

Rent arrears management practices in the housing association sector

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Executive summary

Introduction

This report presents findings from a study of housing association (HA) rent arrears management practice commissioned by the (former) Housing Corporation in October 2008. Commissioning of the study was prompted, in part, by a debate on the legal powers available to HAs which was, itself, prompted by the Parliamentary passage of the Housing and Regeneration Bill during 2008. Research was also seen to be needed to assess the operational impact of a range of good practice advice issued in recent years and, in particular, the 2006 Rent Arrears Pre-action Protocol (PAP).

As well as a review of existing research, the study involved:

- interviews with key national stakeholder organisations
- analysis of secondary data
- a nationwide online survey of housing associations (response rate: 70%)
- detailed case study work focused on a diverse selection of six housing associations
- a case file analysis relating to 105 recent eviction cases

Literature review

As a backdrop to the original research being undertaken within this study, a literature review was undertaken to establish the current state of knowledge on rent arrears management practices together with possession proceedings, and to identify gaps in that knowledge.

Earlier studies on rent arrears management drew attention to a steep rise in possession actions seen during the 1990s. For some, this was seen as resulting largely from the promotion of a performance culture within social housing. Previous research on arrears management practice identified a wide range of landlord approaches. Developing use of IT systems has had an impact, for example, through automated, triggered responses. Since the early part of this decade there has been a shift towards a more specialist model of rent collection services.

As regards court action, studies have found that roughly one quarter of notices result in a court hearing. Association practice was, not surprisingly, varied – for example, in relation to the level of internal review of each claim. Provision of money advice to tenants in arrears has been found uneven and concerns have been raised about access to advice and information prior to court hearings.

Studies have found a number of barriers to justice, including the inaccessibility of advice services, fear of cost, language, cultural barriers and a general lack of understanding of the implications of proceedings. Different factors affect the exercise of discretion by District Judges and there is a lack of consistency in relation to outcomes across different courts and between different judges in the same court. However, it is to be noted that the relevant studies took place before certain key interventions, notably the implementation of the 2006 Rent Arrears Pre-action Protocol (PAP).

There is a lack of evidence about the use of Ground 8 in England. There is some evidence about its use in Wales, where around 26% of outright possession orders obtained in 2006-07 were made on the basis of mandatory grounds. A Citizens Advice Bureau survey of 26 English associations identified 20 using Ground 8, although only two did so as a matter of routine. An earlier national study of England found that about one third of associations used Ground 8 but that there were striking regional and landlord type variations. There was also evidence that District Judges disapproved of Ground 8 and, in some cases, sought to avoid granting possession in such instances; for example by giving extra scrutiny to paperwork before the court. However, these studies took place prior to Court of Appeal guidance on Ground 8.

By way of conclusion, our review highlights a number of issues calling for additional research – notably in relation to the incidence of Ground 8, regulation, housing management and use of the courts.

National stakeholder perspectives

Interviews were conducted with representatives from ten national organisations, including one major lender, as well as with senior lawyers with three national law firms. The interviews sought to identify changes in rent arrears management practices, to probe views on the factors underlying the reduction in associations' use of possession proceedings, and to gauge views for and against the retention of the mandatory ground for possession, Ground 8.

As regards arrears management practices, two key trends were believed to have been under way. There had been a shift to specific housing management roles and associations had tended to adopt, at least in policy documents, an early intervention agenda. A key reason for the latter was said to be the impact of the PAP, which had summarised in its terms other key messages from policy documents.

As regards the use of possession proceedings, the general decline was noted by most participants.

Key underlying factors were said to include the shifts in arrears management practices as outlined above, but most particularly improvements in HB administration, as well as the cost-benefit of taking enforcement action. The NHF believed that the decline was a 'success story' for the sector.

As regards the case for and against the retention of Ground 8 powers for HAs, there was an unevenness of response (as had been anticipated). There were arguments for, and counter-arguments against, its use. A broad summary of the underlying reasons for these positions lies in the contrasting rationales between, on the one hand, the "social" element of the role of an association, and, on the other, their business ethos most specifically concerning landlords' exposure to risk. Although some claimed that retention of Ground 8 was a priority for lenders, it was said by contrast that lender behaviour could not be predicted and there was a suggestion that, in determining loans and rates, lenders look at quantitative evidence as opposed to the actual process used. More specifically:

- Ground 8 provided certainty to an association, as opposed to the alternatives. The contrasting view was that there was a need for a court to be able to take account of all factors in an individual

claim; compliance with the PAP should provide certainty (provided there was compliance with its terms)

- Certainty had consequential impacts on when an association might bring possession proceedings. The countervailing view was that the evidence 'on the ground' was that Ground 8 was not necessarily being used at the end of a process
- Ground 8 had deterrent effects on tenant behaviour. The counter view was that there may be deterrent effects, but these were likely to be lost on the average tenant. A zero-tolerance approach to rent arrears was inappropriate
- Ground 8 is used only in a small proportion of claims. The contrasting view was that on the ground experience suggested that it was being used in a significant minority of claims and, if it was barely used, then there was no need to retain it

Rent collection and arrears management: national and regional trends

The HAs arrears management performance has remained fairly steady over recent years, with the mean rate of rent arrears falling very slightly from

5.6% of collectable rent to 5.3% in the three years to 2007-08. At least since 2005-06, however, HB service performance appears to have improved significantly. The national average number of days to process new HB claims was cut from 33 days to 25 days in the two years to 2007-08.

HAs evicted some 9,000 tenants from general needs housing in 2008-09 – equivalent to around 0.51% of the dwelling stock. While the equivalent rate for supported housing will have been much higher this largely reflects the different forms of tenancy prevalent in the two sub-sectors, with the less secure status of supported housing tenants making it much easier for tenancies to be repossessed.

The vast majority of evictions from general needs housing continue to result from actions triggered by rent arrears. Statistical evidence suggests that rates of rent arrears eviction in the HA sector fell by around a quarter in the three years to 2007-08, though a slight increase was recorded in 2008-09. The downward trend up until 2007-08 was also reflected in local authority eviction rates. In 2007-08 HA eviction rates were highest in the Midlands and lowest in London.

Rent arrears eviction rates have tended to run significantly higher for traditional HAs (equivalent to 0.52% of dwelling stock in 2008-09) than for stock transfer landlords (0.40%). Having peaked in 2004-05, typical eviction rates have fallen in recent years for associations of all types and sizes. However, this has been rather less marked among the largest landlords. At the same time, while they account for only a small proportion of the overall dwelling stock, the highest rates of eviction are probably found among smaller associations (those with 250-999 dwellings in ownership).

Arrears management practice in 2009: national overview

The online survey informed a national overview of current policy and practice, and recent changes in associations' approach to rent collection. Most responding HAs (58%) saw their organisation of rent arrears management as "mainly specialist" – ie a function primarily carried out by staff specialising in related activities. By 2009, only 27% of associations managed arrears within a "mainly generic" model – down from 41% in 2002. Specialist approaches are particularly dominant among the largest associations and the overall increase in the frequency of this approach

could, in part, reflect the growing average size of associations (up by 50% between 2002 and 2007).

Almost half of associations (47%) employed in-house welfare benefits advice staff. At the same time, the vast majority of associations helped their tenants access such advice via referrals to third party organisations. More than half of associations (56%) accessed debt-counselling services via formal referral arrangements to specialist external agencies. A similar number reported debt counselling being provided by in-house staff, and two thirds routinely trained their rent arrears staff in such matters. However, in only half of associations was it standard practice to train arrears management staff on DWP deductions or mental health awareness – both of which are landlord obligations under the PAP.

Some associations remained frustrated by sub-optimal performances on the part of local authority HB services. One key indicator of such frustration is the fact that more than a quarter of associations (27%) sometimes initiated legal action mainly to pressure authorities to prioritise settling HB claims. More broadly, the vast majority of associations accepted that under certain circumstances they would instigate legal action on arrears in the knowledge that a HB claim was outstanding. This tended to be seen

as legitimate in cases where a delay in resolving a claim is believed to result from the tenant's failure to provide information as requested.

Most associations reported initiating some form of response to a single missed rent payment and the vast majority had designated a specific arrears threshold (most commonly four weeks rent) triggering consideration of legal action. In some cases such action was initiated "automatically" at this point, irrespective of the individual facts of the case. Again, the vast majority of associations reported that staff were "required" to make personal contact with a tenant before a NSP will be served. The average estimated proportion of NSPs, which are, in fact, preceded by such contact was 70%.

A quarter of associations reported recently having sought possession under Ground 8 of the Housing Act 1988. Substantiating suggestions from earlier research, use of Ground 8 was much less common among transfer HAs and much more common in London (where it had been recently employed by more than half of associations). The level of arrears was the factor most commonly cited by respondents as a consideration in whether or not to take action under Ground 8. Other factors cited by more than half of this cohort of associations included where the tenant fails to respond to attempts at contact,

where the tenant is believed to be no longer living at the property and the tenant's "other behaviour".

Estimates based on the incomplete statistics provided by associations responding in the survey suggest that Ground 8 actions may have accounted for some 350 evictions in 2007-08 – just under five per cent of the national total of possessions for arrears. However, among the limited group of associations directly involved, Ground 8 actions typically accounted for 20% of evictions in that year (in a few cases, the figure being much higher). There are also indications that Ground 8 use may have been increasing in recent years.

While three quarters of associations had modified their rent arrears management practices in response to the Rent Arrears PAP, this leaves a significant proportion of landlords (disproportionately the smaller landlords) whose procedures had remained unchanged. Among those acknowledging PAP-stimulated change, the most common themes were the (a) adoption of more structured, consistent practice, (b) a shift towards a more pro-active, preventative approach, and (c) increased awareness of vulnerability issues.

Arrears management practice: case study and case file review evidence

Six HA case studies were conducted to dig deeper into HA practices, using an interview-based method combined with analysis of policy documents. Five of the six associations were users of Ground 8, the other was actively considering its introduction. Case study HAs also completed pro-formas in relation to their most recent 20 possession cases resulting in eviction, in 10 of which they used Ground 8 (where applicable). A third element to this phase of the research involved interviews with local law firms who were party to rent arrears legal actions.

Households regarded by HA staff as at greatest risk of arrears included young single persons and the vulnerable, though the most highly rated risk factor concerned receipt (or non-receipt) of HB. The case file review evidence found that 70% of evictions involved single people or childless couples and that a disproportionate number of evicted households (54%) included persons in employment.

Although performance had generally improved and HAs had relationships with some local authorities or individual officers, there were pockets of poor performance, and certain issues such as

overpayments and suspensions were problematic. A key aspect of HA/LA relationships in this respect involved case-data information exchange. Where it had been developed, electronic data transfer had been found to produce very substantial efficiencies from an association perspective.

Case study HAs had engaged in cultural change at a symbolic and organisational level, most of which now had centralised rent arrears management services and a stronger managerial ethos. Recruitment of “credit control professionals” from outside the housing field was seen by some as an important aspect of this. HAs had also sought to develop a cultural change amongst their tenants so that they would become active in the management of their rent accounts.

Tenancy sustainability was the primary concern of all case study HAs, which had introduced a series of interventions including the increasing use of face-to-face contact through home visits, for example, as well as the use of other media, such as texting. This was also combined in some HAs with personnel to assist tenants in maximising their potential income through benefits advice. Backing up this finding, case file review evidence relating to recent eviction cases (see Annex 1) indicated that housing officers had typically contacted the tenant five times about

their arrears before serving an NSP and that an average of eight further contacts had been made post-NSP (and before actual repossession).

As regards use of the courts, the case study evidence compounded the findings of the national survey in demonstrating that the PAP had significantly altered practices and was a factor (if not a significant one) in the development of more managerial approaches in the case studies. HAs had generally become more assiduous in documenting their interventions with tenants. It was, however, unclear among most of the studies whether they had increased or decreased in their use of the courts. District Judges were generally said to be tenant-friendly, although their heterogeneous approaches were also remarked upon.

HA use of Ground 8 was said to be generally as a last resort, but different HAs had different approaches to its use. It was also notable that all HAs using Ground 8 said that their rent arrears management would not be substantially affected by any withdrawal of this power. The case file analysis (Annex 1) confirmed that the factors most commonly associated with use of Ground 8 were tenant unresponsiveness to landlord attempts to negotiate repayment terms, and property abandonment. However, it was less clear from this

evidence whether the existence of “high arrears” is, in itself, a critical factor.

Duty advisors, who represent occupiers in court proceedings, perceived a growing use of Ground 8 in courts used by the three north case study HAs (A-C) and the unwillingness of some HAs and some of their officers to negotiate before the hearing. All advisors appreciated that District Judges were more inclined to side with the tenant, but believed that presenting housing officers were adversely affected by their lack of knowledge of law and procedure. There were also concerns that HAs were paying lip service to the PAP and were not making early enough interventions.

As to impacts of the post-2008 recession, the case study research found that rising unemployment was already leading to growing dependency on Housing Benefit in some areas. However, while the timing of the fieldwork (May-June 2009) needs to be borne in mind, there was no strong perception of any recent upward trend in arrears or possession activity, which could be attributable to the deteriorating economic situation.

Conclusions

This study makes two major contributions, which should facilitate more informed policy discussion.

First, it provides evidence of incremental changes in the management of rent arrears over the past few years and the evidence about the contextual factors, which back up those changes. Those contextual factors may well be policy interventions but other internal factors are likely to be equally important (such as responding to perceived problems in rent arrears management).

Second, it draws together evidence about the relative use of different grounds for possession across the sector. In particular, for the first time, it demonstrates the use of Ground 8 across the sector, the geography of its use (for example, London has twice the national average), the reasons for its use (and factors rarely considered prior to its deployment, such as Human Rights Act considerations), and the possible perverse incentive of the PAP. Case study HAs which used Ground 8 also tended to see their ability to employ this power as useful rather than essential. While any removal of the power might result in a slightly higher exposure to rent arrears it was not believed that the effect would be substantial.

Chapter 1

Introduction

1.1 Background to the research

This report presents findings from a study of housing association (HA) rent arrears management practice commissioned by the former Housing Corporation in October 2008. The research builds on earlier studies focusing on social landlords' use of possession powers – in particular, the 2003-04 ODPM research on social landlords use of possession actions (published 2005)¹ and the DCA study on judicial treatment of rent arrears cases undertaken in parallel².

The research was triggered by discussions associated with the Parliamentary debate on the 2008 Housing & Regeneration Bill. These focused on HAs' use of possession powers under Ground 8 of Schedule 2 to the Housing Act 1988 in relation to Assured Tenancies. As explained in more detail below, the key feature of Ground 8 is that it provides HAs, in certain circumstances, with a mandatory right to recover possession of a tenanted property, as opposed to being subject to the discretion of the court.

HA rights to claim possession under Ground 8 continue to be seen as a matter of concern by bodies such as Shelter and Citizens Advice who argue that in possession actions social landlords should in all cases be subject to judicial discretion. There are particular anxieties around the possibility that the use of Ground 8 could result in eviction for tenants whose arrears have arisen entirely as a result of flaws in HB administration. For their part, HAs making use of this power have previously contended that they do so “responsibly”. Importantly, it should be stressed that, while its use may have aroused debate, deployment of Ground 8 is not incompatible with regulatory guidance.

The broader context for the study is the ongoing focus on improving performance in the management of social housing while, at the same time, minimising any contribution by social landlords to homelessness via eviction. Part of the wider policy backdrop here is the recent official policy emphasis on the prevention of homelessness, with local authorities under pressure to meet a demanding target of halving the use of temporary accommodation in the five

¹ Pawson, H., Flint, J., Scott, S., Atkinson, R., Bannister, J., McKenzie, C. & Mills, C. (2005) Possession Actions and Evictions by Social Landlords; London: ODPM <http://www.communities.gov.uk/publications/housing/203568>

² Cowan, D.S., Hitchings, E., Pantazis, C., Hunter, C., Blandy, S. & Nixon, J. (2005) The Exercise of Judicial Discretion in Rent Arrears Cases; London: Department for Constitutional Affairs http://www.dca.gov.uk/research/2005/6_2005.htm details

years to 2010³. Similarly, a key theme of 2005 rent arrears good practice guidance was the need for a more pro-active way of working, to include prioritising direct contact with tenants falling into arrears (in preference to a reliance on postal communication).⁴

A key policy move aimed at consolidating the downward trend in social landlord possession actions since 2004 was the introduction of the PAP in 2006.⁵ A central objective of the research was, therefore, to assess the extent to which the PAP has impacted on HAs' operational practice.

All of this policy activity has taken place against a backdrop of generally benign economic conditions, with high levels of employment and low interest rates. It must be acknowledged that the onset of recession in 2008 may well affect the incidence of tenant debt and on social landlord practice in managing rent arrears. In our case study research we probed rent collection staff on early impacts of this new economic climate on arrears and possessions (see Chapter 6).

Another important aspect of the context for the research is the changing regulatory landscape. Set up in December 2008, the Tenant Services Authority (TSA) is due to introduce a new regulatory regime for HAs in April 2010, with a new framework being rolled out for local authorities and ALMOs from the same date. An aspect of this new regime will be the introduction of the term "Registered Provider" in place of "Registered Social Landlord" (RSL). Consistent with the title of the research, this report uses the term 'housing association' or the acronym HA. It should, however, be emphasised that our remit covered only HAs registered by the (former) Housing Corporation.

Structure of the report

In the remainder of this chapter we first outline the legal and regulatory framework for HA rent collection activity. This includes a summary of key official good practice messages published in the past few years. Next, follows an account of our research methodology. In Chapter 2, we review existing research and associated literature on

³ ODPM (2005) Sustainable Communities: Homes for All – A Five Year Plan from the Office of the Deputy Prime Minister; London: ODPM <http://www.communities.gov.uk/archived/publications/corporate/homesforall>

⁴ ODPM (2005) Improving the Effectiveness of Rent Arrears Management – Good Practice Guidance; London: ODPM <http://www.communities.gov.uk/documents/housing/pdf/138886.pdf>

⁵ Ministry of Justice (2006) Pre-action Protocol for Possession Claims Based on Rent Arrears; http://www.justice.gov.uk/civil/procrules_fin/pdf/protocols/prot_rent.pdf

arrears management and related aspects of housing management activity.

Chapters 3-6 then set out the findings of our own research. First, in chapter 3, we recount views of key national stakeholders on recent policy developments and on landlords' management practices. Chapter 4 then reviews secondary data on arrears management performance and on the associated use of legal action. Chapters 5 and 6 summarise our empirical findings; from a national survey of associations and from six in-depth case studies focusing on individual associations (see Section 1.3). Conclusions are set out in Chapter 6, with findings from the eviction case file analysis detailed in Annex 1. The remaining Annexes provide more detail on aspects of the research methodology and a profile of the case study HAs.

1.2 Possession for rent arrears: the legal framework

General

The statutory framework within which they fall governs the security of tenure of all tenants of HAs. The interpretation of that framework is influenced by case law. Most such tenants have assured tenancies under the Housing Act 1988. To obtain possession of a property let on an assured tenancy, a HA must obtain a court order, as with any landlord, unless the tenant determines the tenancy.⁶ The landlord must serve a notice seeking possession, unless the court dispenses with that requirement.⁷ The court can make an order for possession only on the basis of limited grounds contained in Schedule 2, Housing Act 1988. In respect of rent arrears, there are three statutory grounds for possession: 8, 10, and 11. Critically, Ground 8 is a mandatory ground – if the landlord proves its case, the court must grant possession. The only discretion is on the period within which the occupier is required to give up possession.⁸ The other grounds for possession are discretionary and the landlord

⁶ S 5(1), Housing Act 1988.

⁷ S 8 (1), Housing Act 1988, although it should be noted that, where the landlord proceeds on the mandatory ground of rent arrears – Ground 8 – the court has no discretion to dispense with service: s 8(5).

⁸ S 89, Housing Act 1980.

must show not just that the ground is proved but also that it would be **reasonable** to grant possession in such cases.

In deciding on reasonableness, the court is entitled to look to all relevant factors,⁹ such as issues with HB, the length of the tenancy, the behaviour of the tenant, the ability of the tenant to meet the rental obligation and the arrears of rent involved. Indeed, the 1988 Act gives the courts extended discretion in such cases to stay or suspend execution of the order or to postpone the date for possession.¹⁰ In such circumstances, the court can impose terms on the payment of the rent and arrears.¹¹ That discretion and those other considerations do not apply to the mandatory Grounds for possession, including Ground 8.¹²

Ground 8 is satisfied where, both at the date of service of the notice seeking possession and at

the date of the hearing at least eight weeks' rent is unpaid.¹³ Ground 10 is broader and requires that some rent lawfully due from the tenant is unpaid at the date on which the proceedings for possession are begun. Ground 11 concerns persistent delay in the payment of rent lawfully due (even where there are no arrears at the date on which the possession proceedings have begun).

If the HA seeks possession on Ground 8, the Court of Appeal held in *North British HA v Matthews* that a claim may be adjourned if, in the proper management of the court list, this would be appropriate.¹⁴ The only other circumstances in which such a claim should be adjourned are where there is a possible defence (such as a defence based on ordinary principles of judicial review, or where the defendant has paid a cheque which has yet to clear).¹⁵ Where there are extreme cases, an adjournment might be justified:

⁹ *Cresswell v Hodgson* [1951] 2 K.B. 92.

¹⁰ S 9(1).

¹¹ S 9(2).

¹² S 9(6).

¹³ Or, if rent is payable monthly, at least two months' rent is unpaid; or if rent is payable quarterly, at least one quarter's rent is more than three months in arrears; or if rent is payable yearly, at least three months' rent is more than three months in arrears.

¹⁴ [2005] 1 WLR 3133.

¹⁵ *Id.*, [11]-[13].

“... there may occasionally be circumstances where the refusal of an adjournment would be considered to be outrageously unjust by any fair-minded person. We hold that the power to adjourn a hearing date for the purpose of enabling a tenant to reduce the arrears to below the Ground 8 threshold may only be exercised in exceptional circumstances. ... But the fact that the arrears are attributable to maladministration on the part of the housing benefit authority is not an exceptional circumstance. It is a sad feature of contemporary life that housing benefit problems are widespread. To a substantial extent, these are no doubt the product of lack of resources. But we do not consider that the non-receipt of housing benefit can, of itself, amount to exceptional circumstances which would justify the exercise of the power to adjourn so as to enable the tenant to defeat the claim.”¹⁶

The examples of such exceptional cases include where the tenant was mugged on the way to court and had money stolen, or a computer failure prevented the HB authority making the relevant payment.¹⁷ However, as already explained, the court

held that the failure by a HB authority to make a payment is not such an exceptional circumstance and it would not be appropriate to adjourn the matter in such circumstances.¹⁸ Thus, a trial judge is, in theory, left with little room to manoeuvre.

One further emerging issue about the use of Ground 8 has arisen in the context of shared ownership claims for possession where the HA seeks to end the assured tenancy element by claiming possession for non-payment of rent. In *Richardson v Midland Heart*, heard in the Birmingham County Court in November 2007, the Court found that the long lease was an assured tenancy, Ground 8 was proved, and terminated Ms Richardson’s possession. At the time of writing the case is on appeal to the Court of Appeal.¹⁹

Human Rights Act considerations

It has been established that there are two interrelated “gateways” of challenge to mandatory possession orders, referred to as Gateway (a) and Gateway (b). Gateway (a) arises where there

¹⁶ Id [32].

¹⁷ Id [31].

¹⁸ Id.

¹⁹ For discussion, see <http://nearlylegal.co.uk/blog/?s=midland+heart>

is a seriously arguable point on the compatibility of a court order for possession with Article 8 of the European Convention on Human Rights, as incorporated into English law by the Human Rights Act 1998.²⁰ Gateway (b) arises where the occupier wishes to challenge the decision of a public authority to recover possession on the basis that it is an improper exercise of the public body's powers.²¹ Article 8 of the ECHR concerns the right to respect for private and family life:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Gateway (a)

Gateway (a) provides the foundation for a general attack on Ground 8 in certain cases on the basis that it is a disproportionate interference with the right of respect for the home because, being a mandatory ground, the court has no discretion as to whether or not to make an order for possession. Although this is a general challenge to Ground 8, it may be particularly relevant where one reason for proceeding on Ground 8 takes account of other factors such as the behaviour of the tenant. In *Cosic v Croatia*,²² the European Court of Human Rights made the following point about mandatory possession proceedings in the context of a state claim to possession of property:

- In this connection the Court reiterates that the loss of one's home is a most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality and reasonableness of the measure determined by an independent tribunal in the light of the relevant principles

²⁰ S 3, Human Rights Act 1998.

²¹ *Kay v Lambeth LBC* [2006] 2 AC 465, [110] (Lord Hope); as expanded upon in *Doherty v Birmingham CC* [2008] UKHL 57.

²² Application no. 28261/06, ECHR, 15.01.09.

²³ At para 22, referring to *McCann v UK* [2008] BLGR 474.

under Article 8 of the Convention, notwithstanding that, under domestic law, his or her right of occupation has come to an end.²³

This echoes the finding of the ECHR in *McCann v UK* concerning the proportionality of the landlord's common law right to possession where one of two joint tenants has given a notice to quit.²⁴ The House of Lords declined to accept the principle in *McCann*.²⁵ Even so, a number of claims for possession on the basis of Ground 8 have been referred to the High Court for a determination as to the compatibility of that Ground with Article 8.²⁶

Gateway (b)

Gateway (b) arises only where an HA is a "public authority" or, in exercising its right to possession, is exercising a "function of a public nature".²⁷ In *R*

(*Weaver*) v London & Quadrant Housing Trust,²⁸ the Divisional Court made a declaration that, in principle, HAs are subject to the Human Rights Act 1998 and judicial review in respect of certain of their functions relating to allocation and management of their housing stock.²⁹ This decision was upheld by the Court of Appeal and is, at the time of writing, on appeal to the Supreme Court.³⁰

If HAs are exercising public functions in seeking possession on the basis of Ground 8, tenants may draw on traditional public law defences, including irrationality (or *Wednesbury* unreasonableness). There is also the possibility that tenants may draw on the development by the courts of a proportionality defence to summary proceedings for possession.³¹ There is a developing body of case law on this issue, which, broadly, has established

²⁴ *McCann v UK* [2008] BLGR 474.

²⁵ See *Doherty v Birmingham CC* [2008] UKHL 58.

²⁶ Personal correspondence with Professor Ian Loveland and Justin Bates of Counsel. The County Court does not have power to make such a determination: s 4(5), HRA. See also *Dublin CC v Gallagher* [2008] IEHC 354, in which the Irish High Court found that summary possession proceedings were incompatible with Article 8.

²⁷ S 6(2)(b), HRA.

²⁸ [2008] EWHC 1377 (Admin).

²⁹ *Id* at [52].

³⁰ [2009] EWCA Civ 587 - <http://www.bailii.org/ew/cases/EWCA/Civ/2009/587.html>

³¹ Compare, *Hillingdon LBC v Collins* [2008] EWHC 3016 (Admin) and *Dixon v Wandsworth LBC (No 2)* [2009] EWHC 27 (Admin).

³² See *Doran v Liverpool CC* [2009] EWCA Civ 146; *McGlynn v Welwyn Hatfield DC* [2009] EWCA Civ 285; *Defence Estates v JL* [2009] EWHC 1049 (Admin); *Central Bedfordshire Council v Taylor* [2009] EWCA Civ 613; *Stokes v LB Brent* [2009] EWHC 1426 (QB)

that successful gateway (b) challenges are likely to be rare and exceptional.³²

In *Weaver*, Ms Weaver claimed that the use of Ground 8 by L&Q contravened her legitimate expectation that they would not do so. That expectation, it was claimed, was created by the Housing Corporation's Regulatory Circular on eligibility and evictions (see Chapter 2). Alternatively, it was claimed on a similar basis that HAs use of Ground 8 contravened her public law rights. Both those strategies were unsuccessful (and this part of the decision was not the subject of the appeal). That case has done little to dim the prospect of HRA/ judicial review defences to a Ground 8 claim for possession. Indeed, possession cases have recently been adjourned to enable the occupier to mount defences based on different public law grounds.³³

1.3 The regulatory framework for housing associations

Housing Corporation regulatory codes and guidance

Notwithstanding the establishment of the Tenant Services Authority (TSA) in 2008, HAs remain subject to the Housing Corporation's Regulatory Code and its associated guidance and regulatory circulars. Introduced in 2002, the Code was amended in 2005.³⁴ It states that associations must be viable, properly governed and properly managed, but makes no directions about the collection of rent. However, the regulatory guidance does state that "legal repossession of a property is sought as a last resort".³⁵ The Housing Corporation reiterated this in the 2007 Residents' Charter, which stated that a landlord "must only take action to evict you from your home as a last resort, when there is no reasonable alternative".³⁶ Circular 02-07 was issued the same month in response to both the prevention of homelessness strategy and anecdotal evidence of the increase in the use of Ground 8

³² Personal correspondence with Professor Ian Loveland and Justin Bates of counsel; also I. Loveland, 'Ground 8 and Article 8: A modest success for the HRA', (2009) June Legal Action 42.

³⁴ Housing Corporation (2005), *The Regulatory Code and Guidance*, London; Housing Corporation.

³⁵ Housing Corporation (2005), *op cit*, 3.5.c.

³⁶ Housing Corporation (2007a), *A Charter for Housing Association Applicants and Residents*, London: Housing Corporation, p. 11.

by HAs.³⁷ The Circular informed associations of the Corporation's expectation that proceedings for rent arrears:

"should not be started against a tenant who can demonstrate that they have:

- a reasonable expectation of eligibility for housing benefit
- provided the local authority with all the evidence required to process a housing benefit claim
- paid required personal contributions towards the charges"³⁸

It further stated that:

"Before using Ground 8, associations should first pursue all other reasonable alternatives to recover the debt. Where use of Ground 8 forms part of an arrears and eviction policy, tenants should have

been consulted and governing board approval for the policy should have been given."³⁹

It is unclear how many associations have met this expectation, but it should be noted that there are no specific questions within the Audit Commission's 'KLOE' (Key Lines of Enquiry) housing management standards about whether the use of Ground 8 has board or tenant approval.⁴⁰ While HAs are regulated by the TSA, they are inspected by the Audit Commission. Consequently, the Commission's criteria for housing management excellence – KLOEs – are of fundamental importance although AC inspections incorporating these criteria are not the only source of information about regulatory compliance.⁴¹

Good practice guidance

ODPM research, published in 2004,⁴² underpinned separate good practice guidance, issued "in response to concerns [...] at the rising number

³⁷ Killeen, A. (2005), Registered Social Landlords and Rent Arrears: is possession the last resort?, Unpublished MA Thesis, University of Westminster.

³⁸ Housing Corporation (2007b), Tenancy Management: Eligibility and Evictions, Circular 02/07, London: Housing Corporation.

³⁹ Audit Commission – <http://www.audit-commission.gov.uk/housing/inspection/Keylinesofenquiry/Pages/HousingincomemanagementKLOE.aspx>

⁴⁰ Killeen, A. (2005), op cit.

⁴¹ Housing Corporation (2005), How we regulate: Management, London; Housing Corporation.

⁴² Pawson, H., Flint, J., Scott, S., Atkinson, R., Bannister, J., McKenzie, C. and Mills, C., (2004), The Use of Possession Actions and Evictions by Social Landlords, London: ODPM <http://www.communities.gov.uk/publications/housing/203568>

of possession actions and evictions".⁴³ A further Housing Guide was issued in 2006. The introduction states that the guide:

"[...] sets out clearly the DCLG view, supported by Housing Corporation regulatory guidance emphasising that social landlords should seek to maintain and sustain tenancies, rather than terminate them and that eviction should be used as a last resort. The Civil Justice Council have provided a pre-action protocol relating to the proceedings for claims made by a social landlord against a tenant for possession due to rent arrears. The message of that pre-action protocol reflects that contained within this guidance that eviction proceedings should be a last resort."⁴⁴

Key recommendations within the guidance included a focus on prevention, income maximisation, improving staff training and, more particularly, repeated the Housing Corporation circular's message that Ground 8 should be used only as a last resort measure.

Two further guidance documents are also relevant to mention here. First, following the Audit Commission's research on the use of direct debits to collect council tax, councils and HAs were recommended to adopt its use more widely for the collection of rent.⁴⁵ Second, the income management toolkit developed recently by the Housing Quality Network includes 112 self-assessment questions which reflect much of the good practice discussed elsewhere.⁴⁶

Whilst it is unnecessary here to rehearse the detail of these various guidelines and toolkits, they were useful to the research as a source of benchmarking criteria for the assessment of current practice and of compliance with the PAP. More specifically, when looking at associations, which use Ground 8, the advice in these guides represents a useful set of tools for understanding landlord policies and practices.

⁴³ ODPM (2005), *Improving the Effectiveness of Rent Arrears Management: Good Practice Guidance*, London: ODPM, p. 6.

⁴⁴ Department for Communities and Local Government (2006), *Guide on Effective Rent Arrears Management*, London: DCLG.

⁴⁵ Audit Commission (2006), *Improving Income Collection: Efficient collection of council tax, housing rent and other income by direct debit*, Local Government Summary, London: Audit Commission.

⁴⁶ Newman, T. (2008), *Income Management Toolkit*, York: Housing Quality Network Rent Income Excellence Network.

Pre-action protocol for possession claims

In 2006, following recommendations from a number of bodies, the PAP was added to the Civil Procedure Rules, aiming to encourage more pre-action contact between parties to prevent escalation of action and thereby to help use court time more efficiently.

The PAP makes clear that possession proceedings should not be started against tenants who can demonstrate that they have:

- a. provided the local authority with all the evidence required to process a housing benefit claim
- b. a reasonable expectation of eligibility for housing benefit
- c. paid other sums due not covered by housing benefit⁴⁷

Landlords were required to postpone court proceedings if a tenant had made, and was keeping to, an agreement for payment of the arrears.

The PAP directed courts to take into account whether its terms had been followed when considering what orders to make. Where the landlord unreasonably fails to comply with the PAP, the court may impose one or more of the following sanctions: an order for costs against the landlord; and, for cases brought on anything other than solely mandatory grounds, to adjourn, strike out or dismiss claims.⁴⁸ This means that the sanctions, other than a costs order against the landlord, are not available to the court where the landlord proceeds solely on the basis of Ground 8, even if they have failed to comply with the PAP. If the mandatory Ground for possession is proved, then the order must follow. This exclusion of mandatory grounds might be seen to create a perverse incentive encouraging HAs to use Ground 8 where they have failed to comply with the PAP (although there is power to penalise the HA for non-compliance through an order for costs).

⁴⁷ Civil Justice Council (2006), Pre-Action Protocol for Possession Claims Based on Rent Arrears, London: Civil Justice Council: para 7.

⁴⁸ Civil Justice Council (2006), op cit: para 14.

1.4 Research methodology

The research involves the following elements:

- i.** Literature review
- ii.** Interviews with key national stakeholders
- iii.** Interviews with legal professionals – national law firms
- iv.** Secondary data analysis
- v.** National survey of housing associations
- vi.** Detailed case study work focused on a small number of selected HAs
- vii.** Interviews with legal professionals – duty desk advisors at local courts

Literature review

The literature review covered a wide range of sources including regulatory and good practice guidance, case-law and research reports – the latter encompassing both studies commissioned by central government and work undertaken for third sector agencies.

Interviews with key national stakeholders and national law firms

Interviews were conducted with representatives from ten national organisations, including one major lender to the HA sector. The organisations were:

- National Housing Federation
- Chartered Institute of Housing
- Communities and Local Government
- Tenant Services Authority
- Council of Mortgage Lenders
- Shelter
- Citizens Advice
- Audit Commission Housing Inspectorate
- Housing Quality Network
- A lender

The interviews were mainly conducted by telephone and lasted 25-90 minutes. Three organisations declined the opportunity to participate on the basis that they had little, if anything, useful to add (Advice Services Alliance; Department for Work and Pensions; Ministry of Justice).

The purpose of these interviews was to identify trends in rent arrears management practices, to gauge perceptions as to the factors underlying the reduction in the use of possession proceedings by associations, and to sound out views on the case for and against the retention of the mandatory ground for possession, Ground 8.

In addition interviews were conducted with three senior solicitors from law firms who each represent a large number of HAs. In each case the solicitor was responsible for housing management and/or litigation. While they were often no longer directly involved in possession proceedings, they provided training to clients on the legal aspects of possession, dealt with those cases which proved “difficult” and generally advised clients on matters such as tenancy conditions and possession policies. They were each located in different cities, and thus had a different geographical focus for the majority of their clients. The purpose of the interviews was much as for the key stakeholders, but was more focused on recent developments in relation to legal proceedings and processes, rather than management practices.

Secondary data analysis

The main sources for the secondary data analysis were the former Housing Corporation’s RSR and CORE datasets. The former is an annual return submitted by all registered HAs and containing statistics on the numbers of possession actions undertaken by the relevant association as well as a wide range of useful contextual data such as the association’s size and type. The latter is a case return system which collects a range of data in relation to every letting made by all registered HAs (and most local authorities). Of particular relevance to this research, each record includes details of the reason that the property became available for letting. And, with eviction forming one of these “void reasons” it is possible to treat this as a proxy measure of evictions undertaken by each association.

National survey of housing associations

This was conducted as an online survey targeted on all individual HAs (rather than group entities) owning more than 1,000 general needs housing as at 1 April 2008. In all, these numbered 361. However, 18 of these were excluded on the basis that they were recently established stock transfer landlords, which would be unable to respond to questions about policy and practice over the past three years. In all, therefore, eligible associations totalled 343.

In total, 226 returns were received. Because a few of these were group-wide responses representing two or more individual associations, the number of registered social landlord entities covered by the responses totalled 239. The adjusted response rate was therefore 70%. The rate was slightly higher rates for stock transfer HAs (72%). Because this was also true for larger associations (those with more than 10,000 dwellings (74%)) the coverage of the survey was somewhat greater than 70% in terms of the proportion of association dwellings owned by participating landlords.

Case study fieldwork – selection

Given the diversity of practices revealed by the national survey, it was decided to investigate practices in more detail via six case studies focusing on selected HAs. That would enable sufficient variation to be accounted for in the case study selection, as well as potentially enabling us to access a wide variety of practices, policies and procedures in relation to rent arrears management and court use. As summarised in Table 1.1, the chosen associations were a fairly diverse selection. Our approach to selection is more fully described in Annex 2.

We took the view that participant HAs should be drawn only from those which responded to the survey data, because those who failed to take part in that aspect of the study (despite repeated requests to do so) were considered unlikely to be willing to engage with more detailed and potentially time-consuming fieldwork. However, we did conduct one further interview during this phase with a national RSL, which was also a high user of Ground 8.

Table 1.1 – Case Study HAs

HA	Status	Size	Region	Organisation of arrears management	Use of Ground 8 – % of 07-08 arrears evictions	Audit Commission Inspection outcome/prospects
A	Non-Transfer	Very Large	National	Specialist	40.3	
B	Non-Transfer	Medium	North	Specialist	66.7	Fair/promising
C	Non-Transfer	Medium	North	Generic	44.2	Fair/promising
D	Transfer	Medium	South	Specialist	70.2	Good/promising
E	Non-Transfer	Very Large	South	Specialist	9.4	
F	Non-Transfer	Medium	South	Specialist	0	

Case study work

In each case study, 6-7 semi-structured interviews were conducted – the data collection instruments appear at Annex 4 – with the following participants:

- HA staff, including senior manager; front-line staff responsible for rent arrears management; court officers (where these were different)
- interviews with tenant representatives and advice agencies
- interviews with local legal practices representing both tenants and HAs

In addition, case study HAs' local procedure manuals were collected to complement accounts of organisational practice as detailed by housing manager interviewees.

Prior to each case study visit, the relevant HA was asked to self-collect data on a cohort of recent possession cases, which had resulted in eviction – the most recent 10 cases where Ground 8 had been used, and 10 where it had not been used. This proved to be an effective mechanism for accessing data, which might otherwise have been unavailable to the researchers for data protection reasons; but those reasons were overcome by the HA data

collector making the cases at source anonymous. We were most grateful to the HA data collectors for their time and assistance in this process. The analysis of these cases appears below. A blank pro-forma, which was completed by the HA data collector, appears at Annex 5.

Interviews with local duty desk advisors

To supplement the case study work, telephone interviews were conducted with four solicitors who regularly act as duty desk advisors in courts on possession days. Duty desk advisors take instructions from clients shortly before the court hearing and advocate on their behalf. This can all take place in a matter of minutes. The preconditions for this advice are that the tenant attends the court and seeks the advice of the duty advisor. Two participants were also managers of the duty desk scheme. Two participants operated duty desk schemes covering one of the courts used by case study HAs A-C, which provided us with an opportunity to counterbalance our findings from those case studies. The two other participants covered London courts, including those used by case study HAs D-F, although the interviews were more general.

Chapter 2

Rent arrears management practice: a literature review

Chapter summary

As a backdrop to the original research being undertaken within this study a literature review has been carried out to establish the current state of knowledge on rent arrears management practices together with possession proceedings, and to identify gaps in that knowledge.

Earlier studies on rent arrears management drew attention to a steep rise in possession actions seen during the 1990s. For some, this was seen as resulting largely from the promotion of a performance culture within social housing. Previous research on arrears management practice identified a wide range of landlord approaches. Developing use of IT systems has had an impact, for example, through automated and triggered responses. Since the early part of this decade there has been a shift towards a more specialist model of rent collection services.

As regards court action, studies have found that roughly one quarter of notices result in a court hearing. Association practice was, not surprisingly, varied - for example, in relation to the level of internal review of each claim. Provision of money advice to tenants in arrears has been found uneven and concerns have been raised about access to

advice and information prior to court hearings. Studies have found a number of barriers to justice, including the inaccessibility of advice services, fear of cost, language, cultural barriers and a general lack of understanding of the implications of proceedings. Different factors affect the exercise of discretion by District Judges and there is a lack of consistency in relation to outcomes across different courts and between different judges in the same court. However, it is to be noted that the relevant studies took place before certain key interventions, notably the implementation of the PAP.

There is a lack of evidence about the use of Ground 8 in England. There is some evidence about its use in Wales, where around 26% of outright possession orders obtained in 2006-07 were made on the basis of mandatory grounds. A Citizens Advice Bureau survey of 26 English associations identified 20 using Ground 8, although only two did so as a matter of routine. An earlier national study of England found that about one third of associations used Ground 8 but that there were striking regional and landlord type variations. There was also evidence that District Judges disapproved of Ground 8 and in some cases sought to avoid granting possession in such instances; for example by giving extra scrutiny to paperwork before the court. However, these studies took place prior to Court of Appeal guidance on Ground 8.

By way of conclusion, our review highlights a number of issues calling for additional research – notably in relation to the incidence of Ground 8, regulation, housing management and use of the courts.

2.1 Context

While the research project has been partly triggered by an interest in the extent and circumstances of the use of Ground 8 powers, the broader context of the study is the ongoing focus on improving performance in the management of social housing and the recent official policy emphasis on the prevention of homelessness, with local authorities under pressure to meet a demanding target of halving the use of temporary accommodation in the five years to 2010.⁴⁹ This overview of the literature outlines key aspects of what is currently known about rent arrears management practices and, more specifically, the evidence (such as it is) on the use of Ground 8 by HAs.

2.2 Rent arrears and possession actions – exploring incidence and trends

HAs are expected to demonstrate improving rent arrears performance year on year and, on inspection, to provide substantive compliance with KLOE criteria. It has been suggested that such monitoring measures have contributed to the tightening of rent arrears management procedures.⁵⁰ However, it should be noted that the Audit Commission reported in 2003 that rent collection had been falling (confirmed by the new PIs), with potential implications for associations as rent provided, at that time, 83% of their revenue funding.⁵¹

Neuberger found around 90% of possession claims are brought on the grounds of rent arrears.⁵² In 2002-03, Notices Seeking Possession (NSPs) were issued to some 13% of HA tenants, resulting in evictions for 0.64% (as a percentage of stock).⁵³

⁴⁹ ODPM (2005) Sustainable Communities: Homes for All – A Five Year Plan from the Office of the Deputy Prime Minister; London: ODPM <http://www.communities.gov.uk/archived/publications/corporate/homesforall>

⁵⁰ Ford, J. and Seavers, J. (1998), *Housing Associations and Rent Arrears: Attitudes, Beliefs and Behaviour*, Coventry: CIH; Neuberger, J. (2003) *House Keeping: Preventing homelessness through tackling rent arrears in social housing*, London: Shelter; Phelps, L. and Carter, M. (2008), *Possession Actions: The Last Resort?*, London: CAB.

⁵¹ Audit Commission (2003), *Housing Association Rent Income: Rent Collection and Arrears Management by Housing Associations in England*, London: Audit Commission.

⁵² Neuberger, op cit.

⁵³ Pawson, et al (2004), op cit.

Pawson et al's study found that 98% of NSPs granted (to all social landlords) were for rent arrears. However, only 93% of evictions related to rent arrears, with the difference accounted for primarily by the higher conversion rate for antisocial behaviour cases, where an NSP was four times more likely to result in eviction than for a rent arrears case.⁵⁴

As shown in Chapter 4, housing association evictions have been falling in more recent years. However, seen against the context of the rapid increase in the late 1990s, any reduction in actual evictions has not (yet) been substantial. Whilst previous studies had reported marked regional variations in the use of possession action, this appears to have changed more recently. Pawson et al found that, although the level of possession orders granted to social landlords in London was twice the national average in 1996, it had equalised to the national level by 2002. The rise in court actions in the north of England was particularly notable and the highest rates of eviction in 2001-02 occurred in the East Midlands.

⁵⁴ Pawson et al, (2004), op cit.

⁵⁵ Pawson et al, (2004), op cit.

As questioned in 2002-03, the most common reasons given by landlords to explain the overall rise in evictions recently recorded were: changes in the policy and practice in the organisation (47% of respondents); and an underlying increase in breaches of tenancy (46%). Above average evictions rates were recorded for smaller associations while LSVT (Large Scale Voluntary Transfer) landlords had lower rates than their "traditional association" counterparts. There was no relationship between eviction rates and rent collection performance.⁵⁵

Audit Commission research found rent collection to vary by size of association, with smaller HA collection rates slightly worse than large. Geographically, small associations in London were collecting at well below average rates, while the south as a whole was well above average. Traditional associations (ie longer established landlords not set up to receive stock transfers) were found to have worse levels of collection than their stock transfer counterparts. In explaining this finding it was noted as potentially significant that most LSVT associations operate only in one HB area. Some evidence was found that rent collection

tends to be higher following stock transfer, as the maintenance of cash flow becomes a key issue. The Commission also suggested that some associations operating in lower demand areas might perceive a greater incentive to avoid eviction, which could leave properties unoccupied.⁵⁶

Studies analysing the underlying causes of rent arrears have identified the following risk factors: low-income earners, households with children, people experiencing changes in employment status and single adult households (especially those with children). Pressures within the sector have grown, as social housing has become more residualised and occupiers more marginalised.⁵⁷

However, two related issues are of particular note. First, HB payments to tenants of HAs and private landlords are made four weeks in arrears. This is regarded as a particular compounding issue, especially given the research finding that some associations took no account of this when making applications to court.⁵⁸ Secondly, there is little evidence to suggest that many tenants in

rent arrears are unwilling to pay and much more evidence, which suggests that tenants would pay if they could. It should also be borne in mind that rent arrears are often only one form of debt among others, with debtors often actively juggling their finances in quite complex ways. Understanding payment decisions and motivations is rarely a straightforward endeavour, which suggests that there should be scrutiny of the arguments made by some that possession proceedings are necessary to overcome the problem of those who “won’t pay”.⁵⁹

Overall, understanding the reasons for arrears is a key factor in understanding how to maintain a tenant-focused response to non-payment, as well as being the starting point for income maximisation and a holistic response to overall indebtedness. Although the factors leading to the accrual of arrears do not form the primary focus of this research, it is an important context for social landlords’ development of rent management practices including decisions by HAs on which Ground for possession on which to rely.

⁵⁶ Audit Commission (2003), op cit.

⁵⁷ Ford, J. and Seavers, J. (1998), op, cit.; Killeen, A. (2005), op cit.

⁵⁸ Pawson et al, (2004), op.cit.; Audit Commission (2003), op cit.

⁵⁹ Dominy, N. and Kempson, E. (2003), Can’t Pay or Won’t Pay? A review of creditor and debtor approaches to the non-payment of bills, <http://www.dca.gov.uk/research/2003/4-03es.htm>

2.3 Rent arrears management practice

Individual HAs are responsible for establishing and implementing their own policies and practices around rent arrears management. Existing research has identified a wide range of practice, but much effort of late focuses on prevention, possibly as a response to the Codes and guidance discussed above (para 1.3).

Studies have shown that, when arrears occur, most landlords have some kind of numerical threshold – either number of weeks' rent outstanding or the amount of arrears accrued – which triggers their initial response.⁶⁰ In this respect, arrears prevention and rent collection has been aided by the expansion and specialisation of HAs' IT systems,⁶¹ with better management information and automated monitoring. Earlier use of computerised management systems

tended to result in automated responses insensitive to specific circumstances, with standard letters being sent at standardised trigger points.⁶² By the early part of the current decade, however, a focus on prevention was beginning to reduce such practice, in favour of a more case-focussed approach.⁶³ It is not possible to calculate the impact of this focus on collection rates. However, it is worth considering the extent to which an association relies on automated procedures and whether this may influence the likelihood of possession action.

Initial responses to arrears vary, from dispatching standard letters or making telephone calls, to personal visits and offers of income maximisation advice, sometimes in-house or sometimes by referral to outside agencies.⁶⁴ Even by 2002-03, email and text messaging had begun to be used by some associations and some landlords had a policy of making a home visit at this stage.

Ford, J. and Seavers, J., *op cit*; Gray, B., Finch, H., Prescott-Clarke, T., Cameron, S., Gilroy, R., Kirby, K. and Mountford, J. (1994), *Rent Arrears in Local Authorities and Housing Associations in England*, London: HMSO;

Kempson, E., Bryson, A. and Rowlingon, K. (1994), *Hard Times: How poor families make ends meet*, London: Policy Studies Institute;

Croft, J. (2001), *Risk Crystallisation, Housing Debt and Social Exclusion*, Unpublished PhD thesis, University of Bristol

⁶⁰ Pawson et al (2004), *op cit*.

⁶¹ Ford, J. and Seavers, J. (1998), *op cit*.

⁶² Pawson et al (2004), *op. cit*; Gray et al (1994), *op cit*.

⁶³ Pawson et al (2004), *op cit*.

⁶⁴ Pawson et al (2004), *op cit*; Phelps, L. and Carter, M. (2008), *op cit*.

Enquiries by the Audit Commission found that HAs most commonly sought possession either as a precautionary measure when the outcomes of HB claims were unclear or as a form of inducement for tenants seen as persistent defaulters who would not otherwise pay.⁶⁵ Research elsewhere has also found resort to the courts for similar reasons, essentially using NSPs and, in some cases, subsequent court action prematurely as an arrears management device, sometimes as a means to encourage HB departments to expedite claims.⁶⁶ However, it was found in one study that, in the majority of cases when HB was an issue, the resulting action of the court was an adjournment.⁶⁷ The use of the courts is discussed further below.

There have been some organisational changes to the management of arrears in recent years. Research has shown that there has been a tendency for associations to move away from a system of housing management based around generic housing officers with general responsibilities (including rent collection and arrears management) for their patches. Instead,

the trend (particularly among larger associations) has been to move the responsibility for arrears management to specialist departments, sometimes staffed by officers with a background in credit control rather than housing management.⁶⁸ Practice was found to vary in relation to the point at which specialist staff becomes involved.

The thinking behind the move towards a more functionally specialised approach is that arrears control is an activity which may be de-prioritised by “generic” staff whose wide ranging housing management remit entails some discretion as to the tasks on which to focus. Acting to pre-empt and manage rent debt may be viewed as a relatively “humdrum” pursuit and one (in contrast to ordering repairs or addressing antisocial behaviour) unlikely to feature among top priorities for tenants. Admittedly, however, hard evidence on this is lacking. Pawson et al found some indications that generic housing officers might tend towards leniency over arrears, but data were too sparse to be able to establish

⁶⁵ Audit Commission (2003), op cit.

⁶⁶ Killeen, A. (2005), op cit; Pawson et al (2004), op cit; Phelps, L. and Carter, M. (2003), op cit.

⁶⁷ Hunter, C., Blandy, S., Cowan, D., Nixon, J., Hitchings, E., Pantazis, C. and Parr, S. (2005), *The Exercise of Judicial Discretion in Rent Arrears Cases*, DCA Research Series 6/05, London; DCA.

⁶⁸ Pawson et al, (2005), op cit;

this with any certainty.⁶⁹ However, it was noted that the effects of specialisation could not be isolated as the change in structure often occurred at the same time as other changes to working practice, which could equally contribute to improved rent collection performance, including a greater emphasis on prevention.⁷⁰ Phelps and Carter found that practices in any case varied between housing officers within the same association, casting further doubt on the generalisation of the claims.⁷¹ While the evidence here remains inconclusive, this is a relevant contextual consideration for the research; in particular, whether there is a particular type of rent management arrangement, which correlates to more or less possession-focussed approaches.

2.4 Use of the courts

This section looks at what we know generally about the use and practices of the courts, before moving on more specifically to discuss the use of Ground 8.

Although there are no official figures for the number of Notices of Seeking Possession (NSPs) which are not pursued, data collected from landlords in the Pawson et al study found that around 28% of notices entered by social landlords resulted in court action, with the remainder being resolved by housing officer activity between service of the NSP and the court date (some of which would also have expired). Some HAs had a policy of requiring a home visit after the service of the NSP – a practice seen as important in reducing the need for further legal action.⁷² Decisions to bring proceedings to court often involved higher-level staff in reviewing the case. Even when a suspended possession order

Pawson, H. (2005) Social Landlords Get Tough? Investigating Recent Trends in Possession Actions and Evictions by Social Landlords in England; in Wilcox, S. (ed) UK Housing Review 2005/06; Coventry and London: Chartered Institute of Housing and Council of Mortgage Lenders.

⁶⁹ Pawson et al, (2005), op cit.

⁷⁰ Pawson et al, (2005), op cit.

⁷¹ Phelps, L. and Carter, M. (2003), op cit.

⁷² Pawson et al (2004), op cit.

(SPO) was granted,⁷³ most landlords continued to attempt to avoid eviction, often through further personal contact.

Although the value of debt counselling or welfare benefits advice was generally accepted, 26% of HAs did not provide this either in-house or as a referral to an external service and even when referrals were made, sometimes this was merely by the provision of contact details.⁷⁴ Given that people in debt often lack confidence that there is anything they can do to resolve their situation⁷⁵, it is questionable whether the mere provision of contact details is sufficient to encourage tenants to use services. In-house advice services might also not be sufficiently impartial to benefit

tenants with multiple debt problems. Whatever strategies associations use, there is some evidence to suggest that insufficient advice and information is sought prior to or after possession hearings. For instance, court desk advisers in a study by NACAB⁷⁶ said that clients often did not understand the implications of Ground 8. However, there is some evidence of good practice⁷⁷ and any further enquiry is beyond the scope of this study.

Studies have found a number of barriers to justice, including the inaccessibility of advice services, fear of cost, language, cultural barriers and a general lack of understanding of the implications of proceedings.⁷⁸ Fear or mistrust of

⁷³ Note that at the time of the Pawson et al research, the suspended possession order was the form of order generally used. It was found to have limitations because it potentially left an occupier in the position of being a 'tolerated trespasser' when they failed, sometimes through no fault of their own, to maintain the requirements of the court order: *Harlow DC v Hall* [2006] EWCA Civ 156. However, the House of Lords has now held that the tolerated trespasser line of authority does not affect SPOs made under the Housing Act 1988, because the assured tenancy continues so long as the tenant is living in the property. Consequently, there is never an issue of the tenant becoming a tolerated trespasser: *Knowsley HT v White* [2009] 2 WLR 78. Most of the issues should now be resolved after implementation of the Housing and Regeneration Act 2008, and, in relation to post-possession order LSVTs by Statutory Instrument (for background, see CLG, *Tolerated Trespassers: Successor Landlord Cases – A Consultation*, London: CLG, 2008); Housing and Regeneration Act 2008 (Commencement No. 5) Order 2009. SI 2009/1261; *The Housing (Replacement of Terminated Tenancies) (Successor Landlords) (England) Order 2009*. SI 2009/1262..

⁷⁴ Pawson et al (2004), op cit.

⁷⁵ Genn, H. (1999), *Paths to Justice: What people do and think about going to law*, Oxford: Hart Publishing; Kempston et al (1994), op cit.

⁷⁶ Phelps, L. (2008), *Unfinished Business: Housing Associations' Compliance with the Rent Arrears Pre-Action Protocol and Use of Ground 8*, CAB Evidence Paper, London: NACAB.

⁷⁷ Pawson et al (2004), op cit.

⁷⁸ Blandy, S., Hunter, C., Lister, D., Naylor, L. and Nixon, J. (2002) *Housing Possession Cases in the County Court: Perceptions and Experiences of Black and Minority Ethnic Defendants*, ii/02, London: DCA; Nixon, J., Hunter, C., Smith, Y. and Wishart, B. (1996), *Housing Cases in County Courts*, Bristol: Policy Press; Croft, J. (2001), op cit; Genn, H. (1999), op cit.

authority can also lead to a lack of participation in the process, although it is well documented that, attendance at court can have a positive impact,⁷⁹ by providing the opportunity for tenants to explain their personal circumstances to the judge.⁸⁰

It is unclear whether possession proceedings disproportionately involve people of black and minority ethnic (BME) origin, as court procedures are not subject to ethnic monitoring. However, it is known that BME households are disproportionately reliant upon benefits.⁸¹ It is unlikely that this has been considered by those associations, which routinely initiate claims where arrears are caused by HB. If unresolved HB claims are not being taken into consideration when taking cases to or through the court, could this constitute an element of indirect discrimination within the practice of the law?

Research has shown there to be varying patterns of decisions both within and between courts. Hunter et al found differences in the decisions of different judges hearing similar cases, though with no clear pattern to explain this. District judges in that study appeared well informed about the HB issue⁸² and used adjournments on terms as a standard response in cases where HB issues were not resolved.⁸³ A Shelter study highlighted how a judge in one Ground 8 case agreed to adjourn pending an appeal on HB and, in another case, to allow the maximum period of six weeks delay on giving possession to allow time for benefits issues to be resolved.⁸⁴

Other case studies demonstrated the assistance given by Shelter's advisors in negotiating with landlords and advocating in court.⁸⁵

⁷⁹ Blandy, S. et al (2002) op cit; Nixon, J. et al (1996), op cit; Croft, J. (2001), op cit.

⁸⁰ Hunter, C. et al (2005), op cit.

⁸¹ Blandy et al (2002), op cit.

⁸² Hunter, C. et al (2005), op cit.

⁸³ Blandy, S. et al (2007), 'The impact of housing benefit on social landlords' possession actions in the county courts', *Journal of Social Security Law*, 14 (1), p. 29.

⁸⁴ Shelter (Undated), Housing and Regeneration Bill Briefing: Proposed new clause on possession for rent arrears involving Housing Benefit (Ground 8) – NC12, unpublished.

⁸⁵ Shelter (Undated), op cit.

The diversity of factors taken into consideration by district judges in deciding possession cases led Hunter et al to conclude that:

“[...] it is likely that even the introduction of some form of structured discretion which states that certain factors must be taken into account, eg level of arrears, personal circumstances of tenant, the impact on the landlord, will still lead to different outcomes for similar cases.”⁸⁶

The application of judicial discretion is also particularly relevant when considering the use, or not, of mandatory grounds. Cowan et al note that, although court cultures may exist (and shape the actions of applicants), individual judges within

the same court can be seen to display differing approaches, thus affecting how both claimant and defendant experience the courtroom as well as influencing outcomes.⁸⁷ On the other hand, busy judges dealing with (for them) mundane cases have been found to construct rules and principles around the trust and worthiness of applicants and defendants, which permeate their decision-making.⁸⁸ A further research question, therefore, is whether associations have a sense of how their district judges “operate” and whether they have developed a particular strategic response to those perceptions.

⁸⁶ Hunter, C. et al (2005), op cit.

⁸⁷ Cowan, D. et al (2006), ‘District judges and possession proceedings’, 33(4), *Journal of Law and Society*: 547-72.

⁸⁸ Cowan, D. and Hitchings, E. (2007), ‘“Pretty boring stuff”: District judges and housing possession proceedings’, 16(3), *Social and Legal Studies*: 363-82.

2.5 The use of Ground 8

Although there is evidence in the literature on the use of discretionary grounds for possession and on district judges' use of discretion in those cases, much less is known about the use of mandatory Ground 8. This section summarises existing relevant material, before highlighting what, in the context of the discussion so far, is worth further investigation.

Official data sources are silent on the use of specific grounds in England, but there are some figures available for Wales. For HAs, in 2006-2007:

- A total of 1,029 suspended and postponed possession orders were made, of which 12 used mandatory grounds⁸⁹
- A total of 346 outright possession orders were made, of which 91 used mandatory grounds⁹⁰

In total, therefore, orders on mandatory grounds accounted for some seven per cent of all orders made.

The Citizens Advice Bureau reported an increase in recent years in the number of HAs using Ground 8. Twenty of 26 associations participating in a recent study said they made some use of this power, although in most cases on an exceptional rather than routine basis. Two associations did, however, use Ground 8 routinely.⁹¹ Reasons given for using the ground included:

- where the association believed non payment to be intentional or through omission, including where HB claims had not been submitted
- repeated or long term arrears
- where contact had not been made with the tenant, or arrears not discussed
- when the tenancy was considered beyond salvage
- where tenants had a long history of failed arrangements or refused to make an arrangement
- where arrears were coupled with nuisance issues
- where all other means had been exhausted

⁸⁹ When the HA proceeded solely on a mandatory ground for possession an SPO or PPO should not be a possible outcome and, thus, we assume that in those 12 claims the HA also proceeded on the discretionary Grounds.

⁹⁰ Welsh Assembly Government (2007) Social Landlords Possessions and Evictions in Wales, 2006-07, Statistical Release SDR 161/2007, <http://wales.gov.uk/docrepos/40382/40382313/statistics/housing/housing-2007/sdr161-2007?lang=en>

⁹¹ Phelps, L. (2008), op cit.

Three associations stated that there were safeguards for officers to follow prior to resorting to Ground 8, which included complying with the PAP. Evidence from specific CAB cases indicated (albeit anecdotally) that, in spite of safeguards, the PAP was not followed in practice in some cases, however.⁹²

The Pawson et al study found one third of responding associations were making some use of Ground 8 in 2002-03, with this being true for half of London-based associations. Incidence of Ground 8 use was much higher among traditional associations (47%) than stock transfer landlords (17%). Case study evidence suggested that this difference might be associated with undertakings made upon transfer for associations not to use these grounds (at least in relation to transferring tenants). Although the frequency of use by associations was not investigated in that study, a National Housing Federation survey of 116 of the largest associations in 2000 (unpublished) is

reported to have found that Ground 8 was used in 16% of granted possession orders.⁹³

Analysis of court data by Hunter et al⁹⁴ focused on 237 possession actions involving assured tenancies, of which 62 cases used Ground 8 as well as the discretionary Grounds 10 and 11, and Ground 8 was used alone in nine cases. Of these 71 cases in which Ground 8 had been used one quarter did not meet the arrears level criteria for the use of Ground 8 (see Section 1.2). Regional differences were again noted. In London, 36% of relevant cases included the use of Ground 8, while in the West Country, only nine per cent did so. In actions involving Ground 8 alone, 78% resulted in an outright possession order, whereas when used in conjunction with Grounds 10 and 11, this figure was 11%, with 71% of cases being adjourned.⁹⁵ This suggested to the authors that the result in cases relying on Ground 8 is not a foregone conclusion.⁹⁶

⁹² Phelps, L. (2008), op cit.

⁹³ Shelter (Undated), op cit.

⁹⁴ Hunter, C. et al (2005) *The Exercise of Judicial Discretion in Rent Arrears Cases*, DCA Research Series 6/05, London; DCA.

⁹⁵ Hunter, C. (Unpublished), "Judges resisting the law: The avoidance of possession in mandatory cases", Paper on file with the authors.

⁹⁶ Hunter, C. et al (2005), op cit.; Hunter, C. (unpublished), op cit.

In the Hunter et al study,⁹⁷ which took place prior to the Matthews case discussed in Section 1.2, judges were asked whether associations used Ground 8 and, if so, what the judge's attitude was to such cases. All but one expressed some distaste for such practice, but a number stressed they had no choice but to follow the law (that is, that they had no discretion). Some judges, however, tried to look for ways to avoid outright possession, such as close scrutiny of the paperwork, asking the HA whether they would agree to an adjournment to allow time for the HB to be resolved, or putting Ground 8 cases to the end of the day (so that they would perhaps not be heard), thus discouraging landlords from relying on the ground. Some judges were using adjournments despite knowledge of the disputes around the legality of this.⁹⁸ The inconsistency of application of the legal requirements appears to be supported by more recent evidence from NACAB, albeit from a smaller scale study.⁹⁹

One further piece of research, more specifically focussed on examining whether possession was being used as a "last resort" measure, found that seven of 16 associations used Ground 8.¹⁰⁰ Only two associations had tenant and board approval for the policy (although this fieldwork pre-dated the Housing Corporation's policy of requiring such approval). Four of the seven Ground 8-using associations reported that this only occasionally resulted in an outright possession order. Of 15 Ground 8 cases observed in this study, only nine resulted in an order for possession, with four of those defendants not present in court. Paperwork was found to be routinely scrutinised by judges, with two cases dismissed, one on the ground that the notice had expired. These findings therefore offer some support to Hunter et al's observation that use of the ground does not always lead a court to grant possession to the social landlord.

⁹⁷ Hunter, C. et al (2005), op cit.

⁹⁸ Hunter, C. et al (2005), op cit.

⁹⁹ Phelps, L. (2008), op cit.

¹⁰⁰ Killeen, A (2005), op cit.

2.6 Conclusion and summary of potential research issues

Although there is little in the way of up to date systematic evidence gathered since the PAP was introduced, there is some older evidence to confirm that an appreciable proportion of associations have, in the recent past, made some use of Ground 8. Given the current guidance and policy thinking around rent arrears management, some commentators are concerned about the appropriateness of its use. An amendment introduced in the House of Lords during the passage of the Housing and Regeneration Act 2008, although ultimately withdrawn, sought to remove the power for Ground 8 to be used by HAs. The discussion included the following observations from Baroness Andrews:

“Given the range of stakeholder views on the subject, it is important that any changes to legislation – which would be profound – are made on the full understanding of current practice and the effects that those changes would have. [...] There is a more subtle point about current practice. I understand that some of the [HAs] that use Ground 8 do so precisely in order to resolve

their rent arrears problems. If those [HAs] had to rely on discretionary grounds alone, they might seek proceedings for possession much earlier to prevent the level of rent arrears from becoming unmanageable. [...] By contrast, the mandatory nature of Ground 8 gives the [HAs] greater confidence to hold back formal proceedings until as late as possible in order that they may spend time working with tenants and trying to resolve the problem.”¹⁰¹

Given the lack of recent evidence to demonstrate whether or not such a scenario is correct, it was appropriate and timely for further research to be conducted (as ministers themselves made clear in Parliament).

From the discussion above, the following points are highlighted as particularly relevant for this study:

(a) Rent arrears and the use of possession actions: incidence and trends

Of particular interest would be the relationship between the numbers of possession actions and HA size, type, geographical location, ethnicity of tenants, HB performance. Changes over time in arrears levels and use of the courts would enable

¹⁰¹ House of Lords Hansard, 23 June 2008, Column GC518.

some comment on the effect of the PAP, if this information were available, as would rent collection rates and their association (or not) with possession actions. NSP conversion rates (to OPOs) might be established from HA internal data.

(b) On regulation

- HA perceptions of how regulation and guidance shapes policy and practice
- Adherence to the PAP
- Awareness of staff of guidance and PAP
- Awareness of changes in the law on SPOs and PPOs
- Awareness of Human Rights Act issues

(c) Housing management

- Collection structures (generic/specialist) and change over time
- Rent collection methods
- Automation
- Local links with associated agencies (HB offices, advice agencies, support services for vulnerable general needs tenants) and how these relate to rent management practices

- Rent arrears policy, particularly around cut off points, officer discretion, embeddedness of good practice, whether Ground 8 is permitted, whether board approval and tenant consultation gained, on pursuing tenants with outstanding HB claims, conformity with PAP etc
- Staff knowledge of, and adherence to, policy and practice
- What is it about specific cases that lead to possession action and, more particularly, to use of Ground 8?

(d) Courts

- HA perceptions of local courts
- District judges' perceptions and experience of local HAs
- DJs' experience of Ground 8, including changes over time
- Application of the PAP by the court, including use of sanctions
- Availability and signposting of local advice services pre-court, at court and post-court

Chapter 3

National stakeholder perspectives

Chapter summary

Interviews were conducted with representatives from ten national organisations, including one major lender, as well as with senior lawyers with three national law firms. The interviews sought to identify changes in rent arrears management practices, to probe views on the factors underlying the reduction in associations' use of possession proceedings, and to gauge views for and against the retention of the mandatory Ground for possession, Ground 8.

As regards arrears management practices, two key trends were believed to have been under way. There had been a shift to specific housing management roles and associations had tended to adopt, at least in policy documents, an early intervention agenda. A key reason for the latter was said to be the impact of the PAP, which had summarised in its terms other key messages from policy documents.

As regards the use of possession proceedings, most participants noted the general decline. Key underlying factors were said to include the shifts

in arrears management practices as outlined above, but most particularly improvements in HB administration, as well as the cost-benefit of taking enforcement action. The NHF believed that the decline was a “success story” for the sector.

As regards the case for and against the retention of Ground 8 powers for HAs, there was an unevenness of response (as had been anticipated). There were arguments for, and counter-arguments against, its use. A broad summary of the underlying reasons for these positions lies in the contrasting rationales between, on the one hand, the “social” element of the role of an association, and, on the other, their business ethos most specifically concerning landlords' exposure to risk. Although some claimed that retention of Ground 8 was a priority for lenders, it was said by contrast that lender behaviour could not be predicted and there was a suggestion that, in determining loans and rates, lenders look at quantitative evidence as opposed to the actual process used. More specifically:

- Ground 8 provided certainty to an association, as opposed to the alternatives. The contrasting view was that there was a need for a court to be able to take account of all factors in an individual claim; compliance with the PAP should provide certainty (provided there was compliance with its terms)
- Certainty had consequential impacts on when an association might bring possession proceedings. The countervailing view was that the evidence 'on the ground' was that Ground 8 was not necessarily being used at the end of a process
- Ground 8 had deterrent effects on tenant behaviour. The counter view was that there may be deterrent effects, but these were likely to be lost on the average tenant. A zero-tolerance approach to rent arrears was inappropriate
- Ground 8 is used only in a small proportion of claims. The contrasting view was that on the ground experience suggested that it was being used in a significant minority of claims and, if it was barely used, then there was no need to retain it

3.1 Rent arrears management practices

Although some key stakeholders were not in a position to address this issue – as their focus was elsewhere (for example on legal proceedings) – others were able to note a number of key trends impacting on the use of possession proceedings more generally. These key trends were (a) the shift from generic to specific housing management roles; and (b) the degree to which HAs had adopted the “early intervention” message contained in key regulatory and other documents, including the provision of money and other advice.

Although the nature of housing management roles was described by one participant as “cyclical”, between generic and specific roles, it was also said that the move to specific housing management roles was usually prefaced by a level of need for service improvement. For whatever reason, it was generally agreed by the key stakeholders who were able to answer this question (n=4) that there had been a general trend in favour of a specific rent arrears management role. This was not necessarily regarded as contributing to job satisfaction, but was said to contribute to income maximisation and

efficiency. This was because some staff would have a more personal relationship with service users, and could therefore work with them to make HB applications, where relevant (and stop tenants “abdicating their responsibility” for such applications), and could be more proactive in chasing arrears.

The literature review has identified a number of regulatory and other interventions, which have suggested that early intervention by a landlord can facilitate income maximisation. The point was framed that the HA role is not just about managing properties but also about sustaining the tenancies. One participant suggested that early intervention should occur prior to the tenancy being signed. At the point of tenancy sign-up the future occupier would be met with a plethora of leaflets and other advice, without necessarily a synthesis of that advice.

A number of key publications and interventions in the 2000s were seen as having prompted HAs to re-think their rent arrears management strategies. These are both specific and general, but the message was that evictions should be progressed only where there are no reasonable alternatives.

Of particular importance, according to most of our research participants, including the lawyers, was the impact of the PAP and its emphasis on early intervention and debt management advice. It was suggested that this document had recently triggered many associations to review their practices so as to avoid possible court-based challenges. One lawyer had been involved with a lot of training for her HA clients when the PAP was issued. The document was seen to be in tune with a number of publications and other interventions with a similar ethos: the Audit Commission's involvement in housing inspections and their KLOE 4; the work of organisations such as the Joseph Rowntree Foundation, Shelter and the Citizens Advice Bureau, and the possibility of outsourcing advice provision to the latter organisations. For the TSA participant, who was on secondment, there was a key moment in 2004-05 when the cost of an eviction was identified and this concentrated minds on its value to the association.

There was a difference of opinion as to the impact of such documents and more general concerns about actual front-line practice. It was suggested, for example, that implementation was not always perfect with insufficient attention given to implementation, as opposed to policy development. On the other hand, it was argued that policies could be embedded in practice so that officers do not necessarily realise that they are implementing the policy, but will avoid court-based challenges to practice as a result. It was also suggested that some associations, primarily smaller ones, simply assume that their procedures produce compliance with the PAP.

One possible “stimulus factor” which was considered of little significance was the homelessness prevention agenda. A number of reasons were cited for this – it tends to be local authority driven; evictions have a nil net impact on homelessness because they free up a unit of accommodation usually taken by a homeless household but also create a homeless household.

3.2 The use of possession actions

The general decline in numbers of possession actions and evictions was noted by most participants who were aware of these statistics. This was said to be a consequence of a number of developments in addition to those identified above. Of most significance was the general improvement in the administration of HB and the better working relationships believed to have developed between HB teams and HAs. One participant noted that it has become unusual for an association to cite HB administration as a problematic issue in the course of an Audit Commission inspection. In the past, by contrast, commencing proceedings for possession was said to be one of the only effective methods of pressuring HB authorities to prioritise casework in relation to a specific claim.

For the NHF participant, the decline in possession actions and evictions gave rise to the “headline response on behalf of HAs that this is a success story”.

The lender participant said that one of the issues was essentially a cost-benefit analysis of bringing possession proceedings. The primary question,

when using discretionary grounds for possession, was whether it was worth bringing possession proceedings where the likely outcome was that the occupier would be required to pay a minimal amount towards the arrears. This was an issue, which would be discussed with a new LSVT management team. Other participants also noted that, in addition to the costs of possession actions, it was always better for an association to sustain a tenancy because they would be more likely to recover any arrears where the occupier remained in the accommodation.

The lawyer interviewees all commented on the impact of the changes outlined above, in particular the PAP, as well as on the use of Ground 8 on the court process and outcomes (see below). In relation to the PAP, one suggested that it should have led to more outright possession orders, because judges should, where it is complied with, recognise that associations have taken all the necessary steps to give the tenant a chance to

pay. In practice, however, this was not the case, since the judges' still continued their practices (and variations in those practices) much as before. Another noted that in one court association representatives were asked to produce a checklist to demonstrate compliance with the PAP, while other courts required no such explicit demonstration of compliance. None of these interviewees had direct experience of judges imposing penalties on associations for failure to comply with the PAP, although two understood that some judges would adjourn in the event of non-compliance.

3.3 The use of Ground 8

Whereas answers to the previous issues generated relatively even responses, participants' opinions were generally sharply divided on the appropriateness of the use and retention of Ground 8 by HAs. Some presented arguments for its use and retention; others presented arguments in favour of its repeal for the HA sector. It may well be that this division was made sharper by the existence of the national working group, set up to consider its use in the context of the Parliamentary debates concerning the amendments to the Housing and Regeneration Bill. Seven stakeholder participants represented organisations, which are members of that group.

It became clear that each argument has a counter-argument, although there is also much conjecture (particularly about lenders' positions), which is used to support individual participants' contentions. It should also be noted that the interviews were conducted at a time of considerable uncertainty in the banking sector. Each side has its own apocryphal stories, which are then traded. In what follows, six arguments in favour of the withdrawal of Ground 8 are identified and presented, followed by the counter-arguments.

- a. Use of Ground 8 is inimical to the nature of social housing, particularly in its wider roles (eg concerning unemployment). It is important that a neutral arbiter is involved in decision-making over evictions, rather than being a passive observer. The use of this power can be arbitrary, both in terms of drawing an arbitrary line at which it can be used, and in terms of decision-making within an organisation where different officers may make different use of it. Ground 8 actions allow no scope for negotiations, even where there might be valid reasons for non-payment of rent. Shelter reported involvement in cases where Ground 8 had been invoked despite HB complications and where the association had not engaged with the authority. – Ground 8 provides certainty to housing associations because of its mandatory nature. If HAs pursue a possession claim on this ground, it should follow that a possession order will be made. It offers a “better, cleaner, more effective solution”.
- b. The withdrawal of Ground 8 would not, in itself, present a cause for concern among lenders because they focus on arrears performance and are not specifically concerned about management procedures. Lenders look to regulatory assessments, including star ratings

and “traffic light” designations. It is deviation from benchmark arrears figures, which would affect whether a lender would be prepared to lend to the association and the pricing of any loan. No lender specifically requires associations to use Ground 8, and its use may be prohibited in standard LSVT agreements where “boiler-plate” documents are used. Associations may “hide behind” the supposed effect on lenders. Lender attitudes towards Ground 8 reform are difficult to predict; their key requirement will be that associations have the full range of measures in place to manage arrears.

– Disentitling the use of Ground 8 by HAs may have an impact on the lending environment at a time when any impact on risk would be of concern to lenders. Ground 8 provides comfort to lenders because it offers a relatively straightforward path to possession. Reform, which makes it difficult to remove non-payers, would be of concern to lenders as it may undermine the financial viability of HAs. As a result, it offers a useful tool for HAs.

- c. The rent arrears Pre-action Protocol narrows the discretion of District Judges where the association has complied with its terms, and this should place a further burden on the tenant to say why an order should not be made in favour

of the association. In these circumstances the justification for Ground 8 as a means of countering judicial indecision has been weakened.

– The discretionary grounds for possession for rent arrears lead to multiple (and costly) suspensions of warrants for possession. The most regularly cited example of this involved a possession claim where there had been 17 suspensions of warrant. Questions were also raised about the sustainability of tenancies where a postponed possession order had been made.

- d. When using Ground 8, associations are “relentlessly going for an order” and are inflexible.
 - As a corollary of the certainty provided by Ground 8, housing associations are able to bring possession proceedings at a later stage allowing for other interventions in the meantime, such as money advice. In clear-cut cases, where a tenancy is unsustainable, it is a useful tool.
- e. Occupiers do not necessarily understand the mandatory effect of Ground 8 and this increases the chances of their losing their home as a result of the claim. A defendant might be better informed having sought advice but many occupiers subject to possession claims do not

do so early enough, or at all. Claims on the basis of Ground 8 may also result in the occupier abandoning the property.

– Ground 8 has a deterrent effect because of its mandatory nature. Abolishing its use could send a dangerous signal in a climate where housing association finances are squeezed. Many cases where its use is threatened result in early resolution because the occupier pays the arrears. It particularly affects the “won’t pay” cadre as a result.

- f.** If, as is sometimes asserted by associations and their representatives, Ground 8 is not used much in practice, then there is no reason to retain it.
 - Given that Ground 8 is used in only a small proportion of possession cases, the focus on the power is disproportionate. One of the lawyers based outside London saw Ground 8 as a non-issue, since hardly any associations used it.

The NHF participant predicted that over the next five years, possessions as a total number would reduce but that the use of Ground 8, either as a proportion of that total number, or more generally, would increase. The following rhetorical question was posed by this participant in relation to this

scenario: “if, in a few years time, we have a position that repossession rates have fallen, but the use of Ground 8 has increased, would that be a success?”

Two of the lawyer interviewees pointed to the reluctance of the courts to evict, with multiple applications to suspend seen as pushing associations towards considering Ground 8 (as indicated above). On the other hand, one of the lawyers felt that there was now a move away from the use of Ground 8. It was suggested that this may be due to the way that judges deal with it and representatives defeat it. The experience of all three lawyers reflected the finding from the earlier DCA study that some judges still look on the use of Ground 8 with distaste (see Chapter 2). A range of tactics used by district judges was mentioned usually involving finding a basis for adjourning: where there are HB issues; on case management grounds because the case has been put to the end of the list and there is insufficient time; for consideration of public law matters following the decision in *Weaver*.¹⁰² One indicated that a case where a judge had adjourned a case because he was not satisfied that Ground 8 was being used as a “last resort” was going on appeal.

¹⁰² R. (*Weaver*) v. London & Quadrant Housing Trust [2008] EWHC 1377 (Admin).

3.4 Conclusions

The nature and environment of rent arrears management is changing. A number of key drivers of this change were raised, but the most significant appears to be the impact of the PAP on rent arrears and good practice interventions. Although the sector is heterogeneous and practices will consequently be different across the sector, many HAs have moved away from generic housing management at least in the area of rent arrears. There has been an increasing focus on advice to occupiers at an early stage (at the commencement of a tenancy and/or when arrears arise).

These changes are likely to have made an impact on the use of court proceedings, leading to their decline. Other factors include better HB performance. It is unclear whether the decline in the use of possession proceedings is general or specific.

The issue of the use of Ground 8 leads to sharp divisions between organisations. Each argument has a counter-argument. Although some arguments are at the philosophical end – the nature of social housing, due process - some of the arguments are based on opinion as opposed to actual evidence. There is a suggestion that on-the-ground practice and views about the use of Ground 8 is likely to differ between HAs.

Chapter 4

Rent collection and arrears management: national and regional trends

Chapter summary

HAs' arrears management performance has remained fairly steady over recent years, with the mean rate of rent arrears falling very slightly from 5.6% of collectable rent to 5.3% in the three years to 2007-08. At least since 2005-06, however, HB service performance appears to have improved significantly. The national average number of days to process new HB claims was cut from 33 days to 25 days in the two years to 2007-08.

HAs evicted some 9,000 tenants from general needs housing in 2008-09 – equivalent to around 0.51% of the dwelling stock. While the equivalent rate for supported housing will have been much higher this largely reflects the different forms of tenancy prevalent in the two sub-sectors, with the less secure status of supported housing tenants making it much easier for tenancies to be repossessed.

The vast majority of evictions from general needs housing continue to result from actions triggered by rent arrears. Statistical evidence suggests that rates of rent arrears eviction in the HA sector fell by around a quarter in the three years to 2007-08, though a slight increase was recorded in 2008-09.

The downward trend up until 2007-08 was also reflected in local authority eviction rates. 2007-08 HA eviction rates were highest in the Midlands and lowest in London.

Rent arrears eviction rates have tended to run significantly higher for traditional HAs (equivalent to 0.52% of dwelling stock in 2008-09) than for stock transfer landlords (0.40%). Having peaked in 2004-05 typical eviction rates have fallen in recent years for associations of all types and sizes. However, this has been rather less marked among the largest landlords. At the same time, while they account for only a small proportion of the overall dwelling stock, the highest rates of eviction are probably found among smaller associations (those with 250-999 dwellings in ownership).

4.1 Chapter scope

This chapter sets out an analysis of HA activity in managing rent arrears over the past few years. The main sources are the former Housing Corporation's RSR and CORE datasets. First, we trace recent trends in associations' arrears management performance and in the performance of local authority HB teams. However, the main focus of the analysis is on HA possession actions in the four years to 2007-08.

4.2 Rent collection and arrears management performance

As shown in Table 4.1, HAs' rent arrears management performance has remained fairly steady over the past few years. However, there is considerable variation across the country. In 2007-08, while the average current tenant arrears

(general needs) figure for London associations was 6.7%, the comparable figure, for associations operating in the south west, was only 3.6%. In terms of association type, transfer organisations typically record lower arrears rates; the average for this class of association in 2007-08 was 4.5% as compared with 6.0% for "traditional" HAs.

Table 4.1 – Trend in current tenant arrears, general needs housing, 2004-05 to 2007-08

	2004-05 %	2005-06 %	2006-07 %	2007-08 %
Mean	5.6	5.4	5.4	5.3
Top quartile	3.5	3.5	3.3	3.4
Bottom quartile	7.1	7.1	6.5	6.6

Source: Housing Corporation performance indicators

Note: Figures show year-end rent arrears as % of rent collectable

4.3 Housing Benefit service performance

The effectiveness of HB administration is an important factor influencing rent arrears management on the part of social landlords. Over the past few years

the Benefits Service appears to have recorded a sustained trend of performance improvement in terms of the time taken to process new claims (see Table 4.2). An improving trend has also been established since 2005-06 in relation to the time taken to process changes in claimant circumstances.

Table 4.2 – Housing Benefit performance statistics, 2003-04 to 2007-08

Year	Average days to process new claims	Average days to process changes in claimant circumstances	Percentage of new claims processed within 14 days
2003-04	42	11	78
2004-05	36	10	84
2005-06	33	14	85
2006-07	29	11	89
2007-08	25	9	92

Source: DWP Housing Benefit performance statistics – http://www.dwp.gov.uk/asd/asd1/hb_ctb/performance.asp

4.4 Housing association possession actions

Background

Being housed by a social landlord involves the individual signing a tenancy agreement, which commits them to honouring various specified covenants. As well as being required to make rent payments, tenants are required to desist from certain behaviour posing a nuisance to neighbours or others in the locality. Breach of tenancy agreement terms leaves a tenant at risk of legal action by the landlord, ultimately leading to eviction from the dwelling.

Local authorities and HAs are non-profit making bodies with social and welfare obligations, which influence their response to breaches of tenancy. As social landlords, possession claims should generally be seen as a last resort. They must, at the same time, consider the interests of tenants collectively and the possibility that – where all other possible measures have failed to resolve the problem – eviction is the only responsible course.

Housing association evictions in 2007–08

The late 1990s saw a steep rise in social landlord evictions, with claims issued in court by local authorities and HAs in England rising from 65,000 to 151,000 in the seven years to 2001 – an increase of 130%.¹⁰³ Official records show that, in 2007-08, some 11,375 tenants were evicted by HAs in England (see Table 4.3). Allowing for the fact that these figures exclude evictions by small associations (those owning less than 1,000 dwellings), it is estimated that HA evictions will have totalled around 12,000 during the year.

Estimated total evictions from general needs housing in 2008-09 equated to around 0.51% of general needs dwelling stock (excluding non-social rented homes). The comparable figure for supported and older peoples housing was considerably higher – at 0.77%. In practice, however, the actual numbers of evictions from older people's housing were probably negligible. If it were to be assumed that all evictions recorded as involving older peoples housing and supported housing were, in fact, possessions of supported

¹⁰³ Pawson, H., Flint, J., Scott, S., Atkinson, R., Bannister, J., McKenzie, C. & Mills, C. (2004) Possession Actions and Evictions by Social Landlords; London: ODPM <http://www.communities.gov.uk/publications/housing/203568>

Table 4.3 – Housing association evictions 2004–05 to 2008-09 – raw figures

Year*	General needs housing			Supported housing**			Evictions from demoted tenancies
	Rent arrears	ASB***	Other	Rent arrears	ASB***	Other	
2004-05	9,114	615	344	1,384	1,131	782	83
2005-06	8,536	681	434	1,093	1,331	766	82
2006-07	7,790	769	294	871	926	734	106
2007-08	7,646	758	249	745	1,323	633	22
2008-09	7,703	740	319	759	1,030	687	24

Source: Housing Corporation/TSA RSR

*note that figures for years subsequent to 2005-06 do not include associations with less than 1,000 properties

including housing for older people. *including cases involving ASB and rent arrears

dwellings, the 2007-08 eviction rate for the supported sector would have been equivalent to 2.5% of supported housing stock – five times the general needs rate.

In interpreting these figures it needs to be taken into account that general needs housing and supported housing cater for different client groups. Some SH schemes, by their very nature, take on tenants with the kind of problems (eg history of drug or alcohol abuse) likely to increase the risk of their breaching occupancy conditions. General needs dwellings and supported housing also differ

in the tenancy conditions typically applicable. The former are generally let by HAs on assured tenancies. These confer substantial security – notwithstanding the possible use of Ground 8 where there are serious rent arrears. Only a small proportion of general needs housing is occupied on less secure “starter tenancies” or “demoted tenancies”. In supported housing, by contrast, dwellings are mainly occupied on the basis of licences or assured short hold tenancies (ASTs). Assured tenancies are rare in supported housing (other than, perhaps, for older people). Occupiers on licences or ASTs can be evicted relatively

easily by court order, and there is the accelerated procedure for ASTs (although use of that procedure precludes a claim for arrears of rent). This means that although rent arrears or anti-social behaviour, may have triggered a landlord's decision to end a supported tenancy there won't have been a formal adjudication of that as such.

As shown in Table 4.3, the 2008-09 profiles of evictions in general needs and supported housing are highly contrasting. In the former, those resulting from rent arrears formed the vast majority (88%), whereas in the latter, the largest category of possessions was that triggered by anti-social behaviour. To a large extent, the higher rate of eviction from supported housing reflects the much greater prevalence of "ASB evictions" in this sub-sector. Again, the critical factor underlying this apparent contrast is that whereas securing possession in the case of assured tenancies requires a great deal of evidence this is not true in relation to licences or ASTs (because in the latter, eviction just follows from the relevant notice being served).

Recent trends in rent arrears repossessions

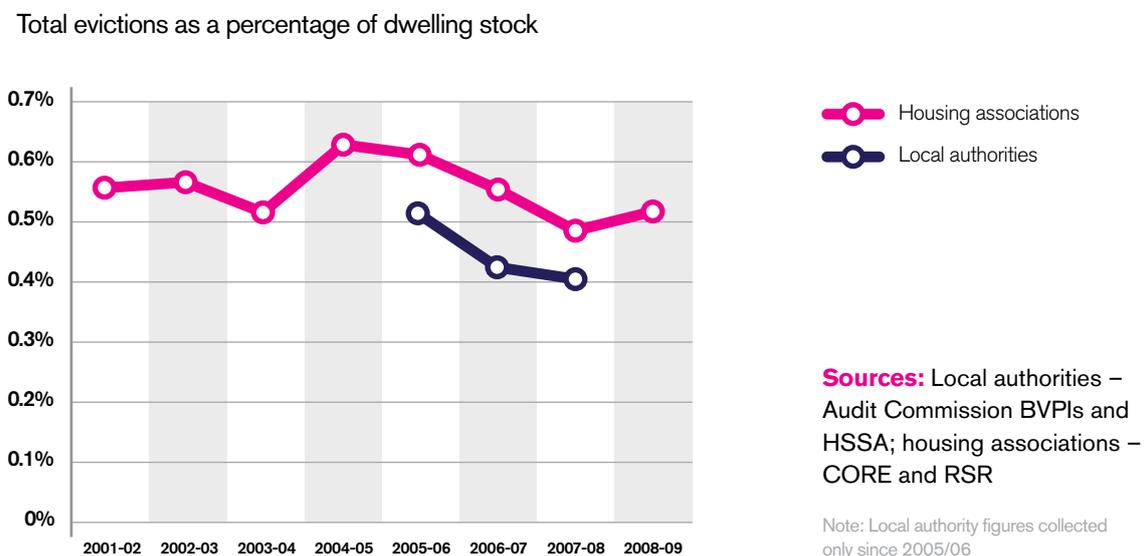
While the figures set out in Table 4.3 represent the most detailed statistics available, they are not ideal for tracking changing rates of eviction over the past few years. Two factors are important here. First, the post-2005-06 figures shown here were affected by a change in Housing Corporation data collection practices whereby associations with less than 1,000 dwellings were no longer required to submit evictions statistics in annual RSR returns. In gauging the likely impact of this change it should be noted that associations with less than 1,000 general needs dwellings evicted some 600 general needs tenants for rent arrears in 2005-06. On this basis, the underlying numerical reduction in arrears evictions recorded for 2006-07 to 2008-09 was probably only marginal.

The second issue needing to be taken into account in interpreting the pattern of figures set out in Table 4.3 is the overall expansion of the sector during this period. Ongoing stock transfers from local authorities, as well as new HA development added around 140,000 homes to the sector in the five years to 2008-09. Changes in general needs eviction rates may be more reliably gauged via CORE lettings data, making reference to information collected on the reason that a property fell vacant prior to being re-let.

As shown in Figure 4.1, CORE data illustrate that the gross eviction rate (ie including evictions for all reasons) fell steadily in the three years to 2007-08 – see Figure 4.1. However, although the 2008-09 rate remains 18% below the 2004-05 peak, the latest figure marks a reversal in the previous trend of decline. While the figures for local authorities are somewhat lower, the pattern over the two years to 2007-08 was similar.

Given that the vast majority of evictions from general needs housing relate to rent arrears, this means we can safely conclude that arrears-related possession actions have been in decline over this period. In the absence of more detailed figures, it must be assumed that such actions have fallen by around a quarter – in line with the overall downward trend (see above). Notably, this has been achieved over a period when associations’ arrears management performance has been broadly stable (see Table 4.1)

Figure 4.1 – Eviction rates – all repossessions of general needs housing, 2001-02 to 2008-09



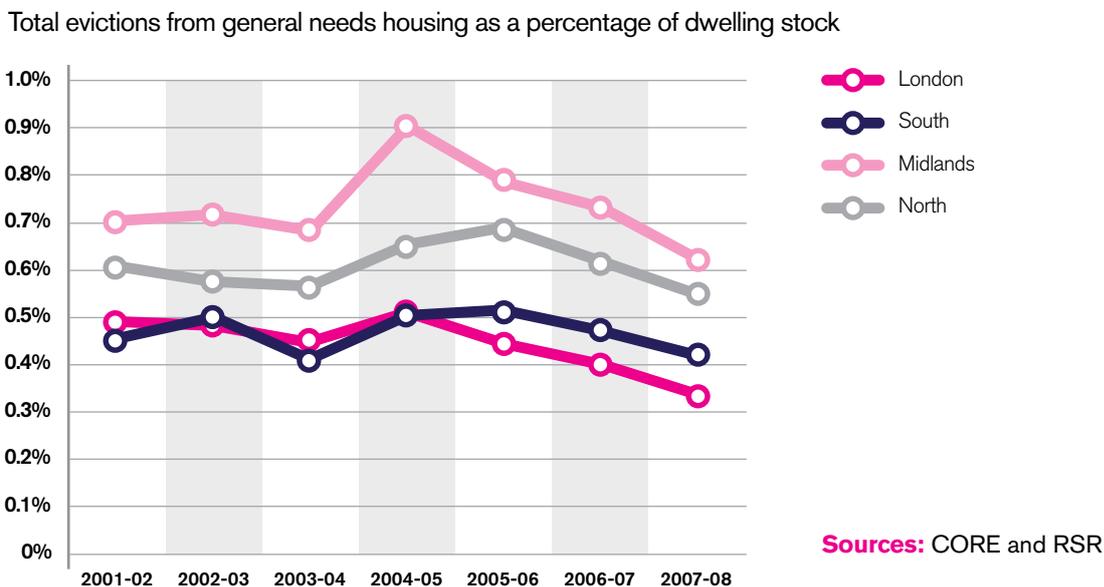
Variations in rent arrears possession rates

Taking account of the amount of stock involved, Figure 4.2 shows that 2007-08 evictions in the Midlands were not far short of double those recorded in London. Exactly what underlies the contrasting eviction rates shown in Figure 4.2 is, however, unknown.

Rent arrears eviction rates also vary to some extent,

according to association size and type. As shown in Table 4.4(a), 2008-09 figures show similar rates for each size category. However, over the past five years there appears to have been an inverse relationship between organisation size and change in eviction rates – with larger reductions recorded by smaller organisations. It should, however, be noted that pre-2006 data suggests that the highest eviction rates may be recorded by the smallest associations. Figures from 2005-06 – the last year in which they

Figure 4.2 - Housing association eviction rates - general needs housing; 2001-02 to 2007-08



were collected for landlords with less than 1,000 dwellings in ownership – showed the (general needs) rent arrears eviction rate for associations with 250-999 dwellings in ownership equated to 0.85% of general needs stock (in comparison with a sector-wide figure of 0.55%).

Table 4.4(b) shows that stock transfer associations are substantially less likely to evict tenants than their traditional counterparts although the gap slightly narrowed in the five years to 2008-09.

Table 4.4 – Housing association rent arrears eviction rates (general needs housing) 2004–05 to 2008–09

(a) Breakdown according to association size

Size class	2004-05	2005-06	2006-07	2007-08	2008-09	% change
Rent arrears evictions as a % of GN dwelling stock						
>10,000 dwellings	0.53	0.56	0.53	0.49	0.44	-17
5,000-9,999 dwellings	0.64	0.53	0.49	0.46	0.49	-23
1,000-4,999 dwellings	0.62	0.54	0.48	0.45	0.43	-31

(b) Breakdown according to association type

Status	2004-05	2005-06	2006-07	2007-08	2008-09	% change
Rent arrears evictions as a % of GN dwelling stock						
Transfer	0.50	0.43	0.41	0.39	0.40	-20
Non-transfer	0.70	0.67	0.61	0.50	0.52	-26

Source: Housing Corporation/TSA RSR

Chapter 5

Arrears management in 2009: national overview

Chapter summary

Undertaken from January-February 2009, the online survey covered all HAs owning more than 1,000 dwellings on 1 April 2008. Two hundred and twenty-six returns were received, these representing a response rate of 70%.

Most responding HAs (58%) described their organisational approach to rent arrears management as “mainly specialist” – ie a function primarily carried out by staff specialising in related activities. By 2009, only 27% of associations managed arrears within a “mainly generic” model – down from 41% in 2002. To an extent, the separation of rent collection from other estate management activities harks back to a model of housing management as operated by many local authorities before the trend towards “comprehensive housing services” in the 1970s. Specialist approaches are particularly dominant among the largest associations and the growing popularity of this model could, in part, reflect the growing average size of associations (up by 50% between 2002 and 2007).

Almost half of associations (47%) now employ in-house welfare benefits advice staff. At the same time, the vast majority of associations help their

tenants access such advice via referrals to third party organisations. More than half of associations (56%) access debt counselling services via formal referral arrangements to specialist external agencies. A similar number report debt counselling being provided by in-house staff, and two thirds routinely train their rent arrears staff in such matters. However, in only half of associations is it standard practice to train arrears management staff on DWP deductions or mental health awareness – both of which are landlord obligations under the PAP.

Some associations remain frustrated by sub-optimal performance on the part of local authority HB teams. One key indicator of such frustration is the fact that more than a quarter of associations (27%) sometimes initiate legal action mainly to pressure authorities to prioritise settling HB claims. More broadly, the vast majority of associations report that there are circumstances in which they would instigate legal action on arrears in the knowledge that a HB claim was outstanding. Most saw this as legitimate in cases where a delay in resolving a claim resulted from the tenant's failure to provide information as requested. A number of other scenarios were also highlighted as making such action legitimate.

Most associations report initiating some form of response to a single missed rent payment and the vast majority have designated a specific arrears threshold (most commonly four weeks rent), which triggers consideration of legal action. In some cases such action was initiated “automatically” at this point, irrespective of the individual facts of the case. Again, the vast majority of associations report that staff are “required” to make personal contact with a tenant before a NSP will be served. The average estimated proportion of NSPs, which are, in fact, preceded by such contact was 70%. In one in ten cases, nonetheless, it was believed that this applied in no more than 30% of notices served.

Almost a quarter of associations reported recently having sought possession under Ground 8 of the Housing Act 1988. Substantiating suggestions from earlier research, use of Ground 8 was much less common among transfer HAs and much more common in London than elsewhere. The level of arrears was the factor most commonly cited by Ground 8 users as a consideration in whether or not to take action on this basis. Other factors cited by more than half of this cohort of associations included where the tenant fails to respond to attempts at contact, where the tenant is believed to be no longer living at the property and the tenant’s “other behaviour”.

Estimates based on the incomplete statistics provided by associations responding in the survey suggest that Ground 8 actions may have accounted for some 350 evictions in 2007-08 – just under five per cent of the national total. However, among the limited group of associations directly involved, Ground 8 actions typically accounted for 20% of evictions in that year (in a few cases, the figure being much higher). There are also indications that Ground 8 use may have been increasing in recent years.

While three quarters of associations reported having modified their rent arrears management practices in response to the PAP, this leaves a significant proportion of landlords (disproportionately the smaller landlords) whose procedures had remained unchanged. The most common themes were the (a) adoption of more structured, consistent practice, (b) a shift towards a more pro-active, preventative approach, and (c) increased awareness of vulnerability issues. Looking to the future, many respondents anticipated further significant changes in the management of arrears during 2009. On this basis, it can be expected that we will see a continuation in recent trends towards greater functional specialisation and increased emphasis on personal contact with debtors.

5.1 Survey coverage and analytical framework

Statistical results are broken down in three main ways in this report. First, we differentiate stock transfer HAs from “traditional” HAs. Although a few “partial transfers” have involved property handed from local authorities to existing HAs, the vast majority of both partial and whole stock transfers have involved new landlords established specially for the purpose. Virtually all of the 168 transfer associations created in England in the 20 years to 2007 remained in existence at that date.¹⁰⁴

Most transfer landlords remain distinct to some extent from traditional associations in terms of the geographical concentration of their housing stock. Another factor highly relevant to the current context is our understanding that at least some “transfer promises” have included undertakings that the transfer landlord will abstain from using its Ground

8 claim for possession (although such promises might be limited to occupiers who were tenants at the time of transfer ballot).

Secondly, results are broken down by size of organisation. Here, we differentiate between very large landlords (those with more than 10,000 homes in ownership), large landlords (those with 5-10,000 homes) and medium sized associations (those with 1-5,000 homes). It would be expected that some aspects of rent arrears management practice might vary by landlord size – eg in terms of the scope to support specialist staff. Thirdly, results are broken down by region. The classification here relates to the former Housing Corporation regional office regional office responsible for regulation of the association concerned, with England broken down into five “regulation regions” – London, south east, south west, central and north.

¹⁰⁴ Pawson, H., Davidson, E., Smith, R. & Edwards, R. (2009) *The Impacts of Housing Stock Transfer in Urban Britain*; Coventry: Chartered Institute of Housing (for the Joseph Rowntree Foundation) <http://www.jrf.org.uk/publications/impacts-housing-stock-transfers-urban-britain>

5.2 Organisation of rent arrears management service

In exploring this issue, the survey differentiated between “generic” and “specialist” approaches. The former refers to an arrears management model where front-line housing officers take responsibility for this activity alongside other ‘estate management’ duties in relation to a defined “patch” or body of tenancies. As stated by one survey respondent, an argument for this model is that it “provides one point of contact for residents and arrears are often closely related to other problems”. A “specialist” approach is where designated staff are tasked with arrears management duties across a much larger number of tenancies than included in the traditional housing management “patch”.

In describing the organisational structure of their rent arrears management function, most associations (58%) described this as “mainly specialist”. As shown in Table 5.1, this was especially true for transfer HAs. Comparing these results with survey data collected in 2002 suggests a distinct trend towards functional specialisation in this respect. At that time, the split between “mainly generic” and “mainly specialist” was very evenly balanced (41% opting for the former, with 39% selecting the latter).¹⁰⁵ By 2009, specialist approaches outweighed generic models by two to one (see Table 5.1). However, the general trend here is part of a longer-established pattern, which was already evident in the late 1990s.¹⁰⁶

¹⁰⁵ Pawson, H., Flint, J., Scott, S., Atkinson, R., Bannister, J., McKenzie, C. & Mills, C. (2004) Possession Actions and Evictions by Social Landlords; London: ODPM <http://www.communities.gov.uk/publications/housing/203568>

¹⁰⁶ Ford, J. & Seavers, J. (1998) Housing Associations and Rent Arrears: Attitudes, beliefs and behaviours, Coventry: Chartered Institute of Housing

Table 5.1 – Primary structure of arrears management service – breakdown by HA status

		Transfer	Non-transfer	All HAs
Generic	No.	27	34	61
	%	22.1%	33.3%	27.2%
Specialist	No.	76	55	131
	%	62.3%	53.9%	58.5%
Combination	No.	18	12	30
	%	14.8%	11.8%	13.4%
Other	No.	1	1	2
	%	0.8%	1.0%	0.9%
Total	No.	122	102	224
	%	100.0%	100.0%	100.0%

Source: Online survey

Some 27% of associations operated a “mainly generic” approach to arrears management (see Table 5.1). This usually included housing officer presentation of cases in court. However, almost a quarter of respondents who described their organisation’s model as “mainly generic” reported that cases were presented in court by a specialist “court officer”, a senior manager or a housing officer alongside legal representatives. One association reporting a “mainly generic” model noted that cases were presented in court by arrears management

staff members “except in Birmingham courts where they won’t allow right of representation to us”.

In the general move towards “specialist” approaches, associations could be seen as re-instituting the historic local authority model where income management and arrears control was a Finance Department responsibility – organisationally separate from other aspects of tenancy and estate management. As it has recently been implemented, the “specialist” model has been justified partly on the basis that arrears control

Table 5.2 – Primary structure of arrears management service – breakdown by HA size

		>10,000 dwellings	5,000-10,000 dwellings	1,000-4,999 dwellings	All HAs
Generic	No	4	13	44	61
	%	14.8%	21.7%	32.1%	27.2%
Specialist	No	17	39	75	131
	%	63.0%	65.0%	54.7%	58.5%
Combination	No	5	7	18	30
	%	18.5%	11.7%	13.1%	13.4%
Other	No	1	1	0	2
	%	3.7%	1.7%	.0%	.9%
Total	No	27	60	137	224
	%	100.0%	100.0%	100.0%	100.0%

Source: Online survey

may receive insufficient priority where it is one of a range of housing management tasks – especially where other aspects of the housing officer role (eg tackling anti-social behaviour) will often command greater urgency.

As stated by survey respondents, the recent adoption of more specialist approaches was seen as a logical response to the technical complexity involved in helping tenants manage their arrears and/or in processing possession cases in court. For one respondent such changes were linked

with a “greater emphasis on financial inclusion/ arrears prevention rather than a traditional recovery approach”. Another referred to a “cultural shift from income recovery to financial inclusion and payment advice.”

As shown in Table 5.2, there was a clear relationship between association size and arrears management structure, with generic models being twice as prevalent in the “medium” size category (1-5,000 dwellings) as in the largest category. Indeed, with the average stockholding of English

associations increasing by 50% between 2002 and 2007,¹⁰⁷ the shift towards a more specialist approach in recent years could be largely a reflection of associations' increasing scale of operations.

Thirty associations reported their predominant approach to arrears management as a "combination" of generic and specialist approaches. This sometimes reflected different models across an association's stock. For example, an early stock transfer association, which had subsequently evolved into a major regional landlord operated a specialist approach for the large body of property in its original "home local authority", whilst a generic model was implemented for scattered stock elsewhere.

Perhaps more commonly, a "combination" model involved generic staff taking responsibility for the management of low-level arrears, with responsibility being handed to a specialist staff member or team when debt crossed a given threshold – eg £300. The threshold for such handovers also sometimes reflected the point at which legal action would be

considered or initiated. It is possible that some associations operating a model of this kind could have described it as "mainly specialist".

The implication of a strong trend towards functional specialisation was confirmed by the survey in that more than a third of associations reported having introduced such changes over the previous three years. The trend was especially marked among the largest organisations where two thirds had made such changes (see Table 5.3).

Some associations which had recently adopted a more functionally specialist approach to arrears management reported that an aspect of this involved the establishment of a specialist welfare benefits advice post within the organisation. While most associations reported sourcing welfare benefits advice via referrals to external agencies (see Table 5.4), almost half (46%) employed their own specialist staff for this purpose. Again the growing average size of associations over the past few years may have enabled many to achieve the "critical mass" required to facilitate the creation of such posts.

¹⁰⁷ Pawson, H. & Sosenko, F. (2008) Sector Restructuring; Housing Corporation Sector Study 61; <http://www.housingcorp.gov.uk/server/show/nav.001010001005>

Table 5.3 – Recent changes in organisational structure of rent arrears management service

Changes in past 3 years		>10,000 dwellings	5,000-10,000 dwellings	1,000-4,999 dwellings	All HAs
No significant change	No	6	21	70	97
	%	22.2%	35.0%	51.1%	43.3%
More generic	No	2	4	8	14
	%	7.4%	6.7%	5.8%	6.3%
More specialist	No	18	21	42	81
	%	66.7%	35.0%	30.7%	36.2%
Other change	No	1	14	17	32
	%	3.7%	23.3%	12.4%	14.3%
Total	No	27	60	137	224
	%	100.0%	100.0%	100.0%	100.0%

Source: Online survey

Table 5.4 – Provision of welfare benefits advice

		Transfer	Non-transfer	All HAs
Welfare benefits advice provided by rent arrears staff	No	90	69	159
	%	73.8%	67.0%	70.7%
Welfare benefits advice provided by inhouse specialist WB staff	No	66	38	104
	%	54.1%	36.9%	46.2%
Welfare benefits advice provided via referral to external agency	No	110	90	200
	%	90.2%	87.4%	88.9%
Total	No	122	103	225
	%	100.0%	100.0%	100.0%

Source: Online survey

Note: Because respondents could opt for two of more approaches, figures do not sum to column totals.

Table 5.5 – Debt counselling provision

		Transfer	Non-transfer	All HAs
Debt counselling by rent arrears staff	No	69	57	126
	%	57.0%	55.9%	56.5%
Debt counselling by in-house specialist debt counselling staff	No	39	26	65
	%	32.2%	25.5%	29.1%
Debt counselling via informal referral to external agency	No	90	81	171
	%	74.4%	79.4%	76.7%
Debt counselling via formal referral to external agency	No	65	61	126
	%	53.7%	59.8%	56.5%
Responding associations	No	121	102	223
	%	100.0%	100.0%	100.0%

Source: Online survey

Note: Because respondents could opt for two of more approaches, figures do not sum to column totals.

Distinct from welfare benefits advice is the role of debt counselling for tenants in serious arrears. Typically, associations made available such help both via in-house staff and through referrals to external agencies (see Table 5.5).

In the 2004 ODPM research¹⁰⁸ it was noted that “referral to an external agency” might, in many cases, involve no more than providing a tenant with the contact details of an independent

advice provider. This was quite distinct from a “formal referral” where a housing manager took responsibility for contacting the agency and booking an appointment for their client. In some cases, such arrangements have been made within the context of formal contracts. More than half of responding associations reported operating a “formal referrals” system and although there is no direct historical comparator, this would appear to indicate a significant increase in this kind of

¹⁰⁸ Pawson, H., Flint, J., Scott, S., Atkinson, R., Bannister, J., McKenzie, C. and Mills, C., (2004), *The Use of Possession Actions and Evictions by Social Landlords*, London: ODPM <http://www.communities.gov.uk/publications/housing/203568>

Table 5.6 – Staff training provision

Whether training routinely provided for rent arrears management staff on...		Transfer	Non-transfer	Total
...Housing Benefit eligibility rules and calculation	No	103	90	193
	%	84.4%	87.4%	85.8
...Debt management	No	79	69	148
	%	64.8%	67.0%	65.8
...Mental health awareness	No	63	43	106
	%	51.6%	41.7%	47.1
...DWP deductions	No	59	54	113
	%	48.4%	52.4%	50.2
...Court procedures	No	108	87	195
	%	88.5%	84.5%	86.7
Responding associations	No	122	103	225
	%	100.0%	100.0%	100.0%

Source: Online survey

Note: Because respondents could opt for two of more approaches, figures do not sum to column totals.

arrangement. However, the scale of such activity (eg volume of referrals) and its precise nature (eg contractual relationships) cannot be judged from these data. Case study research would be required to explore such issues further.

To what extent is rent arrears management a “professional service”? One key factor here is training provision. The vast majority of associations reported that relevant staff were routinely trained

on HB rules and on court procedures (see Table 5.6). Debt management training was made available as standard practice by two thirds of responding landlords. However, only around half routinely trained their staff on DWP deductions or on mental health awareness, both of which are key elements required of landlords by the PAP.

5.3 Interaction with Housing Benefit services

The administration of HB services is a critical factor influencing the effectiveness of rent arrears management. The accumulation of arrears can, in some cases, result from delays in HB service decision-making and HB “overpayment recovery” can result in a tenant’s account being suddenly plunged heavily into the red. Effective joint working between HB teams and social landlords is therefore at a premium.

More than two thirds of HAs (68%) have negotiated Service Level Agreements (SLAs) on HB Services with the local authority in which they have the largest presence (see Table 5.7). Just over half of such SLAs contain a provision for “fast-tracking” HB claims in relation to cases subject to legal action for rent arrears. The reported incidence of HB SLAs was somewhat higher among transfer landlords than among traditional associations. This may be a reflection of the typically more concentrated stockholdings of the former.

Table 5.7 – Housing Benefit Service Level Agreements between housing associations and local authorities

		Transfer	Non-transfer	Total
SLA with fast-track provision for cases subject to legal action	No	49	38	87
	%	40.2%	36.9%	38.7%
SLA without fast-track provision	No	41	25	66
	%	33.6%	24.3%	29.3%
No SLA	No	32	40	72
	%	26.2%	38.8%	32.0%
Total	No	122	103	225
	%	100.0%	100.0%	100.0%

Source: Online survey

Within the transfer landlord cohort there is also some regional contrast, with the incidence of SLAs being considerably higher in the central and northern regions (83%) than in London and the south (62%). It is possible that this reflects a tradition of more effective HB administration in the latter regions – such that associations have not seen the necessity to establish SLAs.

Whether or not prompted by the PAP, the vast majority of responding associations (88%) reported that staff were required to check a tenant's HB status before issuing a Notice Seeking Possession. However, in preparing to issue a claim in court, only 42% routinely sought an HB service certificate to confirm that no benefit enquiries were outstanding.

The 2004 ODPM¹⁰⁹ research identified HA frustration with what was seen as “inefficient” HB services. For some associations pressurising HB

staff to prioritise resolution of a particular claim could involve initiating legal action against the tenant (in the belief that this would lead to speed up the process). Here, therefore, in instigating action against a tenant, the association's main objective was to send a signal to the local authority.

As shown in Table 5.8, more than a quarter of associations indicated that they sometimes initiated legal action in a bid to speed up the processing of HB claims. However, this was much more common among traditional HAs than among transfer landlords (see Table 5.8). It was also much more common in London than elsewhere. Among associations regulated from London, 41% reported that issuing NSPs in these circumstances was an occasional practice.

¹⁰⁹ Pawson, H., Flint, J., Scott, S., Atkinson, R., Bannister, J., McKenzie, C. and Mills, C., (2004), *The Use of Possession Actions and Evictions by Social Landlords*, London: ODPM <http://www.communities.gov.uk/publications/housing/203568>

Table 5.8 – Legal action initiated to prompt LA action to resolve HB claim

Frequency of legal action instigated to prompt LA action to resolve HB claim		Transfer	Non-transfer	All
Often	No	0	1	1
	%	0.0%	1.0%	0.4%
Occasionally	No	21	39	60
	%	17.2%	37.9%	26.7%
Never	No	101	63	164
	%	82.8%	61.2%	72.9%
Responding HAs	No	122	103	225
	%	100.0%	100.0%	100.0%

Source: Online survey

Although it might be contended that this should never happen, the vast majority of associations (84%) acknowledged that, in certain circumstances, possession actions would be issued despite the existence of an outstanding HB claim. Most respondents noted that this would be legitimate where it was believed that the tenant had failed to provide the HB section with information or proof required to substantiate the claim. Other relevant circumstances mentioned by numerous respondents included:

- Where the tenant is receiving or judged eligible (by the association) for partial HB only but where contributions to the unfunded rent are not being made
- Where the tenant is judged by the association as ineligible for HB
- Where the HB to which the tenant is believed entitled will not clear their debt (or where the remaining arrears would be above a given threshold amount)

- Where arrears were accrued before the HB claim was lodged and where the tenant is judged as having no realistic expectation of a backdated payment (and previous arrears are not being repaid)

Another relevant scenario mentioned by one respondent was where the action had been triggered for reasons other than rent arrears.

More questionably, another respondent stated simply that a claim might be pursued despite an outstanding HB claim simply if there were “very high arrears”. A sense of frustration was evident in the response stating that such action might be taken in “cases that drag on for months, where we have made every effort to assist benefits and claimants to resolve delay”.

5.4 Arrears management practice

In addition to probing associations' interaction with HB services, the survey also included questions about other aspects of arrears management practice. In particular, these sought to investigate the extent to which associations have been

following official good practice advice to prioritise personal contact with tenants in arrears rather than relying mainly or exclusively on postal communication.¹¹⁰

As noted in the official guidance, an “early intervention” strategy needs to encompass practices around the initial tenancy sign-up process. Part of this is about making clear the grounds under which possession might be sought. Well over half of associations responding in the survey (62%) reported that their tenancy sign-up procedures specifically required new tenants to be advised of these.

How quickly do associations react when arrears begin to accumulate? In four-fifths of associations participating in the survey, it was routine to initiate some form of action in response to a single missed payment. While this might be interpreted as generally reassuring, it also raises questions as to why such practices are not universal. It is also notable that responding to a single missed payment appears to vary according to association size. Whereas the proportion of associations without such a procedure was only 17% among medium sized landlords (those managing 1,000-5,000

¹¹⁰ ODPM (2005) Improving the Effectiveness of Rent Arrears Management Practice: Good Practice Guidance; London: ODPM <http://www.communities.gov.uk/documents/housing/pdf/138886.pdf>

homes) the corresponding figure for those with more than 10,000 dwellings was 32%.

Typically, associations designate a specific arrears threshold to serve as the trigger for consideration of legal action. This was true for 88% of responding landlords. In three quarters of cases, the threshold was defined in terms of a multiple of week's unpaid rent – most commonly four weeks, although in a few cases as low as two weeks or as high as eight weeks. Where defined as a cash amount, the trigger point for consideration of legal action was usually set at £200-300. However, while a few respondents stated that action would be initiated “automatically” at the relevant trigger point, a larger number made it clear that this would depend on consideration being given to the specific facts of each case. For example, one respondent noted that the association's trigger point for action was “normally six weeks, although flexibility is built in to ensure that this is not a rigid rule - for example where HB is an issue or where there are particular vulnerability considerations”. Equally, a few respondents mentioned that legal action might be initiated below “threshold arrears” levels in the case of tenants with a history of non-payment.

In serving a NSP, just under half of associations (48%) said that their standard notification included

informing tenants of their right of appeal (although there is no formal legal entitlement to such a review).

To what extent are associations complying with guidance on prioritising personal contact with tenants in arrears? Virtually all – 94% – reported that arrears management staff were “required” to make personal contact with tenants before an NSP was issued. Anticipating that many would indicate an “in principle” commitment to this objective, respondents were also asked to detail their organisation's guidance to staff on “the ways [they] should seek to contact tenants [in arrears] and on the number of attempts they should make to do so”.

In most cases extracts from associations' procedure manuals demonstrated that staff were encouraged to make personal contact prior to the service of NSP. In some instances, however, this was qualified to the extent that “personal contacts” could include communication by text or e-mail. Given that these are not forms of “live contact” it is debateable whether they should be regarded as appropriately substitutable for conversation – either face-to-face or by telephone. On the other hand, many procedure manuals stipulated that home visits should be attempted prior to service of a NSP and a few specified that staff should seek to achieve these through out of hours calls where necessary.

Table 5.9 – Estimated percentage of NSPs served where personal contact made with tenant prior to service of Notice

		Transfer	Non-transfer	All
0-30% of cases where NSPs issued	No	9	11	20
	%	7.6	11.0	9.1
31-60% of cases where NSPs issued	No	21	23	44
	%	17.6	23.0	20.1
61-89% of cases where NSPs issued	No	49	36	85
	%	41.2	36.0	38.8
90% + of cases where NSPs issued	No	40	30	70
	%	33.6	30.0	32.0
Responding Has	No	119	100	219
	%	100.0	100.0	100.0

Source: Online survey

Across the entire cohort of responding associations, the average estimated proportion of NSPs preceded by personal contact was 70%. The majority of respondents estimated that “prior personal contact” was made with more than 60% of tenants subject to NSPs (see Table 5.9). Nearly one in ten respondents, nevertheless, believed that in their organisation less than a third of NSPs were preceded by a face-to-face contact or telephone conversation. One circumstance where

an NSP might unavoidably be served without being preceded by personal contact would be where the property was (suspected of being) abandoned before action began. Nevertheless, the incidence of such cases does not seem an adequate explanation for the range of figures cited here. Rather, this suggests considerable scope for improved practice – notwithstanding the professed commitments of the vast majority of landlords (see above).

5.5 Use of Ground 8

A key factor underlying the commissioning of the current research was the ongoing debate over the use and legitimacy of claims for possession, issued by HAs, based on Ground 8 of Schedule 2 to the Housing Act 1988. The controversy derives from the fact that this is a “mandatory ground” where possession must be granted if the tenant is more

than two months in arrears at the date of service of the NSP and the court hearing. Hence, where Ground 8 is correctly invoked the courts have no discretion in the matter.

The survey indicates that 56 associations identified themselves as recent Ground 8 users. In practice, the actual figure is certain to be somewhat greater. This reflects the fact that – notwithstanding the

Table 5.10 – Associations having made recent use of Ground 8 powers

	HAs having sought possession using Ground 8 powers during previous three years	
	No of HAs	% of all HAs in category
Association status		
Transfer	14	11.5%
Non-transfer	42	40.4%
Association region		
London	22	56.4%
South East	6	18.2%
South West	1	4.0%
Central	14	22.2%
North	13	19.7%
All HAs	56	24.8%

Source: Online survey

Note: Region is classified here in relation to the regional office from which the former Housing Corporation regulated the relevant association. In a few instances (eg housing association groups where the head quarters is in one region but subsidiaries are in others) this may not be the region in which an association itself operates.

relatively high response rate achieved – not every eligible HA chose to participate in the survey. Notably, two associations recently highlighted in the courts as Ground 8 users did not respond. Equally, however, there is no reason to doubt that the responding associations are generally representative of the sector as a whole. On this basis, it seems reasonable to assume that – as indicated in Table 5.10 – around a quarter of associations had been a recent user of Ground 8 at the time of the survey.

Largely substantiating suggestions from earlier research,¹¹¹ use of Ground 8 was much less common among stock transfer associations and much more common among HAs operating in London.

The difference between transfer landlords and their “traditional” counterparts may stem from undertakings made in the transfer process not to use Ground 8. This reflects sensitivity on the part of local authorities and their successor landlord partners to concerns that transfer could diminish tenants’ rights. The extent to which undertakings to refrain from use of Ground 8 are included in transfer commitments as standard is unknown.

It may be that the 14 transfer associations acknowledging recent use of these powers were never subject to such undertakings. Another possibility is that local commitments related only to existing tenants in situ at the time of the transfer and that such actions were never ruled out in relation to post-transfer tenants. It is also, of course, possible that in some instances involving transfer landlords, use of Ground 8 breaches transfer undertakings.

The incidence of Ground 8 use in London was twice the national average. Precisely what factors explain this finding is not clear. An equally striking finding is the virtual absence of Ground 8 use in the south west.

What factors influence an association’s decision to pursue a case under Ground 8? As shown in Table 5.11, most of the relevant respondents (73%) identified the level of arrears as a consideration here. Related to this, statistics on 2007-08 evictions showed that tenants evicted under Ground 8 had higher arrears than those whose homes were repossessed on other grounds. However, the difference in the average figures across all responding associations – £2,600

¹¹¹ Pawson, H., Flint, J., Scott, S., Atkinson, R., Bannister, J., McKenzie, C. & Mills, C. (2004) Possession Actions and Evictions by Social Landlords; London: ODPM <http://www.communities.gov.uk/publications/housing/203568>

Table 5.11 – Factors influencing a decision to use Ground 8 powers

	No of responding HAs	% of responding HAs
Level of arrears	38	73.1%
Tenant does not respond to attempts at contact	34	65.4%
Tenant no longer living at property	31	59.6%
Tenant's other behaviour	27	51.9%
Treatment of Ground 8 actions in pre-action protocol	13	25.0%
Tenant's HB status	12	23.1%
Tenant not present at court	8	15.4%
Solicitor/counsel advice	6	11.5%
Human Rights issues	4	7.7%
Identity of District Judge hearing case	1	1.9%
Quality of local Housing Benefit administration	1	1.9%
Responding HAs	52	100.0%

Source: Online survey

compared with £2,300 – was fairly modest suggesting that this reason (ie level of arrears) may not be the only factor involved in decision-making.

“Tenant does not respond” and “tenant no longer living at property” are both fairly self-explanatory as factors influencing a landlord’s decision on whether to use Ground 8 (see Table 5.11). “Tenant’s other behaviour” is envisaged as involving cases where

the case involves neighbour nuisance in addition to rent arrears.

In addition to responses to specific questions on rent arrears management, the survey collected associations’ procedure documents on the use of Ground 8. More than 40 were submitted. This material could provide scope for further analysis of the circumstances in which Ground 8 may be used.

The survey sought to collect statistics on possession actions from associations having recently made use of Ground 8. In practice, the statistics submitted here were clearly somewhat incomplete. Even for 2007-08 almost a quarter of the 56 associations reporting recent use of Ground 8 did not, or were unable to, provide figures. Data for years prior to 2007-08 was even less complete. Based on the data collected for 2007-08, however, Table 5.12 shows that almost a quarter of the claims issued in court by the relevant associations involved Ground 8. In only a very small proportion of

claims was Ground 8 used alone. Even the relatively small national figure shown here (169) is largely accounted for by a single London association, which recorded 114 cases of this, kind in 2007-08.

Whereas responding HAs invoked Ground 8 in relation to almost 2,000 claims issued in 2007-08 only 189 evictions were reportedly carried out under these powers (see Table 5.13). However, in assessing the significance of this figure in a national context two factors need to be borne in mind. First, as noted above, only just over three

Table 5.12 – Associations having made use of Ground 8 from 2006-08 – Grounds under which arrears possession cases entered in court in 2007-08

Region	Ground 8		Other*	Total
	Alone	Total		
London	134	895	3,590	4,467
South East	7	107	570	677
South West	0	0	82	82
Central	6	240	1,178	1,564
North	22	747	426	1,438
Total	169	1,989	5,846	8,228

Source: Online survey

*Assured tenancies where action not taken under Ground 8, also includes secure tenancies

**Table 5.13 – Associations having made use of Ground 8 from 2006-08
–Ground 8 and other rent arrears evictions in 2007-08**

	Ground 8	Other	Total
London	71	464	596
South East	14	112	126
South West	0	7	7
Central	9	214	258
North	95	170	480
Total	189	967	1,467

Source: Online survey

*Assured tenancies where action not taken under Ground 8, also includes secure tenancies

quarters of associations acknowledging recent use of Ground 8 submitted statistics to substantiate this. Making allowance for this, the 189 figure might be up-rated to an estimate for associations participating in the survey of 245. Secondly, we need to bear in mind that not all HAs participated in the survey. Allowing for this factor, and assuming that those responding were representative of all associations operating in England, the estimated national 2007-08 total of Ground 8 evictions would be 351 – or almost five per cent of all rent arrears evictions as recorded in 2007-08 RSR returns.¹¹² However, the basis for these estimates relies on

consistent use by non-responding associations and those who responded but did not provided statistics as to its use. And there are grounds for disputing the basis for that assessment (for example, if a non-respondent was a high user of Ground 8, as has been suggested in relation to certain non-respondents).

Furthermore, for the associations making active use of Ground 8, the proportionate significance of Ground 8 evictions was somewhat greater. For the 22 associations undertaking such actions in 2007-08 and able to provide relevant statistics,

¹¹² It should be noted that all of these figures exclude activity involving associations with less than 1,000 homes in ownership.

Ground 8 actions typically accounted for 20% of all rent arrears claims (see Table 5.14). Also, as shown in Table 5.14, for a few associations the figure was much higher. One other notable point from this table is that, while four transfer landlords are represented, the scale of Ground 8 activity by such associations was relatively modest. This might reflect tighter organisational rules around the instances in which such powers could be used (eg a stipulation that they were not for use in relation to pre-transfer tenants).

As demonstrated in a case reported in the housing press and elsewhere,¹¹³ HAs have the power to seek possession under Ground 8 in relation to shared ownership dwellings as well as rented homes. While this was not a central concern for the research, the survey did identify three associations (in addition to Midland Heart which failed to respond), which had made recent use of Ground 8 in actions concerning sharing owners. Having identified relevant organisations it would be possible to further investigate the circumstances and outcomes of such actions.

¹¹³ Nearly Legal (2008) Shared Ownership – Midland Heart with the Benefit of Transcript
<http://nearlylegal.co.uk/blog/2008/09/shared-ownership-midland-heart-with-benefit-of-transcript/>

**Table 5.14 – Associations making Ground 8 evictions in 2007-08
(and providing data on such activity)**

Association status	Size	Region	2007-08 rent arrears evictions			Ground 8 cases as % of total evictions
			Under Ground 8	Other	Total	
Non-transfer	1,000-4,999 dwellings	North	34	43	77	44.2
Non-transfer	1,000-4,999 dwellings	London	33	14	47	70.2
Non-transfer	Over 10,000 dwellings	North	31	46	77	40.3
Non-transfer	1,000-4,999 dwellings	North	20	10	30	66.7
Non-transfer	Over 10,000 dwellings	London	12	115	127	9.4
Non-transfer	1,000-4,999 dwellings	South East	11	57	68	16.2
Non-transfer	Over 10,000 dwellings	London	7	45	52	13.5
Non-transfer	1,000-4,999 dwellings	North	6	6	12	50.0
Non-transfer	1,000-4,999 dwellings	London	5	5	10	50.0
Non-transfer	Over 10,000 dwellings	London	4	49	53	7.5
Non-transfer	5,000-9,999 dwellings	London	4	20	24	16.7
Transfer	1,000-4,999 dwellings	Central	4	41	45	8.9
Transfer	5,000-9,999 dwellings	London	3	35	38	7.9
Non-transfer	1,000-4,999 dwellings	Central	3	10	13	23.1
Non-transfer	Over 10,000 dwellings	North	2		157	1.3
Non-transfer	5,000-9,999 dwellings	Central	2	21	23	8.7
Non-transfer	1,000-4,999 dwellings	North	2	2	4	50.0
Non-transfer	1,000-4,999 dwellings	London	2	12	14	14.3
Transfer	5,000-9,999 dwellings	South East	1	14	15	6.7
Non-transfer	1,000-4,999 dwellings	South East	1	22	23	4.3
Transfer	1,000-4,999 dwellings	South East	1	10	11	9.1
Non-transfer	1,000-4,999 dwellings	London	1	10	11	9.1
Totals			189	587	931	20.3

Source: Online survey

How is the scale of Ground 8 use changing over time? Because of the incompleteness of our statistics this is difficult to determine with any certainty. While the total recorded numbers of Ground 8 claims issued in court for 2007-08 were considerably higher than those for 2006-07 and 2005-06 this partly reflects that fact that the data are more complete for the most recent year.

A possibly more reliable indication of the trend over time can be derived by focusing solely on the limited number of responding associations (12) who submitted figures for all three years 2005-06 to 2007-08. This suggests that – at least within this small group of landlords – the use of Ground 8 has been rising quite sharply. The numbers of claims issued in court under Ground 8 (alone or in combination with other grounds) increased from 742 in 2005-06 to 1,157 in 2007-08. Again, however, some or all of this apparent increase might result from the fact that figures from earlier years were less complete even within some of these landlords. In any event, there is no sign at all of declining resort to Ground 8 among the limited number of associations that have been continuing to make use of this power.

Respondents whose associations had made recent use of Ground 8 were asked whether there had been

any recent changes in their use of these powers. However, while 20 of the 56 relevant associations responded affirmatively, there was no consistent pattern to the responses. These broke down almost evenly into four main groups: those reporting having made a decision to cease use of Ground 8, those who had “reduced use” of the power, those who had introduced or widened the scope of Ground 8 claims, and those whose use of Ground 8 had become more formalised through the adoption of more detailed rules – eg requiring authorisation of such action.

Among the handful of associations that had taken a recent policy decision to stop using Ground 8 one mentioned the implications of *Weaver v London & Quadrant*¹¹⁴ as a motivating factor. Another noted that the move was intended to enhance prospects for effective partnership working with Citizens Advice.

While two organisations were contemplating the proscription of Ground 8 actions, another three noted that they were contemplating their introduction. In one instance this was explained as a response to a perception that “Some judges now appear to be extremely “tenant friendly”, repeatedly granting stays of execution for example...”.

¹¹⁴ [2008] EWHC 1377 (Admin). See further para. 1.2, above.

Table 5.15 – Perceived impact of rent arrears pre-action protocol on association rent arrears management practice

Rent arrears pre-action protocol...		>10,000 dwellings	5,000-10,000 dwellings	1,000-4,999 dwellings	Total
...impacted on organization practice	No	24	49	100	173
	%	85.7%	81.7%	73.0%	76.9%
...did not impact on organizational practice	No	4	11	37	52
	%	14.3%	18.3%	27.0%	23.1%
Responding associations	No	28	60	137	225
	%	100.0%	100.0%	100.0%	100.0%

Source: Online survey

5.6 Recent changes in rent arrears management practices

A key policy move aimed at improving preliminary contact between associations and their tenants was the introduction of the PAP.¹¹⁵ The PAP also gives the District Judge discretion in determining the range of order to make in determining a rent arrears possession action, depending on whether the association has complied with the PAP. However, this does not apply to claims made under Ground 8, only to those where a finding of reasonableness

is required. In part, the PAP was also designed to marshal existing good practice advice on rent arrears management within court practice. Nevertheless, as shown in Table 5.14, more than three quarters of responding associations – and an even larger proportion of the largest landlords – asserted that the PAP had made a material difference to local practice. Given that compliance with the PAP is likely to have a material impact on the outcome of a particular claim for possession, it is notable that 23% of respondents said that it had not impacted on their organisational practice. However, this may simply reflect the fact that the associations in question were

¹¹⁵ Ministry of Justice (2006) Pre-action Protocol for Possession Claims Based on Rent Arrears; http://www.justice.gov.uk/civil/procrules_fin/pdf/protocols/prot_rent.pdf

already routinely exercising the actions required by the PAP on a 'good practice' basis. In any event, the PAP was to a large extent an exercise in marshalling existing recommendations in regulatory and similar documents.

Respondents indicating that the PAP had affected local practice were asked to detail the specific impacts. Submissions in response to this question show that, at the very least, most respondents **believed** their association's practice to have been altered significantly in consequence. Three of the most common themes were:

- The adoption of more structured, thorough and consistent practice – often involving the introduction of checklists designed to ensure documented compliance with the PAP's requirements
- A shift towards a more pro-active, preventative approach – usually entailing more effort to achieve personal contact with tenants in arrears and often also involving increased emphasis on welfare benefits advice and/or debt counselling
- Increased awareness of vulnerability issues, scope for officer discretion in cases involving vulnerable people, and more support provision for tenants assessed as such

Allied with the professed shift towards a more formalised approach (first bullet point, above), numerous respondents reported that the PAP focused attention on better documentation of pre-action casework.

Many respondents cited specific changes to policy and procedure, which they saw as having been prompted by the PAP. Those most commonly mentioned were:

- Extra stages introduced into the process – sometimes extending the time allowed for tenants to respond or honour commitments
- Dispatch of separate letters to joint tenants
- More frequent rent statements sent to tenants – many organisations switching from six-monthly to quarterly cycles
- Information on tenants rent balance, HB status and order sought – disclosure 10 days prior to court date

The extent to which other stakeholders perceive associations' arrears management practices to have altered in the ways described above was an important area to probe via the case study fieldwork.

To some extent, in responding to the question about the impact of the PAP, associations may have cited all the “significant” policy and practice changes introduced by their organisation since 2006 – some of which might have come about independently of the PAP. To this extent, the innovations listed above should probably be seen as a portrayal of recent changes, more broadly and not a specific “impact” of the PAP.

Not far short of half of respondents (42%) anticipated that their association would adopt (further) significant changes to its rent arrears policy and/or practice during 2009. Many respondents asserted their organisation’s practice would be increasingly influenced by an ethos of “financial inclusion” and by an increased emphasis on prevention and personal contact with debtors.

The most commonly cited specific expectation was the introduction of (or reversion to) a “specialist model” of arrears management. We should, therefore, anticipate the continuation of the existing trend here (see Table 5.3 and accompanying text). Interestingly, one organisation which had retained a generic model noted the planned “introduction of a specific arrears day throughout the organisation so that all arrears staff can concentrate on all arrears every week without fail”.

Other specific measures expected to be introduced in numerous instances included:

- The establishment of money advice and/or welfare benefits posts (either in-house or in partnership with Citizens Advice or other local agencies)
- The introduction of a wider range of payment options

Chapter 6

Case study evidence

Chapter summary

Six case studies were conducted with HAs to enable the research team to dig deeper into HA practices as well as those of their officers, using an interview-based method combined with analysis of policy documents. Five case study HAs were users of Ground 8; one did not use it but was actively considering its introduction. Case study HAs also completed pro-formas in relation to their most recent 20 possession cases, in ten of which they used Ground 8. The case studies were combined with interviews with a small number of duty advisors, who represent occupiers in possession proceedings.

Certain types of households were regarded as most at risk of arrears – young single persons and the vulnerable – but the most highly rated risk factor concerned receipt (or non-receipt) of HB in certain circumstances. Although HB administration had generally improved and HAs had relationships with some local authorities or individual officers, there were pockets of poor performance, and certain issues such as overpayments and suspensions were problematic.

Case study HAs had engaged in cultural change at a symbolic and organisational level. Most now

had centralised rent arrears management services and a stronger managerial ethos. They had also sought to develop a cultural change amongst their tenants so that tenants would become active in the management of their rent accounts.

Tenancy sustainability was the primary concern of all case study HAs, which had introduced a series of interventions including the increasing use of face-to-face contact through home visits, for example, as well as the use of other media, such as texting. This was also combined in some HAs with personnel to assist tenants to maximise their potential income through benefits advice.

Some case study HAs had introduced new rent arrears management computer software which assisted with the processes and indicated when certain actions should be taken. These were generally regarded as useful management tools but which should be used with discretion as well.

As regards use of the courts, it was clear that the PAP had significantly altered practices and was a factor (if not a significant one) in the development of more managerial approaches in the case studies. HAs generally were more assiduous in documenting their interventions with tenants. Of the case studies, however, it was unclear whether four

had increased or decreased in their use of the courts; one had decreased considerably, the other had increased, both of which were partly due to changed approaches. District Judges were generally said to be tenant friendly, although their heterogeneous approaches were also remarked upon.

HA use of Ground 8 was said to be generally as a last resort, but different HAs had different approaches to its use. What was also notable was that all HAs which used Ground 8 said that their rent arrears management would not be overly affected by its withdrawal.

Duty advisors commented on the increasing use of Ground 8 in courts used by HA A-C and the unwillingness of some HAs and some of their officers to negotiate before the hearing. All advisors appreciated that District Judges were more willing to side with the tenant, but believed that presenting housing officers were adversely affected by their lack of knowledge of law and procedure. There were also concerns expressed that HAs were paying lip service to the PAP and were not making early enough interventions.

6.1 Chapter background and scope

This chapter reports on six case study HAs conducted during May-July 2009. Case study work focused on a small number of HAs enabling us to “drill down” from the emerging findings to explore the “how”, “why” and “in what circumstances” questions. It was apparent from our earlier work and the heterogeneity of the domain that various broad and institutional contextual factors were likely to be in play in both collective and individual decision-making over possessions. Further, whilst we were unable to obtain the requisite consents for empirical work with courts within the timeframe of the research project, case study HAs as an alternative could be directed at questions about court processes and actions from the “sharp end” of practice. This case study work was supplemented with, and counterbalanced by, a small number of interviews with those managing or acting in court duty advice schemes, which roughly overlapped with the case study areas. Reference is also made in this chapter to material derived from one further interview with a national RSL (a relatively high user of Ground 8) and which was conducted during this phase of the research using the case study topic guide.

Annex 2 outlines our method, including our sampling frame. Annex 3 provides a brief summary outline of each of the case study HAs. In accordance with good practice in research, participants signed consent forms under which the research team gave certain assurances regarding anonymity to participants and their organisation (see Annex 4, which also includes the data collection instruments). As a result, case study HAs have been listed alphabetically below (HA A – HA F), and research participants referred to by role.

Case study HAs were requested to complete a pro-forma (see Annex 5) in relation to their most recent 20 possession cases, in ten of which they used Ground 8. The analysis of these pro-formas is presented separately in Annex 1.

The next section outlines the key findings from the case studies. The following section outlines the key findings from the duty advisor interviews.

6.2 Case studies: key findings

In this section, we detail the key findings as they have emerged from our case studies. Although practices were different across the case studies, nevertheless our data clearly suggests that certain themes are currently prominent in rent arrears management by HAs. These themes are as follows:

- a. Categories of tenant at risk
- b. Cultural change
- c. The importance of sustainability
- d. The use of computer software to manage rent arrears
- e. Using the courts
- f. The use of Ground 8
- g. The tenant perspective
- h. Impacts of the recession.

a) Categories of tenant at risk

Research participants were asked about the incidence of, and tenant attitudes to, rent arrears. In particular, we were interested in seeing if certain households were regarded as more at risk of rent arrears than others and whether different approaches had been developed to deal with those instances.

A particularly common observation from participants was that certain categories of persons were most at risk of rent arrears, although it was regularly stressed that each case had different characteristics. Participants regularly discussed young people across the case studies, partly because they were felt to be disproportionately amongst those with arrears. HA A's interrogation of the eviction statistics demonstrated that the majority of evicted tenants were single persons or childless households. As regards the young, their risk factor was enhanced when the property they were offered was their first tenancy. It was said by one participant that "young people under about 40 tend to have a very blasé approach to arrears. They have other debts and don't see arrears as anything to be frightened of" (HA A/LAM); or they could always "go back to Mum" in the event of an eviction (HA D/RO); they were said to treat the property as a "house" but not a "home", in contrast with families

and older tenants. Indeed, the latter group were said to be least at risk – except, oddly it was believed, in HA E's sheltered housing – because there was a "stigma" attached to rent arrears for these persons.

Another category of household mentioned by most participants was the "vulnerable", which was said to include those with mental health problems, the long-term sick and the illiterate (who would be unable to appreciate from correspondence the problem).

Those who "won't pay" were generally regarded as a small group of defaulting tenants, which had a disproportionate effect. A typical example of this type of tenant was those who took "interest free loans" by regularly failing to pay rent until they reached the door of the court.

By far the most significant risk factor, though, concerned households in receipt of HB. The issues here concerned delays in payment of claims; suspensions after a review or home visit; overpayments; non-dependent deductions; the impact of part-time working; and intermittent employment.

The first issue – delays – were caused, on the tenant side, by not providing all the relevant details and, on the local authority side, by considerable differences in performance (from payment within

a couple of weeks to three months). As regards tenants, the issue was the extent to which tenants believed that providing the relevant information and documents was their role or for their HA to chase (“it’s between you and housing benefit – you sort it out”: HA F/ISO). Some case study HAs undertook verification themselves on behalf of the local authority but this was uneven across local authorities. In HA B, participants said that tenants “know the system” and take advantage of it to avoid paying their rent. Differences in performance were related, particularly in HA A, to the HB contracting cycle so that, at the start of a new contract, performance would dip. Local call centres were regarded as important. In HA E, which worked across all the London Boroughs, one SRO regarded payment within four weeks as “a miracle” compared with her previous experience.

Delays in HB case processing might be mitigated by different strategies, such as a strong HA group in the area whose views are listened to by the local authority; often, the single most important strategy was to have a named contact within the local authority HB section, with whom individual applications could be discussed; or, at a different level, the arrangements of a service level agreement between the HA and local authority. As regards the latter, such a strategy could prove frustrating where

the named contact left the office. In HA A, a key component of joint working involving a local HB team involves a “benefit status queries spreadsheet” dispatched weekly to the council. Responses are usually received the same day. This is facilitated by good relationships between the LAM and specific HB team members.

One particular issue concerned the willingness of HB offices to share information due to data protection considerations. HA B’s relationship with one of its major local authorities had declined due to data protection issues. This might be a particular issue on renewal applications. So, in HA C, one HO said that data protection was always an issue with the local authority.

A related area of improvement in HA/LA relationships in this respect and cited by a London-based association manager concerned electronic data transfer. In the areas where this landlord operated it had been found that authorities were increasingly able to transmit batches of electronic data on claimants’ HB status. Being able to read such data straight into the association’s electronic payment record had removed the need for what was previously a huge amount of data entry activity. Such changes had contributed to the organisation’s achievement of staffing economies in rent arrears

management. Conversely, a northern case study association had found that LAs had become more reluctant to contemplate electronic data transfer in the wake of the well-publicised 2008 losses of electronic data by government departments. In response, the HA had invested more effort in developing scanning techniques to create electronic records from hard copy reports.

Some local authorities were said to be “trigger-happy” about suspensions of payment, for example after making a home visit where the occupier was not in the property, or where there had been a change in circumstances. In the meantime, tenants might fail to make sufficient provision for the part of the rent that they might be expected to pay after a new determination (which, again, might take up to three months to make). In HA C, it was said by a manager that one urban local authority was only processing new claims leaving change of circumstances claims on hold.

The other issues identified above were the mundane, everyday experience of the traps of the HB system. Overpayments are not necessarily the fault of the tenant but have a disproportionate impact on their rent account when they are claimed back. Overpayment letters from the local authority might also require ‘translation’ because they

were too complex to understand (HA E/SRO). Non-dependent deductions were said to have a particular effect on BME communities in HA B, and, due to their significance, were generally unwelcome. Where a member of a household worked part-time, this would have a disproportionate effect on their HB to the extent that it created disadvantages for this type of work. And changes in employment status required cancellations and re-applications with consequential delays.

We specifically asked participants about the impact of the current economic crisis on their tenants. All case study HAs indicated that it had little impact on their rent arrears management operations except that there were increasing claims for HB (and, some added, with knock-on effects on time taken to process claims).

b) Cultural change

There are two elements to the theme of cultural change. It relates to internal change, and, second, to attempts to change the attitudes of current tenants towards their rent accounts.

Internal cultural change

The reference to internal change is also at two levels, symbolic and organisational. As regards the former, this is characterised by the labels attached

to officers and policies. Officers are not referred to as “rent arrears officers”, but, as with the private sector, they are account managers, income officers or revenue officers. Partly, this reflects the fact that rent arrears has traditionally been regarded as the poor relation of housing management and an early career job from which personnel regularly move. Changing labels are designed to change and accord status to personnel, shifting away from the use of temporary staff. Equally changing labels to policy documents are designed to capture the new emphasis – so, in HA E, the label for the policy document is now “rent collection”, as opposed to “rent arrears”, to establish a positive relation between tenants, the ROs, and the rent account.

As regards organisational change, what was perhaps surprising and unexpected was that each of the case study HAs, except HA C, had changed the internal organisation of their rent arrears management within the last few years. HA C was in the process of changing its internal organisation at the time of our fieldwork.

There was a considerable degree of unanimity in that organisational change as well. Rent arrears management was largely a centralised service, other than in HA A and HA C's future structure; dedicated rent arrears officers, as opposed to

generic staff with rent arrears as one part of their job specification; each HA sought to balance the need for individual officers to exercise discretion within clear hierarchical lines of control – to put this another way, managerial control is being exercised to a greater extent than previously in our case studies to ensure uniformity of approach, whilst balancing that against a recognition that each case has different characteristics. This last point is significant because of a recognition among at least some of the case studies - especially HA A, C and E – that their performance on rent arrears management did not compare favourably with other HAs against which they benchmarked their service.

Highlighting the broader “cultural” significance of a “specialist” arrears management model, one senior interviewee stressed the significance of recruiting “credit control” professionals from outside the housing field. As well as contributing new expertise, such recruits were seen as bringing a different culture to the operation, offsetting the “moralistic” element of the housing management tradition. Such “incomers” were seen as adopting a “more rational” approach to debt recovery, which recognised that an eviction usually means writing off the associated arrears. Linked with this, the association had worked to establish a stronger “income collection culture” in place of what was seen as a previous over-emphasis

on cutting current tenant arrears (and which incentivised eviction of “high arrears” cases).

Managerialism offered a set of practices and values to improve that performance, as discussed below. It was notable particularly in HA D, E and F that senior management were committed to change, not for its sake, but also to impart a set of values in rent collection as **customer service**. HA C's future internal organisational change was explicitly premised on improving their customer service rating. These changes are made possible by the symbolic reconceptualisation of rent arrears as income collection, as it imparts a shift from the negative (a focus on dealing or coping with deviance) to the positive (a collective responsibility to pay rent).

Cultural change among tenants

The particular cultural change, which was mentioned across most of our case studies, concerned recipients of HB. The view of these participants was that such recipients often held the view that they had no responsibility for the rent as HB paid it for them. Culture change was generally sought through a belief in changing the reputation of the HA – a trickle down effect to tenants through, for example, “word of mouth culture” (HAA/LAM).

On this point, there was a contrast between the position adopted by HA B and HA C. The former did not mention this as an issue because claiming HB was taken out of the recipient's hands at the commencement of the tenancy, as the voids team completed the forms, photocopied documents, and submitted the documentation; those officers also kept a copy of the claim. HA C, by contrast, stopped that practice about seven years ago. The officers check forms, but the responsibility is clearly on the tenant, so that a “culture of responsibility” was imparted to them. This is supplemented by promotional literature which, rather than focus on the negative, now informs tenants “what we could do if everyone paid their rent”, “we need your help and appreciate your help”. It has been recognised that the “big boot” approach “does not get you anywhere”.

HA E's problem was perhaps distinctive because their historical association as a family-based charity generated it, which had been willing to accept tenant's reasons for being unable to pay rent and carry arrears. In order to tackle the historic problems of rent arrears, it has been the culture of HA E, which has changed as considerably as the management – emphasis has been placed on officers' responsibility towards the organisation. ROs began telephoning their customers who, as an

RM put it, “caused uproar from tenants” initially; in the first six months of the new regime, this RM said that she saw 100 tenants who were unhappy about being chased for their rent. The new approach was also designed to change the culture amongst the tenants, as the organisation was ‘coming on strong about rents’ and it was a “shock to tenants that [HA E] is not a family business” but more corporate (RO).

c) The importance of sustainability

There was one standout motif of rent arrears management among case study HAs, and among all participants. Sustaining a tenancy was the primary concern, eviction regarded as a failure. In HA E, the senior manager compared eviction to capital punishment; this was the strongest metaphor employed by participants, most others referring to the organisation regarding eviction as a “failure” for the individual and the organisation. Underpinning many such strategies was the customer service ethos, which was particularly strong in this area, and, allied to which, was a strong notion of treating customers fairly.

Sustainability was strongly linked with prevention strategies, the most prominent of which were early intervention; income maximisation; prioritising face-to-face interaction where possible; cross-

departmental working to produce holistic understandings of individual occupiers and their households; education.

It was recognised that tenancies were at their most sustainable when there were no or low arrears; in HA A, it was said that contact when arrears were low was much easier than when they were high. Early contact was prioritised as a result. For example, some HAs in some areas were engaged in the verification process for HB claims prior to the tenant signing up for the tenancy. Most computer programmes were designed to flag in some way the first form of action when there were no more than two weeks of rent arrears. The exceptions were HA A and HA F, where initial contact was made after a week of rent arrears. In HA A, centre-based staff are required to make three attempts at contact with a tenant within a week of arrears appearing on an account.

Perhaps paradoxically, one outcome of the policy and practice of early intervention is that notices were served by some case studies at an earlier stage in the rent arrears cycle – HA A was the earliest (four weeks), but the norm was at around six weeks. Equally, in HA A (and this was by contrast with the other case studies), formal court action was begun earlier as a result of the early intervention policy and practice.

Income maximisation was a particular feature of the operation of HA A, D and E, and will be an integral part of the restructuring in HA C. These organisations have, or will have, dedicated welfare benefits advisors who assist tenants in maximising their incomes through benefits and tax credits. In HA D, the officer was regarded as giving independent advice and preferred to view himself as a “welfare rights advisor”, indicating his commitment to tenant advocacy. HA B felt that it was not large enough to have its own debt advisors and directed tenants to CAB or advice centres, and was considering setting up a formal liaison with one provider. Even so, officers were sufficiently knowledgeable about HB and their tenants to warn tenants at about the time of their child’s 16th birthday to tell HB that the child was still in full-time education.

The prioritisation of face-to-face contact has been a key development amongst most but not all (HA B being the exception) case study HAs in the past few years and may well be combined with other strategies such as income maximisation and contact at sign-up. In HA A, for example, there is a strong managerial emphasis on establishing personal contact with tenants in arrears. The policy manual states: “Automated letters will be used, in addition to personal contact not as an alternative” (original emphasis). This begins even

before tenancies start. As soon as the identity of a prospective tenant is known, an account manager will make contact to discuss payments methods and ensure that paperwork, such as HB forms and direct debit forms, is completed.

Most often, such contact is designed to take place in the tenant’s own home, but tenants may also be invited to the office. HA A, D and F have altered their officers’ working hours to facilitate out-of-hours contact. Home visits were a new policy move in HA E; and personal contact was new in HA A. In both, there was strong managerial emphasis on personal contact. Such contact could be made in a number of sometimes-innovative ways – some had greater success with text messaging than others (HA D having a failed pilot project; some HA A officers making extensive use of it).

Such contact has been undertaken for a number of reasons. For example, in HA D and E, it was clear that personal contact was designed to generate knowledge about the household and understand their current circumstances, as well as assess the vulnerability of the household (all factors which might be taken into account at a later stage in the process). Additionally, in HA E, tenants would sign an income and expenditure form. In HA C, door-to-door personal contact has always been the

preferred form of the organisation. More generally, personal contact was regarded as more effective than other methods in recouping rent arrears.

Cross-departmental working was particularly facilitated through joint visits or simply from the practice of arrears management officers. In HA E, an RM described the arrears management there in terms of being at the centre of the wheel with spokes coming off to other parts of the organisation (although it was noted that those other parts were not always as good at communicating with them). In HA D and F, ROs and ISOs took the opportunity to make home visits by accompanying a scheduled repair visit, for example.

A further strategy designed to assist with sustainability and the prevention of evictions was education going beyond word-of-mouth. In-house magazines for tenants might be used to enhance take-up of benefits (HA C and E); leaflets are used to promote rent-paying by emphasising the community benefits.

d) The use of computer software to manage rent arrears

Underpinning much of the change in practice has been the development and use of computer software designed to prompt officers into action

according to the HA's policy. Different HAs had different programmes and different experiences. The contrasting experiences of HA E and F demonstrate the sensitivity with which such software has become treated.

In HA F, a new software package for the management of rent arrears had been introduced, which enable ISOs to prioritize cases that require attention. The software uses a series of symbols to order priority arrears cases hierarchically. For instance, a police car with flashing lights icon signals serious arrears cases. The system enables ISOs to manage their time more effectively and facilitated monitoring of tenants. For instance, the software highlights tenancies less than six months old, so that ISOs can “see how they're coping and whether they're managing their rent arrears” (IRM). Frontline staff had mixed views on the software package, partly due to inconsistencies in service charge figures that it produced and partly due to a backlog caused by the updating of the system. Nevertheless, some officers clearly found that the package facilitated their jobs.

In HA E, a software package had been introduced at the time of the restructuring which was designed to highlight the cases that represent the greatest risk to the Trust. It provides a series of prompts

for action at certain stages defined in accordance with the policy (although not as “flashy” as HA F’s software). Although there were different views about the software, all participants had acclimatised to its use and most found it useful most of the time. For example an RM said that it was a useful training tool when temporary staff arrived. However, it was recognised that, as an RO put it, it is “designed to evict” as the prompts flow one from the other without taking account of the circumstances of the tenant; it is “very prescriptive in terms of sending letters” and there is no “in-between” (RM). Initially it had been seen by the organisation as the “only thing” to bring arrears down together with sheer hard work from staff. But, it had been used by staff as a “blunt instrument” without them taking initiative. It is now used as a guide as to the appropriate action to be taken. For example, if an RO is aware of a HB issue that has caused arrears to accrue, letters might not be sent. Letters, whilst standardised, can also be made more personalised. The timeframe set by the software can also be extended. As the AD put it, “we don’t want to become a slave to the system”. All participants now regard it as a good management tool. RO discretion has been substituted for the rigidity of the software.

e) Using the courts

In this section, attention is drawn to three factors: the influence of the PAP; increasing or decreasing use of the courts; and court officer perceptions of DJs.

The influence of the PAP

It is clear that the PAP has altered practice, expressly or implicitly. Many of the above practices of early intervention are both regarded as good practice and included within the terms of the PAP. If good practice on its own might not have been enough to stimulate change, the importance of the PAP in shaping practice has been a significant stimulant. In particular, it has underpinned the increasing demands for uniformity of practice so that officers have less room for “doing their own thing” or, perhaps more pertinently, “skipping things” (HA B/manager). Only in HA C and D was it said that the PAP had limited effect on practice; in both, it was said that its relevance lay simply in being more formalistic so that their actions could be seen to have been done.

Across the case study HAs, there was a more systematic approach and more consistent recording of the activity actually taken on individual cases. This could be channelled into pro-forma documents and checklists, which were also designed to support HAs’ possession claims. In HA A, for example,

tenant contacts are now recorded on electronic case files so that when submitting cases for court online a list of these contacts can be simply extracted from the system and pasted into the application. In HA E, by contrast, the electronic files made this collection process laborious.

In HA E, a new policy had been introduced under which ROs and SROs had to complete a pro-forma detailing the action they had taken before beginning court proceedings and had the approval of an RM. The pro-forma was broadly in line with the requirements of the PAP. The form was designed to counterbalance the discretion accorded to ROs because there had been different levels of compliance with the PAP and the new culture of prevention/assisting the tenant. Applications to court have reduced dramatically (also because of the introduction of home visits) – one RM said that the number of court applications in July had reduced to 12 from 26-30 in the same month last year. One other reason for the decline may also be that the documents required to support the application could not be printed out from one source and there was a laborious process of going through a number of different screens to print out the contents. Other advantages were that it ensured that ROs were adequately prepared to present cases and answer questions. However, there were

also downsides. An officer, who recognised that it was a check on the exercise of discretion, also said “it takes the initiative away from us” and that they should be given leeway as they “know the case”. Although ROs and RMs did not make this correlation themselves, the introduction of the form may well have led to the perception that DJs were making more realistic orders matching the arrears level; whereas adjournments had been a pattern, they were not so any more.

Increasing or decreasing use of the courts?

Whereas HA E could say that the numbers of court applications had declined, some others were not so clear. One possible reason for the lack of clarity is that perceptions can be affected by different legal “events”, from initiating proceedings, to the hearing, to the outcome, as well as suspensions. Where there had been reductions, perceptions might also have been affected by the fact that, as in HA A, C and E, the organisation had just cleared a backlog of cases which had built up (in HA C's case, it had been triggered by the merger with another HA which introduced a backlog of cases). Only in HA B could it be said that court cases and evictions had increased but this was because it was coming out of a cycle in which cases had not been managed properly and the organisation was “catching up”.

So, for example, in HA A, while evictions have been reducing, the incidence of legal action initiated has risen sharply in recent years. Perceptions of some LAM interviewees were inconsistent with this. Two of the three officers concerned reported that legal action is now being used less frequently than in the past because earlier intervention was enabling emerging problems to be addressed before the necessity to serve a notice or initiate proceedings. However, a third LAM interviewee felt that court action was now being more commonly initiated (if not carried through to eviction) – mainly because of the availability of the PCol system, which enables HAs (and others) to issue possession claims online and thus more efficiently.

In HA D, views on the incidence of court action were also conflicting, perhaps indicating more about the attitudes of interviewees than the “real” situation. For instance, one RO felt that court actions were increasing, but that evictions were declining, partly as a result of the economic situation making DJs more reluctant to evict tenants. Another participant thought that court actions were increasing, but this time due to the “nought to court” role of ROs making them more likely to take their “own” cases to court, compared to when specialist court officers were used. However, another (more experienced) RO thought that court actions were declining,

possibly due to staff who were new to the role being reluctant to bring cases. This RO also thought that there had been a change in the nature of tenants, with more LA nominations meaning more vulnerable tenants for whom eviction would be an inappropriate course of action.

Court officer perceptions of District Judges (‘DJs’)

Unsurprisingly, given the findings of other research, our participants talked about the variability of DJ decision-making, although this was usually between different courts (as opposed to different DJs). Some courts were said to be “tenant friendly”, some were said to be formalistic. In the northern case studies, very different relationships were said to exist between the officers and the courts in the region. The northern case study HAs (HA A-C) were particularly chosen because they were situated around a particular court and this might affect local practice. If we control for use of that particular court, the perceptions of HA A-C were generally of heterogeneity between different DJs, although most were said to be “tenant-friendly”. HA A described one particular DJ at the court who was locally renowned as particularly reluctant to grant possession orders in any circumstances. HA B described it as a court which trusted the organisation not to bring a case unless it had to, and,

as a result, would make an order under Ground 8 because the HA had exhausted all other possibilities (a view shared by HA C, HA A remarking that they have not had “any problem” using Ground 8). However, the Court was also thorough in checking the application and would always adjourn cases if the tenant mentioned outstanding HB issues. HA C described the court as being more tuned in to the requirements of the PAP than smaller courts. In pursuing legal action for rent arrears none of these case studies employed different tactics when faced with different approaches by different courts or individual judges. As regards applications to suspend warrants for possession, DJs were said to be more willing to do so on the first occasion but progressively less understanding to tenants.

More generally, it was said that the economic climate might have impacted on DJs' willingness to make outright orders for possession. In particular, stays or suspensions of warrants of possession had been affected by this alteration, with few DJs said to be willing to refuse such an application by a tenant. In HA F, it was said that, faced with a tenant friendly attitude by the courts, court action was pointless (HA F/ISTL). Some manager research participants noted that officers should be more willing to challenge DJs when they made a decision that was plainly wrong.

f) The use of Ground 8

Despite a recognition that DJs tend to dislike the use of Ground 8, all case study HAs, except HA F (which was considering its introduction and using the research as a tool in this process), used it. They used it to varying degrees and for different purposes, and approved written policies were framed differently. Most policies were framed so that its use was a last resort, but there were different ways of conceptualising when this arose.

In HA A, corporate policy encourages the use of Ground 8 “where appropriate”. This is taken to refer to those cases where, despite deployment of a range of methods, a tenant has failed to make any positive response (or where previous agreements to repay have been breached). If, for these reasons, staff sees no prospect of the tenant beginning to repay arrears to save their tenancy, Ground 8 may be used to bring the tenancy to an end as quickly as possible. The local Neighbourhood Manager must also approve the use of Ground 8. A fairly common scenario is abandonment; equally, it is used with tenants regarded as untrustworthy who know how to “play the system”. The Group policy document makes clear that orders will rarely be requested on Ground 8: “We use Ground 8 more as a threat than a promise – it's a tool for getting people to pay when they've been to court before and defaulted

on agreements" [LAM interviewee]. One LAM interviewee estimated that Ground 8 was cited in around one case in every six entered in court. Under Group policy, staff are advised that the power should not be used where there are "ongoing investigations with HB departments regarding a new or backdated claim". In such cases, Ground 8 should be used in combination with Ground 10, with a decision on which Ground to invoke made at Court. If, at any time ahead of the hearing, the tenant makes what is seen as an attractive offer to pay off part of the arrears, the case may be proceeded with on Ground 10.

In HA B, Ground 8 was introduced as a tool to deal with high levels of arrears, although, due to commitments in certain tenancy agreements, it could not be used against certain tenants. It is used in "exceptional circumstances", according to IOs, which is when the tenant has no intention to pay. A manager said that it would be used where there was a combination of factors such as level of arrears, payment history, contact history, and number of times the tenant was previously in court. Ground 8 would not be engaged where the tenant was genuinely willing to pay their rent arrears. Unlike other case study HAs, IOs said that it might be used with vulnerable tenants who rejected support. This is regarded by a manager as an effective "lever" to

make tenants pay. ROs had different views about its use – one suggested that it was a "wake up call" for some tenants, others that it was useful to obtain a possession order but not to make occupiers serious about paying rent arrears. IOs also stressed that just because they obtained a possession order on Ground 8 did not mean that they had to follow it through to eviction.

HA C introduced the use of Ground 8 about eight years ago in response to frustration at having a warrant suspended seven or eight times. It is used only where there is no alternative and only after a vulnerability assessment has been made; and, if the tenancy can be sustained in any way, then it would not be used. It is not used where there are HB issues. The question was whether the tenant had engaged with the organisation or not. It can only be used in court with the approval of a team manager.

In HA D, it is used as a last resort, "when we've done everything, and they still break their arrangements, that's when we'd use it" (manager). It was the "won't pay" -someone with whom contact cannot be made or where trust has been breached (for instance through breaking repayment arrangements) - who were identified as candidates for its use. Past experience of failed Grounds 10 or 11 applications in "interest-free loan" cases can also lead to its

use – in these cases, it is viewed as a “get out of jail card”. It is not used with tenants identified as vulnerable. It was implicitly described as a tenancy-sustaining tool. For instance, its threatened use could trigger action from tenants and therefore secure the tenancy rather than terminate it – it is “a tool to focus people’s minds” (RO). The Ground actually to be used is decided on the day of the court hearing, but Grounds 8, 10 & 11 are always included in court applications to allow flexibility on the day. Even where an order is made on Ground 8, it does not necessarily entail eviction if the tenant can retrieve the situation. Participants clearly saw Ground 8 as valuable: “it is a useful tool, it is getting more and more difficult to recover rent arrears” (RO); and showed some anxiety at the thought of it not being available: “I would hate for it to be removed” (manager); “I would cry [if G8 were removed]” (RO). Despite those views, participants also displayed a desire to acknowledge its potential pitfalls and awareness of the controversy that surrounded it. One manager spoke of the need for “checks and balances” and the need for its use to be perceived as fair by “the man on the Clapham omnibus”, while the other stressed that it was “used but not abused”.

In HA E, Ground 8 had clearly been an important tool to the organisation in the recent past. As a

general rule, before it can be used, an officer must present a supporting case to the Assistant Director. Its use had been linked with the management crisis over rent arrears; in fact, as an RM put it, “it would not have done us well to evict on Ground 8 because it would highlight [internally] poor management”. In 2008-09, an RM said that it had been used for two evictions. The general view among participants now appears to be that there is a disincentive to use Ground 8 because the report requires a lot of additional information. In any event, it was not the favoured solution of any participant: “[I don’t] see the point of it. If I’ve done my work properly, I’ll get my order” (RO); “I can’t see a case where we’d need to serve a Ground 8 notice ... and I hope there would never be a need” because “everything is manageable if we do it right from the beginning” (RM). Another said that the average mindset of officers is that Ground 8 is the “very, very last resort” because there is no going back. The current AD said that it was used in those cases where there had been persistent arrears and tenants had paid the balance off irregularly, sometimes just before court hearings (the “interest free loan” scenario). It appeared that it might also be used in abandonment cases for an organisational reason – “it is the easiest option for that case”. Estate managers pursue abandonment cases via the legal team. It was felt that the legal team “sat on” these

cases for a period and “nobody is prepared to take the initiative”, so arrears accrue on the property. However, pursuing abandoned tenants through Ground 8 would be an easier, more efficient and effective solution and one is not evicting anyone as such. Another type of case where it might be used was in relation to sub-letting, where it was “known” that the property was sub-let but that “fact” could not be proved. “Local laws” separate out the two teams of ROs. One RM had previous experience of a DJ (wrongly) staying a possession order under Ground 8 twice where arrears were £8,000. This case infiltrated this team’s decision-making as to the Ground for possession – why use Ground 8 when the outcome will be the same as Grounds 10 and 11. The other RM had experience of obtaining an order under Ground 8, but subsequently found that there were other reasons for the rent arrears, and had considerable difficulty in withdrawing the order.

HA F had not used Grounds 8 and 11 hitherto, but officers were considering recommending its adoption as a policy to enable them, like other top performing HAs, to use it. Officers recognised that its use was criticised and that some regarded it as inconsistent with the Government’s wider approach on homelessness. Officer attitudes towards its use were largely, although not completely, favourable. Three particular reasons were cited in favour of its

use: deterrence (“it’s like wielding a big knife, we’d like to have it here as a deterrent”; “if we could have Ground 8 in our arsenal, it would make life a lot easier”); disciplining recalcitrant tenants, especially those where there had already been a large number of court hearings; and it was believed that Ground 8 would enable the organisation to cut its rent arrears and legal costs.

What was particularly notable was that all case study HAs which used Ground 8 felt that they could do without it (even HA C). Some participants said that it might lead to larger accumulated debts, and might have a “bit of an impact” (HA A), “not dramatic” (HA B), but its withdrawal would not cause the business model to decline (“we would get by without it”: HA C). In HA E, whilst acknowledging its withdrawal would not affect the business, the AD made an impassioned plea for its limited retention on the basis that government controlled the rents it could charge and the organisation was controlled by outside forces effectively. On this basis, use of Ground 8 was one decision that the organisation could make for itself.

g) The tenant perspective

In each case study, an interview was conducted with a tenant who was a board member or who was engaged at a high level with tenant participation strategies. These research participants tended to emphasise the importance to tenants of low rent arrears because of the consequential impact on rent levels. As a result, they were largely supportive of the use of Ground 8 and confirmed consultation about the use of Ground 8 with Boards.

h) Impacts of the recession

In some case study areas the post-2008 recession had, by the time of the fieldwork (May-June 2009), already led to rising unemployment and this was beginning to push up the proportion of tenants reliant on HB. However, few interviewees believed that the post-2008 recession had, at the time of the fieldwork (May-June 2009), impacted significantly on either arrears levels or the incidence of legal action.

There was no consensus on whether higher rates of benefit-dependency would be expected to lead to growing arrears and possessions. For example, one scenario outlined from a front-line perspective was based on a belief that serious arrears arise most frequently where a tenant gains employment

after having been unemployed and, hence, on full Housing Benefit. Such a change often involves entering relatively low-paid work. Hence, there will be an expectation that the tenant will remain eligible for partial HB. Having been notified of the claimant's change of circumstances, some local authorities suspend payment until the new entitlement has been calculated. In one authority in which several of the case study HAs operated, this process could take three months because the HB section required two monthly wage slips and new Tax Credit payment details before HB entitlement is calculated. Often, tenants failed to make sufficient provision for the part of the rent that they would henceforth be expected to pay. Consequently, when such a claim is finally settled, the HB back payment may be far from sufficient to repay the arrears accumulated in the interim.

From this perspective, a growing economy drawing poor households into low paid employment presents a hazard greater in terms of arrears and possessions than a shrinking one where HB claims resulting from loss of employment are typically resolved quickly.

6.3 Duty advisor interviews: key findings

Telephone interviews were conducted with four solicitors, two mapping on to the HA A-C, and two broadly mapping on to at least some of the courts used by HA D-F. One in each area was responsible for the management of duty advice schemes at their local court. These interviews, although small in number, offered a counterbalance to the perspectives and practices, which formed the case study work in the previous section.

Certain key themes emerged from these interviews which might form the subject of further work but which, for our purposes, offer a third party appreciation of HA court-based practices. The nature of duty advice work is such that advisors meet clients, take instructions, and represent them in court in a short timespan. Instructions can only be taken when tenants attend court and they may not do so. Instructions taken “on the hoof”, so to speak, require the client to have brought the relevant documents with them, which is not always the case, and advising in those situations is obviously difficult. After taking instructions, the usual process is for the duty advisor to seek to negotiate with the HA housing officer before entering court.

The two advisors, which cover the court used most prominently by HA A-C noted an increase in the use of Ground 8 by HAs in that court. Amongst the clients who attend court and instruct them on an average duty day, one said that it is pleaded in around 75% of claims and actually used in 20-25% of hearings; the other said that, in one possession day in June, it was used in four cases in which this person acted. This represented a significant increase in its use, which was said to have begun in or around 2005 (before which it would be used in perhaps one case per year).

It was not just that increase in use, though; it was also the manner in which it was used, with some HA officers being more unwilling to negotiate terms and more aggressive in pursuing a possession order:

“Sometimes when I look at the court list, I cringe because the tenant has little chance of negotiating with HAs and you do know the officers who turn up and won't listen. Nothing will change at that point and they won't consider reasons that we consider to be reasonable.”

The DJs in this court were said to be mostly knowledgeable and sympathetic, albeit there was a lack of consistency between them (and this might alter when a Deputy was sitting). Their approach to

Ground 8 was generally to scrutinise all documents carefully – one interviewee said that HAs complete their documents incorrectly in about a quarter of the claims – and the perception was that they are willing to adjourn Ground 8 claims on the slightest evidence. The same was said by the other advisors, one of whom had some success at requesting the court to give Directions to enable the tenant to file a defence (“Most will listen to that and I always bring relevant articles”). Indeed, across all courts used by participants, it was said that some DJs would ask HAs at the outset whether they really intended to rely on Ground 8 only.

One issue hinted at above, but which also came out of all interviews, was the participants’ general perception that certain housing officers were more willing to negotiate than others, and this differed both between and within HAs. Officers were generally considered to be less knowledgeable about the law and procedure, which enabled advisors to develop arguments. This also meant that officers were unable to develop legal arguments or challenge judgments. In relation to suspensions of warrants, for example, one London duty advisor said that HA court officers were generally inexperienced and did not appreciate that they could ask the court to make that particular suspension the last one and for the DJ to reserve any subsequent applications to themselves.

All the advisors were concerned that HAs were not using Ground 8 as a last resort, and that it was being used earlier. The London advisors felt that its use was gradually being reduced. One London advisor felt that this was a reason why a number of Ground 8 claims were subsequently withdrawn, because the HA found out about the tenant’s problems or vulnerability only after issuing the claim.

As regards the PAP, the courts in which the advisors operated had different approaches. One court was said to require compliance to be included in a witness statement and refuse to hear oral evidence; others were willing to take oral evidence. Most DJs were said to be “hot” on the PAP, and willing to draw on it to identify HA omissions. Although HAs paid more attention to the PAP by necessity, it was felt by these advisors that some paid “lip service” to its terms, rather than actively engaging with its spirit (and the tenant), sending out the relevant letters at the relevant time. The advisors were also sceptical about whether HAs generally made early interventions with tenants to stop rent arrears building up, although the use of court proceedings earlier in the development of arrears also meant that courts would be less likely to make outright orders.

6.4 Conclusions

Six case studies were conducted with HAs. They were spatially concentrated around two areas, and the North case studies were concentrated around a particular set of courts to assess the relevance of an individual court on the HAs' practice.

Five were relatively high end users of Ground 8, one was a non-user but was considering its introduction in the future.

Each of the case studies focused on early intervention both as a matter of good practice and to focus on the sustainability of tenancies. There has been increased centralisation and specialisation of rent arrears management together with managerial intervention in the past few years. The purpose of these changes was most often to ensure consistency of practice across the organisation as well as being used as a tool to improve performance. The latter was particularly the case where the HA had been performing poorly against benchmark HAs on rent arrears management.

There were certain types of tenant who were regarded as most at risk of rent arrears. The most significant such group was recipients of HB, partly because of the time it took to process claims in certain local authorities and partly because of changes in the

claimant tenant's household and employment status. Suspensions of HB were a particular concern. Some tenants in receipt of HB also were said to have a "culture" of not accepting the responsibility for the rent. Culture change amongst officers and tenants was an ongoing process.

Computer software packages prompted officers to take appropriate action on individual cases, and in some HAs these packages were used with discretion.

Although sometimes not explicit, the PAP has had an impact on practice and policies and procedures amongst case study HAs now facilitate compliance with its terms. Additionally, many case study HAs have now formalised their processes, officers complete pro-formas to support their case, and prepare cases for court in ways which demonstrate compliance with the PAP. In some HAs, for different reasons, this had led to a decline in the numbers of court applications. However, where court applications were made, it was likely that this would be the case at an earlier stage than previously because of early intervention policies.

Nevertheless, court practices, approaches and decisions remain different. There concerns amongst some participants that courts had become more tenant-friendly, leading to adjournments and suspensions of warrants.

Ground 8 was said to be used as a “last resort” by all case study HAs, but there were differences in how this term was defined internally and in HA practice. A range of definitions and practices were found in case studies. High arrears on their own might not be sufficient in some HAs to justify its use – something extra was required, such as a perception that the tenant was using the organisation to provide “interest free loans”, repeated court hearings, abandonment. As a general rule, it would not be used where HB was in issue or, except with HA A, where the tenant was “vulnerable”. In one case study, the teams had different versions of a “local law”, which supported a practice of using it only rarely.

There were different rationales underpinning the use of Ground 8, although these were also contested internally by some officers. Its use was said by some to act as a deterrent to rent arrears; it was an alternative where there were, or had been, multiple suspensions of warrants; it was used to resolve an existing rent arrears crisis, although this was also recognised as a failure of previous management strategies. Where it was used successfully by HAs, this might not result in an eviction – tenants were usually given a further opportunity.

Although Ground 8 inspired an occasionally emotional response from participants, it was generally accepted that the organisation could operate successfully without its use but this might involve a slightly higher exposure to rent arrears. Tenants supported its use on the basis that rent arrears impacted on the rest of the tenant community.

Duty advisor interviewees covering HA A-C were concerned at the increasing use of Ground 8 as well as the unwillingness of some HA officers to negotiate. London advisors noted falling use. Generally, the advisors commented on the inexperience of officers in law and procedure, which may result in them not achieving the orders they wished. Equally, the court forms may not have been correctly completed. There was a suggestion that the PAP was now being paid lip service as opposed to a genuine engagement with its terms.

Chapter 7

Conclusions

This study was commissioned to rectify certain gaps in knowledge about housing association management of rent arrears, including processes and practices around possession proceedings. Most of the existing research had been conducted before the interventions of good practice guidance, Housing Corporation Circulars and regulation, as well as the Rent Arrears Pre-action Protocol (PAP). While this research demonstrates that much has changed over the past few years it is not entirely certain that this has resulted directly from these interventions. It is, however, clear that rent arrears management practices are not static and ongoing changes can be expected.

One significant shift, a continuation of a trend identified in earlier studies, has been the increasing focus on specialist management of rent arrears within HAs – just 27% of respondents to our survey continued to operate a mainly generic model. Specialist approaches are predominant among the largest HAs. The case studies indicated that centralisation was a process through which managerial interventions could be imposed on housing officers to ensure greater uniformity of practice as well as improved performance. As typically construed by senior managers, this constitutes a “more professional” approach to income collection.

Additionally, there has been an increasing focus on the provision of income maximisation and welfare benefits advice to tenants either provided in-house or through direct referrals to other agencies. The case studies also demonstrated that value was seen in this advice being provided as early as possible in the tenancy cycle. One potential issue raised by our survey was the comparative lack of internal training on DSS deductions and mental health awareness, which are key features in the PAP.

The service improvements noted above have been complimented by a generally rising trend of performance in the administration of Housing Benefit (HB). Nevertheless, more than a quarter of responding HAs still found it necessary to initiate legal action against tenants to pressurise local authority HB administration to prioritise casework. The case studies indicated that HB issues also sometimes arose after the claim had been successfully processed, for example as a result of suspensions in its payment or the recovery of overpayments. The other issue particularly raised by the case studies was the need for “culture change” amongst tenants in receipt of HB towards accepting responsibility for their rent account.

The key stakeholders regarded the PAP as an important impetus for changes in rent arrears management activity, and three quarters of HAs responding in the national survey asserted that this had been true for their organisation. Such changes were often said to involve the adoption of more structured, thorough and consistent working practices, as well as an increased emphasis on prevention and a greater sensitivity towards tenant vulnerability. The case study HAs had all responded to the introduction of the PAP, although this was not always an explicit impetus (which might, for example, have arisen as a result of disproportionate rent arrears). Nevertheless, the process and practices now in place in the case studies facilitated compliance with the PAP as well as enabling that compliance to be demonstrated.

A further significant shift has been the increasing focus of HAs on initiating personal contact with tenants in rent arrears at an early stage. This was a particular feature of case study HA practice but was also highlighted in our survey, which indicated that as a rule, housing associations expect rent collection staff to seek personal contact prior to serving a NSP. Backing up this finding, evidence from our case file review of recent eviction cases (see Annex 1) indicated that housing officers had typically contacted the tenant five times about their arrears before

serving an NSP and that an average of eight further contacts had been made post-NSP (and before actual repossession). This is completely at odds with any suggestion that possession proceedings may be entered into or pursued by HAs in a casual way.

Also particularly significant is the case file analysis finding that three quarters of the sample of evicted tenants had breached previous repayment agreements – thus making them what housing officers considered to be “serial offenders”.

The statistical evidence indicates that rates of eviction for rent arrears fell by around a quarter in the three years to 2007-08 (mirroring the trend for local authority managed housing). However, there is an unexplained disparity between the rates of eviction in the Midlands, which has the highest rate, and London, which had the lowest rate, in 2007-08. This disparity could not be explained by our research methods in this project and is, perhaps, counter-intuitive and suggests the need for further research targeting this comparison. LSVT landlords have the lowest rates of eviction in the sector; the highest rates are probably found among the smaller HAs with between 250-999 properties. Although the reasons for this statistical fall are likely to be related to a range of factors both directly and indirectly related to rent arrears management, and also HA-specific, the

research findings suggest that the trends towards increasing centralisation and managerialisation of rent arrears management, together with earlier intervention and face-to-face contact, may be factors contributing to this decline.

Previous research on HAs' use of Ground 8, a key focus for this study, has been very limited. Our study found:

- Almost a quarter of HAs had recently made some use of Ground 8
- LSVT associations were least likely to use it, perhaps because of commitments made at transfer
- The level of arrears was reported by housing staff as a key determining factor in influencing decisions to proceed on Ground 8 – however, this was somewhat belied by the case file analysis showing that the typical value of arrears in Ground 8 cases was only marginally higher than for cases where action was pursued on other grounds
- Other considerations reportedly relevant in decisions to use Ground 8 were: failure to respond to attempts at contact; property abandonment; and the tenant's "other behaviour" – the importance of the first two of these factors was borne out by the case file analysis
- On the basis of our survey, we estimate that Ground 8 was used in 350 evictions in 2007-08, just under five per cent of the national total number of arrears evictions (although this assumes evenness across the sector, and it is notable that two HAs, which were known as heavy users of Ground 8 did not respond to the survey)
- Among the sub-sample of HAs which used Ground 8 and which responded to our survey, eviction on this ground accounted for 20% of evictions in that year
- The incidence of Ground 8 use in London was twice the national average
- The indications are that the use of Ground 8 has increased in recent years. The reasons for this remain unclear. It is theoretically possible that this reflects the "perverse incentive" created by the PAP in that failure to comply with its terms in such instances can be penalised only by an order for costs. However, there is no evidence at all that any increase in the use of Ground 8 is an "unintended consequence" of the PAP

Among case study HAs, Ground 8 (which was used by five out of six case study HAs) was said to be used as a last resort. A range of definitions and practices were found as to the meaning of "last resort" in this context, although as a general

rule it would not be used where HB was in issue or, except in one HA, where the tenant was known to be “vulnerable” (although again different notions of vulnerability were employed). In some HAs, this was facilitated by a practice of requiring officers to submit the case for using Ground 8 to a manager for decision. In one HA, which had been a high user of Ground 8, the teams had developed different versions of a “local law” that supported its minimal use. In two case studies, it had been or was being used as a way out of the failure of previous approaches to rent arrears management. In all case landlords using Ground 8 there was a general acceptance that their organisation could operate successfully without its use, although this might involve a slightly higher exposure to rent arrears.

Duty advisors covering the court used by the three Northern case study HAs were concerned at the increasing use of Ground 8 against clients for whom they acted as well as the unwillingness of some HA officers to negotiate. All duty advisors commented that presenting housing officers generally lacked experience and knowledge of law and procedure, which may result in them failing to achieve the orders requested, and could give rise to multiple suspensions.

Future policy development in this area could be usefully informed by routine collection of data on the use of Ground 8 from the landlord perspective. It would be straightforward to request that landlords specify in RSR returns the number of evictions in which action had been brought under Ground 8. More generally, there could be a case for seeking additional data about evictions on an ongoing basis, using the same vehicle. This could include, for example:

- information potentially shedding light on the causes of eviction, such as the proportion of evictions where the recovery of a Housing Benefit overpayment had been a contributing factor to arrears leading to proceedings
- information providing an insight into arrears management, such as the proportion of evictions involving cases where personal contact had been made with the tenant before proceedings had been initiated

In terms of specific research, there is potentially much that could be learned from a longitudinal study of a cohort of households in serious arrears, with a focus on identifying the managerial and legal processes applied.

Annex 1

Recent eviction cases: case file review analysis

Methodology

Each of the six case study HAs was asked to collect and submit brief statistical information in relation to a cohort of recent eviction cases. As regards sample selection, case study contacts were requested to include the most recent ten cases involving properties repossessed under Ground 8, along with a similar number of evictions secured under Grounds 10 or 11. Referring to the relevant case files, case study landlord staff completed pro-formas, which were sent to the research team for data entry and analysis (a blank pro-forma is included at Annex 5).

In all, 105 completed pro-formas were received for inclusion in the analysis, with these being split almost evenly between Ground 8 cases (52) and Ground 10/11 cases (53). Because one case study landlord had not made any recent use of Ground 8, its pro-formas all related to Ground 10/11 cases. Other than this, the samples of both types of case were distributed fairly evenly across the case study landlords.

Demographic and economic characteristics

Single adults accounted for almost two thirds of all cases in the sample (see Table A1.1). Although age data was not collected, it seems likely that the vast majority of these persons will have been people of working age because, in general, retired people are not subject to the changes in employment and family circumstances which are often the cause of rent arrears. Cases taken on Ground 8 were somewhat more likely to be single people or childless couples and less likely to be families.

Just over half of the cases included in the analysis involved households where one or more family members were in employment (see Table A1.2). This should be seen within the context of a sector-wide figure from the Survey of English Housing 2007 showing that only 38% of all households in the social rented sector contained persons in work. The employment rates for the two sub-groups of evicted households included in our study (Ground 8 vs. Ground 10/11) were similar.

Table A1.1 – Evicted households by household type

	Ground 8	Ground 10/11	All
Single adult	71%	58%	65%
Single adult with children	12%	23%	17%
Childless couple	6%	4%	5%
Couple with children	10%	15%	12%
Other	2%	0%	1%
Total	100%	100%	100%
N=	52	53	105

Table A1.2 – Evicted households by economic status (at point of eviction)

Household contains...	Ground 8	Ground 10/11	All
1 or more family members in f/t work	52%	45%	49%
Part-time worker(s) only	4%	6%	5%
No-one in employment	44%	45%	45%
Not known	0%	4%	2%
Total	100%	100%	100%
N=	52	53	105

Table A1.3 – Evicted households by ‘vulnerability’ status

	Ground 8	Ground 10/11	All
Yes	13%	19%	16%
No	87%	81%	84%
Total	100%	100%	100%
N=	52	53	105

By the reckoning of housing management staff, around one in six tenants in our evictions sample was a “vulnerable person” with the proportion being fairly similar for Ground 8 and other cases (see Table A1.3). Rather than defining this in any precise way, the question simply asked, “Could the tenant have been defined as a vulnerable person?”. The small number of “vulnerable” tenants evicted under Ground 8 included persons so-defined as a result of: domestic violence; epilepsy; a care leaver; old age.

Contributory factors to arrears and support provided by landlord

In more than a third of eviction cases in the sample, arrears had built up partly because of unpaid HB (see Table A1.4). In the vast majority of these cases, the problem was attributed by the landlord to the tenant’s failure to provide information requested by the local authority. Another fairly common reason was the instance of tenants prioritising the

repayment of other debts ahead of rent arrears. In many of the cases where participants indicated that “other” factors were involved the details provided were not particularly informative – eg “tenant left property”, “tenant failed to make payments”.

As shown in Table A1.5, at least 80% of tenants subject to eviction were provided with some form of help by the HA, most commonly through provision of welfare benefits advice. This left 20% of cases where no support was provided or the staff member completing the pro-forma did not specify the help given.

Help in making HB claims was not always relevant because of the fact that some tenants were in sufficiently well-paid employment to make them ineligible (see Table A1.2). Also, many of those offered such help reportedly did not take it up (this is likely to include those tenants who were later deemed to have abandoned their homes and were

uncontactable as a result). Where provided, such assistance often either took the form of technical

advice, help in completing a claim, or making contact with a local HB team on a tenant's behalf.

Table A1.4 – Eviction cases: factors triggering build-up of arrears

	Ground 8	Ground 10/11	All
HB administration - LA performance	2%	6%	4%
HB administration - tenant failure to respond	37%	31%	34%
Relationship breakdown	4%	0%	2%
Loss of earnings triggered by med factors	2%	6%	4%
Loss of earnings due to other reasons	10%	8%	9%
Prioritisation of other debts ahead of arrears	27%	29%	28%
Other	56%	61%	58%

Table A1.5 – Support offered by housing associations to tenants subject to eviction

	Ground 8	Ground 10/11	All
Welfare benefits advice	62%	53%	57%
Social support	4%	8%	6%
Other	27%	26%	27%
Referral for debt counselling	27%	26%	27%
Medical support	0%	4%	2%
Some form of support	83%	77%	80%
Total	100%	100%	100%
N=	52	53	105

Previous interventions to address rent arrears

Across the sample of eviction cases analysed, housing officers typically contacted tenants in arrears five times before serving NSPs, with eight further contacts being made post-NSP (and before actual repossession). In some cases these numbers excluded “large numbers” of phone calls and texts. The median number of pre-NSP contacts made in cases of eviction actions under Ground 8 was slightly higher at six, with the median number of post-NSP contacts made in such cases being nine.

In about three quarters of all cases, previous agreements on arrears repayment had been breached – see Table A1.6. In most of the Ground 8 instances not involving breached agreements it was believed that the tenant had abandoned the property or attempts to make contact about rising arrears had otherwise failed to provoke any response.

Just over a quarter of cases (26%) had been considered by management panels – the proportion of Ground 8 cases subject to such procedures was similar to that for Ground 10/11 cases. There is no evidence here that taking cases under Ground 8 requires landlords to subject these to special scrutiny.

Table A1.6 – Existence of earlier arrears repayment agreements

Earlier arrears repayment agreement reached?	Ground 8	Ground 10/11	All
No	14	11	25
Yes – breached	38	41	79
Yes - not breached	0	0	0
Not known	0	1	1
Total (N)	52	53	105

Just under half of all cases in the dataset (49%) involved tenants who had been subject to previous court hearings for possession. This was somewhat lower among Ground 8 cases at 40%.

Initiating intervention

Across the sample, as a whole, the average arrears level at the point when NSPs were served was £907. It is interesting to relate this to the reported practice of RSLs in usually initiating legal action at an arrears level equivalent to six weeks rent. Given that RSL rents averaged £70 per week in 2008 (CLG Housing Statistics 2008), this would imply

a threshold of £420 (although, given the typically higher rents in London, the implied threshold here might be more in the region of £500). Among those eventually subject to eviction and included in our sample, however, only eight out of 105 were reported as having arrears below £420 when the NSP was served. In fact, a quarter of all cases were initiated at an arrears level of over £1,000. It seems possible that such instances may have involved large amounts of debt suddenly appearing on accounts due to HB overpayment recoveries. Alternatively, HA staff do not, in practice, always hold to stated policy here.

Table A1.7 – Tenants subject to eviction: average arrears levels and period arrears present

	Average arrears level (£)		Average no. of months arrears present...	
	When NSP served	On date of Hearing	...when NSP served	...on date of Hearing
Ground 8 cases	1,003	2,027	5.4	14.6
Ground 10/11 cases	814	1,778	11.9	24.6

To an extent, the average arrears value figures in Table A1.7 are consistent with the hypothesis that Ground 8 is used for “more serious” arrears cases. While the period of arrears build up prior to legal action tends to be much shorter for Ground 8 cases, the value of arrears at this point is somewhat higher. While, the difference between the Ground 8 and Ground 10/11 figures is relatively small, as is our sample size, this could imply a tendency to use Ground 8 for cases where debt has risen particularly fast. As well as unpaid rent accumulating weekly, this could involve HB overpayment recoveries.

At 9.2 months, the average period between the commencement of legal action and the court hearing is shorter for Ground 8 cases than for Ground 10/11 cases (12.7 months).

Factors prompting use of Ground 8

Staff completing the pro-forma were asked to provide brief details of the factors that prompted the use of Ground 8. However, the information submitted in response was rather patchy and of variable quality in terms of providing a specific answer to the question. The most frequently mentioned issues were:

- A belief that the property had been abandoned by the tenant – and, in a number of instances, subsequently illegally sub-let (11 cases)
- The (high) level of arrears (11 cases)
- Lack of response or co-operation from the tenant (11 cases)

A factor cited in nine cases was that the tenant had defaulted on previous arrears repayment agreements.

Tenant attendance at court

Only 11% of Ground 8 defendants were recorded as attending their court hearing, as compared with 34% of tenants facing possession actions under Grounds 10 or 11. There could be a number of reasons for this considerably lower attendance rate for Ground 8, such as **actual** abandonment by the occupier or, simply, recognition that they could not defend proceedings brought on a mandatory ground.

Annex 2

Case study HA selection

Our sampling method identified the following criteria as relevant to selection: national/local HA coverage; use of Ground 8 (as reported in the national survey); diversity of HA (in terms of size, type, region and overall geographical footprint); transfer and non-transfer HAs; and organisational factors (relating specifically to audited performance and type of housing management). We take each of these in turn below and identify their relative significance. Given the project's focus on the use of Ground 8 and its relevance as a rent arrears management tool, this criterion was particularly significant.

National/local

Our case studies were focused on two geographical areas of England, one in the north and one in the south, both of which were predominantly urban. Although the national survey data highlighted regional contrasts in the use of Ground 8, both areas incorporated HAs defined as "high users" of Ground 8 – in numerical terms. The focus on three HAs operating in the Northern area also allowed us to investigate whether any specific court or District Judge ("DJ") approach or practice influences HA organisation of its decision-making

on possession actions. Other than geography, this criterion was also concerned with whether an HA was a national or local provider. In the north area, one of our case Study HAs was a national player (HA A), although our study focused on the local operation to ascertain the extent to which local factors were replicated by a national organisation with national policies/practices operating in that locality. Thus, we were able to test for the influence and importance of locality on the implementation of that policy.

Use of Ground 8

The Housing Corporation's research specification emphasised the importance attached to the investigation of association practice with respect to Ground 8. In particular, the research was required to explore whether such practice might have changed in response to recently issued good practice advice on the essential need for a preventative approach to arrears management (as backed up by the terms of the PAP). We have indicated how this affected area selection. It also influenced the selection of case study HAs, particularly in the South. All northern HAs were relatively high users of Ground 8. In the South,

one HA was a high user (HA D); one issued a large number of claims on the basis of Ground 8, but made few actual evictions on this Ground (HA E); and one was a non-user of Ground 8 but had indicated in the questionnaire return that it was considering its introduction into their policy (HA F).

Diversity of HA

The criteria discussed above have foreshadowed this point to an extent. The transfer/non-transfer criterion mentioned above was reflected to some extent by the inclusion of HA D, although this was an unusual form of transfer landlord. Other case study HAs had taken over stock formerly managed by local authorities, although not a stock transfer landlord per se (eg HA E).

Organisational factors

These factors were related to two elements – audited performance of RSLs (ie a mix of high/low performers and improvers) because this could be beneficial in that our work could build on an existing body of well-evidenced research findings; as well as the organisation of rent arrears management.

Annex 3

Profile of case study housing associations

HA A

HA A is an area office of a nationally operating HA that owns or manages more than 60,000 properties. Increasingly, company wide procedures are being introduced for housing management activities, including a structure for rent arrears management. The motivation for this change in rent arrears management was to develop more consistent, more professionalised practice across the organisation in an attempt to manage down both arrears and evictions. At the same time, it was believed that, in developing an effective Former Tenant Arrears collection system, the service could be marketed to other HAs.

Local Account Managers (“LAMs”) are based in area offices, responsible for individual patches of the territory administered by the area office. LAMs are wholly responsible for monitoring rent accounts and managing arrears from the point of commencement of tenancy. This company-wide policy was a shift from the previous discretion accorded to area offices as to organisation. LAMs are co-located with housing management staff in Area Offices and find this beneficial in sharing information with colleagues responsible for response repairs and estate management.

LAMs are line managed by account managers who work from two central offices. LAMs work closely with Centre-based staff, with LAMs' primary role being to make home visits to tenants in arrears – especially those who Centre-based staff find to be un-contactable by phone. LAMs also liaise with local HB staff and present cases in court. They work “non-standard” hours – including evenings and Saturday mornings – in a bid to improve their “strike rate” in making direct contact with tenants in arrears. This out of hours working is compensated by flexible working rather than higher pay.

HA B

HA B is a sub-regional HA operating across 14 local authority areas. HA B operated from three area offices until 2008, when two area offices were closed down as part of a restructuring of the organisation. There is now one central directorate and two rent collection teams. The management of rent arrears gradually switched from generic to specialist in 2006 as different area offices changed their practice.

As part of the restructuring, rent arrears management became a specialist role held by Income Officers (“IOs”). They only become involved with tenants when rent arrears arise. The

management encourage Neighbourhood officers and IOs to talk to each other as the latter do not “know” tenants. The shift to one central location was regarded as helpful in facilitating communication between these different parts of the organisation, although one officer commented that physical proximity did not equate with interaction necessarily.

The motivations for restructuring were performance – HA B was in the bottom 25% of HAs for rent arrears performance and it was felt that a “drastic change” was required – and inconsistency between different area offices, which management wanted to eliminate. After the restructuring, the organisation found that specialist IOs were organisationally more productive than generic housing officers because, under the generic regime, rent arrears management tended not to be prioritised (as it was not regarded a “nice” part of a housing officer’s job, unlike allocations). The timing was appropriate due to retirements in the remaining generically managed office.

As IOs focus is now on rent arrears management, there has been a significant improvement in rent arrears recovery. Arrears figures have dropped dramatically - down by nearly three per cent since IOs became specialist (and were 1.5% in 2008-09). Additionally, the Rent & Voids Manager feels

much more in control now as in the past he could not do anything about the remaining generic office’s poor rent arrears performance.

HA C

HA C is a regional RP with 15,000 owned or managed stock. It has a more traditional, generic approach to rent arrears management in which the management of individual tenant’s rent arrears are one part of the role of Housing Officers (“HOs”), although HOs are target-driven for rent arrears. A Community Initiatives Adviser who advises tenants on benefits supplements their work. This is an important element of rent arrears management as many tenants are not aware they are entitled to benefits (or do not know how to claim them), which may unnecessarily put them in arrears.

Rent arrears management is reactive, in that action is taken when the customer is already in rent arrears (although the policy is to contact a customer early, within two weeks of arrears arising). Housing Officers spend one day per week entirely on rent arrears cases. They also liaise with local HB staff and present cases in court. Current rent arrears performance is “very good” and targets are being met.

However, after a review across its housing services, HA C is to move towards specialist Income Officers. This change is designed to contribute to the prevention of arrears and to achieving an excellent rating for customer services. The prevention of rent arrears is planned to be achieved through focusing on proactive rather than reactive work. Income Officers will not simply be focused on the rent but on the overall financial health of the customer and on maximising customer's income. The role of the existing Community Initiatives Adviser will be amended in that the emphasis will be on identifying households that are entitled to benefits before arrears arise.

HA C has considered the policies and procedures of other HAs with excellent Audit Commission ratings and selectively borrowed from them as part of this shift in approach. In particular, it was decided that the Income Team and the Neighbourhood Team would be located together to make sure that there is effective communication between two types of officers.

HA D

HA D works across London and the south east. In the few months prior to our fieldwork, rent arrears management underwent considerable changes after a service review in 2008 offered criticisms that "Departments and teams do not pull together on rents and arrears across the organisation"; and "the area for greatest development is non-reactive preventative work, although recovery practice would benefit by being speedier and having more contact with the customer via means other than letter". The review also recommended "IT customer profiling and research, service standard development, greater and earlier customer contact, stronger rent payment focus at point of let." These changes all appear to have been implemented by a senior management with a background in, and predisposition towards, personal door-to-door rent collection. A senior manager said that the trend away from personal contact meant that HAs "lost the sense that these are people". Previously there were four revenue officers and two court officers, with a handover between them at the appropriate point. Now there are six Revenue Officers ('ROs') each of whom deals with court actions as necessary.

The motif of the changes has been to establish personal continuity of contact between a revenue officer and the tenant as opposed to a formal process of arrears management. This has been affected by:

- Moving arrears management from the Credit Control Team to the Operations Directorate
- Establishing that one frontline RO officer will have contact with each tenant from the beginning of a tenancy through to eviction, should the situation arise – described as a “nought to court” approach
- Probationary tenancies have been introduced to emphasise the importance of paying the rent from the outset
- Cross-training between ROs after the role-change
- Establishing links between housing officers and ROs since January 2009

The expansion of the RO role has also been part of a wider emphasis on knowledge sharing throughout HA D. For example, there is increasing integration with neighbourhood services, so that neighbourhood wardens are encouraged to visit tenants in arrears and report back with problems that they uncover. The closer relationship with housing officers facilitates

greater awareness of other issues which may give rise to rent arrears (such as domestic violence and relationship breakdown). An in-house call centre also assists with tracking rent arrears when tenants telephone for some reason, such as a repair problem, and their arrears are automatically flagged. The emphasis on knowledge sharing also met a desire of senior management to increase the “intelligence” that HA D has of its tenants: “you have to create ways for, for capturing it [intelligence] both formal and informal”.

HA E

HA E works across most of the London Boroughs, and is an established HA with a long history. That lengthy history still affects some of its practices (such as service of notices on front doors of its properties) and culture change is an ongoing process. There was a shift from generic estate housing management to centralisation of services in 2005 together with the introduction of an in-house call centre for generic issues.

After a restructuring within the past three years, there are now two teams of Revenue Officers (“ROs”). ROs solely manage rent collection on patches and are set targets for rent arrears on their patch. ROs are also set projects in pairs, such

as developing joint working with the lettings team to facilitate prevention of rent arrears from the outset. ROs were described as “DIY court officers” because they also present their cases at court. They have targets of a 90% success rate for court cases. A specific RO was recruited to deal with arrears in the sheltered housing stock (which were felt to be unusually high) and HB overpayments (which were unusually complex). Each team has a Senior (“SRO”), who manages complex cases and the more difficult patches. Each team is also headed by a Revenue Manager (“RM”), who is also responsible for policy development. Most of the senior management post-date the restructuring. There is also a third, newer team of Welfare Benefits Advisors, who are responsible for income maximisation of tenants. They have a service standard of meeting with tenants within two weeks of the commencement of a tenancy.

The restructuring was caused primarily by a recognition that the organisation was underperforming against benchmark HAs on rent arrears management, a fact which was brought into focus during preparation for an Audit Commission inspection. The culture of HA E had been to accept tenant’s reasons for rent arrears and to allow arrears to accrue without court action because of

its charitable objectives. This led to some tenants building up significant arrears. Even after successful court action, many tenants would not be evicted.

As the new approach has matured, there has been a changed focus towards early intervention, support and sustainability. ROs now have a target of making ten home visits per month, a policy, which was greeted with a little disquiet apparently, but is now warmly accepted. The label attached to the policy has also changed from rent arrears to rent collection.

HA F

HA F is an organisation within an HA group structure, operating across London and the south east. Rent arrears management is framed by a policy document, which states that the association aims to, “promote a rent payment culture, encouraging early payment and preventing customers falling into arrears”. It also sets out the objective to “engage with customers quickly and sympathetically where arrears do arise and tackle the causes of the arrears”. These aims are operationalised in rent arrears policies, which have become increasingly standardised practices.

HA F has an Income Services Team divided into three sections, with an Income Services Team Leader (ISTL) managing each section. Each ISTL manages several Income Services Officers ("ISOs"), each of whom is responsible for a patch of 600-800 properties. ISOs work flexible hours on Thursday evenings and Saturday working is shortly to be introduced to enable contact with tenants out of hours. Two current ISTLs were promoted from the ISO role. The service is managed by an Income and Revenue Manager ("IRM") after a restructuring exercise (which also introduced a Leasehold Manager to deal with the needs of the growing body of long leaseholders). There has been an increasing emphasis in rent arrears management on information sharing, arrears prevention (particularly through tenant education) and "revamping" the image of rent collection so that tenants no longer see ISOs as "debt collectors". There is stress now on building personal relationships through face-to-face contact.

A new call centre now fields initial tenant queries, referring complex cases to Income Services staff. Another recent innovation is to conduct joint visits to tenants, with ISO's accompanying Housing Officers and/or Repairs Officers to "tackle all the issues at once" (ISTL interviewee). This way of working also facilitates sharing of knowledge about causes of rent arrears – for instance a Housing Officer may be more likely to be aware of a relationship breakdown.

Annex 4

Case study topic guides

HA manager interviews: topic guide

-
- | | |
|---|---|
| Organisation of rent arrears management | <ol style="list-style-type: none">1. What is your role and how long have you had that role? <hr/> |
| Rent arrears management policies and practices | <ol style="list-style-type: none">2. In what ways has your organisation changed its organisation of rent arrears management (eg balance between generic and specialist elements) over the past three years?3. Has this been solely a matter of re-distributing existing staffing resources, or has the organisation made an overall increase in its staffing capacity/spending on rent collection and arrears management?4. If such changes have been introduced, what were the main factors that motivated these?5. What has been the impact or success of these changes from the perspective of the staff concerned?<hr/> <ol style="list-style-type: none">6. In what ways has your organisation changed its rent arrears management policies or practices over the past three years?7. If such changes have been introduced, what were the factors that motivated these? If the Rent Arrears Pre-Action Protocol were significant, how differently would your organisation be operating today in the absence of the Protocol?8. What general trends are ongoing in the way that you organise and implement rent arrears management activities?9. Aside from impacts on staff, what have been the effects of any recently changed organisation/management practices (eg on efficiency, effectiveness, customer service)? |

10. How are rent arrears management policies and practices being affected by (or likely to be impacted by) the current recession?
11. What recent changes have been evident in the effectiveness of Housing Benefit administration?
12. When housing associations speak of "giving higher priority to personal contact with tenants in arrears" what does this mean in practice? Exactly how have your own organisation's practices and procedures recently changed here?

Use of courts

13. Who makes the decision about when to issue an NSP? Is there an organisation policy? If so, to what extent are local managers or staff entitled to deviate from it?
14. To what extent does your organisation seek to engage with tenants before issuing an NSP?
15. How has your organisation's use of legal action changed over the last three years? Issuing more Notices? Taking more tenants to court?
16. If the incidence of legal action has changed, what is the explanation for this?
17. How has your association's interaction/relationship with the local court changed over the past few years (if at all)?
18. What factor or factors explain any changes?

- 19.** What has been your recent experience of court hearings on arrears repossession cases? Has there been any noticeable change in the typical attitude or approach of District Judges (eg recognising the stipulations of the Pre-Action Protocol)
- 20.** What is your association's policy on the use of Ground 8? Why?
Prompt: symbolic value; better rent management; housing benefit issues; human rights, necessary to satisfy lenders, should be used with more discrimination.
- 21.** What factor/s influence your decision whether or not to proceed on Ground 8?
Prompt: level of rent arrears (how much?); symbolic value; better rent management; housing benefit issues; DJ view; human rights; Board view on its use.
- 22.** In what circumstances is it not appropriate to use Ground 8? – eg in terms of the type of tenancy, the vulnerability of the tenant, the tenant's Housing Benefit status.
- 23.** How problematic would it be for your association to manage without using Ground 8? What would be the consequences?

Frontline worker/court officer interviews: topic guide

1. What is your role and how long have you had that role?
2. What are the circumstances in which tenants are likely to get into rent arrears? Are there any typical scenarios?
3. What sorts of tenants are most at risk of eviction for rent arrears?
Are there particular types of tenants that are more likely to be evicted than others?
4. Do you think that tenants' attitudes towards arrears have changed over the last few years? If yes, in what ways?
5. How (if at all) has the onset of the current recession impacted on rent arrears and the task of arrears management?
6. What are the strengths of your association's organisational structure for rent arrears management?
7. Are there any disadvantages in the way rent arrears management is organised?
8. In responding to accumulating rent arrears, what – in your association – is the balance between the use of automatic letters and making personal contact?
9. How effective is joint working with the local Housing Benefit section?
How easy is it to get information on the HB status of tenants?
10. In what ways could the HB service be improved?
11. Normally, how quickly are HB claims processed? How has HB service performance changed in the recent past? If there have been changes, what has brought these about?

12. How are your tenants helped with HB claims? Do you offer specific help to vulnerable tenants? How do you do this? How is the support provided?
13. Under your association's procedures, at what point is it considered appropriate to initiate legal action for rent arrears?
14. What have been the most significant recent changes in your organisation's rent arrears management practice?
15. Do you think that the number of court actions/evictions by your association have risen/fallen or remained stable over the past few years? If the numbers have changed significantly, why is this?
16. Has there been any recent change in the attitude of the courts towards social landlords seeking orders against tenants on grounds of rent arrears?
17. How consistent are the approaches of different judges in relation to rent arrears cases? If attitudes/approaches differ, in what ways?
18. How often does your association make use of Ground 8? What factor/s or scenarios are likely to prompt use of Ground 8?
19. How has the incidence of Ground 8 actions/evictions by your association changed in recent years?
20. In what circumstances is it **not** appropriate to use Ground 8? – eg in terms of the type of tenancy, the vulnerability of the tenant, the tenant's Housing Benefit status.
21. How problematic would it be for your association to manage without using Ground 8? What would be the consequences?

Topic guide: lawyer/advice agency interviews

1. What is your role and how long have you had that role?
2. Which court or courts do you usually attend on behalf of clients in relation to possession proceedings?
3. At what stage do you usually receive instructions from clients concerning rent possession proceedings taken by housing association?
4. In your experience, what impact do you think that the pre-action protocol has had on RSL practice in relation to possessions?
Prompt: more contact; early intervention; provision of support (eg money advice, assistance with housing benefit); Children Act/community care assessments; withdrawing proceedings; DSS deductions.
5. At those courts that you usually attend, how would you characterise the approach of the DJs? Has this changed at all in the past three years (ie as a response to the PAP)? If so, how and why?
6. Over the past few years, have any other factors in your view altered the approach of RSLs either individually or as a sector to possession proceedings?
Prompt: HRA; change in DJ approach.
7. Roughly, in what proportion of rent possession cases in which you act do RSLs rely on Ground 8 as opposed to Grounds 10 or 11? Has this changed at all in the past three years? If so, how and why?
8. If RSLs rely on Ground 8, is your perception that this is being used as a last resort after contact with the tenant?

- 9.** If RSLs rely on Ground 8, what is the response of the DJ?
How successful are you in opposing claims for possession based on Ground 8?
- 10.** What is your perception of the response of the DJs in the courts that you usually attend to an application to suspend a warrant for possession?
Is this different where there are successive applications?

Annex 5

Pro-forma for case file analysis – recent eviction cases

Please complete this pro-forma separately for each eviction case in the sample.
Please provide the data for recent possession cases resulting in eviction as follows:

- the ten most recent (but no older than two years) **arrears** eviction cases where possession was granted under **Ground 8**
- the ten most recent arrears eviction cases where possession was granted under **Grounds 10 or 11**.

For the sake of data protection, no identifying information is sought.

The form is designed for “on-screen completion” so that it can then be saved for submission to Heriot-Watt.

1 Ground on which possession granted

a) Ground 8

b) Ground 10 or 11

2 Date tenancy started (dd/mm/yyyy)

3 Household type

a) single adult only

b) single adult with children

c) couple without children

d) couple with children

e) other

4 Tenant employment circumstances (at point of eviction)

a) at least 1 family member in full time work

b) part-time worker(s) only

c) all adults unemployed

5 Known factors triggering build-up of arrears (please check all applicable)

a) HB administration – performance of local authority

b) HB administration – tenant's failure to respond to LA (eg failure to supply documents)

c) Relationship breakdown

d) Loss of earnings triggered by medical factors

e) Loss of earnings for other reasons (eg redundancy or loss of overtime)

f) Prioritisation of other debts (ahead of rent arrears)

g) Other – please type in brief details (5g details)

6 Tenant vulnerability:

a) Could the tenant have been defined as a “vulnerable person”?

Yes

No

b) If yes, what type of vulnerability?

7 What, if any support was offered to the tenant by the association? (tick all that apply)

- | | | | |
|--------------------------|--|--------------------------|---------------------------|
| <input type="checkbox"/> | a) Welfare benefits advice | <input type="checkbox"/> | b) Social support |
| <input type="checkbox"/> | c) Referral for debt counselling | <input type="checkbox"/> | d) Medical support |
| <input type="checkbox"/> | e) Other – please type in brief details (7c detail) | <input type="text"/> | |

8 Did the tenant attend court?

- | | | | |
|--------------------------|---------------|--------------------------|--------------|
| <input type="checkbox"/> | a) Yes | <input type="checkbox"/> | b) No |
|--------------------------|---------------|--------------------------|--------------|

9 Previous interventions to address rent arrears

- | | |
|---|--------------------------|
| a) Number of officer contacts with tenant prior to (last) NSP being served | <input type="text"/> |
| b) Number of officer contacts with tenant post-NSP | <input type="text"/> |
| c) Earlier repayment agreement reached with tenant (please check one box)? | <input type="text"/> |
| d) What assistance given with Housing Benefit? | <input type="text"/> |
| e) Possible repossession considered by management panel? – please tick if applicable | <input type="checkbox"/> |
| f) Any previous (repossession) court hearings? – enter responses if applicable | |
| i. number | <input type="text"/> |
| ii. if any previous repossession hearings, what was the outcome of the last one (prior to the one resulting in eviction)? – please type in brief details | <input type="text"/> |

10 Value (£) of arrears at defined points
(no £ sign, no pence, no commas please – eg 1534)

a) when (last) NSP served

b) on the date of (last) court hearing

11 Length of time tenant had arrears (months)

a) when NSP served

b) on the date of Hearing

12 If possession achieved under Ground 8, please state what specific factor(s) prompted the use of this Ground for this case? – please type in brief details

13 If possession achieved under Grounds 10 and/or 11, please state what specific factor(s) prompted the use of these Grounds for this case? – please type in brief details

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on request. Other language versions may also be available.

Rent arrears management practices in the housing association sector

This report presents findings from a study of housing associations' practices in managing rent arrears, and the changes to law, policy and regulation that affect them. It identifies trends over the past few years, and sets out how housing associations use different procedures and grounds for possession.

