems over which they have little control and which serve to compound existing debt problems. The appropriate response from social landlords should therefore be one which seeks to prevent arrears occurring in the first place along with ensuring access to support for tenants in rent arrears so that they can repay their debt without risking the security of their home. These issues are the focus of this report.

⁷ an unpublished survey of 116 of the largest housing associations carried out by National Housing Federation in 2000, found that as many as 16 per cent of possession orders were granted on the basis of Ground 8. (Article by John Bryant **one tenths of the law**, Inside Housing, 13.1.01)

3. Recovering arrears through the court

- 3.1 This chapter examines the use of the courts to recover rent arrears and uses CAB evidence and the findings from a survey of CAB county court desks to illustrate the process and the problems which it can present for tenants.

The court process

- 3.2 The general process for possession proceedings is that the social landlord will reach a point within their own internal procedures at which they will instigate legal proceedings by issuing a Notice of Seeking Possession. The Notice warns the tenant that the landlord will apply to the court for possession unless they deal with their arrears. Once issued, the Notice remains valid for a year, so if arrears are not cleared or arise again at any time in that year, the landlord can proceed to the next stage of the process without having to reissue a notice.
- 3.3 After a Notice is issued, some tenants will pay off their arrears and others will be awarded housing benefit so that the arrears are eliminated, thus bringing the possession process to an end. Others enter into repayment agreements to maintain rent and pay back arrears over a number of weeks. In most cases this means that the proceedings will go no further although as the cases below show, in some cases social landlords still insist on initiating possession action. There are no figures to show how often landlords resort to issuing Notices which are not then pursued.
- 3.4 If the arrears are not tackled in the time specified by the Notice, the landlord can apply to the court giving the grounds of the possession claim and details of the arrears and tenancy at which point, on payment of a claim fee, a hearing date is provided. When making the application they must provide the details of the case and the grounds on which possession is being sought. These are supported by 'a statement of truth' (a signed document confirming that case documentation is accurate) and a more detailed document setting out the amount of arrears and the rate at which they are accruing; details of the notice and tenancy; and the tenant's circumstances, particularly about benefits.
- 3.5 Depending on the grounds used, the district judge has a choice of decisions s/he can make – to adjourn or to dismiss the case, or to grant an order for possession either outright or suspended on terms such as a weekly amount to be paid to pay off the arrears. As long as these terms are met, the possession order is not implemented. However a suspended order leaves the tenant in a vulnerable situation, as any breach of the order can immediately trigger a warrant for possession. Where an outright order is made or where the terms of a suspended order are broken, the landlord can apply to the court for a warrant for eviction. The tenant can apply to have the warrant suspended on terms.

CAB court survey

3.6 To provide a snapshot of what happens to tenants at various stages in this process, 51 of the 129 Citizens Advice Bureaux which operate county court desks took part in a monitoring exercise at 38 county courts during a six-week period in May and June 2002. The bureaux were asked to select a sample of the cases they dealt with, covering the main social landlords in their area and giving a general reflection of their routine work. The aim was to provide a reasonably representative sample of the clients normally seen by Citizens Advice Bureaux at court desks. However in terms of outcomes, the sample is obviously not representative of all tenants facing court action as it does not include those who do not appear at court. This is significant since, as Nixon et al found in their 1996 study of housing cases in county courts:

‘Where tenants were not represented or did not attend the hearing they were more than three times as likely to be placed under the threat of eviction as compared to households who actively participated in the initial hearing.’

- 3.7 The results, therefore, are likely to be considerably skewed towards more positive outcomes for tenants.
- 3.8 The 244 cases in the survey were fairly equally divided between local authority (57 per cent) and housing association (43 per cent) tenants. Fifty-one per cent were in secure tenancies. Assured tenancies accounted for 39 per cent of the cases dealt with. Eleven per cent had insecure tenancies such as introductory or assured shorthold, which meant that they had significantly less security from eviction.
- 3.9 Key findings were that twice as many women (46 per cent) as men (21 per cent) attended court, 49 per cent had children and the most common age group was 25-34 years. As many as 36 per cent of the respondents were single parents. Appendix 2 provides further details of the composition of the sample and of the rent arrears owed.
- 3.10 The average rent payable was £62.35 per week. The average arrears of the tenants facing possession hearings was £1072.32, which equates to 17 weeks average rent. For those seeking suspension of a warrant, average arrears were higher, at £1641.99 which equates to 26 weeks average rent.
- 3.11 The range in the amount owed was particularly striking, suggesting considerable variation in landlord practice. Six tenants were facing possession for rent arrears of £250 or less, whilst at the other extreme, six tenants faced similar action for arrears of over £2,500. In terms of weeks' rent owed, in 18 per cent of the possession hearing cases, arrears equated to 8 weeks' rent or less whilst at the other extreme, in 6 per cent of cases tenants owed over 40 weeks' arrears.

Issuing notice seeking possession

- 3.12 Whilst there is a standard possession procedure, the reality for the tenant is somewhat more complicated as the above figures on arrears levels suggest. CAB evidence indicates that social landlords' rent arrears prevention and recovery strategies vary considerably and, as a consequence, so does the likelihood of a tenant facing court action for rent arrears depends to a considerable extent on the policy of their landlord.
- 3.13 For example, one CAB in south London undertook a comparison of the possession procedures operated by the six housing associations in their local area. This showed the following range of procedures:
- Each issues the notice seeking possession at a different point, varying between three and six weeks arrears, or at a different level of arrears which varies between £50 and £300
 - The point at which possession claims are then issued varies between four and eight weeks after serving the notice
 - One had a policy of not issuing a Notice where there were genuine housing benefit problems outstanding, and one other had a policy of not issuing a possession claim in such circumstances
 - One housing association additionally has a policy of always requesting an outright possession order where arrears are over £1,000.
- 3.14 The onset of possession proceedings depends therefore on the approach and policies of the landlord. This also explains the wide range in arrears levels which reach the courts: some landlords, or perhaps even individual housing managers within organisations, may be more inclined to pursue court action at an earlier date rather than exploring alternatives.

A CAB in Dorset reported a lone mother with two children who was claiming income support and had applied for housing benefit. Owing to a mix up with her claim due to forms being lost, she was refused housing benefit and was appealing against the decision. In the meantime, she had accrued £650 arrears. The housing association knew she was appealing the decision, but still continued to pursue possession, informing her that she would incur the additional cost of £120. The CAB negotiated repayments and the housing association agreed to put a hold on the court action. The CAB later found out that the housing officer had already applied to the court for possession when he made the agreement. The CAB took the case up with the officer's manager who agreed to adjourn the hearing. The housing officer then phoned the CAB to tell them that he disagreed with his manager's decision and that the CAB should report that in the letter to his manager requesting confirmation of the adjournment decision.

A CAB in Kent reported a single woman whose 16-year-old nephew was staying with her. Her housing association issued a Notice seeking possession saying she was £500 in arrears. The housing manager told the CAB adviser that the woman had failed to complete a housing benefit renewal form and her housing benefit had been stopped. The local authority housing benefit section said that wasn't the case and that two payments had been made. The housing association admitted that they neither contacted the housing benefit department nor their own finance department before issuing a Notice. The housing manager agreed to withdraw the notice but was concerned that other tenants may have been issued with similarly incorrect notices. As Notices stand for 12 months, these tenants would be vulnerable to eviction if they later really got into arrears.

A CAB in the West Midlands reported a single woman who had requested direct deductions be taken from her income support in repayment of rent arrears. The request was made to the Benefits Agency in early December 2001 but had still not been processed by February 2002. The housing department told the CAB: 'It is normal for direct deductions to take some time to get through but given the arrears on the account, the re-issue notice was served as 12 months had elapsed and the account was not cleared.'

- 3.15 Where a repayment agreement has been reached following issue of a Notice, then in most cases, no further action is taken. However this is not always the case, and there is again variation around the treatment of repayment arrangements.

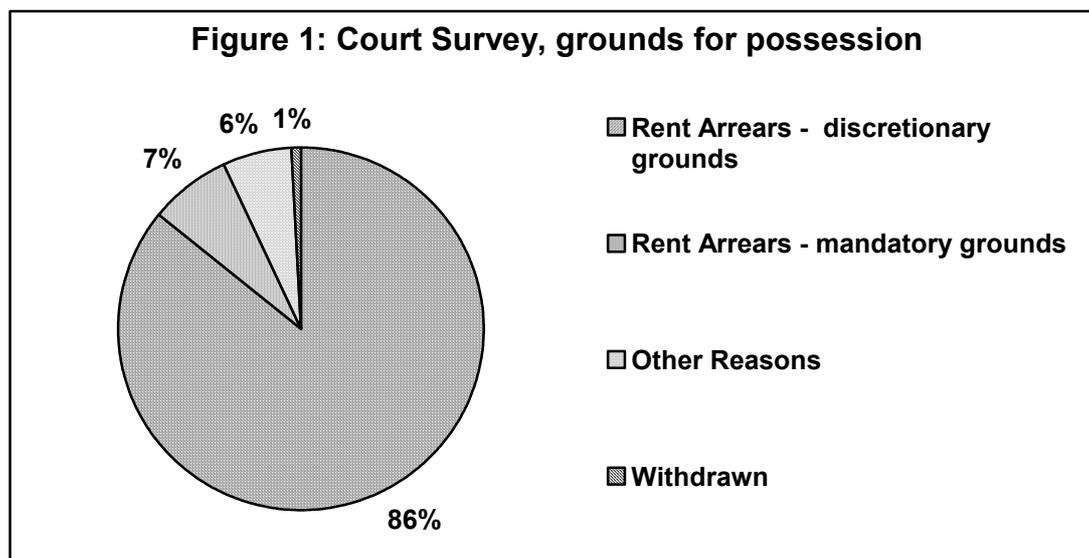
A CAB in Essex reported a woman with mental health problems. Her parents had both died within the space of a year and she had been taking anti-depressants ever since. She had accrued arrears of £267. She made an agreement with the council to pay off the arrears at £18/fortnight. The council refused, however, to suspend court proceedings.

A CAB in Denbighshire reported a council tenant who had maintained an agreed repayment arrangement made in July 2001 without default. However the local authority issued a Notice seeking possession in January 2002 and she received a summons in October 2002. The local authority agreed to adjourn the order on the terms already agreed.

Grounds for possession

- 3.16 The vast majority of clients in the court survey were facing court action on grounds of rent arrears rather than for other reasons such as anti-social behaviour (see Figure 1). The grounds used were most commonly discretionary grounds, thus allowing the district judge to use his/her discretion as to whether or not to issue a suspended rather than an outright order. However in 7 per cent of cases, tenants faced

possession action on mandatory grounds, either because they had a non-secure introductory or assured shorthold tenancy, or because the housing association was choosing to taking action using Ground 8.



Based on 232 cases where information available

3.17 Unlike local authorities, housing associations can choose whether to seek possession under discretionary or mandatory grounds. If they decide to use mandatory grounds (Ground 8), the judge then has no discretion to suspend an order, as long as the landlord proves that the tenant was in two months arrears at the date of the notice and hearing. The CAB Service has serious concerns about this practice: it drastically reduces the tenant's opportunities to act to save their home and prevents the court from intervening where it considers there are mitigating circumstances. It is also indicative of an unwillingness on the part of the landlord to seek solutions to rent arrears which avoid the tenant losing their home.

A CAB in Kent reported a couple with one child and another expected, where the man had recently lost his job. They had submitted claims for means-tested benefits but housing benefit had not yet been paid. Some paperwork was lost during the claim process but this had been supplied again. Meanwhile the housing association sought possession under Ground 8 and a possession order was granted. The family were due to be homeless within 28 days and would have to apply to the local authority as homeless.

A CAB in Dorset reported a couple who had taken up a housing association tenancy and claimed housing benefit. There was initially some confusion over when the client's husband started work, which led to 6 weeks rent arrears, but apart from that, rent had been paid regularly. The client received a letter threatening possession action under Ground 8. Although Ground 8 requires a minimum of 8 weeks arrears, it is apparently the housing

association's policy to issue a letter threatening such action after 4 weeks arrears.

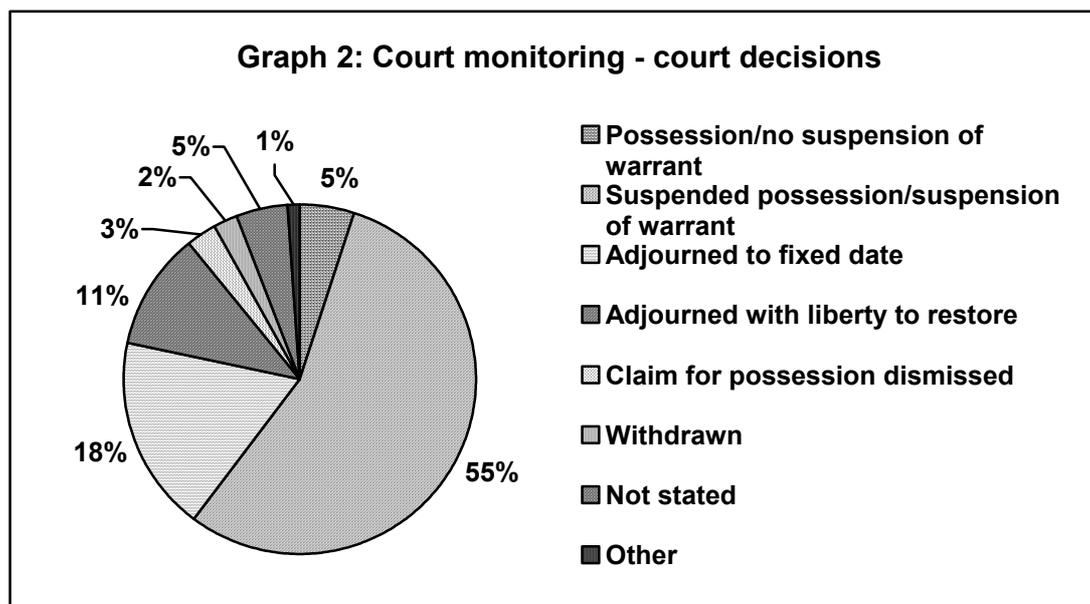
A CAB in South London reported a housing association whose policy was to use Ground 8 but not in circumstances where housing benefit is a factor. In the case in question, a single parent received an outright possession order under Ground 8 although a renewal claim for housing benefit was outstanding. When the CAB took the case up with the housing association, they stated that they had only been aware of the renewal claim on the day before the hearing and should not have proceeded with the case, but there was a failure of communication between the two officers involved.

- 3.18 Where there are failures and poor co-ordination in other parts of the welfare system, the use of Ground 8 can mean that tenants are faced with eviction before they have even had a chance to set up home:

A CAB in North London reported a homeless refugee with four children aged under 11 who had accepted the offer of housing association accommodation. She had been in emergency accommodation and so had to apply for a community care grant in order to buy essential furniture before she could move in. Her claim was initially refused and it took three months before she received a favourable decision following a request for a review. She was then able to move into the tenancy and applied for housing benefit, but the regulations only allow 4 weeks backdating in such circumstances. She therefore incurred 10 weeks rent arrears and the housing association issued a notice seeking possession under Ground 8. Despite the intervention of the CAB, the housing association insisted on pursuing possession action. The client had not been provided with any support in relation to her tenancy despite her vulnerability, her lack of familiarity with the benefit system and her language difficulties.

Hearing outcomes

- 3.19 In 64 per cent of cases in the CAB survey, the court made an order, either for possession or a warrant, thus putting the tenant at some risk of losing their home. However in only 12 out of these 136 cases did the court make an outright order. It is interesting to note that the ratio of suspended to outright orders, at 12 to 1, was far greater than in the national figures detailed in Table 1 (page 8) where they are consistently less than 3 to 1. This difference is likely to be due in part to the fact that all the tenants in the monitoring exercise were present at court for their hearing, and also received advice and representation from their CAB adviser, thus making a suspended order more likely.



Based on 240 cases where information available.

- 3.20 Over half of all actions which reached the court were suspended – by far the most common decision. Sometimes the landlord is seeking a suspended order because they do not want to evict but are paving the way to do so if the arrears are not reduced. In other cases it is the judge’s decision when the landlord has applied for possession.
- 3.21 Where discretionary rather than mandatory grounds are used, the court may also decide to adjourn the case, either to “a fixed date” where the judge feels there is not enough information or where there is an outstanding housing benefit claim, or “with liberty to restore” where the judge may consider that the amount of arrears or tenants’ payment record doesn’t justify a suspended or outright order. A decision to adjourn may therefore indicate that the landlord has taken possession action precipitately rather than using it as the last resort. It is therefore significant that in nearly one third of cases, the court’s decision was to adjourn.
- 3.22 Possession action by landlords where there is an outstanding housing benefit claim has been criticised as maladministration by both the courts and the Ombudsman. Most recently, the Audit Commission in Wales (2002e) has called for an end to court action by social landlords where arrears are due to housing benefit delays.

A CAB in south London reported four cases within one month from the same housing association where families with between two and four children each were taken to court for outright possession. Three of the cases were adjourned so that housing benefit could be sorted out.

A CAB in Buckinghamshire reported a couple with two children who were also expecting twins. They were awaiting a decision on an

income support claim and relying on a social fund loan as their sole source of money. They had applied for housing benefit but almost three months later it had still not been processed. It was unclear whether the housing benefit would cover their escalating arrears of over £1,800. The clients contacted the housing benefit department when they received notice and were assured that the claim would be processed. When the hearing date came through, the housing benefit department again assured them that the claim would be sorted by then. However the case went to court without resolution of housing benefit claim and the court granted possession to the housing association.

Payment terms

3.23 Repayment terms must be realistic and affordable in the long-term if they are to be sustained and the tenant is to avoid eviction. CAB case evidence indicates that the courts often play a valuable role in moderating the demands of social landlords to ensure repayment rates are affordable:

A CAB in Buckinghamshire reported a Pakistani woman with one child, married to a British citizen who was on remand for drug-related offences. She was applying for Indefinite Leave to Remain but currently was not entitled to any recourse to public funds so was receiving only child benefit and relying on her relatives for support. The District Council received no response from their efforts to contact the woman's husband. The tenancy was in his name and he was receiving full housing benefit which was being paid to the landlord but this would be discontinued after 13 weeks if he received a custodial sentence. The housing officer referred the woman to the CAB and applied for possession, seeking a suspended order with a repayment of £10/week. Following CAB representation, the court agreed the suspended order but reduced the repayment to £2.70/week which was going to be met by the relatives.

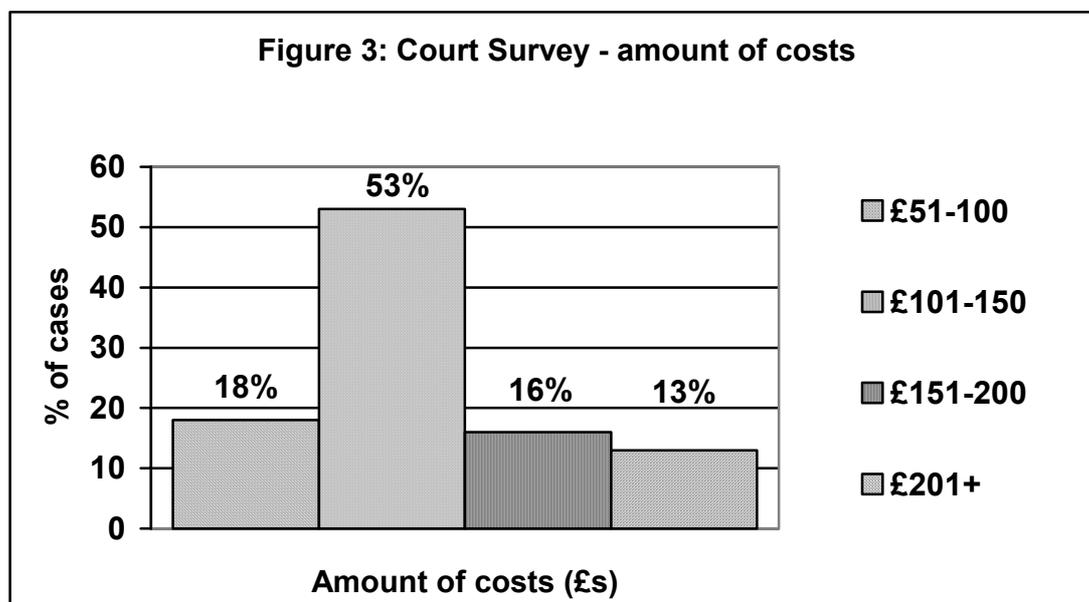
3.24 The court survey revealed a wide range of payment terms agreed in suspended cases. However three occurred most frequently:

- In 30 cases, terms were £2.70/week + rent
- In 34 cases, terms were £5/week + rent
- In 10 cases, terms were £10/week + rent

3.25 Whilst the first figure (£2.70) reflects the amount commonly applied in the benefits system to recover debts directly from benefit payments, the latter two suggest a rather crude rounding up to a convenient figure which may not reflect levels of income or affordability.

Costs

- 3.26 Possession proceedings also carry a heavy cost. At the time of the survey, the fee for issuing proceedings was £120, whilst an eviction warrant cost £80. These figures are due to rise to £130 and £90 respectively from February 2003.
- 3.27 In addition if the landlord uses a solicitor or barrister then these costs may be passed on to the tenant. The average amount of costs awarded in the court survey was £141.18, a significant addition to the debt (and a full year of additional payments at a rate of £2.70 per week). Where rent arrears are relatively low (in 17 per cent of cases, arrears were £500 or less, see Appendix 2), court costs can be disproportionate to the amount of rent owed.
- 3.28 Citizens Advice Bureaux report that costs claimed can vary widely between social landlords. In general local authorities use internal legal executives to prepare summonses whereas housing associations may use external solicitors. For the hearing, local authorities may use their legal executives in addition to housing officers, whilst housing associations may use barristers or the instructing solicitor in addition to housing officers. Attempts at costs recovery will then vary from the summons issue fee alone (£120) to full recovery of the external solicitor and barrister fees. For suspended orders the court will limit costs to £250 and some landlords will target this figure since it is not difficult to justify £130 for preparation of the summons and attendance at court. However for hearings that are adjourned and for outright orders there is no cap on costs as long as they can be justified to the judge.



Based on 95 cases where information available.

- 3.29 Figure 3 shows the wide range in costs awarded in the court survey. The findings suggest that some social landlords charge costs at less than the issuing fee and others charge more. If a case is suspended on terms of £2.70 per week and the fee of £120 is added to the amount to

be paid off, the tenant will be paying off the debt for an *additional* 45 weeks as a result of costs. As chapter 4 will show, the causes of arrears accrual are wide-ranging, most often linked to the benefits system and frequently reflecting poverty or low levels of income.

A CAB in Berkshire reported a couple where the man is a wheel chair user and the woman had mental health problems and learning difficulties. They got into arrears when the woman overspent whilst mentally unwell and then took on more credit to clear her initial debts. A notice seeking possession was issued, but a grant and loan from her employer meant that the arrears were cleared before the hearing took place. Nevertheless the housing association refused to withdraw the case as they wanted to claim £525 costs. In the event the judge adjourned the case generally and made no order for costs.

A CAB in Northumberland reported a woman with mental health problems who is a long-term benefit claimant and council tenant. She had built up arrears over many years and had a suspended warrant taken out in November 1996. She made an agreement to make repayments but was unable to keep it up. The council were applying for an eviction warrant which would increase her arrears of £218.42 by £135.25. The CAB pointed out that if the woman is evicted she would probably have to be rehoused by the council because she is vulnerable and in priority need under homelessness legislation.

A CAB in Somerset reported a settled traveller couple, both of whom had learning difficulties and were in receipt of jobseekers allowance. They received housing benefit at their previous address and on moving to their new property assumed that they were automatically entitled to housing benefit as one of them continued to claim jobseekers allowance. No rent had been paid on their new home from September 2001 to March 2002. They were facing possession action for rent arrears. They had not received any support from the housing association or housing benefit department and, even if they were able to make a successful claim for housing benefit to be backdated, will have added £189.50 of court costs to their debts.

A CAB in the West Midlands reported a man who had lost his job. He already had some rent arrears. He applied for jobseekers allowance and put in a housing benefit claim. Over three months later, his housing benefit claim had still not been awarded. He had already been served with a Notice seeking possession and possession proceedings had been issued. His original arrears were over £900; when housing benefit was awarded, these were reduced to just over £400. He received a suspended order which then increased his debt to almost £600 as court costs were added.

- 3.30 In some cases social landlords insist on taking possession action where arrangements to pay have been agreed and maintained. Costs added to debts in these cases, make it more difficult for the tenant to afford payments to the landlord and other creditors:

A CAB in Surrey reported a couple who had fallen into rent arrears due to the man's loss of earnings following a motorbike accident. An arrangement to pay off the arrears had been made two years previously and had been adhered to. However when the arrears were almost completely paid off, the local authority issued proceedings. In court the landlord withdrew the claim as the arrears were by that time nil, but asked for and were awarded costs of £189.50.

A CAB in Surrey reported a lone father with 2 children aged 16 and 14 who was claiming income support. He had never been in arrears. When he returned his housing benefit renewal forms in September 2001, the housing benefit department wrote back asking for more information in a letter he did not receive. He did not, therefore, realise the claim had lapsed and arrears were mounting until he received a letter from his housing association threatening possession in January. He made an agreement to pay £10/week rent to the landlord and £6.74/week to clear the arrears. The landlord, however, still pursued a hearing in March.

Advice and representation

- 3.31 Independent representation and the presence of the tenant at court can make a significant difference to the outcome of cases. Research (Nixon et al 1996) has highlighted the value placed on it by judges, enabling them to make informed decisions and, in particular to assess the vulnerability or extenuating circumstances of the tenant.

A CAB in Surrey reported a recently separated lone mother with three children who was claiming income support. She has learning difficulties including illiteracy and short term memory problems which mean that she cannot read letters sent to her, remember some details about her life, know when to go to court unless prompted by her sister, understand that she is a tenant, understand her responsibility to make housing benefit applications when necessary. She was convinced that at the time of the hearing in November 2001 she had no arrears and that her partner was claiming all benefits. He left the same month. Neither of them had appeared at the court to put their case and an outright possession order was granted.

- 3.32 There is considerable evidence that attendance at court and obtaining representation and advice from a CAB can make a material difference to the outcome of the court action.

3.33 It is impossible to say what outcome would have resulted had an adviser not been present, but the combination of knowledge and experienced advocacy serve to redress the imbalance between tenant and landlord outlined above. In 208 (85 per cent of the cases in the CAB court survey, the advisers considered that their intervention had made a difference to the outcome. The differences they thought they had made are detailed in the following table.

Table 2: Court survey – the difference which advisers considered their intervention made (numbers add to more than 100% as multiple answers were possible)

| | % of cases |
|---|------------|
| Possession/warrant suspended | 41 |
| Case adjourned on terms | 21 |
| More realistic repayment arrangements made | 21 |
| Access to ongoing advice and support | 51 |
| Identified additional social security benefit | 13 |
| Other | 13 |
| Not stated | 1 |

Based on 208 cases

3.34 It cannot be verified beyond doubt that the decision to suspend or adjourn a case was due to the intervention of the adviser. However our survey results tend to suggest this since, as noted above (Figure 2) the proportion of outright orders granted in the cases monitored was considerably lower than that in the national statistics. Advisers also help to ensure that realistic repayment proposals are offered; that benefits which have not been claimed and which are likely to make a material difference to arrears levels, are identified and claimed; and that tenants receive more general advice and support. None of these are peripheral issues. But they are, arguably, functions that social landlords might be expected to perform before a tenant gets to court. They certainly contribute to the tenant's management of rent arrears and are essential to a more holistic approach to income, debt and advice.

A CAB in Essex reported a 20-year-old woman with cystic fibrosis who claimed income support and disability living allowance. She had experienced problems with her benefits due to hospitalisation and the many visits she had to make to the hospital. She had arrears of £735 but also had an on-going appeal about a disability living allowance claim exceeding £3,000. Eviction was imminent, as her local authority landlord had gained a warrant for possession. However the CAB successfully argued for suspension of the warrant and as a result of a successful disability living allowance appeal she was subsequently able to clear her arrears.

A CAB in Worcestershire reported a divorced man with depression who lived alone. Housing benefit had been overpaid during 2000 and 2001 and the council decided to recover the overpayment by deducting £8.10/week from his ongoing full housing benefit, thus causing arrears to accumulate at that rate. The housing

association threatened him with eviction saying he had arrears of £499.24. When the CAB took up the issue, the arrears were found to be £264 not £499. The housing association admitted that there had been considerable misunderstanding and confusion concerning the housing benefit situation. The man felt that his health had suffered as a result and that his relationship with his landlord was 'non-existent'. He had tried to get more information about the overpayment from the housing benefit department but found them to be unhelpful. When the CAB contacted the housing benefit department, they were unable to explain how they'd worked out the overpayment figure and then came up with a much lower figure. They also agreed to reduce the overpayment recovery from £8.10/week to £2.50/week and the housing association agreed not to pursue possession.

- 3.35 Despite the evidence of the value of debt advice, some people face barriers to obtaining help. Additional resources for debt advice at a more specialist level are now mostly provided through the Legal Services Commission. This can result in people in work and on moderate incomes facing difficulty in obtaining more specialist advice because of the restricted eligibility for publicly funded legal services. People with relatively high travel to work costs (because, for example, they live in rural areas) can be particularly affected because such costs are not taken fully into account in the income test.
- 3.36 This chapter has outlined CAB clients' experience of the court process in the recovery of rent arrears. CAB evidence indicates that in many cases court action was premature or inappropriate and that there is considerable variation in the way social landlords use the court process. This variation is seen for example in the point at which landlords resort to court action, and in the level of costs which are sought. The chapter has also highlighted some of the areas which may be appropriate for action from social landlords and others in dealing more effectively with arrears. This theme is continued in the following chapter which explores the reasons for rent arrears in more detail.

4. How rent arrears build up

- 4.1 This chapter examines some of the causes of arrears and the events in people's lives which contribute to them. A proper understanding of the factors which lead to rent arrears is essential for the development of a fair and appropriate rent recovery strategy.
- 4.2 The CAB court survey asked advisers to assess with the client what were the main reasons why they had fallen into arrears. The responses are detailed in Table 3 below. Most of the reasons given can be divided between three broad categories:
- major changes in personal circumstances such as job loss or relationship breakdown which result in a drop in income,
 - delays and failures in the housing benefit system,
 - other poverty-related reasons, for example unclaimed benefits or prioritising other debts
- 4.3 In most cases it is a combination of life events or personal problems, exacerbated by inadequate housing support and poor housing benefit administration which results in the build up of arrears.
- 4.4 The reasons given in Table 3 closely reflect the national picture as demonstrated by the Survey of English Housing, where the most common reasons for rent arrears given by social housing tenants are problems with housing benefit, other debts, unemployment, illness and domestic related reasons. (Survey of English Housing, 2000/1, ODPM)

Table 3: Court survey - main reasons for the arrears⁸

| Main reasons for arrears | % of clients in work | % of clients not in work | % of all clients |
|---|----------------------|--------------------------|------------------|
| Housing benefit administration | | | |
| housing benefit delay on new claim | 8% | 17% | 14% |
| housing benefit admin failure on renewal of claim | 8% | 14% | 11% |
| housing benefit delay processing change of circumstances – work related | 17% | 7% | 11% |
| housing benefit delay processing change of circumstances – non work related | 2% | 12% | 7% |
| Other benefit administration problems | 12% | 16% | 14% |
| Change of circumstances | | | |
| Drop in income | 30% | 9% | 18% |
| Relationship breakdown | 20% | 14% | 17% |
| Onset of illness | 13% | 15% | 14% |
| Loss of job | 11% | 17% | 14% |
| Poverty-related | | | |
| Prioritising of other debts | 28% | 8% | 17% |
| Unclaimed benefits | 18% | 18% | 18% |
| Impact of housing benefit non-dependant deductions | 5% | 7% | 6% |
| Inadequate contributions of other household members | 12% | 7% | 9% |
| Benefit levels inadequate to meet needs | 3% | 7% | 5% |
| Other reasons | | | |
| Lack of action by client | 0 | 4% | 2% |
| Other | 26% | 22% | 24% |

Based on 244 cases

4.5 Table 3 also illustrates how the relative importance of the main reasons for arrears differs between those in and not in work:

- The main reasons for arrears for people in work were a drop in income (30 per cent) and the prioritising of other debts (28 per cent). The latter is less likely to affect rent payments for people out of work as their rent is usually paid direct through housing benefit. But multiple debt itself is not uncommon: 58 per cent of clients in the court survey had other priority debts⁹, and 49 per cent had other non-priority debts.
- Housing benefit was mentioned as a reason for arrears by 58 per cent of respondents in receipt of housing benefit. The key housing benefit problem affecting people in work was delays in processing changes of circumstances (17 per cent), when for example their income from work fluctuates.

⁸ more than one response was possible so numbers do not add up to 100 per cent

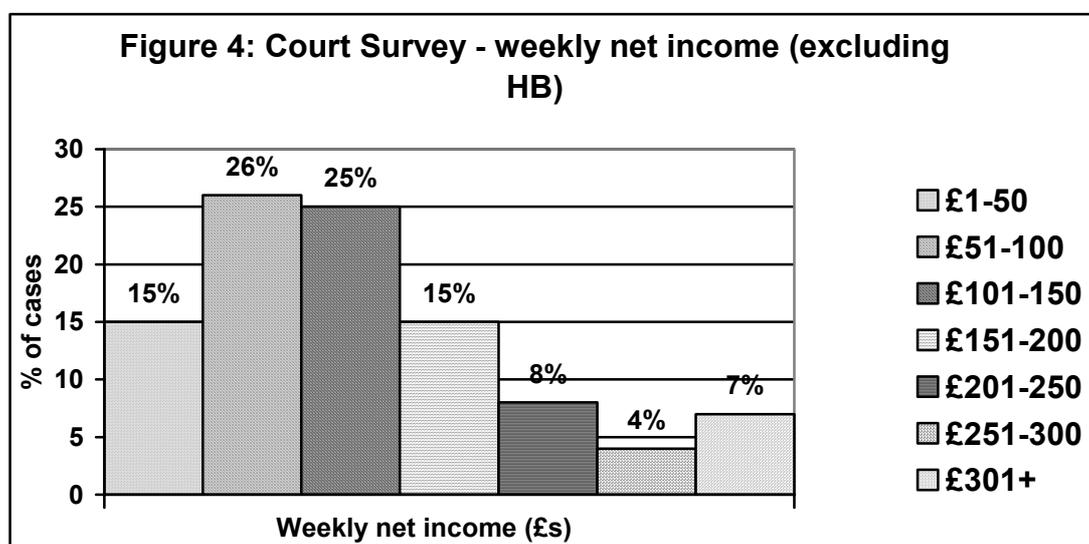
⁹ Priority debts are those where the creditor has drastic sanctions available to recover the debt such as eviction, loss of fuel supply or liberty.

- For people out of work, housing benefit problems are of even greater significance. Delays in processing new claims, for example following loss of employment, are particularly likely to lead to arrears (17 per cent).
- Poverty - related reasons such as unclaimed benefits, affected both groups equally (18 per cent).

4.6 In the rest of this chapter we explore in more detail the main reasons for arrears and the implications these have for rent arrears prevention and recovery practices.

Poverty

4.7 As Figure 4 illustrates, a key factor leading to debt is the low level of incomes of the tenants facing possession action in the courts. Forty one percent of the respondents in the court survey had incomes net of housing benefit of £100 per week or less. This, together with the fact that in 18 per cent of cases there was unclaimed benefit entitlement, points to the importance of benefit take up campaigns as part of any arrears prevention strategy, as well as having implications for the level of repayments people are able to sustain. It also shows the importance of ensuring that every effort is made to recover arrears without increasing tenants' indebtedness By, for example, additional court costs.



Based on 198 cases

4.8 Tenants living in rural areas face the additional problem of high travel to work costs. Work opportunities are likely to require relatively lengthy journeys to neighbouring towns. No allowance is made in the benefit/tax credit system for essential travel to work costs and as a result Citizens Advice Bureaux report that such clients can find themselves struggling to afford their rent and other essential commitments. For example:

A CAB in Cornwall reported a client in low paid work whose hours vary so that he repeatedly comes into and out of eligibility for

housing benefit. He has a round trip of 20 miles a day to his employment and just over 20 per cent of his income is used for motoring costs, which has led to him accumulating rent and council tax arrears. He has no public transport option to work as his shift is 4pm to midnight and the last bus to his village leaves at 4.20pm. He was already in debt when his car broke down and was beyond repair. He has therefore had to take out a loan to replace the car, thus increasing his indebtedness.

- 4.9 Poverty is often compounded by indebtedness and clients with multiple debts may face pressure from other creditors not to prioritise rent arrears repayment:

A CAB in the West Midlands reported a single parent in low paid work and in receipt of working families tax credit who owed approximately £3000 to a home-collected credit provider. She had agreed to repay at a rate of £324 per month and had maintained these payments in order to avoid difficulty with the doorstep collector who was very persistent. However as a result she had accumulated significant rent, council tax and water rate arrears and the local authority had issued possession proceedings.

A CAB in South Yorkshire reported a couple with two children who were housing association tenants facing a hearing for suspension of an eviction warrant. Both were receiving sick pay although she had been paid incorrectly and was not receiving her full entitlement. They had claimed housing benefit but had been unable to get evidence from either employer. The arrears were partly due to previous lost housing benefit claims and partly due to the clients prioritising payment of non-priority debts. They had negotiated reduced payments on the latter, but at £40 per week this had resulted in priority debts not being paid. They had resorted to trying to borrow £3000 in advance of the hearing in order to pay off the rent arrears. The woman was so distressed that she was unable to speak to the adviser and had to get additional medication from her doctor. With the CAB's support, the warrant was suspended on rent plus £2.70 per week, payment to all non-priority creditors was reduced to £1 per week and information for the housing benefit claim was obtained.

Changes in personal circumstances

- 4.10 Frequently rent arrears are triggered by sudden and unexpected changes in people's personal circumstances such as loss of a job, illness, relationship breakdown or bereavement which reduces their income. But the emotional burden of such events can also leave people poorly equipped to engage promptly with the benefits system in order to report changes and/or claim additional benefits. Even if they do so, there are then too often delays in processing changes in housing benefit claims with the result that rent arrears build up. Problems are

compounded if social landlords then take possession action for the arrears.

A CAB in Merseyside reported a 57 year-old widower who had been in receipt of housing benefit and had to have it re-assessed following the loss of his wife and his daughter starting work. He was accumulating arrears and made an agreement with the council to pay off an amount until the claim was sorted out. However, he was still threatened with possession and it took the intervention of the CAB to get the possession action put on hold and his housing benefit claim to be brought forward to the 'urgent box'.

A CAB in Hampshire reported a lone mother who received working families tax credit due to a short spell of employment and had submitted a claim for income support and housing benefit. Her ex-partner had lost his job and stopped paying maintenance for the child, which lowered her income. The combination of housing benefit delay, reduced income and changing benefits caused her arrears. When the housing association took her to court, the CAB appeared with her and the order was suspended on repayment terms.

A CAB in Surrey reported a woman in receipt of retirement pension, in poor health who is an amputee. She was in receipt of attendance allowance, income support and housing benefit. Whilst she was in hospital she received a letter from her housing association giving her notice seeking possession. She had been aware that her benefits would be reduced during her hospital stay but did not know the timescale involved and had not been notified by the housing association that she had any arrears.

Unmet support needs

- 4.11 A repeated theme of CAB evidence is that tenants who are vulnerable in some way are not identified by housing officers in order that they may be given additional support in sustaining their tenancy. In 76 of the cases in the court survey, (48 per cent of those where information was provided), the client or a member of their family was vulnerable in some respect. If made homeless the household was therefore likely to be found to be in priority need under homelessness legislation.

A CAB in Worcestershire reported a single man who suffers from cerebral palsy and depression who cannot complete claim forms without help because of his disability. He was in receipt of disability living allowance and income support and therefore should have been passported to full housing benefit. He was certain that he had claimed housing benefit but the housing benefit department had no record of his claim. Arrears of over £2000 had accumulated and the local authority had taken possession action. The client had struggled to make a round trip of 36 miles to attend the possession

hearing only to have it adjourned because the council representative did not attend.

A CAB in South London reported a 66 year-old woman with tuberculosis who was full-time carer to her 40 year-old son who has learning difficulties and is sometimes aggressive. Her husband had died three years previously and she had used all their savings to survive, only recently claiming retirement pension and not claiming housing benefit at all. She had accrued rent arrears of over £2,000.

A CAB in Wales reported a council tenant with learning difficulties who had difficulties in conducting his affairs effectively. He had submitted a housing benefit claim but this was not processed because he had not provided the necessary supporting documentation. The local authority did not follow up why the supporting evidence had not been provided and he received a summons for possession. Following the CAB's intervention, court action was stopped and the CAB was helping him to apply for backdated housing benefit.

- 4.12 People with mental health problems can be particularly at risk of debt and its consequences. Recent research carried out with psychological therapists in Northumberland found that the most common type of debt that their service users had was rent arrears, and the most common causes of the debt were thought to be associated with poverty and illness (Sharpe and Bostock, 2002). The importance of welfare benefits advice and support for this group was considered of prime importance.

A CAB in Essex reported a woman who was receiving counselling from a mental health unit for personal problems. Her relationship had been violent and her two children had been taken into care. Rent arrears had accumulated as a result of misunderstandings and delays in applying for housing benefit during her intermittent periods out of work. The council had obtained a warrant for eviction. However the intervention of the CAB resulted in the warrant being suspended and an agreement made to repay the arrears. The CAB is also helping her to apply for backdating of housing benefit.

- 4.13 The provision of home visits is particularly important where vulnerable clients live in rural areas and have difficulty affording the transport costs to seek help:

A CAB in Staffordshire reported a couple where the woman has learning difficulties and the man is in low paid full time work. The woman who could not read or write approached the CAB for help with a note from her husband, because they had received a warrant for possession from their housing association. On contacting the housing association, the CAB was told that the

warrant had been issued because the clients had not responded to letters inviting them to attend for interview. The housing association had decided that a home visit was not necessary since the summons had been correctly replied to, with a financial statement. The clients live in a rural area, 10 miles from the housing office and do not have a telephone or any means of transport.

Housing benefit administration

- 4.14 Failures in housing benefit administration are very frequently a compounding factor and in many cases the overriding factor in causing rent arrears. In such circumstances, it is unreasonable for the social landlord to argue that the responsibility for the rent arrears lies solely with the tenant, and therefore to pursue possession action. In the CAB county court survey, housing benefit was given as one of the main reasons for rent arrears in 58 per cent of the cases where the client was in receipt of housing benefit.

A CAB in South Wales reported a council tenant who accumulated nearly £400 of rent arrears whilst waiting for her housing benefit claim to be processed. The local authority commenced possession proceedings and she received a summons which the landlord refused to withdraw. When the claim was dealt with, the arrears were reduced to £36.82, which the client immediately paid off.

A CAB in Hampshire reported a lone mother with one young child who had been on full housing benefit for three years. Due to the housing benefit department changing over their computer system, her housing benefit was not paid and she accrued arrears of £914.32. The client had been taking her receipts to her housing association to say that housing benefit were processing her claim but they still went ahead and issued court papers for possession. This caused the woman considerable upset as she had to appear in court. When the CAB rang the housing association they had received the housing benefit payment and said they would withdraw the papers plus costs.

A CAB in Wiltshire reported a lone mother with five children who was facing a possession hearing. She had an housing benefit claim outstanding and the CAB arranged with housing benefit staff that she could go to the offices and they would fast track her claim via the manager. But when she got there she was told that the claim would not get to the manager until the following Friday, three days after the possession hearing.

- 4.15 Problems often start from the outset of the tenancy because of hitches in the initial claiming process, with forms going astray or supporting documents not being provided or simply processing delays:

A CAB in South-East Wales reported a client with mental health problems who had recently moved into a housing association property having lived with his parents all his life. He claimed housing benefit but whilst he was waiting for benefit to be processed he received a letter from the housing association about rent arrears. The letter stated, "We realise the fact that you have recently moved into your property and that the arrears could be due to a delay in the processing of your housing benefit. However may I remind you that it is your responsibility to ensure that we receive the rent due." Despite the CAB intervention, the housing association was insisting that the client attend their office for a meeting in relation to his rent arrears.

A CAB in Oxfordshire reported a single young man on income-based jobseekers allowance who moved into his flat in September 2001. Housing benefit was not paid for a further five weeks, by which time he had accrued arrears and already received his first threat of court action.

A CAB in Suffolk reported a lone mother with 3 children whose tenancy started in October 2001. She sent in her claim form, tenancy agreement and proof of benefit shortly afterwards but the housing benefit department claimed they had not received her tenancy agreement. She sent in the agreement and proof of income support twice and in the end filled in a second form (in April 2002) with a rent update. The housing benefit department were refusing to backdate the claim and, because there was a local delay of 15 weeks in processing claims, she had accumulated arrears of £1,700 and received a Notice seeking possession from the housing association. Following CAB intervention, the housing benefit office backdated the original claim and made the second claim, with the rent update, a priority.

- 4.16 Some social landlords recognise the importance of providing new tenants with ongoing support until housing benefit comes into payment. In chapter 5 we provide some examples of good practice in this area. By providing such support and liaising closely with the housing benefit department, landlords are also kept aware of the reasons behind any arrears accrual, and are able to ensure that their response is appropriate.
- 4.17 But CAB evidence indicates that in too many cases social landlords do not make allowances for the fact that rent arrears may be caused by problems in housing benefit administration, and continue to pursue court action regardless.

A CAB in Kent reported a single male pensioner who had received a Notice seeking possession even though the CAB had contacted the housing association in May when he was first notified that he was in arrears, to say that housing benefit had been awarded for the current period and would be processed immediately.

Apparently, the new software in the housing benefit department required an officer to issue a new reference number in certain circumstances and in this man's case, the old number had been cancelled without a new one being issued. His housing benefit claim had not therefore been processed.

A CAB in South-East Wales reported a single parent in her 20s who had been a housing association tenant on income support for three years. Benefit had been paid direct to the landlord without a problem. However in July 2002 she was informed that she was in rent arrears. She contacted the housing benefit department and was told to complete further housing benefit and council tax benefit forms. She heard nothing further until late September when she received a possession claim for rent arrears and a separate claim for unpaid council tax.

Another CAB in South East Wales reported a client in receipt of Statutory Sick Pay who was suffering from a disability. He had applied for housing benefit in July 2002 and had promptly replied to two requests for further information in July and early September. He was then told it would take a further six to seven weeks to process his claim because of a backlog. In the meantime he had been served with notice seeking possession which his housing officer said should help speed up his claim.

- 4.18 In some cases it appears that social landlords decide to use the threat of possession action as a means of expediting the housing benefit payment. Whilst the frustration of social landlords with the failures of housing benefit administration is understandable, the inappropriate use of the possession procedure creates huge anxiety for tenants:

A CAB in Oxfordshire reported a lone parent suffering from a progressive muscular disease who had received a notice of seeking possession from the council for rent arrears. She had applied for housing benefit four months earlier when she had had to give up work due to her illness, but her claim had not been assessed. When the bureau contacted the housing office, they explained that it was their policy to issue a notice automatically when rent arrears reached £250. Where there was a known housing benefit delay, they advised their tenants to take the notice to the benefits office and ask for a decision within 28 days.

A CAB in Cheshire reported a man on income-based jobseekers allowance who received a letter from his housing association referring to a notice of seeking possession which had been issued in regard to rent arrears due to non-payment of housing benefit. The client had never received one so the CAB contacted the association to be told that none had been issued but that the letter was computer-generated to go out automatically. The association said it was policy to issue a notice of suspended possession

(NOSP) when arrears reached £400 as this would put pressure on the authority issuing housing benefit to speed up processing a claim if arrears were related to housing benefit. The client, meanwhile, was extremely distressed because he believed he was being evicted and facing court action.

A CAB in Cumbria reported a recently separated woman who was waiting for her housing benefit and council tax benefit claim to be processed, who received a notice of seeking possession from her housing association. When the CAB phoned the housing association they were told to inform the client that possession proceedings wouldn't go ahead but that she should badger the housing benefit department to process her claim as soon as possible. The CAB commented: 'they know it's the local authority's fault, but the client gets the pressure.'

- 4.19 In other cases, it appears that social landlords respond to increases in levels of rent arrears by increasing their use of possession action, even when they know that the root cause is a failure in housing benefit administration:

A CAB in South Yorkshire reported that the council had implemented a "get tough" policy on rent arrears following an internal audit, despite the fact that the council's housing benefit service was performing poorly and had an excessive backlog of claims. Cases included a client with mental health problems where the council refused to stop court action even when the housing benefit department eventually agreed backdating which virtually wiped out the arrears. In another case, an outright order was sought against a single parent who had had difficulties in paying his rent because of three in-patient operations, and had accumulated just over £100 arrears.

- 4.20 Another common cause of rent arrears is problems and delays over renewals of housing benefit claims. Again this is an area where good procedures and liaison with the housing benefit department should enable social landlords to anticipate problems and respond appropriately rather than simply pursuing possession. Too often however this is not the case:

A CAB in London reported a lone mother claiming income support. She had built up rent arrears of £2,700 due to housing benefit renewal problems. The housing association had obtained a suspended possession order the previous year. Housing benefit was eventually backdated reducing the arrears to £587. The client also had an outstanding appeal for a further five weeks which would have reduced the arrears to £150. The housing association issued a bailiffs warrant and when the CAB phoned to try and delay possession proceedings, the housing association insisted that the client pay off the full arrears. The CAB advised the client to apply

to the court for a suspension of the warrant and the case was adjourned for five weeks for the housing benefit matter to be resolved.

A CAB in Staffordshire reported a single man who had been claiming jobseekers allowance since September 2001. He did not receive a housing benefit renewal form and as a result his housing benefit stopped in mid December. By the time he realised there was a problem it was early in February and he then reclaimed along with an application to backdate the benefit. The delays in the housing benefit department were such that in mid March they were not expecting to deal with February claims for another week to ten days. In the meantime, the man was being taken to court for repossession, running the risk of becoming homeless or having court costs added to his debt.

- 4.21 Renewal problems should be reduced from October 2003 when pensioners (who make up 42 per cent of housing benefit claimants) no longer have to renew their claims on an annual basis. And the recent Department for Work and Pensions proposal (DWP 2002) to extend this to all other claimants is very welcome.

People in work

- 4.22 The Government sees taking up work as a central plank in its fight against poverty. The introduction of the national minimum wage and tax credits have increased the income for people in low paid work. But CAB evidence indicates that having a job is no security against rent arrears and possession action, particularly where people are on low wages and also rely on housing benefit to meet their rent payments. Forty three percent of the clients in the CAB court survey were in work and 21 per cent of these were claiming housing benefit.
- 4.23 Housing benefit is not well designed as a benefit for people in work. The steep rate at which housing benefit is withdrawn as people's incomes rise¹⁰, undermines the positive effect of tax credits on incomes and can act as a disincentive to working additional hours. And housing benefit must be re-assessed whenever the claimant's income changes, unlike tax credits and their predecessor family credit. Many people on the margins of the job market have wages, which continually fluctuate, requiring repeated adjustments to benefit. Where there is any backlog in the local administration of housing benefit, this can result in confusion over entitlement and the amount of rent the tenant is left to pay. Recovery of overpayments then compounds the problems of budgeting on a low income. The Citizens Advice service has previously called for amendments to housing benefit regulations to provide for fixed period

¹⁰ HB is withdrawn at a rate of 65p in every £ where a person's income is in excess of their applicable amount. When income tax, national insurance contribution and the withdrawal of tax credits is also taken into account, claimants can face a marginal tax rate well in excess of 90p in the £.

awards for people in work, along with a provision for claimants to request a reassessment should their income reduce significantly (NACAB 1999).

A CAB in Merseyside reported a lone mother with 3 children who had been working and claiming working families tax credit. She had previously been receiving housing benefit which was overpaid after she started work and the recovery of the overpayment led to rent arrears. She then gave up work but was late re-claiming housing benefit and was refused backdated payments. She was threatened with eviction.

A CAB in Norfolk reported a lone father with 2 children who was working part-time and claiming working families tax credit. He put in a claim for housing benefit but got into arrears in the time it took to process it because he didn't know how much he would have to contribute towards his rent.

A CAB in Kent reported a lone mother who was working and claiming Working Families Tax Credit. She put in a housing benefit claim in October 2001 but by May 2002 it had still not been paid and the housing association had issued an eviction order. The CAB raised the case at the local housing benefit forum and was told that the housing association and local authority are supposed to liaise over delays to prevent this sort of thing from happening, but that is clearly not the case. The woman had stated her intention to give up work believing it is simpler to get income support and have her housing costs paid in full.

- 4.24 The Department for Work and Pensions has recently announced that it will end the requirement for a new claim every time a person gets a job, and allow benefit to automatically run on until entitlement is recalculated where a claimant is returning to work after at least six months unemployment (DWP 2002). These measures are most welcome and will address some of the problems around take up of employment but further reform of the scheme is necessary if it is to properly support people in work.
- 4.25 Failure in housing benefit administration is a key cause of tenants getting into arrears with their rent. It is therefore vital that this is reflected in rent arrears recovery policies and practices, so that tenants are not threatened with eviction for reasons, which are beyond their control. The Department for Work and Pensions has recently introduced a number of initiatives aimed at driving up standards of housing benefit administration including specific standards aimed at improving liaison with landlords. These are minimised levels of debt whilst discussed in more detail in the following chapter.
- 4.26 The evidence presented in this chapter has illustrated the myriad causes of arrears. Some have their roots in bureaucratic systems, some are about an individual's problems, some are about what other people do, all

are linked to low income. They are complex and multi-faceted rather than simple or discrete. This presents a significant challenge for social landlords who need to develop ways to help tenants sustain their tenancies whilst also keeping rent arrears to a minimum. The evidence in this report demonstrates that this is not always achieved.

5. Managing rent arrears – turning policy into good practice

- 5.1 Social landlords have considerable scope to prevent and recover rent arrears without resorting to possession proceedings. This chapter examines some of the policies and initiatives currently used by social landlords and highlights examples of good practice. Citizens Advice Bureaux were asked to contact their local social landlords to obtain copies of their policies and procedures on rent recovery. This provided 48 policies for examination, including 13 from Citizens Advice Bureaux in the Dorset Social Policy Group who undertook a more detailed study of their local social landlords' policies. To ensure that we particularly targeted social landlords who have managed to sustain a relatively low level of court action to recover arrears, we contacted the National Housing Federation which kindly provided contact details for housing associations which, according to their records, fell into such a category.
- 5.2 A considerable amount of guidance, research and good practice advice is available from the Housing Corporation, the Office of the Deputy Prime Minister and its predecessors, the two key social housing professional bodies, the National Housing Federation and the Chartered Institute of Housing, and others¹¹.
- 5.3 Much of the guidance on managing rent arrears focuses on maximising rent collection, avoiding possession and protecting vulnerable tenants. For example, the Audit Commission's Comprehensive Performance Assessment criteria for housing services, has a section on how to maximise the collection of rent due which includes the following:
- “involve tenants, members and other stakeholders in shaping the rent collection service and ensure they are clear about how the service works
 - maximise benefit take-up, including housing benefit, to help prevent increases in rent arrears and other debts
 - make the best use of the most cost-effective rent collection methods, taking into account tenant preferences, and providing accurate and timely information about rent accounts to tenants
 - set targets for keeping rent arrears to a minimum (and cascade these targets to front line staff), implement measures to prevent arrears growing and take swift action to control and recover arrears, including former tenant arrears
 - help tenants in arrears to stay in their homes by providing advice and assistance on debt management and pursuing debt collection strategies that sensitively balance the pursuit of debt against the needs of vulnerable tenants

¹¹ See for example Housing Corporation (2001a) *The Big Picture, Housing associations and Tackling Poverty*, Steven Fuller and Guy Palmer, New Policy Institute, Housing Corporation; and the work of the Big Picture, HouseMarks, and The Bank.

- seek possession on rent arrears only as a last resort, once all other reasonable steps have been taken
- know how much the service costs, including the split between collection, recovery of arrears and debt counselling”.

(Audit Commission, 2002a)

5.4 The Housing Corporation Performance Standards for registered landlords, para G1.3, states:

‘The terms of occupancy should make clear the rights and responsibilities of the resident and the housing association. Housing associations should have explicit, fair and published procedures for dealing with breaches of tenancies or leases in accordance with the law. They should only seek possession once all other reasonable steps have been taken.’

- 5.5 In these examples, the emphasis on prevention of possession proceedings is coupled with notions of rights and responsibilities on both sides. These principles are all widely accepted. The challenge is to turn them into a reality.
- 5.6 It is a considerable challenge for social landlords to follow the guidance and support materials and, crucially, to keep abreast of and manage change. One of the most important changes is the shift in emphasis enshrined in the Homelessness Act 2002, which places prevention at the heart of homelessness strategies and therefore has direct implications for how landlords should recover arrears.
- 5.7 In addition, the Law Commission (2002) has recently made proposals for fundamental reform of tenancy law. These include the creation of a single tenancy type agreement that would be used by housing associations and local authorities, thus effectively precluding housing associations from using the mandatory ground for possession; and secondly, reform of the possession proceedings to reduce or even abolish the use of suspended possession orders for rent arrears. Instead, their proposal is that the first stage of the court procedure would focus on the steps required to pay off arrears. Such a reform would open up the possibility of ensuring there was a greater emphasis on examining the tenant’s financial circumstances at this stage so that a sustainable arrangement for repayment of the arrears could be established.
- 5.8 Significant changes to housing benefit are also planned. The Department for Work and Pensions has announced (DWP 2002c) proposals to simplify administration by ending benefit periods, and allowing claims of people returning to work to run on until they are reassessed thus avoiding the need to recover overpayments. More controversially from the perspective of levels of rent arrears, the Department for Work and Pensions also indicated that in the longer term, direct payments of housing benefit to social landlords may be removed.

This would increase the possibility of rent arrears resulting from tenants facing pressure to prioritise other debts.

5.9 The Department for Work and Pensions has also recently issued self-assessment performance standards (DWP 2002b) for all aspects of housing benefit administration. Of particular relevance to this report is the section entitled *Working with Landlords*. As well as reiterating the requirement to make payments on account in accordance with the regulations where there are delays, the performance standards encourage landlords to make direct contact with housing benefit departments before taking enforcement action. Housing benefit departments are also encouraged to aim at performing “above standard” by having in place mechanisms to pick up serious cases of arrears debt and potential eviction before they reach the court. Recommended good practice includes:

- “effective liaison with landlords on the cases where delay is causing them most problems. This can include for instance providing housing benefit sections with regular schedules from landlords of the arrears cases causing them most concern that can then be prioritised
- encouraging the landlord to contact the LA via a direct LA contact point, to avoid them taking court action for arrears when the claimant is waiting to have their housing benefit entitlement assessed
- supplying landlords, particularly LA and housing association landlords, with case by case information on outstanding housing benefit claims, when the tenant has consented to the sharing of information, before court action is taken
- encouraging landlords, particularly LA landlords, to ensure that a certificate from the housing benefit section accompanies all applications for possession to the County Court to confirm that there are no outstanding benefit enquiries on the case as recommended by the Local Government Ombudsman (LGO) and by a recent Better Regulation Task Force report
- the appropriate and effective use of provision for direct payment to the landlord (in line with NHF recommendations)
- in cases which are landlord direct payment and payment is suspended, notifying the landlord as well as the claimant that payment has been suspended and the reason for the suspension, if not related to a suspicion of fraudulent activity in the part of the claimant or the landlord.”

Working with landlords, DWP housing benefit/CTB performance standards, March 2002

5.10 If implemented by both housing benefit departments and social landlords, these standards and practices - particularly the provision of certificates for the court showing that no enquiries are outstanding - could make a real difference by ending the inappropriate court action where rent arrears are due to delays in housing benefit payment.

All reasonable steps?

- 5.11 It is explicit in the key guidance from the Audit Commission and Housing Corporation, that social landlords should take all reasonable steps to recover arrears before resorting to possession action. The previous chapter demonstrated that the main reasons why tenants fall into arrears are a combination of sudden changes in circumstances and failures in housing benefit administration, often compounded by their low income and vulnerability. These factors should therefore guide the actions and procedures adopted by social landlords to tackle arrears and ensure that recourse to the courts is a last resort. The following table suggests this is not the case.
- 5.12 As part of the CAB court survey, advisers were asked to assess for each client which of eight key steps the landlord had taken which might have avoided the use of court proceedings or loss of their home.

Table 3: Court survey – actions taken by landlords before possession proceedings

| Before taking possession action did the landlord ... | % Yes | % No | Total number of cases where relevant |
|---|-------|------|--------------------------------------|
| Ensure any outstanding housing benefit issues were resolved | 29% | 71% | 144 |
| Identify correct housing benefit entitlement | 34% | 66% | 143 |
| Offer repayment arrangements affordable to client | 45% | 55% | 163 |
| Consider revision of arrangements if circumstances changed | 33% | 68% | 101 |
| Offer direct payment where client is on IS/JSA | 19% | 81% | 86 |
| Encourage access to independent advice | 57% | 43% | 145 |
| Ensure wider support provision where tenant is vulnerable | 17% | 83% | 66 |
| Encourage tenant to attend court | 75% | 25% | 157 |

- 5.13 The survey findings indicate that many social landlords are not taking all reasonable steps before moving on to court action. Only two key steps – encouraging access to independent advice and encouraging tenants to attend court – had been carried out by landlords in a majority of the cases where they were applicable. This is hardly surprising since the sample consisted entirely of tenants who had attended court and, once there, had sought the help of a CAB adviser.
- 5.14 Particularly striking is the percentage of tenants in our survey who were facing court action with outstanding housing benefit problems unresolved (71 per cent) or where correct housing benefit entitlement had not been established (66 per cent). This is consistent with the extent to which housing benefit problems featured in the main reasons for the arrears (Table 2), and points to a key area where changes in practice are needed.

- 5.15 Where tenants in receipt of income support/jobseekers allowance are more than eight weeks in arrears, direct deductions from benefit at a rate of £2.70 per week can be made automatically if the landlord requests it. This method of recovering arrears provides the landlord with a regular income stream without increasing the tenant's indebtedness. As such, it is a valuable way of recovering debt from people on the lowest incomes. Yet in our survey, it was used in less than one in five cases where it was an option, despite CAB evidence that in practice if such cases go to court (with the inevitable impact of increasing tenants' indebtedness because of court costs), district judges will commonly only set the same repayment level of £2.70 for people on income support/jobseekers allowance.

A CAB in West Sussex reported an unemployed single man who lived 14 miles from the Jobcentre. He relied on his bicycle for transport and sometimes failed to sign on when the weather was particularly bad or his bicycle was out of order. His housing benefit claim was then cancelled and arrears or housing benefit overpayments built up. He also had difficulty in completing the new forms then required. The housing association did not refer the client for independent advice, but sought an outright order for possession. The district judge instead suspended the possession with arrangements for direct payments of £2.70 from his jobseekers allowance. The Jobcentre has also agreed to postal signing on arrangements.

- 5.16 In some cases, landlords refuse to accept direct deductions from benefit even where eviction is the alternative:

A CAB in South Yorkshire reported a client who was attending a drug/alcohol rehabilitation programme. Having a stable home was therefore of considerable importance to the success of his treatment programme. Rent arrears arose when he failed to renew his claim and the council had obtained a warrant for possession. The client had offered to repay the arrears through direct deduction from income support but the council refused to accept this.

- 5.17 The key step which was least often practiced by landlords was the provision of wider support where the tenant was vulnerable. This did not happen in 83 per cent of the cases we identified where it was relevant to do so. Yet the CAB case evidence included in this report repeatedly illustrates how people's difficulties in managing their rent commitments and successfully pursuing their benefit claims are compounded where for example they are in poor physical or mental health, or have caring responsibilities or literacy problems.

- 5.18 The evidence presented in this report demonstrates clearly that possession proceedings are avoidable in many cases. Table 3 suggests that the provision of benefits advice and support to vulnerable people is not sufficiently prominent in the arrears recovery practices of many

social landlords. The next section examines some of the rent arrears recovery policies and practices of social landlords in order to highlight effective approaches for the prevention and minimisation of arrears.

Rent arrears recovery policies

- 5.19 In terms of a tenant-focused approach to the recovery of rent arrears, the variation in policies is significant. The best landlords take a broad approach recognising and understanding that rent collection and arrears recovery cannot be isolated from tenancy support and the provision of independent information and assistance.
- 5.20 The following case studies provide examples of how better rent recovery performance can be achieved without 'possession purges':

Good practice example: Stevenage District Council

Stevenage District Council reduced its levels of rent arrears by 15 per cent in one year without increasing the number of suspended possession orders obtained. They put their success down to a combination of the "relentless nagging" of tenants along with a flexible approach to recovery.

Key features are:

- every missed payment produces a response from the housing office, no matter how small the debt
- continually varying the approach used – letters, visits, 'phone calls
- trying to ensure that personal contact is always made before a possession order is sought
- always checking with housing benefit department before initiating court action
- providing tenants with information about sources of independent advice
- building good relationships between staff and tenants
- low turnover of staff and high morale
- high profile payment campaigns emphasising methods and importance of paying.

Between March 2001 and November 2002, rent collection performance improved from 95.9 per cent to 97.8 per cent.

Email to Citizens Advice 19/12/2002

Good practice example: Westcountry Housing Association

Torbay CAB met a member of Westcountry's Rent Control Team, which places significant emphasis on debt prevention including the following measures:

- when tenants sign up for new tenancies, they are offered help completing housing benefit forms, as are existing tenants when re-applying for housing benefit
- staff use the Quick Benefit Calculator programme to give new tenants an idea of their likely housing benefit entitlement. Tenants are then encouraged to make regular payments of any expected shortfall to avoid the build-up of arrears while the claim is being processed
- the Rent Control Team write to new tenants in the first weeks of their tenancy offering a point of contact should arrears arise. They invite tenants to give their consent for Westcountry staff to discuss housing benefit claims with the housing benefit department
- all members of the Rent Control Team have regular benefit training and are 'debt aware'
- the Rent Control Team have access to an independent Housing Benefit Advice Service for advice on any housing benefit issues that may arise
- there is a full-time Welfare Rights Adviser (with a CAB background) whose main focus is on tenants struggling to pay their rent. The facility is advertised on most letters to tenants and the adviser has a column in the Westcountry newsletter
- tenants in supported housing can get help with money advice. Relations with the housing benefit department are maintained through regular quarterly housing association forums, plus individual meetings where necessary.

Where arrears have built up, the Rent Control Team make contact as quickly as possible, providing help or referring to an outside agency. Court proceedings are never started if arrears are solely due to housing benefit delay. Where a case gets as far as a possession warrant, the Team always encourage the tenant to apply to the court for the warrant to be suspended.

Letter from CAB 9/7/02

Good practice example: Broadlands Housing Association

Broadlands Housing Association has a funded arrangement with Norfolk Money Advice (NMA) whereby when a notice seeking possession is issued, a tenant is referred to NMA to deal with any debt problems. If the tenant uses the service and the rent arrears issue is addressed, then no further action is taken. In addition, if a tenant in rent arrears contacts NMA at any stage in the rent recovery process, the housing association freezes any recovery action to allow time for alternative strategies to be put in place.

The housing association also employs a tenant support worker who liaises closely with NMA to ensure tenants receive the support they need in managing their financial affairs and sustaining repayment arrangements.

Prior to adopting this approach to rent arrears with debt counselling an integral part, the housing association had experienced a remorseless increase in levels of rent arrears. Since the arrangements have been in place, arrears have stabilised.

Email to Citizens Advice, 20/01/03

- 5.21 A number of key good practice points emerge from these three examples, which were not always reflected in the 48 policy documents we examined:

Support with housing benefit claim and pro-active liaison with housing benefit departments

- 5.22 It was noticeable how few of the policy documents examined included references to pro-active liaison with housing benefit departments and to actively helping tenants with their housing benefit claims. The following extract was typical of many of the documents we examined:

‘Arrears resulting from delayed payment of housing benefit will be treated sympathetically, however tenants should be advised that they are responsible for ensuring that the rent is paid which may require them to follow up housing benefit claims. Standard arrears procedures should be followed in all cases.’

- 5.23 It would appear that for some social landlords a significant culture shift will be required if the Department for Work and Pensions housing benefit performance standards on liaison with landlords are to be achieved. Once again though, the most striking feature was the variation in approach. Another landlord’s policy document reads:

‘New tenants

Make sure a housing benefit form is given to the applicant. We recognise that housing benefit forms are complex and can be

difficult and daunting for tenants to complete, therefore housing officer assistance should be offered. Housing officers should make themselves familiar with the requirements of the verification framework. Experience shows that time spent at this stage can prevent rent arrears problems later. Insist that the tenant provides us with a receipt from Housing Benefit within two weeks of occupancy...once the form is submitted, Housing Officers should seek confirmation as to the likelihood of housing benefit being paid and likely date of first payment.'

5.24 The following are also examples of positive practices:

Impact Housing Association takes a pro-active approach to helping new tenants navigate the housing benefit claims process. The housing association ensures that where required, new tenants accurately complete their housing benefit forms and take them personally to the relevant council office along with the necessary verification documents. Where it seems likely that a tenant will not receive full housing benefit, weekly payment will be agreed until such time as the local authority calculate correct payment. All new housing benefit claims are checked with the housing benefit department within six weeks of submission to ensure receipt of all the information required to process the claim. Where there are any queries outstanding on the claim and/or further information is required, the tenant is informed in writing within two working days. If there is no response to this letter, a visit is made.

Stroud CAB describes their good working relationship with the rent officers at Stroud District Council members where actual evictions had fallen from 14 to 10 in 2001-02. Some of the rent officer team have previously worked in housing benefit departments and are thus aware of possible problems and are active in liaison with housing benefit where payment is pending. Officers are quickly aware when benefit payments have stopped. If this is due to a failure to return a review form, a visiting officer immediately calls to explain the consequences of non-return, give advice on evidence requirements and if necessary to call Benefits Services from the tenant's house to establish what exactly is needed.

South Wight Housing Association (SWHA) always make a pre-allocation home visit, at which the housing officer discusses the housing benefit claim and provides help in completing the form where necessary. SWHA insist that if they are likely to be entitled to housing benefit, the claimant should obtain a receipt for the claim form from the Benefit Section. Prospective tenants are expected to show such a receipt or make an advance payment of the first week's rent, before collecting the keys. SWHA meet at fortnightly intervals with the Housing Benefit Section and discuss individual cases with them in order to ensure that they do not take legal action if there is a benefit claim likely to be paid. It is also an

opportunity for them to find out if a tenant has failed to provide the required documentation supporting the housing benefit claim. SWHA then follow this up with the tenant and encourage them to provide this information.

Early and sustained intervention

- 5.25 All the policy documents from the social landlords with relatively low levels of possession action, point to the importance of early and sustained intervention to prevent arrears getting out of hand. Early engagement with tenants ensures that benefit issues can be tackled more quickly and that appropriate referrals to support and advice agencies can be made where needed. The importance of face-to-face contact wherever possible is also frequently mentioned.

Flexibility

- 5.26 There are a number of areas in which social landlords could benefit from being flexible and adaptable. Contact with tenants may need to be more varied or out of regular office hours, given the increase in part-time working.
- 5.27 Other areas where flexibility is needed, as previously described, are in agreeing flexible and affordable repayment schedules and preparing to reschedule them when circumstances change. This was well expressed in one policy document we examined:

‘It is important that a standard and fair approach is used when making an agreement to pay off arrears. Staff should attempt to make an agreement, which is reasonable, realistic and does not cause exceptional hardship. Irrespective of the debt it is important that the arrangement is not excessive. Even with a large debt it is better for the tenant to pay £2.70 each week rather than make an arrangement which will result in missed payments and further action.’

Recognising the value of holistic independent debt advice

- 5.28 Many social landlords appreciate the part which independent advice can play in helping their tenants sustain tenancies, and build referrals to Citizens Advice Bureaux or other debt advice agencies into the arrears procedures. For example, many of the standard arrears letters used by social landlords, include a reference encouraging tenants to seek independent advice. Stroud CAB reports that its local authority regularly:
- accepts CAB offers based on budget sheets at all stages of the procedure up to and including a possession hearing – agreement is normally reached before the court date
 - rings CAB when a client has defaulted on an arrangement the CAB has negotiated, to see whether CAB knows why there is a problem

- advises clients to visit CAB for help.

5.29 The CAB Service's 'money advice' approach is a structured process to enable a debtor to cope with a multiple debt problem. The aim is to preserve the tenant's home, fuel supplies and liberty; advise them about their rights and responsibilities; maximise their income; enable them to draw up a realistic financial strategy to deal with their multiple debt problem and negotiate with all their creditors. The principles of this approach should be acknowledged within the strategies of social housing providers, although its provision is more appropriate from independent sources rather than in-house, to avoid inevitable conflicts of interest.

5.30 A number of landlords have developed funded referral arrangements with Citizens Advice Bureaux whereby tenants in rent arrears, particularly where they have multiple debts, are referred to the CAB **before** court action is considered.

Eastern Valley Housing Association fund Torfaen CAB for a seven hour a week money adviser post specifically to help their tenants. The aim is to avoid rent arrears building up so that possession action is unnecessary.

Wyre Forest Community Housing (WFCH) has provided funding to help establish a part time Money Advice Worker post to provide help and support to tenants and staff of WFCH in order to help reduce arrears and evictions. At least half of the postholder's time is spent providing outreach sessions at WFCH premises.

The Money Adviser at Thetford CAB has an arrangement with the largest housing association in the area to receive referrals from any tenant with arrears. She plans to work with the housing association to encourage greater consultation with the tenant prior to their being issued with a notice, including proposals towards changing their notification letters about arrears to include specific warnings about further action.

Cheltenham Borough Council has developed an innovative scheme in conjunction with local Citizens Advice Bureaux and other advice agencies, which has the specific objective of offering council officers an alternative to the more traditional methods of debt recovery such as court and bailiff action. The "A Way to Pay" scheme is available to applicants who have more than one debt owing to the council and who have received debt counselling from an approved participating agency. There are financial incentives for tenants to commit to an acceptable payment arrangement in respect to their arrears, as the council will then set a reduced proportion of the debt which they will accept as being due under the scheme. Provided there has been no breach of the conditions, the council credits the tenant's account every quarter with the

appropriate sum for each whole pound paid. The council has recently reviewed the scheme and decided to continue it. The scheme has enabled the collection of debts which may not otherwise have been recoverable, whilst also providing its customers with assistance with their financial difficulties. Other councils have shown an interest in adopting the scheme.

Joining up

- 5.31 Establishing good working relationships with other agencies which have a role to play in helping tenants sustain their tenancies and avoid possession, is of key importance.

Walsall CAB has been working with its local authority and the local courts to develop a pre-action protocol. This is aimed at putting parties in a position where sustainable arrangements for repayment can be agreed before possession action is commenced. This avoids the costs of possession proceedings or, when proceedings are unavoidable, to reach a sustainable agreement pre-hearing to assist the effective administration of the court. A key provision is to defer issue of proceedings where there remain valid outstanding issues such as unresolved housing benefit claims or payments.

Dartford CAB have developed good working relationships with the local authority housing department and over the last 18 months the CAB has arranged three training sessions with housing officers on topics such as benefits awareness, budgeting and debt. As a result, housing officers are more able to identify cases where tenants are underclaiming benefit, and will readily refer tenants to the CAB for debt advice.

Communicating with tenants

- 5.32 We found wide variety in the tone and content of landlords' leaflets and letters on rent arrears. Some adopt an uncompromising approach which would be unlikely to encourage the tenant to approach them for help or advice on their arrears. For example:

'You must keep rent payments up to date. You agreed to this when you first became a tenant.
We need your money to help pay for the services you receive. If we don't get what is owed all tenants suffer'

A CAB in the West Midlands reported that a local social landlord had press released a local poster and leaflet campaign to combat rent arrears which showed the picture of a small child under the headline "Evicted" and another showing a man facing a visit from the bailiffs.

- 5.33 In contrast, other landlords make a point of showing that they recognise the difficulties that can arise, and convey a real sense of working together and on behalf of the tenant to protect their home:

‘Most tenants pay their rent on time but sometimes things go wrong and payments are missed. When this happens we act fast to prevent the problem getting out of control. We will give all the help we can to stop you getting into arrears. Our rent arrears recovery procedure is based on early action which is firm but fair. Staff try to establish and maintain a relationship with tenants in arrears to ensure they receive sound advice at every stage of the procedure.’

The financial benefits of tenant-focused approaches

- 5.34 The financial benefits to both tenant and landlord, of better arrears and housing management, are beginning to be supported by example. These three case studies, each taking a different perspective and approach, show the scope for change: they mix local knowledge and information with new ways of working to provide tailored solutions to local problems and conditions:

In 1998, Brighton and Hove City Council set up a Special Needs Housing Project to support council tenants who were at risk of losing their tenancies primarily through substance misuse and/or mental ill health. The floating support model incorporates intensive housing management, occasional general welfare, care and support tasks, and advice on bills and debts. It is flexible to move from property to property, move in and out of people’s lives as they need it, and varies in intensity with time. The Special Needs Housing Officers also provide a contact and reference point for other housing staff and for agencies external to the council. An initial six-month pilot of 21 people who were at genuine risk of losing their tenancy resulted in a reduction of rent arrears by 57 per cent and the retention of tenancies in all 21 cases. Neighbour complaints were reduced by 93 per cent Success was attributed to the project’s supportive and motivational approach, providing intensive support whilst believing that change was possible, and to the joint approach and work with Social Services and agencies in the voluntary sector. The permanent project has been so successful – over 95 per cent of tenants retain their tenancies – that the local authority extended the remit to include private sector tenants and added a further post to the three-strong team.

Letter to Citizens Advice from Brighton and Hove Council, 9/11/2001

Irwell Valley Housing association runs a Gold Service scheme which rewards tenancy compliance. To qualify, tenants must have a clear rent account or an agreement in writing that they will pay off their arrears and no breaches of tenancy. In return, tenants receive an accelerated emergency repair service (three hours); priority modernisation; discounts on home contents insurance, fuel, funerals and eye care; a discount card for use in local shops and restaurants and Virgin mobile calls. Over 80 per cent of tenants are now joined up to the scheme. Before the scheme, they calculated that were spending 80 per cent of their resources on 20 per cent of their tenants. Now, with fewer evictions, fewer voids and fewer rent arrears, they say that for every £1 they spend they get £2 back. Since 1998 costs had been reduced by 16 per cent, arrears by 47 per cent, staff per property by 25 per cent, and transfers to surpluses had risen by 162 per cent. The Office of the Deputy Prime Minister and HM Treasury have shown interest in the scheme and its potential to be replicated elsewhere, not necessarily confined to the social housing sector.

Housing Today, 26 September 2002

The Housing Corporation's Innovation and Good Practice fund evaluated a Tenancy Support Service run by New Leaf, part of the Places for People group. Over a period of fifteen months one hundred people were provided additional tenancy support services in the increasingly widespread floating support model. The study found that assistance with benefits and rent arrears were the most common tenancy support tasks, with budgeting and other financial concerns accounting for a further third of issues tackled. Positive results were achieved in 80 per cent of cases, often resulting in increased income for the tenant and/or a significant reduction in their debts, as well, of course, as increased income for the housing association.

The evidence of cost-effectiveness was shown through comparison with 60 tenants who had not received tenancy support throughout a fifteen month period. Although these figures should be regarded with a degree of caution, due to the fact that the non-intervention group included larger numbers of single young men than the supported group, they provide very strong evidence of the financial benefits of more intensive and proactive tenancy support:

- average rent arrears for those being supported decreased by £203
- average rent arrears for those not being supported increased by £340
- therefore, tenancy support increased housing association income by £543
- 8 per cent of tenants receiving support ended their tenancy compared with 20 per cent in the group receiving no support
- None of the supported tenants were evicted although 6 had arrears at an average of £399
- 12 per cent of the group not receiving support were evicted or abandoned, leaving average rent arrears of £986

Housing Corporation and New Leaf, 2002

5.35 This chapter underlines the key finding of this report: possession proceedings are not the only option. There is ample evidence that some social landlords are exploring alternatives to possession proceedings, many of which require restructuring of resources rather than additional ones and can be achieved without sacrificing the autonomy of landlords. Combining tenant focused or tenant-sensitive housing management and housing tenancy with support with increased liaison and co-ordination with housing benefit departments has the capacity to reverse the reliance on possession proceedings. This is enshrined in the new direction demanded by the Department for Works and Pensions.

6. Conclusions and recommendations

6.1 The CAB evidence in this report demonstrates that there is currently considerable variation in social landlords' approaches to the recovery of rent arrears. Some landlords appear to initiate court action simply in order to get a housing benefit claim expedited. Some take action on mandatory grounds, thus preventing the courts from using their powers to suspend orders for possession. However, other landlords have comprehensive policies and systems for arrears prevention in place from the outset of the tenancy, including pro-active liaison arrangements with housing benefit departments. And when despite this, tenants fall into arrears, there are referral arrangements with providers of independent debt advice to help tenants maximise their income and offer affordable arrangements to repay. As a result, possession action when it is taken, is genuinely the last resort.

6.2 This contrast is well illustrated by the following comment from one Community Legal Service funded CAB case worker who deals with a number of local authorities and housing associations in East Anglia:

“The officers of (one social landlord) make every effort to liaise with their tenants when they start to fall into arrears with rent. They even refer clients directly to me, to enable them to try and make the best of any benefit entitlement, and for me to ensure that the clients are aware of the importance of paying rent / council tax, rather than non-priority debts. I have an arrangement whereby the housing officer gives my direct line telephone number to the client and asks them to phone me to make an appointment. I then give advice on income maximisation, complete an income / expenditure sheet, and refer to a Money Advice Caseworker if appropriate. I think this is an example of excellent co-operation by a social landlord.

In comparison, ...(another social landlord) will take a tenant to court for possession on mandatory grounds for rent arrears in excess of eight weeks rent. I have a client who got into arrears because her repeat application form for housing benefit went astray and ... they are seeking possession unless she reduces the arrears to under eight weeks. She's had to get a budgeting loan from the social fund to do this, putting still more pressure on her limited finances.”

6.3 Pressures on social landlords are recognised. The combined effects of poor housing benefit administration, narrow targets and general financial pressures, are serious. The failure of housing benefit services to meet the legitimate needs of its customers— both tenants and landlords - for prompt and accurate payments in accordance with regulations, is unacceptable. It is essential that arrangements are put in place to enable social landlords to get a housing benefit claim expedited without resorting to possession action.

- 6.4 However, the routine use of possession action to recover rent arrears is inappropriate, ineffective and inefficient. It is not what the court process was designed for and adds more debt to those who are already struggling. Tenants are significantly affected by the process, only too aware of the threat to their security, the stress of court action and the financial burden of court costs and time off work to attend hearings. The fact that the majority of possession orders are suspended should not be used as a justification for taking court action.
- 6.5 The causes of arrears are not solely to do with the failures of the benefit system. They are as likely to relate to the difficulties people face in coping with sudden changes in their lives, particularly when they are on low incomes. Social landlords house large proportions of tenants claiming benefit and on low incomes and this makes debt issues and debt management a central characteristic of their customer base. The narrow range of tools used by some landlords to tackle rent arrears is inappropriate given the diversity of their causes. Possession proceedings are also expensive for social landlords and involve significant amounts of staff time in issuing warnings and notices, pulling together legally required documentation and court appearances, as well as the costs of solicitors.
- 6.6 Increasingly, social landlords are looking to new ways of tackling the problems which have a better fit with wider agendas around social inclusion and tenancy sustainment. Greater recognition is needed of the importance of independent advice and the role of social landlords in working with advice agencies and ensuring tenants receive signposting or referral. This should include properly resourced court desks that are proficient in money advice and welfare benefits as well as housing law. The limited availability of money, benefits and debt advice was criticised in over a third of Housing Inspectorate and Housing Corporation inspection reports covering rent/arrears collection services, analysed by the Housing Quality Network (Housing Quality Network, 2002).
- 6.7 This report calls for a new approach to dealing with rent arrears, with an emphasis on prevention, reinforced by performance standards, and ensuring that possession action is only used as a last resort.
- 6.8 There are alternatives and they have been shown to work. The challenge now is to see that they are universally used.

Recommendations

- 6.9 Citizens Advice sees the way ahead as comprising three key elements. Firstly it is imperative that the administration of housing benefit is dramatically improved and that the needs of tenants and landlords for prompt payment is given greater priority. Secondly some of the legislative reforms proposed by the Law Commission could help underpin a change in approach to the recovery of arrears, by removing the mandatory ground for possession and providing the opportunity for a

greater focus on establishing sustainable arrangements for tenants to pay off arrears.

6.10 The third element, which has been the main focus of this report, relates to the need for a change in approach by some social landlords towards the recovery of rent arrears. The following specific recommendations are designed to bring about such a change.

6.11 The Office of the Deputy Prime Minister and the Housing Corporation should draw up a joint statement of practice on preventing and recovering rent arrears to which all social landlords should subscribe. The statement of practice should be drawn up in consultation with bodies representing the interests of social housing tenants and landlords. The Welsh Assembly should undertake a similar exercise in Wales. Compliance with the statement of practice should be a key element in the inspection of social landlords' rent arrears management undertaken by the Audit Commission's Housing Inspectorate.

6.12 The statement of practice should focus on the prevention and recovery of arrears, ensuring court action is the last resort. The content would be based on existing best practice and would build on the Housing Corporation's Regulatory Code and Guidance. It should include the following elements:

Prevention measures

Social landlords should:

- provide accessible information to tenants, particularly those with specific needs such as lack of basic skills in numeracy and literacy and people for whom English is not a first language;
- adopt tenancy start-up procedures which include
 - maximising housing benefit take up, providing any necessary support with benefit claims from form completion through to payment, and
 - identifying vulnerable tenants in order to ensure that rent payment and recovery procedures are tailored to their special needs and that any ongoing additional support needs are met;
- provide tenants with access to welfare rights advice across the full range of benefits;
- ensuring tenants know where to go should they need independent debt advice at any point;
- offer customer friendly payment methods by providing a range of options including cash payments, which are easily accessible to all tenants wherever they live;

Dealing with rent arrears

Social landlords should:

- act promptly to contact tenants where rent arrears accrue, and keep records of all steps taken
- make personal contact wherever possible, with home visits where necessary
- promote access to holistic independent advice where tenants have multiple debts
- offer affordable repayment arrangements which can be altered to allow for changes in circumstances
- seek and accept repayment of arrears by direct deductions from income support/job seekers allowance where appropriate;
- establish close and effective liaison with housing benefit departments to ascertain housing benefit entitlement and resolve problems which delay payment.

Court action

Social landlords should:

- not take possession action where tenants have made and maintained repayment arrangements, including direct deductions from benefit
- not take possession action where housing benefit issues are outstanding
- encourage tenants to seek advice before appearing in court
- encourage tenants to attend at court.

Post court action

Social landlords should:

- continue to provide support to enable tenants to remain in their homes
- provide tenants with information on how to apply to vary a suspended order or suspend a warrant, and how to get independent advice
- liaise with homeless persons units and social services departments where eviction and subsequent homelessness appears inevitable.

- 6.13 Similar initiatives are already in place in other areas of arrears recovery. For example the Council of Mortgage Lenders has adopted a statement of practice in relation to recovery of mortgage arrears. The Banking Code to which members of the British Bankers Association and Building Societies Association subscribe, has specific guidance on dealing with customers in financial difficulty.¹² Codes on the recovery of arrears emphasizing the need for debt prevention strategies, are also employed within utilities regulation.
- 6.14 Such a statement of practice on the prevention and recovery of rent arrears would have the following benefits:
- help to drive up standards towards accepted best practice
 - ensure that all social landlords work toward what is accepted good practice
 - increase transparency for all parties including tenants, advisers and the courts, about what steps landlords should take before resorting to possession action
 - help ensure that possession action is genuinely used as the last resort.
- 6.15 A Best Value Performance Indicator should be introduced for all social landlords, on the number and proportion of tenants evicted for rent arrears along with targets for its reduction.** This would parallel the data already published by the Council for Mortgage Lenders in relation to mortgage borrowers. This is crucial for effective monitoring of poverty, policies and policy development. It would also help to ensure that the existing performance indicators, which focus on the proportion of rent collected and on levels of rent arrears of current tenants as a proportion of the rent roll, do not act as incentives to social landlords to evict tenants.
- 6.16 Social landlords should not take possession action for rent arrears where these are due to delays in processing housing benefit claims.** As recommended in the Department for Work and Pensions housing benefit Performance Standards (Working with Landlords), housing benefit departments and local social landlords should establish liaison arrangements to include the provision of a certificate from the Housing Benefit Department accompanying all applications to the county court, to confirm that there are no outstanding housing benefit enquiries on the case. To support this and our proposed statement of practice, the **Lord Chancellors Department should amend the Civil Procedure Rules to provide that social landlords are liable for court fees where they have not checked prior to taking court action whether there are outstanding housing benefit enquiries on the case.** In this way, social landlords rather than tenants would bear the costs of inappropriate use of court action.

¹² Council of Mortgage Lenders, Handling of arrears and possessions, Statement of Practice, January 1997; The Banking Code: Setting the Standards of Banking Practice, January 2001.

- 6.17 To underpin the above recommendation, **housing benefit departments should establish liaison arrangements with social landlords to enable the housing benefit claims of tenants with high rent arrears (who are most likely to face possession action) to be prioritised.** This should remove any need for social landlords to issue notices seeking possession simply to expedite a housing benefit claim.
- 6.18 The Law Commission has recently proposed changes to tenancy law which would have the effect of ending housing associations' option to use the mandatory Ground 8 when seeking possession. We welcome this. Until such reform is in place, **we recommend that housing associations cease taking possession action using Ground 8.**
- 6.19 The value of independent advice in helping tenants to maximise their incomes and to manage their debts is increasingly clear. **All social landlords should establish arrangements with local Citizens Advice Bureaux and other advice providers to ensure that tenants with rent arrears are able to get independent advice.**
- 6.20 There is strong evidence that county court advice desks are effective in ensuring that tenants threatened with possession action can obtain advice before appearing in court, thus reducing their risk of losing their homes. **The Lord Chancellor's Department should take action to ensure that every county court has an advice desk, funded to provide advice and representation on benefits and debt to people facing court action for housing debt.** The reorganisation of the management of the Courts into a single agency being brought in by the Courts Bill, may provide the opportunity to take this forward.

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Appendix 1: Citizens Advice Bureaux that submitted evidence on the recovery of rent arrears by social landlords between January and December 2002

EAST REGION

Basildon
Bedford & District
Brandon
Brentwood
Buntingford
Bury St Edmunds
Bushey
Cambridge & District
Dacorum
Dereham
Dunstable & District
Elstree & Borehamwood
Epping
Fenland
Harlow
Haverhill
Hertford
Ipswich & District
Kings Lynn & District
Leighton Linlade
Lowestoft
Marham
Mid-Suffolk
Norfolk Money Advice Unit
North Hertfordshire & District
Norwich & District
Oxhey & District
Peterborough
Rickmansworth
Southend-on-Sea
St Neots
Stevenage
Tendring
Thetford & District
Waltham Abbey
Ware & District
Watford
Welwyn Hatfield
Wickford
Witham
Wymondham & District

LONDON REGION

Addington
Barking & Dagenham
Barnet Home Visiting
Beckenham & Penge
Beddington & Wallington
Bermondsey

Brent
Brentford & Chiswick
Bromley & Chislehurst
CALL
Catford
City of London
Croydon Money Advice Unit
Dagenham
Edmonton
Eltham
Enfield Town
Feltham
Fulham
Haringey
Harrow
Havering
Hendon
Hillingdon (Ealing/Acton)
Hillingdon (Ruislip)
Hillingdon (Uxbridge)
Hornchurch
Hornsey
Islington
Kingston & Surbiton
Lewisham Money Advice
Leytonstone
Merton (MMAS)
Mitcham
New Barnet
Newham Docklands
Orpington
Paddington
Palmers Green
Peckham
Pimlico
Putney
Redbridge
Richmond Money Advice
Richmond Upon Thames
Roehampton
Romford
Sheen
St Helier
Streatham
Sutton
Sydenham
Thornton Heath
Tooting & Balham
Tottenham
Tower Hamlets East

Twickenham
Walthamstow
Wandsworth MAS
Whitechapel
Woolwich

MIDLANDS REGION

Acocks Green
Bedworth & District
Biddulph
Birmingham City Centre
Birmingham District Health Project
Bridgnorth & District
Brierly Hill
Bromsgrove
Burton-Upon-Trent
Charnwood
Chesterfield
Coalville & District
Coventry
Derby
Dudley
Eastwood & District
Erewash
Halesowen
Harborough District
Kettering
Lichfield
Lincoln & District
Lutterworth
Malvern Hills District
Mansfield & District
Melton Mowbray
Newcastle-Under-Lyme
Northampton
North Shropshire (Market Drayton)
North Warwickshire
Northfield
Nottingham & District
Nuneaton
Ollerton & District
Redditch
Rugeley
Shirley
Shrewsbury
Smethwick
Solihull
South Derbyshire
South Shropshire (Ludlow)
Stoke-On-Trent District

| | | |
|-----------------------------|------------------------------|----------------------------|
| Stone | Todmorden | Swinton & Pendlebury |
| Stourbridge | Wakefield District | Tameside |
| Stratford-Upon-Avon | Wear Valley | Toxteth |
| Tamworth | York | Ulverston & North Lonsdale |
| Tipton | | Walkden |
| Uttoxeter | NORTH WEST REGION | Wallasey |
| Walsall | Altrincham | Warrington |
| Warwick District | Anfield | Whitehaven |
| Wellingborough | Atherton | Winsford |
| West Bromwich | Bebington | Withington |
| West Lindsey | Birchwood | Workington |
| Wolverhampton | Birkenhead (Charity) Ltd | Wythenshawe |
| Wyre Forest | Blackburn | |
| Yardley | Blackley | SOUTH REGION |
| | Bolton & District | Abingdon |
| NORTH REGION | Bootle | Aldershot |
| Barnsley | Bradford (Gtr Manchester) | Amersham |
| Batley | Carlisle | Alton |
| Berwick | Chorley & District | Andover |
| Blyth Valley | Crewe & Nantwich | Ash |
| Bradford (West Yorkshire) | Crosby | Basingstoke |
| Calderdale, Halifax | Eccles | Bexhill & Rother |
| Darlington | Garston | Bicester |
| Derwentside | Halton District | Bishop's Waltham |
| Dewsbury | Harpurhey | Bognor Regis |
| Doncaster | Heywood | Bracknell |
| Durham | Hindley | Camberley |
| Elland | Hope Hospital | Canterbury |
| Hambleton | Hulme | Caterham & Warlingham |
| Harrogate | Hyndburn | Chiltern |
| Hartlepool | Knowsley District | Chichester & District |
| Hebden Bridge | Lancaster | Cranbrook & District |
| Hull Bransholme | Leigh & District | Crawley |
| Hull City Centre | Liverpool City Centre | Crowborough |
| Hull Orchard Park | Liverpool County Crt Service | Dartford |
| Keighley | Lytham St Annes | Didcot & District |
| Leeds | Macclesfield & Wilmslow | Dorking |
| Middlesbrough | Manchester Central | Eastleigh |
| Newcastle City | Manchester District Projects | Edenbridge & Westerham |
| North Tyneside | Marple & District | Epsom & Ewell |
| Pontefract | Middleton | Esher & District |
| Richmondshire | Millom & District | Fareham |
| Rotherham | Morecambe & Heysham | Farnborough |
| Ryedale | Nelson | Faversham & District |
| Scarborough | Netherley | Godalming |
| Scunthorpe | North Liverpool | Gosport |
| Selby District | Preston & District | Gravesham |
| Sharrow | Radcliffe | Guildford |
| Sheffield Debt Support Unit | Ribble Valley | Hailsham |
| Sheffield Mental Health | Rochdale | Haslemere |
| South Elmsall | Runcorn | Haywards Heath |
| South Kirklees | Sale | Heathlands |
| South Tyneside | Skelmersdale (West Lancs) | Henley & District |
| Spen Valley | Southport | High Wycombe |
| Stainforth | Speke | Kent Probation Project |
| Teesdale District | Stretford | Leatherhead |

| | |
|--|------------------------|
| Littlehampton | South Somerset |
| Lymington | St Austell (Restormel) |
| Maidenhead | Stroud |
| Malling | Taunton & District |
| Medway | Tavistock |
| Milton Keynes | Teignmouth |
| New Milton & District | Tidworth |
| Oxford | Tiverton & Crediton |
| Portsmouth | West Wiltshire |
| Reading | Weymouth & Portland |
| Reading Community Welfare Rights Unit | WALES |
| Romsey & District | Aberystwyth |
| Sevenoaks | Ammanford |
| Shoreham & Southwick | Bargoed & District |
| Sittingbourne & Isle of Sheppey | Bridgend |
| Slough | Carmarthen |
| Southampton | Colwyn Bay |
| Spelthorne | Conwy |
| Swanley WRU | Cowbridge |
| Thanet | Denbigh |
| Tonbridge | Haverfordwest |
| Tunbridge Wells | Maesteg |
| Waterlooville | Merthyr Tydfil |
| Waterside | Newport |
| Winchester | Pontypridd |
| Witney | Port Talbot |
| Woking | Rhyl |
| Wokingham | Ruthin |
| Worthing & District | Swansea |
| Yateley & District | Torfaen (Cwmbran) |
| | Ynys Mon (Holyhead) |

SOUTH WEST REGION

Barnstaple
 Bournemouth
 Bristol
 Bude, Holsworthy & District
 Camborne (Kerrier)
 Christchurch
 Cirencester
 Coleford
 Dorchester & District
 East Dorset
 Exeter
 Exmouth
 Falmouth (Carrick)
 Frome & District
 Kennet
 North East Somerset
 North Wiltshire
 Plymouth City Centre
 Salisbury & District
 Sherborne
 South Gloucester
 South Hams

Appendix 2: Citizens Advice Bureaux that took part in the county court survey

EAST REGION

Abbots Langley
Basildon
Brentwood
Buckingham Winslow & District
Cambridge
Chelmsford
Ely
Ipswich
Rickmansworth
Ware & District
Watford
Wickford

LONDON REGION

Edmonton
Harrow
Kingston upon Thames
Lewisham Money Advice Service
Newham
Wandsworth MAU

MIDLANDS REGION

Brierley Hill
Halesowen
Malvern Hills District
Nuneaton
Redditch
Stoke-on-Trent
Stourbridge
Walsall

NORTH REGION

Doncaster
Gateshead
Sheffield Debt Support Unit

NORTH WEST REGION

Chester
Crewe
Nantwich
Runcorn
Warrington

SOUTH REGION

Basingstoke
Burgess Hill
Dartford
Dorking
Haywards Heath
Oxted
Poole
Portsmouth
Southampton
Winchester
Wokingham

WALES

Newport
North Denbighshire (Rhyl)

SOUTH WEST REGION

Camborne (Kerrier)
Sedgemoor
Taunton

| Region: | Number of cases: | Number of bureaux |
|----------------|-------------------------|--------------------------|
| East | 42 | 12 |
| London | 41 | 6 |
| Midlands | 43 | 8 |
| North | 18 | 3 |
| North West | 20 | 6 |
| South | 51 | 10 |
| West | 19 | 4 |
| Wales | 10 | 2 |
| Total | 244 | 51 |

Appendix 3: CAB county court survey (May/June 2002): additional tables

A total of 244 tenants of social landlords facing possession action for rent arrears, were surveyed by 51 CABx that hold advice desks in county courts throughout England and Wales. The main findings are discussed in the body of the report in chapters 3 and 4.

Age of respondent

| Age | % of cases |
|------------|------------|
| 16-24 | 18 |
| 25-34 | 31 |
| 35-44 | 25 |
| 45-59 | 20 |
| 60+ | 1 |
| Not stated | 5 |

Based on 244 cases

Household composition

| Household composition | % of cases |
|-----------------------|------------|
| Single | 76 |
| Couple | 24 |

Based on 244 cases

Number of dependants in household

| Number of dependants | % of cases |
|----------------------|------------|
| 0 or not stated | 51 |
| 1 | 18 |
| 2 | 20 |
| 3 | 7 |
| 4 | 4 |
| 5+ | 0 |

Based on 244 cases

Ethnic group of respondents

| Ethnic group | % of cases |
|-----------------|------------|
| White UK | 85 |
| Indian | 1 |
| Pakistani | 2 |
| Bangladeshi | 1 |
| Black British | 4 |
| Black Caribbean | 3 |
| White other | 1 |
| Other | 3 |

Based on 223 cases where information provided

Amount of rent arrears (excluding warrant cases)

| Amount of arrears (£) | % of cases |
|------------------------------|-------------------|
| 1-250 | 4 |
| 251-500 | 14 |
| 501-750 | 14 |
| 751-1000 | 23 |
| 1001-1250 | 11 |
| 1251-1500 | 11 |
| 1501-1750 | 3 |
| 1751-2000 | 7 |
| 2001-2500 | 9 |
| 2501+ | 4 |

Based on 152 cases where information provided

Number of weeks of rent owed (excluding warrant cases)

| Number of weeks of rent owed | % of cases |
|-------------------------------------|-------------------|
| 8 or less | 18 |
| 9 to 12 | 11 |
| 13 to 16 | 18 |
| 17 to 20 | 18 |
| 21 to 24 | 10 |
| 25 to 28 | 8 |
| 29 to 32 | 4 |
| 33 to 36 | 3 |
| 37 to 40 | 3 |
| Over 40 | 6 |

Based on 148 cases where information provided

The Citizens Advice service helps people resolve their money, legal and other problems by providing information and advice, and by influencing policymakers.

All Citizens Advice social policy reports are rooted in unique evidence that stems from advising people on their rights, options and solutions to their problems. Policy makers recognise the value of our evidence reports, which include practical recommendations for change.

Our reports cover a wide range of subjects including debt and consumer affairs, education, employment, health and community care, housing, immigration and asylum, legal affairs, rural issues, social security and tax.

For further information about Citizens Advice social policy evidence reports or to order:

- **www.citizensadvice.org.uk**
- Telephone: 020 7833 2181,
- Email: **social.policy@citizensadvice.org.uk**

For CAB information and advice **www.adviceguide.org.uk**

For more information on local CAB volunteering opportunities call **08451 264 264** Monday-Friday, 9am – 5pm.