



## Policy briefing: Avoiding unnecessary evictions among social tenants in Wales

September 2018

### Introduction

This paper sets out the case for raising minimum standards in the way in which social landlords work with their tenants who may be at risk of eviction. Specifically, this paper looks at the role of the [Pre-Action Protocol for Possession Claims by Social Landlords](#) and explores how this could be improved for the benefit of the people of Wales and for Welsh public services.

### What is the Pre-Action Protocol?

The aim of the Pre-Action Protocol is to avoid unnecessary litigation and, where litigation is unavoidable, to make it more efficient by encouraging communication at an early stage between social landlords and tenants who may be in rent arrears.

The Protocol is meant to form a minimum standard for how social landlords engage with tenants in rent arrears. It does not govern the entire relationship – and many social landlords in Wales have their own policies that go over and above the Protocol.

The Protocol includes certain basic measures that a landlord is meant to take prior to taking a tenant to court – for example:

- The landlord should contact the tenant as soon as reasonably possible to discuss the cause of the arrears

- The landlord and tenant should try to agree affordable sums for the tenant to pay towards arrears, based upon the tenant's income and expenditure
- The landlord should offer to assist the tenant in any claim the tenant may have for Housing Benefit, Discretionary Housing Payments or Universal Credit.

A similar protocol exists for mortgage possessions, although there is at present none for the private rented sector and none relating to anti-social behaviour in social housing.

The Pre-Action Protocol forms part of Civil Procedure Rule 55 (CPR 55), covering England and Wales. The Civil Procedure Rules are non-devolved, and are governed by the Civil Procedure Rule Committee which is sponsored by the Ministry of Justice.

However, the Renting Homes (Wales) Act 2016 means that some aspects of CPR 55 must be revised for Wales. This requires the Committee's consent, and Welsh Government has therefore been in active dialogue with the Committee.

While the revisions do not necessarily affect the Pre-Action Protocol, this is an ideal opportunity for Wales to secure further improvements.

## How does the current Protocol work?

The landlord should send a copy of the Protocol to the tenant *after* the service of a Notice Seeking Possession but *before* the issue of court proceedings. Having done this, the landlord should then provide written confirmation to the court that the Protocol has been followed.

This written confirmation is literally a tick-box exercise – the landlord confirms by ticking a series of statements that all required actions have been undertaken. There is no requirement to provide evidence or further detail. This means that, in cases where the landlord may not have followed the Protocol, it can be challenging for the tenant to evidence this.

Moreover – and this is where the Protocol's greatest weakness lies – even if the landlord hasn't followed the Protocol, and the tenant is able to demonstrate this to the court, this doesn't protect the tenant from losing their home.

Typically, the court will still order possession, but by way of compromise will not award the landlord any costs. This means that the tenant's debt is not further inflated by several hundreds of pounds in court fees – but it may still mean homelessness, even if the landlord hasn't taken basic steps to support their tenant with offers of financial advice or support.

*'In my experience on court duty a judge will never usually dismiss or strike out a claim but they won't award costs as a halfway measure. The general reasoning by district judges seems to be that the arrears are there so only delaying the inevitable!*

*'It is however very difficult to prove that the Pre-Action Protocol has not been complied with as all social/council landlords provide a checklist saying they have complied and even if it is not accurate the district judge will rarely back the defendant's line of defence over a council who is seen as trustworthy and reputable.'*

- Housing Law Advocate

## How often is the Protocol not followed?

Data on the use of the Protocol is not routinely collected by the Ministry of Justice. In order to understand its current use we undertook a small-scale piece of research with legal advocates from Shelter Cymru and law firms in Wales that are involved in representing tenants in court.

Of the 14 advocates who took part 11 agreed that the Protocol, when applied correctly, was effective at preventing evictions. However, ten said that they 'sometimes' found that the Pre-Action Protocol was not applied in possession claims and one advocate said they 'often' found it was not applied.

*'It appears that the Protocol is used as a tick box exercise by claimants, where possession is not really considered to be a matter of last resort. Some housing associations pay lip service to the Protocol, but have not considered Housing Benefit difficulties, set up the necessary support to vulnerable tenants etc.'*

- Housing Law Advocate

More broadly, there is evidence suggesting inconsistencies in approaches taken by social landlords in Wales towards eviction prevention. Until 2010/11 Welsh Government collected and published data on evictions by social landlord. This data gave us valuable insight into the differences in practices between social landlords and the varying burdens on local homelessness services.

Analysis of the 2010/11 data shows large variations between landlords:

- The highest number of outright possessions by a Registered Social Landlord (RSL) was 9.83 per 1,000 stock, while the lowest was just 0.55

- The highest number of outright possessions by a local authority landlord was even greater at 16.4 per 1,000 stock, while the lowest was 1.84
- There were few clear differences in the rates of eviction between larger and smaller landlords. For example, among larger RSLs (with 5,000 stock or above) the range of outright possessions varied between 2.21 and 7.99 per 1,000 stock.

While these figures are several years old, they illustrate a broad spectrum of performance. Some landlords evicted only one household in 2010/11, while one local authority landlord evicted 150 households that year.

Re-establishing this data collection would be an important measure to track the varying contributions of social landlords to the prevention of homelessness.

### How should the Protocol be improved?

There are two main ways in which the Protocol should be improved – both of which would depend on the willingness of the Civil Procedure Rule Committee to approve any requests made by Welsh Government to further amend CPR 55 for Wales.

The first is to give the Protocol more teeth by replacing it with pre-action *requirements*.

The second is to revise it to introduce new measures that are more in tune with the Welsh policy focus on homelessness prevention and the wellbeing of future generations.

### Replacing the Protocol with Requirements

Scotland has had Pre-Action Requirements in place since August 2012. This means that Scottish social landlords may not serve proceedings unless they have complied with the Pre-Action Requirements and have confirmed as such to the court.

The key benefit of having Requirements as opposed to a Protocol are that requirements *ensure* that landlords take all necessary steps to avoid evicting a tenant because of rent arrears. Requirements also ensure that eviction as a 'last resort' is more consistently understood.

In summary, the Scottish Requirements are to:

- Give clear information about the tenancy agreement and the unpaid rent or other financial obligations

- Make reasonable efforts to give help and advice on eligibility for Housing Benefit and other types of financial assistance
- Give information about sources of help and advice with the management of debt
- Make reasonable efforts to agree with the tenant a reasonable plan for future payments
- Consider the likely result of any application for Housing Benefit that has not yet been decided
- Consider other steps the tenant is taking which are likely to result in payment within a reasonable time
- Consider whether the tenant is complying with the terms of an agreed plan for future payments; and
- Encourage the tenant to contact their local authority (where the local authority is not the landlord).

The Scottish Requirement was introduced at a time of multiple welfare benefits changes. Since 2013/14, rent arrears-related evictions have been on the rise despite the introduction of the Requirement. [Shelter Scotland has analysed eviction statistics](#), concluding that the rise is linked to wider issues around reform of social security, and recommending that the Scottish Government commit to a review of the operation of the Requirement. There is as yet no evidence to indicate whether evictions might have been even higher without the Requirement in place.

#### Introducing new homelessness prevention measures

There is much current good practice in homelessness prevention among Welsh social landlords. The creation of a distinctly Welsh approach would be an opportunity to enshrine some of this good practice, raising standards across the sector.

We believe that the best way to establish this new minimum standard for eviction prevention should be via consultation and dialogue with the sector and with tenants.

At a Shelter Cymru homelessness seminar on 29<sup>th</sup> September 2017, a debate and live vote was held in order to understand what delegates thought about this question. A total of 43 delegates, representing a range of local and central government officials, third sector providers, academics and service users, voted for the following options:

- Referral to Housing Options (32%)

- Consideration of the impact of Adverse Childhood Experiences (18%)
- Consideration of Equality Act protected characteristics (13%)
- Landlords to identify a pathway to suitable alternative accommodation (32%).

Two-thirds of delegates (67%) voted in favour of replacing the current Protocol with Requirements.

Furthermore, during the debate 90% of delegates voted in favour of establishing a Protocol/Requirement for private landlords.

### Questions to consider

- What else could be included in a Welsh Protocol/Requirement? A support needs assessment? Referral to independent advice? Notifying other local authority departments as appropriate, such as Social Services?
- Should the Protocol be accompanied by guidance on effective engagement with tenants in rent arrears to avoid causing unnecessary stress or avoidance?
- Should there be a Protocol/Requirement for anti-social behaviour?
- Should there be a Protocol/Requirement for the private rented sector?

### Conclusion

The Housing (Wales) Act 2014 has put Wales at the forefront of homelessness prevention, opening up new possibilities for improving public policy in order to reduce the human and financial cost of homelessness. We hope that this paper helps to spark thinking about how we can continue to upstream prevention.

With the introduction in England of the Homelessness Reduction Act – inspired in many ways by the Housing (Wales) Act – we would hope that the CPR Committee would be prepared to consent to further reform of CPR 55 for Wales as a logical next step in the maturation of our distinct approach.

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