Transcript

RRA Unit 6.1.3
The new world for successful prevention casework

Hi, everyone. In this video, we're going to have a look at what I describe as the new world for successful prevention of homelessness casework that has come about because of the Renters' Rights Act. We'll have a look at the slides, and I'll explain it to you.

So why do I call it a new world for successful prevention casework? Until the Renters' Rights Act came in, most private tenancies, when they received a notice, received a notice based on a Section 21 notice. The most common reason given was that the landlord wanted to sell the property. That may have been the case – maybe the landlord did want to sell – but in many cases the landlord was using that as an excuse. Maybe they were a bit embarrassed about wanting a higher rent.

So lots of landlords issued a Section 21 notice because it's a "no reason required" notice. The council housing options service would then contact them, and the landlord or the managing agent would say, "Oh, well, the landlord is going to sell the property." In some cases, the landlord or agent would say, "Well, it's none of your business why the landlord wants the property back. It's a Section 21 notice. As long as it's a valid notice, then it's our business as to what we now want to do with the property." The result of all that was that the chances of prevention were pretty limited, especially for cases where the real reason that the landlord wanted their property back was because they wanted a higher rent. Officers often have said to me that they've rung landlords or agents and just had the phone put down on them.

The important thing to understand is that with the abolition of Section 21 no-reason-required notices, the focus now is obviously on Section 8 notices, where there has to be an issue. The evidence for that issue has to be clear and has to be evidenced in court. So the chances of preventing homelessness post-Renters' Rights Act rules have now been significantly increased.

The new strategy – the new housing options prevention strategy – I'm describing as the "carrot and the stick" approach, and I'll explain what I mean by that. One person said to me last week, "Well, we're now the fourth emergency service in the housing option service." That might be taking things a bit too far, but you understand what the person was trying to say: that now landlords really need the council's housing option

service. You are most probably the best deal in town to try and find a resolution that both suits the landlord and suits the tenant.

Let's have a look at this carrot and stick approach, and let's first of all look at the carrot side. There's an incentive for the landlord to work with the housing option service to find a solution. The council, of course, has an incentive to deliver a successful outcome because not only is this the best solution for the tenant, but it will also save the council significant amounts of money through reducing the cost of temporary accommodation. The fewer cases that go into temporary accommodation because they're prevented, the lower the cost to the council.

It's important to understand to start with, and it's important that landlords understand, that a landlord is far less likely to obtain a successful outcome through another means. If you think of what the housing option service has, it has prevention fund payments to tackle issues such as rent arrears. If there are issues around behaviour, the HOS can arrange practical help and support to help tenants manage their tenancy and resolve problems. Landlords, if they're willing to work with the council, can achieve a successful outcome which is going to save them money in the longer term.

What do I mean by saving money? The financial cost of not engaging with the housing option services is likely to be huge for landlords. For example, the court fee alone to enter the action for possession is a £404 court fee. If it goes all the way to the bailiffs evicting, that's a further £148. Many, many landlords are now saying they don't have the confidence to try and take through repossession action without being represented by a solicitor, and solicitors' costs can certainly be up to £1,500, possibly more. Then there are the court delays. Given that there are likely to be far more cases that go to court, there are going to be further backlogs in the county court to hear possession claims. And what happens if the tenant stops paying whilst the case is waiting to go to court?

If you put all the costs together for the landlord, the costs can add up to several thousand pounds. And that’s crazy if they can find a solution through the council housing option service that will cost them nothing. But you do need to be able to negotiate and get that message across to landlords.

If a landlord or agent won't work with the housing option service, then we get to the stick side. The carrot is working with landlords to find a solution that suits them and finds a solution for their tenants. The stick is, if they won't work with the housing option service, then you, as a council, as a housing option service, have a duty to take all reasonable steps to try and prevent the tenant from becoming homeless. Those

steps include helping the tenant defend the claim based on the ground relied upon by the landlord. That will include telling the tenant to remain until a possession order is granted, as the landlord will have to prove the grounds relied on in court.

There's another video where we look at the advice in the Code of Guidance since the introduction of the Renters' Rights Act, on when a council should consider somebody to be homeless. But for the majority of the grounds relied on by a landlord, they will have to prove the ground in court, which means tenants, in most grounds, should stay until the court has decided whether that ground is proven or not.

Having considered what the carrot is and what the stick is, let's have a look at the broad tasks for the housing option service – the things you're going to need to do to deliver a successful prevention outcome. I've put that down into six tasks.
Number one: informing tenants in the private rented sector to contact the HOS immediately if they receive a notice and have no other accommodation option. Let's focus a bit more on that. The statistics show that many, many tenants receive a notice, but the number of those notices that end up with court action is very small.

Last year, I think only 30,000 cases ended up with possession action in court. So that means the majority of tenants, once they receive a notice from their landlord, leave. They either leave at the expiry of the notice or before the notice expires. If they leave, then you can't prevent. To get hold of those tenants, you're going to need to encourage them to present to the housing options service immediately if they receive a notice. Some of you might be saying, “How are we going to know? Why would they present if they don't know what it is that we require of them?” Remember from next year we will have the landlord database rolled out – late 2026 going into 2027 – where you'll know all the rented properties in your council area. So proactively, you need to go out to those tenants to say, “If you receive a Section 8 notice and you have no other accommodation option, then you need to come to the council as quickly as possible.”

The second thing around this approach, this strategy, this new strategy to prevent homelessness, is to check whether the Section 8 notice is valid. We'll have a look at that on the next slide. The number of things the landlord has to get right for the Section 8 notice to be valid is considerably more than the number of things they had to get right for the Section 21 notice to be valid.

Number three: your role in the strategy is helping a tenant to defend a possession claim, including submitting evidence on their behalf once the landlord's particulars of claim have been issued. Just to remind people how it works: the landlord issues a Section 8 notice. There are questions of whether that notice is valid. If it is valid, they

pay the £404 and enter the action into court for possession. They have to fill in a claim form where they set out the evidence – the particulars of claim. That claim form is then sent to the tenant, so the tenant, if they wish, can produce counter-evidence and make a defence against the claim from the landlord.

The local authority housing options service can help the tenant submit the evidence and can even provide third-party evidence to the court as part of the defence. That's number three.

Number four: the role and the strategy of the housing option service includes submitting evidence of vulnerability so a court can decide whether to grant possession using the test of reasonableness on any discretionary ground. In a previous video, we looked at the discretionary grounds most likely to be seen by a housing option service, and we looked at this test of reasonableness that the county court judge has to consider, even if the evidence is proven on the discretionary ground for possession. Helping the applicant to submit evidence of vulnerability, and submitting evidence of hardship and vulnerability on the applicant's behalf – including what can be done to support the applicant going forward – is key. All of that makes it less likely that a county court judge will give possession on a discretionary ground when that judge considers the test of reasonableness.

Number five: working with your local "Help Us" (H-L-P-U-S) providers and solicitors to gather evidence to defend a claim. Across the country we have legal aid providers under a government scheme called Help Us. That provides free advice to all tenants, which is not means-tested, and potentially provides some form of support and court representation. The issue is that those Help Us providers are likely to have far too many cases coming their way to be able to deal with all of them, including court desks. They are the main providers in your area of court desks – the county court desks where they can work with the person on the day they present to provide support to defend the claim.

So the coordination between the housing options service, where the person may first come, and the Help Us provider is going to be absolutely critical in working out who does what – the council, the Help Us provider – and in providing the evidence, if needed, to the Help Us provider if they have the capacity to help the tenant. You should provide that evidence to help them better defend the tenant's position in court.
Number six: checking all Section 8 court hearings listed for the next 14 days and contacting each tenant. If they've not already come through to the council to say they've received a notice, then there's still a chance – when the court hearings for

Section 8 notices for the PRS are listed – to contact the tenant and try and get in late to help them defend the ground that's being relied on.

That's a basic strategy with six points for the housing options service. Let's take that a bit further and look at a couple of examples of how the housing options officer might go about working for the successful prevention casework outcome. We're going to use two examples. The first example is where the landlord has issued a Section 8 notice using Ground 1, where they claim they wish to sell the property. The second example will be where the landlord issued a Section 8 Ground 8 notice based on serious rent arrears.

In the first example, what I'm trying to set out is all of the actions that you, if you are the case officer, might take to try and help prevent homelessness. It's a Ground 1 case where the landlord wishes to sell. The first action of the case officer is checking the validity of the notice itself. There are a number of things that may make the notice invalid.

The first one is that the landlord has used the wrong form. If they don't use the new Form 3A to issue their Section 8 notice – if they use the old version of the form, Form 3 – that is likely to mean the notice is invalid. Many landlords going online might find an older version of the form and not the new prescribed form post-Renters' Rights Act. There's a second issue about valid notices around typing errors, such as misspelling the tenant's name or getting the property address slightly wrong. The county court, if it got to court, would decide whether that error was fatal. Legal aid solicitors report that large numbers of landlords get the tenant's name or the property address wrong. You might think, “How on earth would they get those basics wrong?” but people do make mistakes, and those mistakes might or might not be fatal if the case got to court. Something that's not going to save a landlord is an incorrect notice period. Around the 36 mandatory and discretionary grounds, there are different notice periods depending on the ground relied on. For example, on this one – the landlord wishing to sell – a full four months’ notice is required. If four months’ notice has not been given, then the notice is going to be invalid.

Still specific to Ground 1, landlords wanting to sell: if a landlord issues a notice that expires within the first 12 months of a new tenancy, then that will make the notice invalid. Failure to protect the rent deposit and provide the prescribed information is less likely to make the notice invalid, but more likely to mean that at the point it gets to court, possession would not be granted unless the landlord has returned the deposit. So it's less about the validity of the notice; however, it's still something that the housing options caseworker would want to check at the outset.

Failing to include the full text of the ground or a very close equivalent in the notice can result in the claim being rejected by the court. It doesn't necessarily mean it will be rejected, but it can mean it will be rejected. The landlord has to set out the full text of the ground or grounds that they are relying on; they can't abbreviate those grounds; they can't shorten them. That brings us to the last point where the notice may be invalid if a landlord just inserts the number for the ground. If the landlord just said, "Section 8 notice Ground 1A" and left it there without any text as to what Ground 1A is, then the tenant hasn't got the reason. The tenant isn't expected to know that Ground 1A is where the landlord wishes to sell. That again could make the notice invalid.
So that's the first action in this example of a landlord wishing to sell: you would check the Section 8 notice, and specifically the areas around Ground 1A, to decide if it was invalid. If it was an invalid notice, then the landlord is going to have to start all over again.

What about helping beyond checking the notice? What about the prevention actions that you could take? Obviously, there is the desire to help the tenant defend the claim in response to the landlord's particulars of claim if your view as a case officer is that the ground has not been proven.

Key evidence in the particulars of claim from the landlord to prove a sale ground would include things such as evidence that the property is being sold through a formal contract with an estate agent to market the property, or a solicitor's letter confirming the sale or an accepted offer. Those will be quite basic information that needs to be provided by the landlord in the particulars of claim. Obviously, it's up to the court itself to decide what evidence it would require to prove that the landlord wishes to sell. These are what you could expect the court to ask for in terms of confirmation of sale. In helping the tenant to defend their claim, if that sort of evidence is just not present in the particulars of claim, then the landlord may find it difficult to prove in court that the ground they're relying on is supported by sufficient evidence. Again, it will be down to the court itself to make a decision.

Any attempts to prevent homelessness, remember, can continue at the same time as trying to help the tenant defend the ground in court. So there are two things going on in a way – the carrot and the stick are running side by side. We have the attempts to prevent homelessness, and at the same time, we have the attempts to help the tenant defend the ground in court.

What might continuing prevention work look like on a Ground 1A, where the landlord claims they wish to sell? Number one: explaining the reality of the market. If a landlord is unlikely to be able to obtain their expected sale price, then you may be able to

prevent in the context of the landlord deciding not to proceed with possession because they won't get the price they're expecting. Remember, landlords are not just in it for the rental income; they're in it for the capital appreciation on the property, and that's perfectly reasonable. So if they thought they were going to get sale price X, but they're going to get a price that's far lower than that, then you, having the data on the market and successful sale prices, might persuade a landlord not to proceed.

Continuing prevention work could also include informing the landlord of the prohibition on reletting the property during the 12 months after the expiry of the notice period. You can't expect landlords just to understand the new rules. Many landlords might say, "Well, I'm going to sell the property. I'll get my property back, and if I can't get the price, then I'll just re-let it." They may not be aware that there is a prohibited period during the first 12 months after the expiry of the four-month notice where they won't be able to remarket or re-let their property.

Remember: never give up, because you can continue to try and prevent until the day the tenant is evicted or leaves. A landlord can change their mind up until that point and not be hit with the 12-month restriction. So try, try, and try again, because right up to the point at which the tenant leaves or is evicted, a landlord can change their mind and you can prevent.

If they are selling because they are concerned or worried about the Renters' Rights Act changes – they're worried about the civil penalties regime and just think, "I'm not confident to continue to let, so I'm going to sell my property" – then you might be able to offer a private lease arrangement where you take the property off their hands for a lease of up to five years. That means there might be an alternative for the landlord, rather than selling, where they could just lease the property to the council.

For you, there is the opportunity to negotiate a lower rent, more akin to the local housing allowance, as the trade-off for the council taking the property on under, say, a five-year lease. So you win in terms of the rent; the tenant wins in that the rent is more akin to the local housing allowance; and the landlord wins in that they don't have to worry anymore because they've leased the property to the council.

That's our worked example on a Section 8 notice where the ground is Ground 1A – the landlord wants to sell. We've looked at how you check the validity of the notice. We've looked at how you can prevent homelessness, the carrot initiatives to try and find a solution, and, if that's not possible, the other side of it, where you help the tenant defend the possession claim in court.

Let's look at the second example. Example two is a rent arrears case, and in this example the landlord has issued a Section 8 notice on Ground 8, which is serious rent arrears, and has also included Grounds 10 and 11 – Ground 10 being any rent arrears, and Ground 11 being persistent arrears. So we have three grounds, one mandatory and two discretionary, relating to rent arrears.

What about the housing options caseworker's action? I'm not going to repeat everything we've just said on the previous example, but obviously you would again check the validity of the notice: have they used the wrong version of the form to issue the Section 8 – it should be Form 3A; any misspelling of the tenant's name or the address; any incorrect notice period. For a Section 8 serious arrears case, it needs to be a full four weeks' notice. Failure to protect the rent deposit and provide the prescribed information will not make the notice invalid, but will very likely prevent possession in court. And failure to include the full text of the ground, or just inserting the number for the ground without the text, is again an issue, as we explained in more detail in the previous case example.

What can the HOS do to try and prevent? You could make a prevention payment to ensure the arrears are less than three months at the date of the court hearing, which will mean that the mandatory Ground 8 cannot be proven by the landlord. There has to be three months' (or, if paid weekly, 13 weeks') arrears both at the date the notice is issued and at the date of the court hearing. If it's less than three months because you've been able to make a payment to bring the arrears under three months at the date of the court hearing, then the landlord cannot get possession on Ground 8. What's left for the landlord is those two discretionary grounds, Ground 10 (any rent arrears) and Ground 11 (persistent rent arrears). Here, of course, they are discretionary grounds, and you can help the tenant to enter a defence that it's not reasonable for possession to be granted on those discretionary grounds. That is going to include the impact on the tenant of potentially being homeless, and all of the other parts of the reasonableness test that the court has to consider. We covered that in our video on the discretionary grounds. In that video I took you through the framework that the court uses to decide whether it's reasonable to grant possession on a discretionary ground.

So even if the ground has been proven – rent arrears, persistent arrears – because of the test of reasonableness, if you're able to help the tenant put in a defence based on that test, arguing that it's not reasonable for possession to be granted, then possession may well not be granted and you will have prevented homelessness.

You should also highlight the impact on the tenant and the actions the HOS can take to resolve the arrears and reduce the chances of the arrears happening again. There's no point on a discretionary ground in just submitting evidence to say "it's not reasonable." You have to provide more than that: not just highlighting the impact on the tenant – that they could become homeless – but also the positive actions that the council's housing option service can take to (1) resolve those rent arrears and (2) support the tenant to reduce the chances of those arrears happening again. That is really important evidence to provide to the county court, to the judge, when they're making their decision on whether it's reasonable on the discretionary grounds to grant possession or not. That's what you as a case officer can do to try and prevent.

Your attempt to prevent homelessness can continue at the same time as trying to help the tenant defend the ground in court. This is back to the balance between the carrot and the stick. The carrot: you're still trying to work with the landlord to prevent. The stick: you're still doing everything you can at the same time to help the tenant defend the ground.

That continuing prevention work, whilst it's going through the court process, could include explaining that accepting the council's offer to sort out the arrears is a far cheaper option than the landlord continuing with possession action. Why do I say that? Because we need to get across to the landlord the costs: solicitors, court fees – including the initial £404 and a bailiff fee if it goes that far – and the real risk of a further loss of rent if the tenant stops paying. That is likely to result in several thousand pounds' worth of loss to the landlord in rent arrears, simply because it may take many months for the landlord to get a court hearing date due to court backlogs, by which time the rent arrears could be equivalent to half a year's rent or more. The landlord may well struggle to recover those costs from the tenant.

If possession is granted and the tenants don't leave, it could be several months more before the landlord is able to get a court bailiff to physically evict the tenant. If you think about all that, why wouldn't the landlord take the deal from the council to resolve the arrears and keep their tenant? It's going to cost the landlord nothing or next to nothing, whereas not working with the council's housing options service might cost them thousands upon thousands of pounds.

What's the missing link? You have to get the landlord to understand that. Otherwise, a landlord might just say, "Nope, I'm fed up with the tenant. There are arrears. I don't want your offer." Your response to that is: "We tried our best" – but remember, you keep at it. It's not just a question of offering that deal to the landlord once and then walking away. If the landlord says, "I'm not interested in your deal," continue to offer

the deal as it's going through the court process. It might be that the landlord doesn't want your deal and then finds it's going to take them four or five months to get a court hearing date, and the tenants stop paying the rent, at which point the landlord is then willing to listen to your deal.

So those are two examples of the work that you could do to try and successfully prevent homelessness.

To conclude this video: before the Renters' Rights Act came in, trying to prevent homelessness for the private rented tenancy, especially where most of the notices were Section 21 no-reason-required notices, meant your attempts to prevent homelessness were severely constrained. It was very difficult to get a solution. Landlords and agents quite often were not prepared to listen to the council's message.

All that has changed. You could call yourself the fourth emergency service. You are the best deal for the landlord, the best chance of a solution. Your solution potentially saves that landlord thousands of pounds and prevents homelessness for the tenant, which is obviously the best solution for the tenant as well. However, it means that you have to work in a structure, in a framework, and have clear actions to take – not just to check the validity of the notice, but to know how you would go about prevention actions for each of the grounds the landlord will rely on.

We've only looked at two of those grounds today – sale and rent arrears. But there are many other grounds where the same approach would be appropriate. That is our video on the new world for successful prevention casework. I will see you on another video.