



RENT ARREARS POLICY

Responsible Director: Director of Homes and Wellbeing

Responsible Manager: Head of Homes and Wellbeing

Last updated: February 2018

Next update: **Under Review**

INC02 Rent Arrears Policy and Procedure

1. Policy

- 1.1 NCHA aims to maximise its rental income to meet its financial obligations. The Income Management Strategy sets out NCHA's Income Management Objectives.
- 1.2 NCHA will adopt a fair but firm approach in line with housing legislation, best practice and with the expectations of Homes for England.
- 1.3 NCHA recognises that it is the customers' responsibility to ensure that rent is paid in advance as stated in the conditions of tenancy.
- 1.4 NCHA aims to prevent customers from falling into arrears and where arrears exist, to use all effective means to recover the debt. As a last resort, NCHA will enforce possession proceedings for non-payment of rent.
- 1.5 NCHA will train its staff in procedures to recover rent.
- 1.6 Income, Estates and Allocations staff will provide customers with welfare and Housing Benefits advice. NCHA will also offer debt advice and tenancy support in order to support its customers throughout their tenancy. The support will be from NCHA staff or external agencies.
- 1.7 NCHA will refund credits that are over the advance rent balance.
- 1.8 Information about Housing Benefit is contained in the Housing Benefit Policy.
- 1.9 This policy will be reviewed every three years or earlier if there is a significant change in legislation.

2. Welfare Reform Act 2013

- 2.1 Where rent arrears accrue as the result of the WRA changes, NCHA will take action on rent accounts as per this policy.

Under Occupation

- 2.2 Customers who are under occupying their homes and have their Housing Benefit reduced will be expected to pay the shortfall in their rent

Benefit Cap

- 2.3 Customers who have their Housing Benefit reduced as a result of the Benefit Cap, will be expected to pay the shortfall in their rent.

Universal Credit

- 2.4 Procedures relating to Universal Credit are contained in the Universal Credit procedure. Enforcement action will be delayed in the initial UC claim period.
- 2.5 Customers in receipt of Universal Credit will be expected to pay their rent to NCHA.

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3. Rent in Advance

3.1 NCHA expects that customers pay their rent in advance. This means that a customer's rent account should always have a clear or credit balance.

3.2 New Customers – Since October 2013 NCHA has used a Starter Assured Tenancy Agreement with the following rent payment clause;

Clause 8

NCHA and you agree that you must pay to NCHA:

- Before the commencement of this tenancy (being on a Monday) a payment of 4 weeks rent which shall be the Rent in advance for the first 4 weeks of this tenancy; and
- After expiry of that 4 week period, your Rent to us in advance on or before the Monday of each week by direct debit:

The net rent of:	£	Per week (" Net Rent ")
The Service charge of:	£	Per week (" Service Charge ")
The Supported housing charge of:	£	Per week (" Supported Housing Charge ")
The total weekly rent will be:	£	Which is the Net Rent and Service Charge added together (" the Rent ")

3.3 NCHA will ask new customers to pay 4 weeks rent in advance. If the customer cannot afford this, the initial payment will be reduced on the understanding that payments will be made to get the rent account to be clear or in credit at all times. NCHA does not have the legal right to ask that customers' rent accounts are always 4 weeks in advance. All that NCHA can insist on is that a rent account is always clear or in advance.

3.4 Existing Customers – Those customers who signed tenancy agreements before October 2013 had a different rent payment clause in their tenancy agreement;

Clause 8

- NCHA and you agree that you must pay to NCHA in advance on the first Monday of each week:

The net rent of:	£	Per week (" Net Rent ")
The service charge of:	£	Per week (" Service Charge ")
The supported housing charge of:	£	Per week (" Supported Housing Charge ")
The total weekly rent will be:	£	Which is the Net Rent and Service Charge added together (" The Rent ")

3.5 The rent in advance letter was sent to all existing customers in December 2013. The letter asked that customers paid their rent in a way to comply with their tenancy conditions. In the letter NCHA asked that customers should pay their rent so that their rent accounts were always in credit (advance) or clear in line with their conditions of tenancy.

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- 3.6 In order to comply with the rent payment tenancy conditions, those customers who are in receipt of Housing Benefit or those who chose to pay rent in arrears, were asked to pay the amount of rent required, in order to ensure that their rent account was always clear or in credit.
- 3.7 Credit accounts will be monitored by CAPITA. When the credit on an account falls below the agreed amount, the customer will be contacted.

4. Direct Debit

- 4.1 NCHA will offer customers a wide variety of ways to pay their rent. Direct debits are promoted as NCHA's preferred rent payment method to pay rent.
- 4.2 Monthly direct debits are calculated to take account of the 5 week month - Weekly rent divided by 7 x 365 divided by 12.
- 4.3 A Direct Debit may not be the best option for a customer or NCHA if a customer's income is irregular.
- 4.4 Recurring payments will be offered as an alternative to Direct Debits where appropriate.

5. Contact

- 5.1 Contact should be made as soon as prompted by CAPITA, it should be on a 1:1 basis if possible taking account of contact preferences. If there are support needs this should be addressed.
- 5.2 Rent statements will be sent to Affordable and Social Housing customer's every 6 months.
- 5.3 Income Officers are trained to give benefits advice. They will refer customers with debt issues to the Debt & Benefits Officer or to debt advice agencies. Customers who need budgeting or banking advice will be referred to Tenancy Support. Those with IT training needs to Customer Involvement.
- 5.4 Income Officers will have regular contact with DWP Job Centres about Universal Credit and with Housing Benefit Offices about customers' HB claims.
- 5.5 All contact will be recorded on CAPITA and confirmed in writing or email to the customer when necessary.
- 5.6 CAPITA will either take automatic action, or prompt the Income Officer to take action.

6. Arrears Prevention

Pre Sign up

- 6.1 At the pre-tenancy interview, Allocations Officers will emphasise the importance of paying rent in advance and bringing a payment of rent at sign up. If the applicant

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does not pay the agreed amount at sign up they will not be signed up without the Income/ Allocation Manager's permission.

- 6.2 Applicants will complete a financial statement and Lettings Officers will calculate entitlement to Welfare and Housing Benefits/ Universal Credit. They will establish if the applicant has a bank account with Direct Debit facilities. If they do not they will be given advice about banking.
- 6.3 Where there is an entitlement to Housing Benefit, Lettings Officers will tell applicants to bring a completed Housing Benefit claim form with all proofs to the sign up or, if the Housing Benefit application process is online, the customer will be advised of the process.
- 6.4 A pre tenancy risk assessment is completed by the Lettings Officer. Information from the customer and from the Experian credit check is used to assess if the customer has support needs. If the assessment is red, the customer is referred to the Tenancy Support Officer for their input. If there are outstanding debts there may be a referral to the Debt Advice Officer as well.
- 6.5 Staff will establish any special circumstances, e.g. supported needs, English not first language and make referrals to appropriate agencies.

At sign-up

- 6.6 Estates or Lettings Officers will emphasise the importance of rent payment at sign up, explaining that payment of rent is the customer's responsibility.
- 6.7 Starter customers should be told that if there are rent arrears at the end of the Starter tenancy, the tenancy will not be converted or renewed.
- 6.8 A rent payment will be taken at sign up and advice given about the different methods to pay rent. See 3.2 Rent in Advance.
- 6.9 If the applicant has not brought the agreed rent payment, the sign up will be delayed for 24 hours to give them time to get a minimum of one weeks rent. An arrangement will be made to make up the full advanced rent payment.
- 6.10 If the applicant still cannot pay, the Income or Allocations Service Manager will make a decision whether to sign the applicant up for a tenancy.
- 6.11 If authority is given to sign up the applicant, the customer will be expected to set up a Direct Debit to get their account into credit.
- 6.12 If there have been any changes in the applicants circumstances since the pre sign up interview, staff will re- calculate their entitlement to Housing and Welfare Benefits. They will explain the procedures and deadlines involved in claiming Universal Credit.
- 6.13 If the applicant is claiming Universal Credit they will be advised to tell the DWP of their change of address. A UC attribute will be put on CAPITA and the Income Officer will be informed.

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- 6.14 Staff will ensure that Housing Benefit claims and all proofs are completed at sign up for paper applications.
- 6.15 The applicant will be warned about the consequences of non-payment of rent and agree the dates and amounts of rent payments to ensure regular payments in advance.
- 6.16 There will be an explanation of NCHA's Arrears Policy with emphasis on contacting their Income Officer if they are contacted.

Post sign-up

- 6.17 First tenancy contact by the Estate Officer will be conducted within four weeks of a tenancy starting. Advice on income maximisation and welfare benefits will be provided where necessary. Customers will be advised to chase up their Housing Benefit or Universal Credit claims if they are not yet in payment.
- 6.18 A new tenancy can be started on any week day. The tenancy agreement has been amended as follows:
 - This tenancy agreement (the "Tenancy") begins on any day/date. The first period of this Tenancy will be from today's date to midnight on the following Sunday. Second and subsequent periods of this tenancy are from week to week commencing on the Monday immediately after the end of the first period.
- 6.19 If a tenancy is started Tuesday to Friday, the rent due for those days is calculated by dividing the weeks rent by 7 and multiplying that number by the number of days of the first week of the tenancy. For example, if the tenancy starts on a Wednesday, rent is due Wednesday to Sunday i.e. 5 days.

7. CAPITA Monitoring and Regular rent control

- 7.1 The arrears processing system sends out text messages, letters and prompts Income Officer actions according to agreed rules.

8. Recovery Procedures

Arrangements to Pay

- 8.1 If a customer has rent arrears they should be asked to pay off the whole debt in full. If they cannot do this the customer should be asked how they intend to clear the debt. An arrangement to repay the debt is not a right.
- 8.2 Customers will be advised that rent arrears are a priority debt.
- 8.3 Where a formal arrangement is agreed, the customer should where possible sign an agreement form and be told how long it will take them to clear their debt.
- 8.4 Customers should be warned of the consequences of breaking the arrangement.
- 8.5 If a customer does not maintain the agreement, all efforts must be made to contact the customer to discuss making up the payment within a reasonable time.

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Third Party Deductions

- 8.6 For customers on Universal Credit, Income Support or Job Seekers Allowance, direct payments towards arrears of rent may be obtained where:
- The customer authorises direct payments in writing to the Benefits Agency.
 - Arrears are in excess of 4 weeks rent and have accrued over a period of 8 weeks.
- 8.7 'Third Party Deductions' are deducted from a claimant's fortnightly payment and paid 4 weekly to the landlord. The sum payable is currently £3.75, arrears are cleared at a very slow rate. Officers, nevertheless, are expected to apply for it whenever appropriate.
- 8.8 Customers will be asked to sign a DWP form requesting larger payments than the maximum direct deduction where they can afford it.
- 8.9 If a customer is claiming Universal Credit and owes more than 8 weeks rent, an Alternative Payment Arrangement form will be completed, if the tenant has not agreed to a payment plan, and sent to the DWP as per the Universal Credit procedure.

Voluntary Attachment of Earnings

- 8.10 Some employers will agree to deduct an amount from a customer's wages and pay it direct to NCHA. The customer's consent is required and sometimes a small administration charge is made.

9. Notice of Seeking Possession

- 9.1 The Notice of Seeking Possession is the first stage in the process of legal action for rent arrears. The Notice will generally be issued at when arrears are above £400 unless there are mitigating circumstances such as pending Housing Benefit or Universal Credit.
- 9.2 Customers should be given warning of the Issue of a Notice of Seeking Possession and its implications should be explained. It is essential that the Notice of Seeking Possession is accurate in all aspects since a deficient notice will cause legal proceedings to fail.
- 9.3 Where a customer has supported needs the Income Officer should consider whether to serve the Notice or take other action before issuing a Notice.

Validity of a Notice of Seeking Possession

- 9.4 A notice is valid for 12 months from the specified date of service. No proceedings can begin after 12 months has elapsed. If court action is required a new notice must be issued. If a customer clears their arrears and then builds up new arrears, a new Notice of Seeking Possession should be served.
- 9.5 The Notice of Seeking Possession will become invalid if the customer clears their rent account.

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- 9.6 The Notice of Seeking Possession will be hand delivered wherever possible. Staff will advise customers to seek independent advice and the consequences of an increase in rent arrears.

Form of notice

- 9.7 The notice must be in a form prescribed by the regulations. The notices are different for Secure and Assured tenancies.

Name and address

- 9.8 Only existing customers can be named in a Notice: co-habitees, lodgers etc. are excluded. If it is a joint tenancy, then the full names of all joint customers, as per the Tenancy Agreement should be entered.

- 9.9 The address must be precise. If the premise is a flat, the flat number and/or floor should be specified to distinguish it from the others in the property. If a room is let on an individual tenancy, then the room number must be specified.

Grounds for possession (Secure customers)

- 9.10 The notice must specify the correct legal ground on which the court will be asked to make an order for possession. It is essential that the wording used in the legislation should be repeated in the notice.

For secure customers, Ground 1 of Schedule 2 to the Housing Act 1985 applies:

"Rent lawfully due from the customer has not been paid or any obligation of the tenancy has been broken or not performed."

Grounds for possession (Assured customers)

- 9.11 The Housing Act 1988 provides 3 distinct grounds for possession on rent arrears and from June 2009, NCHA's tenancy agreement allows all three grounds to be used at NCHA

- 9.12 Ground 11 of the Act applies and reads:

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

- 9.13 Under Ground 11, the court will make a discretionary decision. The customer does not have to be in arrears at the time NCHA applies to court, but the customer should have a history of significantly reducing or clearing rent arrears i.e. after a NSP has been issued or after NCHA has warned about court action

- 9.14 In appropriate cases the Income Officer would recommend the use of Ground 11 to the Income Manager / Head of Homes and Wellbeing.

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9.15 Ground 10 of the Act applies and reads:

"Some rent lawfully due from the customer"

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

9.16 Under Ground 10, the Association must prove not only that the customer was in arrears at the time the notice was served but also that they were still in arrears at the time of applying for a court hearing. The latter point can only be proved once the case is heard in court and cannot be detailed in the notice. If the customer pays up in full before the date of a fixed hearing, the case cannot go ahead and that particular Notice cannot be used again.

9.17 Ground 8 of the Act applies and reads:

"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 thirteen weeks' (8 weeks amended by 1996 Housing Act) rent is unpaid;
- (b) If rent is payable monthly, at least three 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;
- (e) And for the purpose of this ground "rent" means rent lawfully due from the customer."

9.18 Ground 8 is a mandatory ground for possession. If the landlord can establish the ground, then an Outright Possession Order must be made. A suspended possession order could be sought if the circumstances, which prompted the use of ground 8, have changed.

9.19 Ground 8 will be used when:

- There is more than 8 weeks rent outstanding at the time of the service of the notice and at the time of the court hearing.

9.20 Ground 8 will be used in the following types of scenarios;

- **High-level persistent arrears** - The arrears may be as a result of non-payment or lack of liaison with Housing Benefit or both.
- **High-level arrears with other tenancy breaches** it can be the case that customers with high arrears may be in breach of other conditions of tenancy. If there is nuisance or harassment or damage to property it may be appropriate to use ground 8.

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- 9.21 In appropriate cases the Income Officer would recommend the use of Ground 8 to the Income Manager / Head of Homes and Wellbeing. If it were agreed that it was appropriate to use Ground 8 the Ground 8 Procedure should be used.
- 9.22 The customer would have the right of an internal appeal to NCHA, against a Ground 8 Notice, following the S21 procedure.

Particulars of each ground

- 9.23 The details of the circumstances justifying the ground for possession must be laid out in section 4 of the Notice of Seeking Possession. If insufficient particulars are given, the courts cannot proceed with the action. It must state the amount of arrears at the date of issuing the Notice. The arrears must consist exclusively of rent owed by the named customer(s) for the current property.

Date after which proceedings can commence

- 9.24 Since NCHA tenancies are weekly, proceedings cannot begin until at least 2 rental weeks have passed. This does not mean 14 days. The rent week begins on a Monday: if the notice is dated on a Wednesday then the two weeks should be counted from the following Monday. Thus the date specified on the notice as the date after which proceedings can commence (the specified date) will be the third Monday from the date the notice is served.

Service of a Notice of Seeking Possession

- 9.25 In court, the Association may have to prove that the notice has been served on the customer. A Certificate of Service must be attached to NCHA's copy of the Notice, showing how the Notice was served.

The following methods have been established as acceptable service of notice.

- Hand delivery on the customered property is the preferable method of delivery. Service on the customer outside the home is not recommended unless backed up by one of the above. The words "customered property" are important. If the dwelling is a flat, the notice cannot be served if it is pushed through the letterbox of the main front door to the house: it must be served on the flat itself. Where the notice is hand delivered, a note of the date and method of service (e.g. posted through the letter box, handed personally to the customer) should be made on the Certificate of Service. This Certificate should be signed and dated by the Officer serving the notice.
- By first class post
- Recorded delivery post to the customered address. The disadvantage of this method is that if the customer does not accept and sign for the delivery, the notice will not have been properly served.

10. Section 21 Notices and starter tenancies

- 10.1 NCHA will issue a Section 21 Notice for rent arrears on starter tenancies. (Please see the tenancy policy for the procedure). On occasion if any associated paperwork is not complete, NCHA may consider serving a Notice Seeking Possession on ground 8.

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10.2 The Section 21 Procedure is attached as Appendix 1.

11. Arrears Meeting

11.1 The Income Service Manager will hold regular monthly meetings with Income Officers.

11.2 At these meetings, the Income Manager will:

- Check that action minuted at previous meetings has been carried out.
- Ensure that procedure has been followed on all cases.
- Discuss possible cases for Court and/or eviction.
- Review Income Officers' arrears targets.

11.3 In between meetings, cases requiring urgent action should be brought to the Income Service Manager's attention.

12. Bankruptcy

12.1 NCHA can proceed with possession proceedings against any bankrupt customer.

12.2 If a Suspended Possession Order was granted before the bankruptcy order, then NCHA must obtain the permission of the court to proceed with eviction action.

13. Credit Accounts

13.1 Credit accounts will be reviewed once payment is in advance at least once every 2 months.

13.2 The Income Officer must check that there are no Housing Benefit overpayments due, court costs or other sub account cost due on the account before refunding the customer.

13.3 NCHA will only refund credits that are over the advance payment expected unless there are special circumstances at the Income Officers discretion.

Rent Arrears - Possession Action

14. Conditions

14.1 Before an application for a Court hearing can be made, the following conditions should be met:

- Every attempt to contact the customers must have been tried, and recorded on CAPITA:
 - Telephone, letter or email.
 - Out of hours contact if necessary.
 - Home visit where the property will be checked and if possible speak to neighbours to find out if the customer is still living there and when they are usually home.
 - Agreement made if contact is made.
 - Next of Kin.

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- Employer.
- If customer is an under occupier, an application for DHP has been made if appropriate.
- The current Pre Court Action Protocol has been followed.
- The Notice of Seeking Possession is correct and is still valid.
- The arrears should be solely rent arrears for that tenancy, not former customer arrears or rechargeable repairs.
- If a customer is withholding rent because of disrepair or any other grievance, reasonable steps should have been taken to resolve the problem.
- The Income Manager has given approval. The Form 'Approval for Court Action - Arrears' should be used.

15. Possession Proceedings

- 15.1 NCHA will prepare the Court Papers via the PCOL system. It is usual that the Income or Estate Officer will present the case in court.
- 15.2 If the case is contested or could present difficulties, it may be necessary to instruct Solicitors and the Income Service Manager's advice should be sought.
- 15.3 Staff employed by a Housing Association do not have the right of audience to present cases at the County Court. (Section 60 County Court Act, 1964). However, it is usual that this permission is given in all the County Courts NCHA use.

16. Prepare Papers

- 16.1 A Court Fee is payable for Possession Applications and Warrants of Possession.
- 16.2 A direct debit has now been set up with H.M. Courts and Tribunals Service for payment of all cases submitted via PCOL. If papers are submitted manually then finance is instructed to issue a cheque using an Internal Cheque Request Form. The cheque should be made out to the H.M.C.T.S.
- 16.3 NCHA will submit the court forms through the PCOL system e.g., Summons for Possession of Property (N5), and Particulars of Claim for Possession (N119) should be completed providing all the information requested by the Court.
- 16.4 Via PCOL, the Court will send a Notice of Issue to NCHA with the Claim No., confirming the date and time of the hearing.

At least 10 days before the Hearing Date a copy of the Tenancy Agreement, Notice of Seeking Possession together with Certificate of Service and a Rent Statement showing the last 2 years or since the account has fallen into arrears will be sent to the Court Office for placing on the Court file in readiness of the Hearing.

The Claim Form for Possession of Property

- 16.5 The Court will issue a Claim Form for the customer to attend Court.
- 16.6 The Claim Form will be accompanied by Form NIIR, that is to be completed by the customer and returned to the Court before the Court Date.

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17. Preparing For Court

- 17.1 The Income Officer must continue to try to contact the customer before the court hearing and monitor any agreement made and make every effort to ensure the arrears are reduced.
- 17.2 The Income Officer will prepare the Court script. This will include:
- Full Name and tenancy address
 - Current Weekly Rent
 - Daily rent
 - Any Housing Benefit or Universal Credit Housing Cost Element
 - Net rent payable
 - Current Arrears
 - Any amount to be paid off the arrears
 - A copy of the "Court Date Received" letter
 - Brief details of family set up, income and the history of how the arrears accrued
 - Decision about whether a Suspended or an Outright Possession Order is requested
 - A copy of the NSP together with the certificate of service attached
 - Diary notes
- 17.3 A full copy of the tenancy agreement, an up-to-date rent statement and copies of any relevant correspondence should also be to hand at the hearing.
- 17.4 Customers should be advised to attend the court hearing and told what will be expected from them during the hearing.
- 17.5 Customers should be advised to seek independent legal advice.

18. Presenting The Case

- 18.1 On arrival at Court check the listing and report to the Court Usher
- 18.2 If the Defendant is present at court, make contact. If possible explain what will happen and confirm any agreement.
- 18.3 When the case is called the Officer will have the pleadings summary sheet and supporting documentation at hand. It is sometimes necessary to take the oath or affirm the oral evidence.
- 18.4 Tell the Judge your name, job title and who you are employed by.
- 18.5 Give the Judge the information from the summary sheet covering rent, arrears, and what Order is being requested. The Judge may request further information and to see the Notice of Seeking Possession and proof of service.
- 18.6 If the Defendants are in court, the Judge will ask them to confirm the arrears and that an arrangement is acceptable.

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19. Suspended Possession Orders

- 19.1 Courts grant a Possession Order Suspended (SPO) on the condition that the customer pays their current rent plus an amount off the arrears.
- 19.2 Where the customer keeps to the terms of the Suspended Order, they will retain a valid tenancy.
- 19.3 If the customer does not keep to the terms of the Suspended Order, they will no longer become tolerated trespassers.

20. Outright Possession Orders

- 20.1 In some circumstances an Outright Order for Possession may be requested which can take effect forthwith, 7, 14, 21 or 28 days from the date of the hearing. This would be requested if the customer has moved out of the property, is suspected to have moved out or has failed to engage with NCHA.

21. Money Judgment Orders

- 21.1 The Particulars of Claim will have requested for any Order for Possession to include an Order for the customers to pay the arrears. If the Possession Order is given, a money judgment ordering that these sums be paid will also be granted. The customer's name and address is entered in the Register of County Court Judgments. This will make it difficult for the customer to obtain credit. Once a debt has been cleared, a customer can request the Court to remove the debt from the Register. There is a fee payable for this request.

22. Court fees

- 22.1 The Court Issue fee is also requested to be included in the Order payable by the customer.

23. After the Hearing

- 23.1 The Court will send NCHA and the customer a copy of the Court Order. A sub-account should be created by the Income Assistant on the customer's account to show the Court costs ordered payable.
- 23.2 NCHA will inform the customer in writing of the outcome of the Court Hearing and told of the consequences if the Court Order is not kept to.
- 23.3 The Income Officer will monitor the terms of Court Order. If the terms of the order are not kept to, the Income Service Manager must be informed.
- 23.4 A Possession Order remains valid until all payments due under that Order have been made (i.e. it has no fixed term life span). When wanting to issue a Warrant of Possession for an Order over 6 years old, NCHA will have to place an application before a District Judge together with a Witness Statement in support for a hearing to explain what and why any enforcement action has not taken place during the preceding 6 year period. The District Judge will then decide if a Warrant of Possession can be issued.

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23.5 If the Possession Order is not being kept to, other possible options are:

- Vary the Terms of A Possession Order
- Eviction

24. Varying The Terms Of A Possession Order

24.1 If a customer's circumstances change and they cannot afford to keep to the terms of the order, the correct procedure would be for the customer to apply to the Court for a variation to the terms of the Order using Form 244.

25. Eviction

25.1 Eviction should be the last course of action to be used when all other avenues have failed.

25.2 Every attempt to contact the customers must have been tried, and recorded on CAPITA:

- Telephone, letter or email.
- Out of hours contact if necessary.
- Home visit where the property will be checked and if possible speak to neighbours to find out if the customer is still living there and when they are usually home.
- Next of Kin.
- Employer.
- If customer is an under occupier, an application for DHP has been made if appropriate.

Eviction following a Suspended Possession Order

25.3 If a customer does not keep to the terms of a Suspended Possession Order, NCHA can apply for a Warrant of Possession for the customer to be evicted.

26. Preparing the Papers

26.1 If permission has already been granted a Warrant of Possession is requested via PCOL by completing form N325 "Request for Warrant of Possession of Land" (Appendix D.3.8). The fee will be paid via direct debit to the Court.

26.2 If permission is required (all first time applications in respect of Suspended Possession Orders require permission pursuant to CPR 83.2) a N325A application should be completed and sent to the Court together with a Rent Statement evidencing the breach of terms of the Suspended Order and a cheque made payable to HMCTS in the sum of £121.00.

26.3 Upon making an Order giving permission to issue a Warrant of Possession the warrant is passed to the Court Bailiff automatically by the Court Office.

26.4 The Warrant and date of eviction is then issued to the customer by the Court Bailiff. The Bailiff writes to the customer twice, hand delivering one letter to the property. NCHA will write to the customer with the date and time set for the eviction.

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26.5 An EX97A Bailiff Risk Assessment should be completed and returned back to the Court. An entry should also be made on PCOL referring to any risks identified.

27. Application to Suspend the Warrant for Possession

27.1 If the customer makes a payment to stop the eviction going ahead and it clears the total arrears and all court costs, the Bailiff must be informed in writing to cancel the eviction. If the offer does not clear all the arrears and costs, the customer should be advised to make an application to suspend the warrant.

27.2 The customer has the right to apply to the Court for the Warrant to be suspended. NCHA will only stop the eviction when Ordered to do so by the court

27.3 Where such applications are successful and there has been a history of previous suspensions, the NCHA Officer should consider asking the District Judge for permission to appeal against their decision. It is common for permission to be refused. If this is the case NCHA should complete a form N161 and send it to the Court with the fee. An appeal hearing should then be granted. Advice and assistance should be sought from the Income Service Manager and/or solicitors.

27.4 At the appeal hearing before a Circuit Judge the court will decide if the eviction will be suspended or whether it will go ahead.

28. Eviction date

28.1 Prior to an eviction taking place NCHA should inform the Local Authority Housing Department and other Departments, such as Social Services, especially if children are involved. The Homeless Reduction Act 2016 has placed a duty upon landlords to inform the Local Authority within 56 days of a possible eviction.

28.2 If a Risk has been identified the Bailiff will have been advised and the Police may be asked to attend.

28.3 The eviction should be attended by the Estate Officer, who will meet the Bailiff at the property. A receipt book should be taken in case the customer offers to pay in full at the last minute. Before this is agreed approval has to be granted by Income or Estates Service Manager and Head of Homes and Wellbeing. The Estate Officer will contact the maintenance department to arrange for a joiner to be present to change the locks at the property.

28.4 The bailiff will authorise entry into the property and deal with any customers or occupants left in the property.

28.5 If there are possessions left in the property, an inventory should be made and the procedure outlined in the Abandonment policy should be followed.

28.6 NCHA should give advice to any remaining customers about other housing options.

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29. Small Claims in the County Court

- 29.1 An alternative to taking possession proceedings would be to use the small claims action. (Order 19, Rule 5 CCR 1981).
- 29.2 The small claims action would be useful if the debt is static or for former customer's arrears or rechargeable repairs.
- 29.3 If this arrears recovery action is to be used the customer must be informed and should be told of the consequences in that Judgments are registered in the Register of County Court Judgments. This may mean that credit will be difficult to obtain and if payments are not made the bailiffs could be instructed to levy on personal possessions.
- 29.4 NCHA is registered with HMCS "Money Claims On Line". All guidance and forms are available on <https://www.moneyclaim.gov.uk/web/mcol/welcome>
- 29.5 To commence the action complete form N1 "Claim Form".
- 29.6 The Court will then issue the Claim to the customer. The Reply Pack also enclosed gives the customer the following options:
- a) Do nothing - NCHA can then enter Judgment in default
 - b) Dispute the claim by completing form N9B
 - c) Admit the claim and ask to pay by instalments by completing form N9A
 - d) Pay the full amount to NCHA
- 29.7 When the Claim Form has been issued on the customer, NCHA will be sent a Notice of Issue of the Claim Form N205A. This explains the customers options listed above.
- 29.8 If the customer has not replied to the Claim Form or they have admitted the money is owed and made an offer to clear the debt the Request for Judgement should be completed. The court will make a judgment as to how the debt should be paid. NCHA is sent the form Judgment for the Claimant.
- 29.9 If there is a Defence or a Counterclaim the court will send a copy with the appropriate instructions.
- 29.10 If the customer does not pay in accordance with this order, NCHA can then request the Bailiff to take possessions from the customer's home to sell in order to satisfy the debt. This is done using the form, Request for Warrant of Execution (N323). Authority must be given by the Head of Homes and Wellbeing.
- 29.11 If the customer is working, NCHA could alternatively ask for an Attachment of Earnings (Order N337)
- 29.12 The form Request for Attachment of Earnings Order N337 (Appendix D.3.12) should be completed and sent to the Court with the appropriate fee.
- 29.13 The administration of Attachment of Earnings can be problematic in that the payments usually take some time to reach NCHA and if the customer's wages fall

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below a certain level the full amount may not be deducted. Payments are made by the employer direct to NCHA

30. Criteria for Current Customer and FTA Arrears Write Off

Official Error

30.1 Where NCHA has made an error in calculating rent payments or advising about rent, thereby creating rent arrears, NCHA should consider writing off rent arrears accruing from the error. Examples of official errors are:

- NCHA did not increase a customer's Direct Debit in line with a rent increase - write off the amount of arrears caused by the problem with Direct Debit.
- NCHA incorrectly calculated a rent payment e.g., calculated a rent payment based on 4 weeks rent instead of calendar monthly. Write off the amount of arrears caused by the miscalculation.
- Incorrect financial adjustments on a customer's account creating rent arrears.

Cost Effectiveness

30.2 Where it is not cost effective to chase a current customer for small rent arrears, NCHA should consider writing them off e.g. one week or less rent arrears that have been on a customer's account for over 2 years.

Court Costs

30.3 NCHA could consider writing off court costs when action is taken inappropriately e.g., Housing Benefit claim pending, payment made not showing on rent account.

30.4 In exceptional circumstances, NCHA will consider writing off a proportion of court costs where the customer has cleared significant arrears, i.e. the customer pays 60% of court costs and NCHA writing off 40% of the court costs.

30.5 Each case for writing off a current customer's rent arrears should be authorised by the Income Service Manager or Head of Homes and Wellbeing on the following basis:

- Income Service Manager / Head of Homes and Wellbeing ≤ £500
- Director of Homes and Wellbeing ≤ £500 - £5,000

30.6 NCHA should if appropriate write to the customers apologising for the error and any distress caused.

30.7 Write - offs will be sent to Finance once every quarter for implementation.

31. Recharge Collection

31.1 The Income Team will collect recharges from all customers and former customers.

31.2 Rent arrears, court costs will be the first priority for collection.

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- 31.3 Once the priority debts are clear, arrangements to clear the recharge debt will continue.
- 31.4 A minimum payment of a recharge will be the on-going DWP minimum payment amount
- 31.5 In exceptional circumstances NCHA can negotiate lower repayment amounts.

32. Health and Safety

- 32.1 All staff should adhere to the Lone Working Policy when visiting customers in their own homes

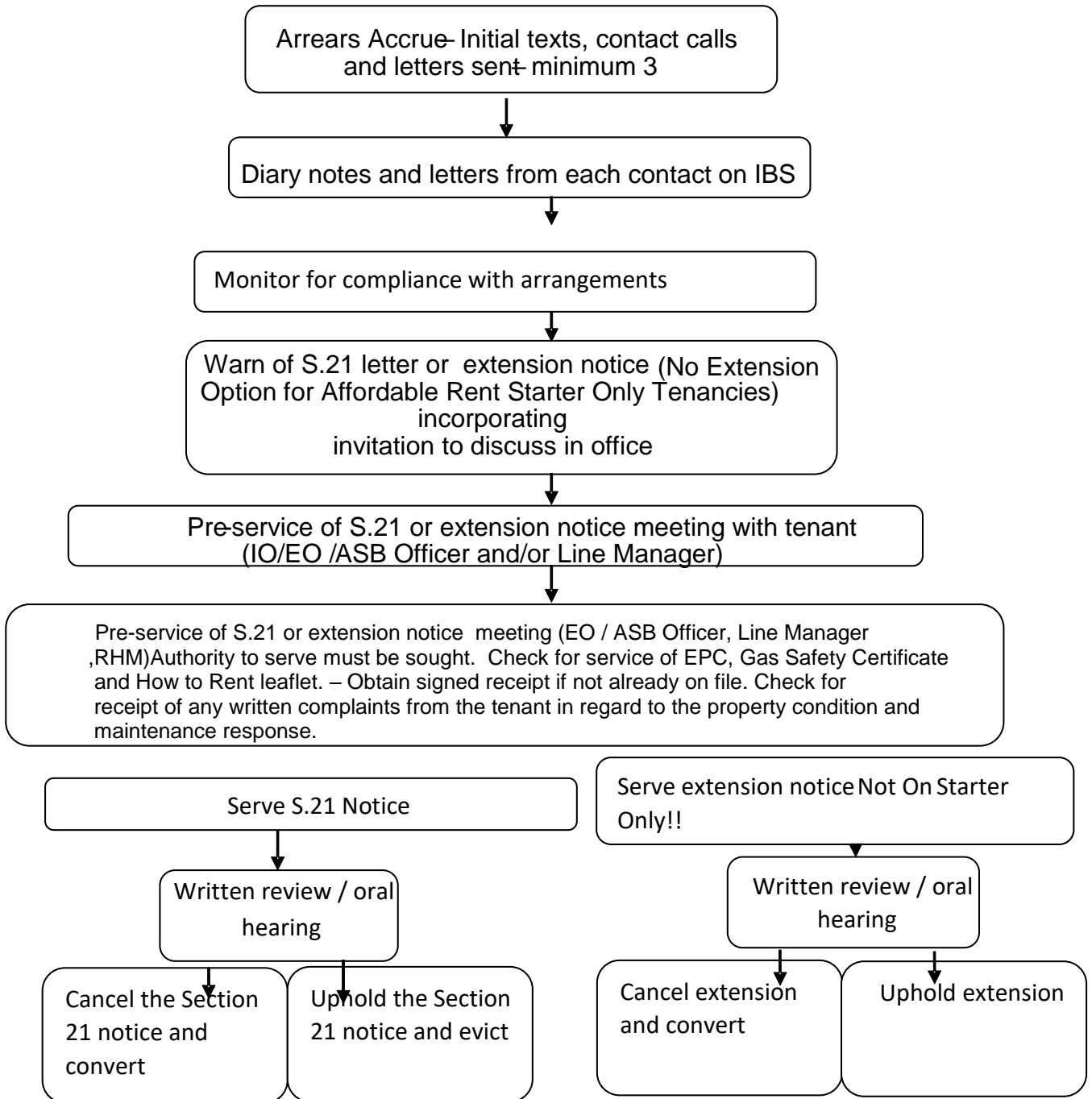
33. Confidentiality

- 33.1 All staff must abide by the General Data Protection Regulations 2018 when discussing customers information with external agencies e.g. Housing Benefit.
- 33.2 This policy is written in accordance with GDPR.

Process for Eviction of AST Starter Tenants for Non Payment of Rent.

Full details in Tenancy Policy B6 – Documents on Flowchart Hyperlinks

ALL DOCUMENTS MUST BE SIGNED AND SAVED AS PDF



Please be aware. Notices issued on tenancies that commenced before the 1st October 2015 Still have to terminate on a Sunday. Tenancies issued after 1st October 2015 can end on any day but you must make sure that you do not issue them before 4 months occupation of the property has been completed and that you give 2 clear calendar months (9 weeks) Notice.