

Rent arrears

How to cope with rent
arrears

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www.sheltercymru.org.uk

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Rent Arrears

How to cope with rent arrears

This booklet is for people who are having problems paying their rent, or who are at risk of losing their home because they owe rent to their landlord. If you need more detailed information, you should get advice from a Shelter Cymru housing advice service or a citizens advice bureau; visit www.sheltercymru.org.uk/get/advice or call 0845 075 5005.

If you have fallen behind with your rent because there is a problem with your housing benefit claim, get help as soon as possible. If you are having problems paying your mortgage, see the free Shelter Cymru booklet Mortgage Arrears.

This booklet is only an introduction to the law in Wales. If you live in England, Scotland or Northern Ireland you can contact Shelter, Shelter Scotland or the Housing Rights Service (see Useful organisations on pages 28–29).

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Rent Arrears

What are rent arrears?

Tenants must pay rent to their landlords, usually every week or every month. If you are a tenant and you miss payments or don't pay enough you will have rent arrears.

People often get into rent arrears because of:

- a change in financial circumstances, such as losing a job
- delays with the payment of benefits
- splitting up with a partner
- having to meet unexpected expenses.

If you are getting behind with your rent, or think that you might not be able to pay your rent in the future, you should act quickly to avoid the risk of losing your home by being evicted. It is often possible to sort things out. If you don't take action, the situation is likely to get worse.

If you have rent arrears your landlord may take you to court and ask the court to evict you and/or order you to pay the money you owe. If you take action early you have more chance of avoiding this.

Even if you end up in court, there is often a solution. It's always best to get advice as soon as you know you are having problems paying the rent. But even if you haven't done this and you are being taken to court, try to get advice before the court hearing from a Shelter Cymru housing advice service or citizens advice bureau. An adviser can explain your options and help you decide what to do. They may be able to go to court with you.

Which tenants are most at risk? Most private tenants have assured shorthold tenancies. Assured shorthold tenants do not have long-term rights to stay in their home. A landlord can evict an assured shorthold tenant quite soon after the agreement has ended whether or not the tenant has paid the rent. But most landlords prefer to keep good tenants and may only decide to evict if there is a reason, such as not paying the rent or not looking after the property.

Usually social landlords (councils and housing associations) give tenancies that mean the tenant can stay indefinitely, as long as they keep to the tenancy agreement. For these kind of tenancies the landlords can only evict if there is a reason, such as not paying the rent.



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In these cases, the landlords must follow certain procedures and help tenants who are in rent arrears. Also, the courts have more power to give the tenants the chance to pay off any arrears by instalments. Most councils and some housing associations now give new tenants 'probationary tenancies' for the first year. Council tenants with probationary tenancies are called introductory tenants. Housing association probationary tenancies are usually called starter tenancies, but they are in fact assured shorthold tenancies, similar to those used by private landlords.

For the first 12 months when the tenancy is an introductory or starter tenancy, the landlord can evict the tenant more easily. If a council intends to evict an introductory tenant they must tell them why and the tenant can ask the council to reconsider. Some housing associations also offer a similar review or appeal, but they do not have to do this. Usually, after the first 12 months, if the landlord has not started possession proceedings, the tenant will get long-term rights – they will become a secure tenant if the landlord is a council and an assured tenant if the landlord is a housing association.

What's the worst that could happen?

If you have rent arrears, your landlord may decide to do one or more of the following:

- talk to you or negotiate with you to pay the money you owe (see page 9)
- apply to the court to have you evicted, or, if you live with your landlord, s/he could just ask you to leave (see page 12)
- apply to the court for a money judgment to force you to pay the arrears (see page 21).

If you don't pay off your rent arrears and end up being evicted, it can be hard to find a new place to live. Your local council may not help you if you have been evicted because of rent arrears and you were in a position to pay the rent, even if you are homeless. Some councils will say you can't go on the waiting list for a permanent home. Many private landlords ask for a reference from your last landlord, and may not want you as a tenant if you've been evicted for rent arrears.

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What should I do if I think I'm in rent arrears?

It's important to check with your landlord how much rent you owe, in case you disagree. It might also be important in court if your landlord tries to evict you. Ask your landlord for a rent statement from the date when the rent arrears are supposed to have started. Rent usually only covers the amount your landlord charges for living in the property, but sometimes it can include other things like bills and service charges. If it's not clear, ask your landlord how much of what you owe is rent, and how much is for other services.

Don't ignore phone calls or letters from your landlord as this will only make matters worse. Don't be put off even if you think your situation is hopeless. There is often a solution.

Your tenancy agreement may also set out what 'rent' includes and does not include. If you are in any doubt about what the tenancy agreement means or what your landlord has said, get advice from a Shelter Cymru housing advice service or citizens advice bureau. Sometimes landlords charge interest on arrears and late payments. Check whether the tenancy allows this and, if so, that the calculations are right. If the landlord is charging a high rate of interest or making you pay a penalty for late rent payments, it may be possible to challenge the part of the agreement that says the landlord can do this.

An adviser may be able to help you to work out how much you owe and check whether you are entitled to any benefits and, if so, how much.

If you disagree with your landlord about what you have paid, look back through your rent book or receipts, bank statements and other information. Remember that if you pay through a bank or post office, or by posting a cheque, the date that you paid will be earlier than the date the payment was received. Explain any disagreements or mistakes to your landlord. If you aren't already doing so, make sure you get evidence of all the payments you make. If you give your landlord cash, insist on a receipt.

If you claim housing benefit (HB) you are still responsible for making sure your rent is paid, and for any arrears you have, even if your HB payments are going directly to your landlord. For more information on housing benefit, see page 8.

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If you are a named tenant on the tenancy agreement, you are responsible for paying the whole of the rent. If you have a joint tenancy agreement, as far as the landlord is concerned, each tenant is equally liable for paying all of the rent, however you have divided up the rent payments among yourselves. If one joint tenant does not pay, then the other tenants are responsible to the landlord for paying her/his share as well as their own.

How can I stop rent arrears building up?

The first thing is to make sure you are paying the current rent. If you can't afford this then you will need to decide whether:

- you can reduce your other expenses
- you can increase your income – by working more or claiming benefits
- you can find a place that's cheaper.

If you can afford the rent but have problems budgeting, you should think of ways to make sure the rent is paid on time. You may be able to set up a direct debit from your bank account, or at least get into the habit of paying the rent as soon as you get paid or receive your benefit. If you get housing benefit, and your landlord is not the council, it will usually be paid to you but you can ask the council to pay it directly to the landlord if you can show you have real difficulties making the payments.

Once you have worked out that you can afford the rent and can pay it regularly, you need to decide how you can pay off the arrears. Although landlords will usually start by insisting that you pay off all the arrears at once, they may agree to let you pay them off gradually as long as you show that you are paying regularly.

If your arrears are over a certain level and you are on certain benefits (income support, income-based jobseeker's allowance, income-related employment support allowance and pension credit) and your landlord is the council or a housing association, your landlord can ask the benefits agency to deduct a small amount from your benefit every week to repay the arrears. They can do this whether or not you agree. If they aren't doing it you could ask them to as it might help you make sure the arrears are paid off.

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A debt adviser (see Useful organisations on page 28) can go through your finances with you to see if you can reorganise your money so you can repay the rent arrears. You may need to reduce your spending to prevent your arrears building up any further and to start paying off the arrears. It may be possible to reduce payments on other debts, or, if you have a job, it may be possible to work more hours or ask your employer or trade union for a loan. Be very careful about borrowing money or using your credit card to repay the arrears as you could make your situation worse.

Always get advice before taking on new loan.

You may also be entitled to claim benefits (see below). Try to make an agreement with your landlord to pay off the arrears by paying something every week or month on top of your current rent. Even if your landlord doesn't agree, you can always start to pay an amount on top of the rent each week or month to reduce the arrears. If you are negotiating with your landlord don't delay making payments until an agreement is reached. Your landlord is less likely to try to evict you if you are reducing the arrears by making regular payments. See page 9 for information on negotiating repayments with your landlord.

Could I claim benefits?

If you are on a low income, there may be benefits you can claim, such as housing benefit (HB), which can help you pay your rent. If you are working, you may also be able to get a tax credit, and if you are a pensioner, you may be able to get pension credit. You can get information about welfare benefits by contacting Jobcentre Plus or visiting the Directgov website (see Useful organisations on page 28).

If you are already claiming HB but your payments are delayed, you may be able to take action to speed up your payments and stop the situation getting worse. If your HB is not covering the whole of your rent and you can't afford the difference, it may be possible for you to apply for extra payments from the council. For more information see page 10.

Can I withhold rent because of repair or other problems?

If you have already started to withhold rent because of repair problems in your home, get advice immediately from a Shelter Cymru adviser. If you are thinking of doing so, get advice before you stop paying. It is usually a very bad idea to stop paying the rent to force your landlord to carry out repairs. If you are an assured shorthold tenant your landlord may take action to evict you and the fact that s/he has not carried out repairs will not stop the court making a possession order.

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Even if you are a tenant with long-term rights, it is dangerous to stop paying the rent because if the landlord does the repairs you may find that you have arrears that are hard to repay.

Legally, as a tenant you can argue that the landlord should pay compensation for inconvenience or damage to your health or belongings or for the cost of repairs you have carried out. And the court can order that any rent arrears are 'set off' against compensation (taken out of any compensation you are awarded).

However, you would need to follow a certain procedure and would usually need a court to make an assessment of the amount of compensation your landlord should pay. See the free Shelter Cymru booklet *Getting repairs done*. If you are having problems getting your landlord to do repairs, get advice from a Shelter Cymru adviser as soon as possible.

What if I've got other bills to pay?

Although you may have other bills and other debts, rent must be a priority because if you don't pay it, you can be evicted. You should also work out your budget to see what you can afford, and to see whether you can make savings on non-essential spending (e.g. gym membership, meals out). The budgeting forms on pages 26 and 27 can help you do this.

Although catalogue and credit card payments are important, they shouldn't come first. It's also important to pay your utility bills (such as your gas and electricity bills) and council tax. If your gas or electricity gets cut off, you will have to pay to have them reconnected. If you don't pay your council tax, you could end up in court, and may have to pay court fees on top of the debt.

It may be possible to negotiate to reduce the payments you are making towards bills, credit cards, or loans. You should ask your utility company, credit card company or lender whether you can pay a smaller amount each month, at least until you have paid off your rent arrears. A Shelter Cymru adviser or citizens advice bureau may be able to help you negotiate with them if they won't agree to do this.

If you're thinking of borrowing a lump sum to pay off your arrears and other debts, get advice first. Be very careful about borrowing money from a doorstep lender, loan company or credit card company to clear your arrears. Always get advice before taking on new loan, even one that claims to reduce your debts down to one monthly payment. They usually charge high interest rates for their services, and you will probably end up paying much more in the long run.



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Should I negotiate with my landlord?

It is always a good idea to tell your landlord if you are having trouble paying the rent. Your landlord will notice that you haven't paid and is more likely to take legal action if you ignore the problem. Telling your landlord and offering a practical solution may prevent her/him from starting court action, as it shows that you are making an effort to deal with the situation. If your landlord is a council or housing association, they must try to talk to you about your arrears and try to resolve things before going to court, even if they have already started taking legal action. This will usually involve asking you to contact them, and probably inviting you to a meeting.

Work out what you can afford to pay to reduce your arrears. Be realistic. If you are on a low income, you will not be able to afford more than a few pounds per week plus the rent for that week. On the other hand, if you are working and getting a good income, your landlord will expect you to pay more towards the arrears.

What if my landlord won't take the money?

If you are having problems with your landlord and s/he doesn't want you to pay back the arrears, but insists you have to leave, get advice from a Shelter Cymru adviser. In most cases your landlord can't make you leave without getting a court order. And in some cases the court will only make an order if it's reasonable to do so. If you are trying to repay the arrears the court may say that evicting you isn't reasonable and may refuse to make an order.

If your landlord refuses to take your rent, you should put all the money aside and don't use it for anything else. Write to your landlord confirming that you are willing to pay off the arrears. Ideally, send your letter by recorded delivery and keep the receipt. If you use the phone or email, send a letter as well. This way, if your landlord takes you to court you will be able to prove you were willing to pay and will have the money available.

Arrears caused by housing benefit problems

If you are in arrears because of problems with your housing benefit (HB) claim, get advice from a Shelter Cymru housing advice service or citizens advice bureau. You may be able to stop the situation getting worse.

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Has your claim been filled in properly?

Your HB claim might be delayed if you don't provide all the information the council asks for. Unless you apply online you should sign and date all your forms and give them to the council as soon as you can.

If the council asks for information or documents you must provide them as soon as possible and no later than one month after they ask. If you are having problems completing the HB form or getting the information you've been asked for, get advice from a Shelter Cymru adviser or citizens advice bureau.

Sometimes councils lose forms and papers you have given them. If possible, keep a photocopy of all your forms, and take them to the HB office in person. Always ask for a receipt. You will then be able to prove that you handed them in on a particular day in case your form gets lost. If you send the form by post, ask for written confirmation that it has been received.

Interim payment

If you rent from a private landlord or a housing association, once you have made a claim, the council should make an interim payment of HB within 14 days (sometimes called a payment on account). The only reason that payment can be delayed beyond this is if the delay is caused by you not providing the council with the information it asked for.

Contact your council if you don't get this payment after 14 days, and get advice if necessary.

What if my housing benefit doesn't cover all of the rent?

Sometimes HB doesn't pay all the rent, even when you are receiving the maximum amount. There can be different reasons for this. Under the local housing allowance scheme, which covers most tenants with private landlords, there is a maximum amount that can be paid according to the size of your property. If your rent is higher than this amount you will have to pay the difference or ask your landlord to consider reducing the rent.

From April 2013 your HB is likely to be reduced if you are a council or housing association tenant and you live in a home that has more bedrooms than you need. You will have to pay the increased shortfall in rent to your landlord.

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HB may not cover the rent because there are other people living with you as part of your household who should be contributing to the rent, principally adult family members. There is a set amount deducted for each person, depending on whether they are working or not. These are called 'non-dependent deductions'. If this is the reason, you must make sure that they give you money so that you can pay the rent.

Other reasons may be because your rent includes payments for water rates or service charges which you will have to pay yourself. Or, it may be because you have been paid too much HB in the past and it is being taken from your current benefit. Sometimes HB doesn't cover all the rent because your income is too high, in which case you have to pay the difference. In all cases the council should send you a letter explaining how your HB has been calculated and in some cases you can appeal.

You can apply for a **discretionary housing payment** from the council to help you pay the difference between the rent and the HB. But it is up to the council whether to pay this and it will only be for a limited period. Get advice from a Shelter Cymru advice surgery if your HB is not meeting the rent and the adviser can tell you if you can appeal against any of the council's decisions.

You must make sure to get advice as soon as you get the letter telling you how much HB you are getting as there is a time limit for appealing.

Is your claim up to date?

If you already get HB, then the council will usually send you a renewal form at regular intervals. It is very important that you complete the renewal form and send it back in time, with all the information the council is asking for. If you don't do this, then your HB could stop and you could be at risk of eviction due to rent arrears.

You must also tell the council about any change in your situation, such as a change in your income, or someone moving in with you. If you don't do this, you could miss out on the extra HB you might be entitled to, or could get paid too much, which you would then have to pay back.

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Can the court evict me if the arrears were caused by HB problems?

This depends what kind of tenancy you have and whether the judge has to decide if it is reasonable to make a possession order – see page 14.

If your landlord is taking you to court because of arrears caused by housing benefit problems, get advice from a Shelter Cymru adviser as soon as you can. You may be able to get the council to sort out your claim so you can pay off some or all of your arrears before the hearing. If your arrears are because of HB problems that are not your fault, the court may refuse to make a possession order but again this depends on the type of tenancy you have.

What if I just leave?

If you decide to leave your home, then it's important to tell your landlord that you are leaving, and give her/him the correct written notice, to avoid increasing any arrears that you currently have. If you simply move out you will carry on being liable for the rent. Only if you give proper notice or your landlord agrees to you leaving will your responsibility to pay rent end.

For most tenancies, you will have to give at least four weeks' notice., If you have a fixed-term tenancy, you may need to give more notice, and you may have to pay the rent until the end of the period you signed up for. Whatever tenancy you have check your tenancy agreement, if you have one, to see what it says about the amount of notice you must give. You should pay rent during the notice period.

If the landlord agrees that you can move out on short notice make sure you get any agreement in writing before you leave.

Can my landlord evict me?

If you have rent arrears, your landlord may be able to evict you. Whether s/he can do this, and the steps that s/he must follow, depend on the type of tenancy you have and whether you live in your landlord's home or not.

I live with my landlord

If you rent a room in your landlord's home (for example, you are a lodger), s/he can ask you to leave and does not have to go to court in order to evict you. Your landlord only has to give you 'reasonable notice', which could be as little as a few days, or even less. However, it is a criminal offence for your landlord to use physical force to remove you from the property.

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If you live with your landlord and s/he has asked you to leave, get advice about your housing options straightaway. You may be entitled to emergency accommodation from the council. If not, then the council should still give you help to find accommodation.

The free Shelter Cymru booklet Homeless? Read this gives more information on getting help from the council and finding emergency accommodation. Get advice from a Shelter Cymru adviser or visit www.sheltercymru.org.uk/get-advice

I don't live with my landlord

If you don't live with your landlord, s/he can normally only evict you by following a special legal procedure and getting a court order. In most cases your landlord must give you notice and apply to the court for a possession order before you can be evicted. In some cases a possession order will only be made if there is a legal reason, called a ground for possession.

The procedure a landlord must follow varies depending on the type of tenancy you have and how much you owe. The general procedure that is used for most types of tenancy is described below. Each step of the procedure is explained in more detail later in the booklet.

If your landlord tries to evict you without going through the correct procedure, or does things that interfere with you using the property, such as threatening you, changing the locks, disconnecting your hot water or heating, then this is likely to be harassment and/or illegal eviction, both of which are criminal offences. You may be able to seek a court order which prevents the landlord from further harassment against you, and compensation for her/his behaviour. If you think your landlord is attempting to evict you illegally, get advice immediately.

In a very limited number of situations, people who don't live with their landlord can be evicted without a court order. This could be the case if:

- you live in the same building as your landlord and you share living accommodation such as a bathroom, living room or kitchen with a member of your landlord's family
- you moved into your home as a squatter, even if you now have a temporary tenancy
- you live in holiday accommodation
- you don't pay any rent or licence fee for your accommodation
- you live in a hostel provided by the council or housing association you were given accommodation while making a claim for asylum.

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If one of these situations applies to you and your landlord is trying to evict you, get advice immediately from a Shelter Cymru housing advice surgery.

What if my landlord takes me to court?

In most cases when a tenant does not pay the rent the legal action a landlord will take will be to make a claim for possession. The landlord will usually be asking the court to make both a possession order and a money judgment. The possession order means that court bailiffs could evict you and a money judgment means that you are ordered to pay all the rent owing (plus the costs of the legal action). If a money judgment is made, this means you will have a 'judgment debt' which will affect your credit rating.

- If you are an introductory tenant, you will get notice that the council intends to evict you and you can ask for a review. You should ask for a review because this will give you the chance to explain to the council why you have arrears and how you are going to repay them.
- If you don't ask for a review or the council decide to evict you after a review, the judge will almost certainly make a possession order and you will be evicted. In very exceptional cases, it may be possible to argue that the council are acting unlawfully and that the court should not make an order.
- If you are an assured shorthold tenant under a starter tenancy with a housing association, you may have similar rights to a review but this will depend on your housing association's policy.
- If you are a secure tenant of the council, the judge must decide that it is reasonable for you to be evicted. The judge can refuse an order or make an order that allows you time to repay the arrears. However, it's still important to get advice, especially if the council is making other allegations, for example, antisocial behaviour.
- If you are an assured tenant (which includes most housing association tenants), the judge usually has to evict you if you owe eight weeks' rent or more. It is very important to reduce the arrears to less than eight weeks before the hearing. This will give the court the power to allow you to stay and to pay off the arrears gradually.
- If you are an assured shorthold tenant of a private landlord your landlord can apply to evict you after your tenancy has ended (or after the first six months if your tenancy agreement is for less than six months) even if you have done nothing wrong.

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If you are an assured shorthold tenant the landlord can apply for a possession order without there being a court hearing. S/he can only do this if there is a written tenancy agreement and the landlord is only asking the court to make a possession order (and not claiming for the rent owed). You will get a notice from the court that your landlord has made an application for possession and you will be given a form on which to reply to what the landlord is telling the court.

If your landlord wants the court to make an order that you pay the rent you owe at the same time there will be a hearing.

Whatever type of tenancy you have, you can get advice from a Shelter Cymru housing advice surgery. The adviser may be able to help you to negotiate with your landlord or the HB department at the council. They may even be able to represent you in court.

I am a council or housing association tenant

If you are a secure or assured tenant of a social landlord (councils and housing associations) the landlord must follow a certain procedure, known as the Rent Arrears Protocol, when there are rent arrears. Your landlord must:

- contact you about the arrears as soon as possible
- try to reach an agreement for you to repay
- help you with any HB problems
- give special help if you are under 18 or 'vulnerable'
- agree not to start court proceedings if you keep to an agreement.

As well as following these steps, a social landlord should always behave reasonably and treat you fairly. In very exceptional cases if you are a tenant who does not have long-term rights (eg an assured shorthold tenant or an introductory tenant) you may be able to argue that your social landlord is acting so unreasonably or unfairly that the eviction would be unlawful. These cases are extremely rare and you will need advice to put this argument to a court.

I am a private tenant

Most private landlords must serve a written notice on the tenant before court proceedings are started – for those that don't see pages 12–14. The notice is usually called a notice of proceedings, notice to quit, section 21 notice or a notice of seeking possession. It doesn't necessarily mean you will have to leave.

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What things must happen before an eviction?

Step 1: Written notice

Unless you share your landlord's home, s/he must first give you written notice if s/he wants you to leave. There are specific legal requirements about how much notice must be given and what the notice should say. The rules vary depending on the type of tenancy you have and the reason why the landlord wants the property back. For some tenancies, a minimum of two weeks' notice must be given, but it can be up to two months.

Your landlord can 'serve' a notice by sending it to you, or sometimes by attaching it to your property. In court, it will be up to your landlord to prove that s/he served the correct notice, and that you were given the correct amount of time.

Sometimes assured shorthold tenants get the notice requiring possession right at the start of the tenancy. This means that no further notice is needed, although usually your landlord will let you know when s/he wants you to leave. Notices for assured shorthold tenants last indefinitely and the landlord can rely on them even years after they were served.

Most other types of notices only remain valid for 12 months. Your landlord does not have to apply to the court as soon as the notice period ends but if s/he doesn't apply to the court for a possession order within 12 months, s/he will normally have to give you a new notice if s/he wants to evict you.

It is important to check whether the notice you are served with is valid, and you may need to get advice to check this from a Shelter Cymru adviser. If you can show the court that your landlord didn't serve you with the correct notice, it could stop or delay your landlord from evicting you.

If you are an introductory tenant the notice will tell you that you have a right to ask for a review and the time limit. It is very important to ask for a review as this is your chance to persuade the council not to start possession proceedings.

If you have an introductory tenancy and you get a written notice, get advice immediately. If possession proceedings are started it is very difficult to avoid a possession order being made.

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In very exceptional circumstances, it may be possible to challenge the way the council has treated you. You may be able to argue that your social landlord is acting so unreasonably or unfairly that the eviction would be unlawful. These cases are extremely rare and you will need advice to put this argument to a court. If you are a secure or assured tenant of a social landlord your landlord must follow the Rent Arrears Protocol, see page 15, and take steps to try to avoid evicting their tenants. This applies even after your landlord has served notice. Your landlord must still try to help you and try to make an agreement for you to repay the arrears if possible. Always keep in contact with your landlord and explain the problems you are having with paying your rent.

Step 2: Grounds for possession

If you are an assured shorthold tenant (which includes most private tenancies that started on or after 15 January 1989) your landlord will need a court order but may not have to prove a ground for possession. An assured shorthold tenancy is normally for six or 12 months and can be renewed. Even if you pay off your arrears, the landlord can get a court order to evict you at the end of your tenancy without a ground for possession. If you are not sure whether your landlord has to prove a ground for possession in order to evict you or what sort of tenancy you have, get advice

For most other types of tenancy, a landlord must prove a ground for possession to the court. The most common ground for possession is rent arrears. In some cases, the judge has to consider whether granting possession to the landlord is reasonable. These are called discretionary grounds. In other cases, if the landlord can prove that a certain amount of rent arrears existed both when the notice was served and at the date of the hearing, the judge usually has no option but to make an order for possession. These are called mandatory grounds.

Landlords can apply for possession using more than one ground and may prove that there is more than one reason for evicting you. The landlord must state clearly on the notice what grounds s/he is relying on, and give details of your arrears and any other reason.

Step 3: Your landlord applies for a court order

If, when the notice period runs out, you have not paid off the arrears or come to any agreement with your landlord to prevent her/him from taking further action, your landlord can apply to the county court for a possession order.

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Your landlord must fill in a claim form, pay a fee and provide evidence to the court such as a copy of your rent account and your tenancy agreement. This evidence is put into a document known as the particulars of claim.

Step 4: You get a claim form

The next thing that happens is that the court will send you a copy of your landlord's claim form. The papers you get from the court will tell you the grounds on which your landlord wants to evict you. They should also contain the following information:

- the address of the property
- the amount of rent you owe
- the time and date of the court hearing
- a case number (make sure you include this number in all correspondence to the court, so they can find your file).

There will be a defence form which you should fill in and return to the court within 14 days.

However, if you are an assured shorthold tenant the claim form may be different. There may be no information about rent arrears and no hearing date, see page 15.

Step 5: You send in the defence form

The defence form is an opportunity for you to tell the court if you disagree with anything which your landlord has written on her/his application for a possession order.

It also has space for you to provide information about your personal and financial circumstances. You can also include any claims you wish to make against the landlord (known as counterclaims) such as for disrepair to the property or harassment.

Depending on the type of tenancy you have, this may help the judge to decide whether or not it is reasonable to evict you.

Get advice as soon as possible if you think you have a counterclaim.

On the defence form there is space for you to make an offer to pay the arrears, either in a lump sum, or in weekly or monthly instalments. If you offer to pay in instalments, it is important that you offer an amount that you will definitely be able to afford every week/month.

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This is because missing just one payment may mean your landlord can apply for a bailiff's warrant to evict you.

If you agree to pay a smaller amount each week/month there is less chance that this will happen, and you can always pay more if and when you can afford to. Be realistic. If you are on a low income, offer a few pounds per week plus the rent for that week, but if you are working and getting a good income, you should offer larger amounts. Fill in and return the defence form to the court within 14 days. If for any reason you are unable to return it to the court within 14 days, send it as soon as you can. You should also turn up to court for the hearing even if you have not returned the defence form beforehand. If you don't return the defence form and don't turn up to court, the judge is much more likely to make a possession order requiring you to leave the property.

If you need help filling in the defence form get advice from a Shelter Cymru adviser.

Step 6: The hearing

It is important for you to go to the hearing so you can put your side of the case to the judge to help her/him make a decision about whether to evict you or not. Bring along any supporting evidence you have, such as evidence of rent payments, photos of repair problems in your home, housing benefit delays, and evidence of your finances, such as wage slips and bank statements. If you have missed rent payments be prepared to explain the reasons why.

Get to court early, if you arrive late, the court may already have made a possession order. Hearings do not take very long, and can be over in a matter of minutes. Many county courts run a scheme that means there may be an expert such as Shelter Cymru adviser or a solicitor at the court who can help you to put your case to the judge. It is always worth asking if there is a duty advocate when you arrive at the court.

Even if your landlord tells you that you don't need to attend the hearing, it's important to go along. If you don't attend, the judge will make a decision in your absence, and is more likely to make a decision in your landlord's favour. If you are ill, get a message to the court explaining why you can't attend to see if the case can be adjourned (delayed) until you are well.

The hearing will be in private, which means that members of the public can't sit in court. However, it may take place in one of the big court rooms. Possession hearings are usually quite informal, but you may want to take along a friend for moral support. It is best not to take children if you can avoid it as children may not be allowed to go into the court room.



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What orders can the court make?

Depending on the type of tenancy you have and the ground on which your landlord is applying for possession, there are several types of order that the judge can make. The judge may decide to refuse to hear your landlord's application for possession if it is clear that it has been brought incorrectly. This is called dismissing or striking out your landlord's claim. The judge could do this if, for example, s/he thought your landlord had not followed the proper procedure.

The judge can also put back the date for the hearing of your case, usually to give you more time to prepare your case or if you are waiting for housing benefit to come through. This is called an adjournment. Your case could also be adjourned if there is only a small amount of arrears, or if there are other special circumstances which mean that it would not be reasonable for the judge to make an order for possession that day.

Adjournments can be made on an indefinite basis or for a fixed period of time (eg 14 days). They can also be made on condition that you pay off a certain amount of your arrears each week or month. If the terms of an adjournment are broken, or after the fixed period of time, your landlord can ask for the case to be brought back to the court when there will be another hearing to consider the possession claim. If you are defending the claim, or bringing a counterclaim, the court may give case management directions. These set out the steps that must be taken before the case can be heard. Usually you will have to file (send to the court) a detailed defence and/or counterclaim. It is always best to do this before the first hearing and get advice. But if you aren't able to provide a detailed defence and/or counterclaim, the court may order you to do this within a certain time after the first hearing. If the judge deals with the case at the first hearing, unless it is dismissed or adjourned, a possession order will be made. This can either be an outright order or a conditional order. See below for information about these type of order.

Once the order has been made, the court will send you written confirmation of it through the post. This will explain what the judge ordered and give any relevant dates (such as when you have to leave), or what you need to do next. If you do not understand what the order means, get advice immediately from a Shelter Cymru adviser.

What is a conditional order for possession?

Unless you have very large arrears, or you are an assured shorthold or introductory tenant, the court will often make an order for possession that is conditional. This means that if you stick to the conditions set by the judge, the landlord will not be able to evict you. In rent arrears cases the conditions will be that you pay your current rent plus an amount towards the arrears every week or month.



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There are two kinds of conditional possession order. If the order is a suspended order this means that the landlord can apply to the court for a bailiff's warrant to evict you if you miss a payment. If the order is postponed, and you miss a payment, the landlord can apply to the court for a date to be fixed when you have to leave. After this, the landlord can apply for a bailiff's warrant. For information about a bailiff's warrant see page 22.

What is an outright order for possession?

An outright possession order is when the court decides that the property should be given back to the landlord on a certain date. In most cases, the court will not make an outright possession order unless you are an assured shorthold or introductory tenant, or you have very large arrears.

Under an outright order you will usually be given 14 days to leave. However, if you can show that there are exceptional reasons why you need longer, eg if you have health problems, or you will find it particularly difficult to find new accommodation, you may be allowed up to six weeks, but no more. If the court believes that the property should be given back to the landlord sooner, for example if the amount of arrears you have are very high, the court may say that the landlord can apply for a bailiff's warrant immediately. Even on the date on the order when you are supposed to leave the landlord cannot force you out but must apply for a bailiff's warrant.

If you get an outright possession order and your landlord gets a bailiff's warrant, then you may still be able to stop or delay the bailiffs. See 'Can I stop the bailiffs from coming?' on page 23.

What is a money judgment?

As well as a possession order, it is also likely that the judge will make a money judgment at the hearing. This means an order that you must pay both the rent arrears and your landlord's court costs. Your landlord can apply to the court for a money judgment even if you have already left the property.

If the court makes a money judgment against you, it will affect your credit rating. You could find it difficult to borrow money or get credit from banks, mortgage lenders or credit card companies in the future. Some letting agents also do credit checks so you might have difficulty finding somewhere else to live.

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Court costs

Unless the case is dismissed, you will usually be ordered to pay your landlord's court costs, even if a possession order is not made. This can include the costs of the application to the court, and also the costs of any legal representation (such as solicitors' fees) your landlord may have paid. These can be several hundred pounds, or more if there are a number of court hearings.

If you think you should not pay your landlord's costs because the action has been brought unfairly, you should explain this to the judge at the hearing. Get advice about this if you are not sure. If you are unsuccessful, you should ask for time to pay off the costs after you have paid any arrears.

Can I ask the court to change the order?

If a conditional order for possession is made, and you are not happy with the conditions, or are worried that you will not be able to stick to them, perhaps due to a change in your circumstances, the court can change the order.

Always tell your landlord if you think you can't keep to the conditions and see if s/he will agree to the conditions being changed. If you have to apply to the court to get the conditions changed, you will need to fill in an application form (an N244) and explain why you think the order should be changed. The form is available from the court offices or can be downloaded from the 'Forms' section of www.justice.gov.uk. You can get advice to help you fill in the form from a Shelter Cymru adviser.

If you have an outright possession order, and your landlord applies for a bailiff's warrant, you may still be able to apply to the court to suspend the warrant. See page 23 for more information about this.

What if I didn't go to court?

If you didn't go to the hearing and the court makes an order for possession you can apply to the court to have the order set aside. To do this you must act quickly as soon as you find out about the order, you must have had a good reason for not going to court and you must be able to show that it would have made a difference if you had been there. For example, if you are a secure tenant and the court has made an outright order when it would probably have made a conditional order. If it would have made no difference, for example if you are an assured shorthold tenant, the court will not set the order aside. If you need help with any part of the court process you can get advice from a Shelter Cymru housing advice surgery.

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When do I have to leave?

Even if an outright possession order is made by the court, you don't have to actually leave the property straight away. Your landlord has to get a bailiff's warrant first. County court bailiffs are employed by the court. They are not the same bailiffs as those used to collect debts such as council tax and credit card debts. Our landlord can only apply for a bailiff's warrant after an outright possession order takes effect, or if you have broken the terms of a suspended possession order (for example, by missing a payment towards your arrears).

To get a bailiff's warrant, your landlord must send a form to the court. The court will then set a date for the bailiffs to come to remove you and your possessions from the property. Your landlord does not have to inform you that s/he is applying for a bailiff's warrant, and there is no court hearing. However, the court should send you a letter giving you the date and time set for the eviction.

Can I stop the bailiffs from coming?

Once you receive a bailiff's warrant it may still be possible to stop or delay the bailiffs from coming by applying straightaway to the county court. The judge will make a decision, based on your personal and financial circumstances, about whether to stop the bailiffs. You will need to explain why you didn't keep to the conditions set by the court and how you will make sure you pay regularly in the future. Even if you can pay off all the arrears before the bailiffs arrive, you still have to apply to the court for the original order to be cancelled. Paying all your arrears will not automatically stop the bailiffs.

It is also possible for your landlord to cancel the bailiff's appointment, so it may be worth trying to negotiate directly with her/him. If your landlord agrees, ask her/him to confirm this in writing, and ask for a copy of the letter they send to the court applying for the warrant to be withdrawn. If your landlord won't give you a copy of the letter, check with the court that your landlord has withdrawn the warrant. If s/he has not done so, then to protect yourself you should still apply to suspend the warrant immediately. On the form, say that your landlord has agreed to withdraw the warrant.

If your landlord does not agree to withdraw the warrant, do not be put off. It is the court who decides whether or not you will be evicted, not your landlord. Your landlord may ask you to pay more than you can afford, but you should only agree to pay what you can realistically manage. Otherwise, you may get into more arrears and face eviction again. The court will be less sympathetic if you apply to set aside a warrant for a second time, unless there are very good reasons.



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How do I apply to stop the bailiffs?

You will need to fill in an application form (an N244) which is available from the court offices or can be downloaded from the 'Forms' section of www.justice.gov.uk

Include your case number on the form. Complete the form yourself if you can, or get advice if you have time. Take two copies of the completed application form, any evidence that supports your case such as copies of bank statements and details of your income, and the notice of the warrant to the county court office.

You will be given a day and time to come back and see the judge. This could be on the same day or the day after you apply. It must be before the date set for the eviction. Before leaving the county court office check where the hearing will take place. It is very important to attend the hearing or you will stand very little chance of success.

Be sure to immediately tell your adviser, if you have one, and your landlord the date, time and place of the hearing.

I can't stop the bailiffs, what now?

If your landlord has got a bailiff's warrant to remove you from your home and you can't stop the eviction going ahead, you will need to find somewhere else to live.

You should get advice about alternative housing options immediately. It may be possible for you to apply to the council as a homeless person. Councils have duties to house certain groups of people.

If you lost your home due to rent arrears, the council may consider that you have become homeless deliberately and may only have a duty to help you for a very short time (usually 28 days). However, this will depend on your particular circumstances. The free Shelter Cymru booklet *Homeless? Read this* gives more information about the council's duties towards homeless people.

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What happens when the bailiffs come?

The bailiff's job is to ensure the property is handed back to the landlord. This means that everyone in the property will be evicted. Once the bailiffs have arrived, it will not be possible for you to stay in your home, or return to it. Make sure you have packed all your belongings and made arrangements for your pets, before the bailiffs come.

How much notice the bailiffs give you will depend on the court procedures for the area in which you live, and on how busy the bailiff's office is. The bailiffs usually only give short notice (eg a few days). Bailiffs have to follow particular rules about how they can treat you. They are not allowed to use physical violence or unreasonable force in removing you or your belongings from the property. However, if you resist being evicted they are likely to call the police who may arrest you for a breach of the peace. If you think the bailiffs have broken the rules, you can make a complaint to the county court, but only after the event.

After the bailiffs have been, a carpenter or locksmith will usually be asked to secure the property to prevent you from getting back in. It's important that you don't leave anything behind, as your possessions may be disposed of and your pets rehomed.

Can I move back in

You cannot just move back in after the bailiffs have carried out the eviction. You may be able to apply to the court after the eviction in exceptional circumstances. If the court sets aside the possession order or the warrant you will be able to move back in.

The warrant may be set aside if there was oppression in the way the eviction happened. This could include being given misleading information by your landlord, or by the court, which prevented you from applying to the court before the eviction took place. It may also include a social landlord not following its own policies in the way they evicted you. If you think this may be the case, get advice immediately from a Shelter Cymru adviser.

Can I get legal aid?

If you decide to see a Shelter Cymru adviser or a solicitor, you may be entitled to public funding, often referred to as legal help and legal aid. If you are eligible for legal help you can get free legal advice. If you are also eligible for legal aid, the Government pays your legal costs, although you may have to make a contribution. your solicitor will be able to advise you about this.

You can get details of solicitors who offer legal aid for housing matters from Community Legal Advice (see Useful organisations at the end of this booklet).

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Budgeting forms

Income per month	£
Wages / Partner's wages	
Housing benefit	
Child benefit	
Tax credits	
Income support / USA	
Pension / Pension credit	
Other benefits	
Child maintenance	
Student loans	
Other	
Total	

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Outgoings per month	£
Rent payments	
Pension / Life insurance	
Electricity	
Gas	
Water	
Insurance	
TV Licence	
Phone / Internet / TV	
Mobile phone	
Credit card	
Student loans	
Hire purchase / other loans	
Travel to work	
Car	

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Child care costs	
Child maintenance payments	
Food	
Toiletries	
Clothes	
Cigarettes	
Alcohol	
Going out	
Holidays	
Other (eg gym membership)	
Total	

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Useful organisations

To contact Shelter Cymru you can call us on 0845 075 5005 or visit www.sheltercymru.org.uk/getadvice for information about your housing rights and details of our local advice services.

Other organisations that may be able to help you:

Citizens Advice

To find details of your local bureau go to www.citizensadvice.org.uk

Community Legal Advice

To get free initial advice, call the helpline on 0845 345 4345

Consumer Credit Counselling Service

Wade House, Merrion Centre, Leeds LS2 8NG
0800 138 1111 www.cccs.co.uk

Court service

<http://www.justice.gov.uk/about/HMCTS>

Debt Advice Foundation

0800 043 4050
www.debtadvicefoundation.org

Department for Work and Pensions

www.dwp.gov.uk

Directgov

www.direct.gov.uk

Housing Rights Service (Northern Ireland)

4th Floor, Middleton Buildings, 10–12 High Street, Belfast BT1 2BA
028 9024 5640
www.housingrights.org.uk

Jobcentre Plus

Contact this government agency to make a claim for benefits.
0800 0 55 66 88
www.jobcentreplus.gov.uk

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Law Centres Federation

020 7842 0720

info@lawcentres.org.uk www.lawcentres.org.uk

Leasehold Advisory Service (LEASE)

Maple House, 149 Tottenham Court Road, London W1T 7BN

020 7383 9800

info@lease-advice.org

www.lease-advice.org

National Debtline

Tricorn House, 51–53 Hagley Road, Edgbaston, Birmingham B16 8TP

0808 808 4000

www.nationaldebtline.co.uk

Shelter

Free housing advice helpline 0808 800 4444.

Visit www.shelter.org.uk/advice for information about housing rights and Shelter advice services in England.

Shelter Scotland

Scotiabank House, 6 South Charlotte Street, Edinburgh EH2 4AW

0344 515 2444

www.shelterscotland.org

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