

Rent Arrears Recovery Procedure (General Needs)

Bernicia Title: Rent Arrears Recovery Procedure (General Needs)

Refers to Policy: Rent Arrears Recovery Policy

Date Written: 31/07/2012

Date Reviewed: August 2019; November 2020, June 2021

Date Next Review: June 2022

Responsibility: Head of Housing

Bernicia provides accommodation and support to a range of tenants and therefore has two Arrears Recovery Procedures (working instructions for staff) to reflect this.

1. Tenants living in our General Needs properties
2. Tenants living in our Care and Support properties

This procedure should be used on a weekly basis by all staff working to recover current tenant arrears – and covers the process up until the application of a Bailiff's Warrant for eviction.

Tenant Support

Bernicia recognises that our tenants can face a number of challenges, many of which can present financial difficulties or create situations where they find dealing with their rent payments challenging. We offer advice at the outset of a tenancy, checking affordability and offering help with benefit claims.

As part of the day to day monitoring of rent accounts, Income Management Housing Officers regularly engage with customers to carry out income and expenditure assessment, providing advice with UC/HB claims as well as assisting with Discretionary Housing Payment applications.

At any stage throughout the arrears process a varied of referrals can be made where more serious concerns are identified or where the Housing Officer is not in a position to provide the level of support required to resolve an issue directly:

Intensive Housing Management – The IHM Team can engage directly with tenants providing in depth support to both vulnerable tenants and those with multiple financial issues. The IHM Team will work closely with the tenant and the Housing Officers to review and understand issues affecting the ability to pay and where possible work to find a solution to the problem. This may include income maximisation, carrying out income/expenditure assessment, help with benefit claims, applying for Discretionary Housing Payments or making approaches on behalf of the tenant to appropriate charities for support.

In addition, Bernicia has entered into a referral partnership with StepChange, an independent UK Debt Charity providing free and impartial advice and solutions.

StepChange Debt Charity, previously known as Consumer Credit Counselling Service (CCCS), has over 20 years' experience of helping people become debt free. Through their telephone debt helpline (0800 138 1111), and online Debt Remedy tool (www.stepchange.org), they provide expert, tailored advice and practical solutions to debt problems.

Officers can make a referral to StepChange at any time in the process as required, however this should be particularly considered as an option at NOSP and Court Action stages.

If a referral is to be made, the Officer will offer to make the referral on behalf of the tenant via the 'hot key' facility if the discussion take place over the telephone. If the Officer is having the discussion in the tenant's property, the Officer will leave a StepChange advice leaflet with the tenant, if the referral is agreed during discussion over the telephone, the tenant will be given StepChange contact details. The Housing Officer will note whether StepChange was discussed and a referral made. It is important that the Housing Officer records when a referral offer is made and refused.

1.0 Arrears Actions

- 1.1 On a weekly basis, Rentsense will produce a report detailing accounts where payment patterns suggest that a review of the account is necessary. This is based on a payment algorithm.
- 1.2 Each Housing Officer will review each account to ensure there are no outstanding benefit claims, prior agreements or other relevant circumstances. Officers can withhold action should they feel this is appropriate.
- 1.3 All action should be undertaken in line with the agreed mandatory or discretionary procedure as detailed in Appendices 1 and 2.

2.0 Notice of Intention to Seek Possession

- 2.1 Bernicia's Rent Arrears Recovery Policy provides for the use of both Mandatory and Discretionary Grounds for possession of a property.

Mandatory Grounds for possession see section 7

Discretionary Grounds for possession

- 2.2 For tenants whose arrears continue to increase following receipt of the NOSP warning letter, a NOSP should be generated. Officers can withhold the sending of the NOSP should they feel this is appropriate, however the reason for doing so should be recorded as a general note in activity in QL.
- 2.3 NOSP's will be printed by the Officers and a factsheet attached, explaining the notice.
- 2.4 Officers will, whenever practical and safe, serve the NOSP in person, by hand to the tenant, at the property, or on the premises if the tenant is unavailable.
- 2.5 Where Rentsense highlights accounts where arrears continue to rise after service of the NOSP, the appropriate post NOSP action should be taken.

3.0 Court Action

- 3.1 Prior to any application to Court, four weeks must have elapsed from the date of any NOSP being served for NOSP's prior to April 2020 or whereby the NOSP was served where arrears exceeded four months' rent at the time of service. In addition, all actions past this point in the procedure may be postponed or ceased if a tenant significantly reduces their arrears, makes an agreement, or clears their account at any point.
- 3.2 Should no contact be made with tenant, and where rent arrears continue to increase after receipt of a Court Warning Letter, and four weeks have elapsed from the date of a NOSP being served, an application to court should be referred to the appropriate manager for authorisation. This should include a Proportionality Assessment (Appendix 3) for sign off.
- 3.3 The manager will review the account to ensure court action is appropriate and that all necessary pre-court steps have been taken. In addition, an attempt to contact the tenant by phone to discuss the arrears and to make a final agreement to avoid court action will be made. Should a satisfactory agreement be reached, court action will be deferred, however where a tenant has defaulted on such an agreement made with the manager within the previous six months, court action may be authorised without further attempt to contact in this way. Authorisation will only be agreed following completion of a proportionality assessment and with the agreement of the appropriate Head of Service and the Director of Housing Services.
- 3.4 Once the Apply to Court process has been authorised, the Housing Officer will send a letter to the tenant requesting details of how COVID19 has impacted on their ability to pay their rent.
- 3.5 If the COVID19 letter does not generate a response or identify any issues and a satisfactory agreement is still not in place, the Housing Officer will then begin the application to Court, via the online Court system (PCOL).
- 3.6 The online Court system (PCOL) will provide the Housing Officer with a judicial review date which will consider the setting of an agreed order or a court hearing date.
- 3.9 The Homelessness Reduction Act 2017 (section 213b) sets out a duty for public authorities, which includes Bernicia, to refer households we consider to be homeless or threatened with homelessness to the local authority. In order to do so, a referral consent form needs to be completed. Officers should ask the tenant to complete this consent form at the Apply to Court stage. This document can then be held in the event is required at a later date. Documents relating to this, including guidance can be found at: J:\Housing\Bernicia Homes North\Commitment to Refer.

4.0 Court Hearing

- 4.1 Once a Court date has been generated, the Housing Officer will prepare a bundle of documents for the court, a copy of which, together with a covering letter will be issued to the tenant and the court 14 days prior to the review date as follows:
- Copy of Notice of Hearing
 - Two years rent statement
 - Copy of NOSP
 - Particulars of claim for possession
 - Claim form for possession of property
 - Details of tenant and any family circumstances
 - Copy of Proportionality Assessment (amended to include confirmation of pre-action protocol; details of order requested; confirmation of date bundle issued to tenant and availability on review hearing date)
- 4.2 Unless the court decision is reached at review, the Housing Officer will attend Court on the given date, having encouraged the tenant to attend (which is not required).
- 4.3 Within the Apply to Court process in QL, the outcome (outright or suspended) of the Court hearing must be entered and a Court Outcome Letter will then be generated stating the outcome, and printed, then posted by the Housing Officer.
- 4.4 Where the court has awarded an outright possession order (forthwith, 14 days or 28 days), the Housing Officer will follow steps from 6.2 at the appropriate time, unless the arrears and costs have been cleared in full.
- 4.5 The Housing Officer will add the court costs to the rent account.

5.0 Defaulting on a Court Order

- 5.1 Where tenants fail to maintain their Court Order a Post Court Visit 1 (or contact) will be undertaken by the Housing Officer. This may be arranged as a home visit or via a telephone conversation.

6.0 Eviction Proceedings

- 6.1 Should tenants fail to positively respond to the Post Court Visit 1 or make a payment in line with the Court Order, an Eviction Warning Letter is generated by the Housing Officer and posted out to the tenant.
- 6.2 Should no contact be made with tenant, and where rent arrears continue to increase after receipt of an Eviction Warning Letter, an application to apply for a warrant of eviction should be referred to the appropriate manager for authorisation. At this point the officer will complete a Proportionality Assessment (Appendix 3).
- 6.3 The manager will review the account to ensure eviction is appropriate

and that all necessary pre-eviction steps have been taken. In addition, an attempt to contact the tenant by phone to discuss the arrears and to make a final agreement to avoid eviction action will be made. Should a satisfactory agreement be reached, eviction action will be deferred, however where a tenant has defaulted on such a prior agreement within the previous six months, eviction action may be authorised without further contact.

- 6.4 Once eviction has been approved, an Eviction Letter is sent by the Housing Officer. The Housing Officer will then make an application for a Bailiff's Warrant to the court.
- 6.5 The Housing Officer will inform the Local Authority Homelessness service (subject to the required tenant approval).
- 6.6 A Safeguarding referral will be made where the tenant has children under the age of 18 years of age, or where other safeguarding obligations apply based on the following definition:
An adult who:
 - Is aged 18 or over; and
 - Has needs for care and support (whether or not those needs are being met); and
 - Is experiencing, or is at risk of, abuse or neglect; and
 - As a result of those needs is unable to protect themselves from either the risk of, or the experience of abuse or neglect.
- 6.5 See Eviction Procedure for next stages.

DISCRETIONARY GROUNDS ARREARS PROCEDURE (APPENDIX 1)

ARREARS LETTER 1

VISIT 1

NOSP WARNING LETTER

NOSP

NOSP LETTER (R5)

VISIT 2

COURT WARNING LETTER

COVID REVIEW LETTER

MANAGEMENT REFERRAL

APPLY TO COURT LETTER COURT

NOTIFICATION (BUNDLE) LETTER

COURT OUTCOME LETTER (OUTRIGHT /
SUSPENDED / ADJOURNED /ETC.)

POST COURT VISIT-HOUSING OFFICER

EVICION WARNING LETTER

MANAGEMENT REFERRAL

NOTIFICATION THAT WE HAVE APPLIED FOR EVICION LETTER

NOTIFICATION OF EVICION DATE LETTER

7.0 Mandatory Grounds possession proceedings

- 7.1 The Housing Act 1988 Schedule 2 grounds for possession are
- 1 to 8 mandatory grounds which, if proved, the court **must** order possession and
 - 9 to 17 discretionary grounds which, if proved, the court **may** order possession
- 7.2 Bernicia's Rent Arrears Recovery Policy and Eviction Policy provide for the use of both mandatory and discretionary grounds for possession.
- 7.3 The use of mandatory grounds is to be used in exceptional circumstances and with the authorisation of the appropriate Head of Service and Director of Housing after the completion of a proportionality assessment.
- 7.4 Mandatory grounds can be used for Assured Shorthold or Assured Tenancies, when the following apply

Ground 8

Both at the date of the service of the notice under section 8 of this Act relating to the proceedings for possession and at the date of the hearing

- (a) if rent is payable weekly or fortnightly at least eight weeks' rent is unpaid;
- (b) if rent is payable monthly, at least two months' rent is unpaid;
- (c) if rent is payable quarterly, at least one quarter's rent is more than three months in arrears; and
- (d) if rent is payable yearly, at least three months' rent is more than three months in arrears

and for the purpose of this ground "rent" means rent lawfully due from the tenant.

Ground 10

Some rent lawfully due from the tenant –

- (a) is unpaid on the date on which the proceedings for possession are begun; and
- (b) except where subsection (1)(b) of section 8 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

Ground 11

Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

7.5 Before a Notice is served on mandatory grounds, a Notice Warning letter (Appendix L) will be generated and hand delivered whenever possible.

7.6 Appeal

7.6.1 There is an addition to the pre-action protocol for possession claims based on mandatory grounds which provides that Registered Providers should offer an opportunity for an internal review (in writing or in person) on mandatory possession cases before proceedings are issued and there must be evidence of this being offered and of the response and outcome of any review in the claim form.

Part C of the revised protocol says:

“3.1 This part applies in cases where if a social landlord proves its case, there is a restriction on the Court’s discretion on making an order for possession and/or to which s. 89 Housing Act 1980 applies (e.g. non-secure tenancies, unlawful occupiers, succession claims, and severing of joint tenancies).

3.2 In cases where the court must grant possession if the landlord proves its case then before issuing any possession claim social landlords—

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

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

3.3 In these cases the social landlord should include in its particulars of claim, or in any witness statement filed under CPR 55.8(3), a schedule giving a summary—

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

(b) if representations were made, that they were considered;

(c) of brief reasons for bringing proceedings; and

(d) copies of any relevant documents which the social landlord wishes the Court to consider in relation to the proportionality of the landlord’s decision to bring proceedings.”

Any notice served on mandatory grounds must therefore include a covering letter (Appendix M) and a Request Review of Decision form (Appendix N).

- 7.6.2 All review requests must be received within 14 days of the serving date of the mandatory notice.
- 7.6.3 If a review request is received within 14 days of the serving date of the mandatory notice, this will be forwarded to the appropriate senior officer who, under normal circumstances, will not be the person who authorised the Notice.
- 7.6.4 The review will be undertaken within 14 days of receipt and the outcome will be confirmed in writing.
- 7.6.5 If the review request is received there are 3 options:
 - Appeal is rejected and the case will be progressed to court as soon as possible.
 - Appeal is upheld, the Notice remains served, and the case is progressed to court if any agreement/payment is not maintained.
 - Appeal is upheld and, for procedural reasons, the Notice is rescinded. The case will be reset to pre notice warning stage.
- 7.6.6 If the appeal is upheld, notice rescinded and arrears stage 'reset', and the case subsequently progresses to the notice stage again, a further right of appeal will be given with any notices served.
- 7.6.7 The tenant will be advised in writing of the decision.
- 7.6.8 The general note activity in QL will be updated accordingly.
- 7.6.9 If no review request is received the case will be progressed with an application to court for possession. At this point the officer will complete a Proportionality Assessment (Appendix 3).
- 7.6.10 The manager will review the account to ensure eviction is appropriate and that all necessary pre-eviction steps have been taken. In addition, an attempt to contact the tenant by phone to discuss the arrears and to make a final agreement to avoid eviction action will be made. Should a satisfactory agreement be reached, eviction action will be deferred, however where a tenant has defaulted on such a prior agreement within the previous six months, eviction action will be authorised without further contact.
- 7.6.11 Once an eviction has been approved, an Eviction Letter is sent by the Housing Officer. The Housing Officer will then make an application for a Bailiff's Warrant to the court.
- 7.6.12 The Housing Officer will inform the Local Authority Homelessness service (subject to the required tenant approval).
- 7.6.13 A Safeguarding referral will be made where the tenant has children under the age of 18 years of age, or where other safeguarding obligations apply based on the following definition:
An adult who:
 - Is aged 18 or over; and

- Has needs for care and support (whether or not those needs are being met); and
- Is experiencing, or is at risk of, abuse or neglect; and
- As a result of those needs is unable to protect themselves from either the risk of, or the experience of abuse or neglect.

7.6.14 See Eviction Procedure for next stages.

7.7 Court Hearing

7.7.1 See section 4.0 however with mandatory possession an Outright Order is being sought therefore all correspondence must refer to this and not a Suspended Order.

7.8 Eviction Proceedings

7.8.1 On expiry of the date set by the Court for possession, section 6.3 to 6.5 should be followed.

7.9 Further Information

7.9.1 **Does the court have the power to adjourn a case to allow the tenant to reduce the arrears below the ground 8 threshold?**

Under section 9 of the Housing Act 1988 the Court has a statutory power to adjourn proceedings for possession brought against an assured tenant. However, this power is removed once the court is satisfied that ground 8 is made out (i.e. that there were 8 weeks arrears at the time of the NOSP and the arrears are still outstanding at the date of the hearing).

There are limited circumstances in which the Court can grant an adjournment. Following the Court of Appeal case of *North British Housing Association v Lorraine Matthews and others* [2004] the court recognised that there were three distinct bases for adjourning a ground 8 possession claim:

a. For procedural reasons:

For example a case may be adjourned because there is no judge available or because the defendant cannot attend due to ill health etc.

b. Where there is a substantive defence

The court referred to four main examples of such a defence:

- (i) where a set off would reduce the arrears below the 8 week threshold (e.g. from a damages claim for housing disrepair);
- (ii) if the landlord has agreed to accept some sort of payment plan in return for not issuing proceedings (this would not apply if the agreement to not to issue was conditional upon the tenant sticking to the plan and he then failed to do so)

- (iii) a credible defence based on abuse of power (this will be very rare); and
- (iv) where the landlord accepts a cheque for a sum sufficient to bring the arrears below the ground 8 threshold.

c. In exceptional circumstances.

It is necessary for the tenant to prove that, if the court refused an adjournment, it would be considered to be, "*outrageously unjust by any fair-minded person*". The court suggested some extreme examples of exceptional circumstances such as the "tenant was on his way to court carrying all of the arrears in cash, only to suffer the misfortune of being robbed and having the money stolen".

The court held that maladministration on the part of the housing benefit, which has led to arrears that were attributable to the non-payment of housing benefit **cannot** amount to an exceptional circumstance.

7.9.2 If the court adjourns a hearing to allow the tenant to reduce the arrears, at the relisted hearing would the case be dismissed on the basis that ground 8 is no longer applicable?

If an adjournment is granted on one of the three ground set out above and at the relisted hearing ground 8 no longer applies then possession cannot be granted on the basis of ground 8 (the relevant date is the date of the current hearing) but it could still be on ground 10 and 11 if that had also been included in the s8 notice and the Claim.

This is in accordance with the decision in *North British Housing Association v Lorraine Matthews and others* in which the court decided that the date of the hearing, for the purposes of ground 8, is the date when the claim is heard. So, if the initial hearing is adjourned, the material day for deciding whether the tenant has the relevant rent arrears is the day of the restored hearing. In addition the court said that previous case law stating that landlords could rely on the rent arrears due at the original hearing was incorrect.

7.9.3 Could the court award suspended possession on a discretionary ground even if there were no discretionary grounds listed in the NOSP?

The basic position is that the Court will generally just rely on those grounds set out in the NOSP and subsequently in the claim form.

It would be possible for the Court to permit additional grounds to be relied upon (notwithstanding their absence for the NOSP) and for the claim to be amended to include those further grounds.

7.9.4 Can a NOSP be served on ground 8 only or should it also include grounds 10 and 11 as a fall-back position?

It is recommended that a notice served on ground 8 should also include ground 10 and, where appropriate, ground 11 as well. The advantages of this is that if the court decides that ground 8 is not made out, instead of

the claim being dismissed the court may make a suspended or postponed order of possession under discretionary ground 10 or 11.

The claim form will need to specify the ground or grounds for possession on which you are relying in the claim.

7.9.5 If grounds 8, 10 and 11 are listed on the NOSP, do we have to specify in the order that possession is sought in relation to ground 8 and not ground 10 and 11?

If possession is granted on mandatory grounds then the order needs to specify this or else on a warrant suspension application the Court will not know whether it was mandatory or not and will treat it as if it was made on discretionary grounds.

When submitting a draft order to the Court relying on ground 8, officers should include words in the proviso to say, "This order is made on mandatory grounds"

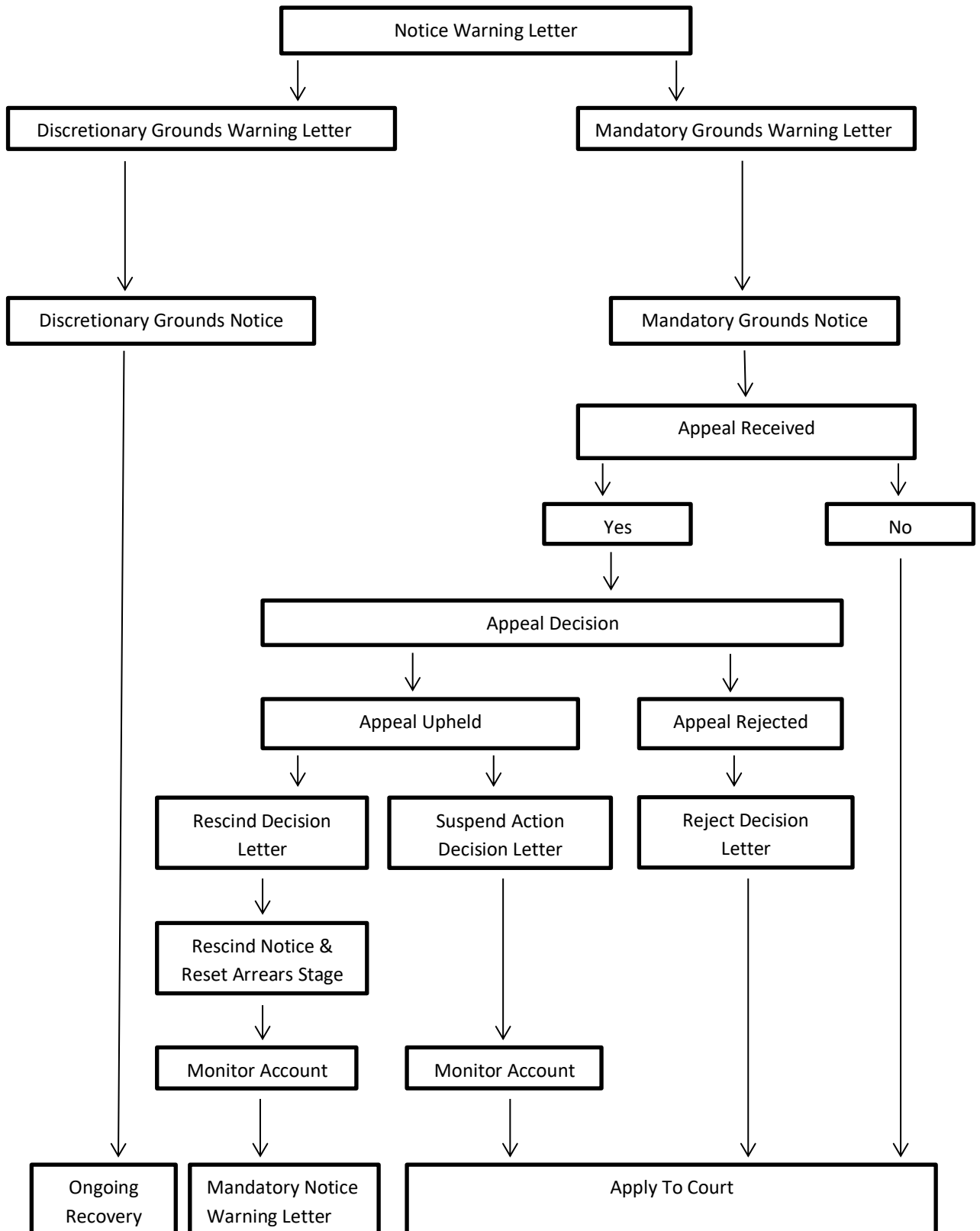
7.9.6 If grounds 8, 10 and 11 are listed on the NOSP can the court ignore ground 8 and make an order based solely on grounds 10 and 11?

The only time ground 8 ought to be disregarded is if the court believes that the ground is not made out (i.e. there is not 8 weeks rent outstanding at the date of the notice or at the hearing) OR if officers inform the Court that we are not proceeding on Ground 8 (e.g. if we decide to accept a payment plan and don't want an outright order any more).

Except in exceptional circumstances and with the agreement of the appropriate manager, officers should not accept a payment plan.

If ground 8 is established then the court cannot ignore it and as set out in s89 Housing Act 1980 must make an order for possession, normally within 14 days, unless the tenant can show this would cause exceptional hardship and execution cannot thereafter be delayed for more than 6 weeks of the date of the order.

MANDATORY GROUNDS ARREARS PROCEDURE (APPENDIX 2)



Arrears Case Review and Proportionality Assessment (Appendix 3)

Tenants full name			DOB
Tenancy address			
COT date			
Employment status	Pre Covid-19	Current	
Income source	Pre Covid-19	Current	
Rent reference/balance		Balance pre Covid-19 £	Current balance £
Rent Payable	£	HB pre Covid-19 £	HB current £
Under Occupation charge	Yes/No	If yes – how many rooms	DHP in payment Yes/No
Household Members	Name		DOB
Most recent Notice of Seeking Possession	Date served	On an arrears balance of £	
Hearing stood down by Courts	Yes/No	Balance at application £	Current balance £
Impact of Covid-19 on income/agreements made to manage impact			
Vulnerabilities identified			
Other Agencies involved			

Support offered/tried to sustain tenancy and record of outcomes			
Details of engagement and payment agreements			
Proposed action to be taken			
Head of Service/Manager review	Name	Signature	Date
Director of Housing review	Name	Signature	Date