

# The Court Process

For Council & Housing  
Association Tenants

## INFORMATION LEAFLET



This leaflet aims to answer **Frequently Asked Questions** on eviction proceedings for rent arrears for council and housing association tenants, explain your rights and responsibilities, and how we can help you.

## I have received a Summons. What can I do?

You will be sent a Summons if your landlord wants to ask the Sheriff Court for a Court Order for your eviction. The Summons will show the date when the case will call in court (a Friday morning).

If you have received a Summons, make an appointment for housing advice with us or another advice agency. If we cannot give you an appointment at short notice, you should attend court, where one of our advisers can give you some last minute advice and book an appointment for you if possible. You will need to represent yourself at the first calling and ask the Sheriff for “a continuation of a few weeks”, to give you time to get advice and representation.

## What happens at the first calling?

The first time a case calls in court, we call it the **‘first calling’**. At that point, we will ask for a continuation, that is for another court date, so we can make an offer of repayment to your landlord and ask for more time to resolve any benefit issues and to give you time to start making payments.

## How can EHAP help me with my court case?

In the first instance, we will try and negotiate a **‘continuation’** with your housing officer, to avoid the case actually calling in court.

If we can’t get your housing officer to agree to a payment plan and **continue** the case, you can instruct us to represent you in court and speak to the Sheriff on your behalf. We will state why it is not reasonable to grant a court order for your eviction. We will need to explain your circumstances, explain why the arrears built up and what you are doing to address the problem, for example apply for housing benefit, look into benefit issues, and make an offer of repayment for the arrears.

## How long will the case stay in court for?

Once a housing officer or Sheriff has agreed to continue the case, we get another date for the next court calling. The case is likely to get continued over several weeks or months for the landlord to **monitor payments**, i.e. to make sure you keep to the arrangement and not miss any payments, but also to address any benefit issues.

**If you do not keep to your payment plan**, however, the landlord is likely to ask the Sheriff to grant an **eviction order (called a decree)**.

## Can I get court representation from EHAP?

We can represent you as long as we have clear instructions from you, i.e. we need to hear from you in the week before the case calls in court. Although we will try and contact you, it is **your responsibility** to contact us at least 3 days before court, if you do not hear from us.

## Do I have to attend court?

We always recommend that you attend court if we cannot get an agreement with your landlord beforehand. If you are unable to attend court for whatever reason, we can speak to the Sheriff without you as long as we have spoken to you beforehand. However, it shows goodwill and helps the case if the tenant is present.

## What will I need to do at court?

If you instruct us to, we can speak to the Sheriff on your behalf and you would just stand next to us, in case the Sheriff wants to speak to you directly or ask you any questions. The Sheriff will make a decision there and then, about whether to continue the case or grant an eviction order. Court is public.

## What is a 'sisted' case?

Once a payment arrangement has been adhered to for a number of weeks or months, and all benefit issues have been resolved, the landlord will eventually agree to **'sist' the case**. This means that the case will no longer call in court, so there won't be any more court dates at that point, but you will have to keep paying the agreed amount until the arrears are paid off.

If you default, then the landlord can easily bring the case back to court, with a single letter, by issuing an 'Incidental Application' form.

When the case is sisted, it will technically remain on the court books (but without any court callings or court dates) until the arrears are repaid.

## When does the case stop being in court?

Once the arrears are repaid in full, the case will be called back to court one last time for it to be **'dismissed'**. In most cases, the court will award **expenses** to your landlord (approximately £350), unless you can show the court action wasn't necessary. Expenses of a court action aren't treated as rent arrears but rather as an ordinary debt. You won't have to repay the expenses in one go and can arrange a payment plan for these.

## About EHAP

Edinburgh Housing Advice Partnership (EHAP) is a service delivery partnership comprising:

- **Community Help & Advice Initiative (CHAI)**
- **Granton Information Centre**
- **Four Square**
- **Move On**
- **Changeworks**

All of which are established charities delivering a range of advice and homelessness prevention services in Edinburgh.

## Contact EHAP

Phone us on **0845 302 4607**. Our referrals line is staffed from Monday to Friday, 9am to 5pm.

Email: [EHAPAdmin@chaiedinburgh.org.uk](mailto:EHAPAdmin@chaiedinburgh.org.uk)

Website: [www.ehap.org.uk](http://www.ehap.org.uk)

Follow us on Twitter: [@ehap\\_adviceteam](https://twitter.com/ehap_adviceteam)

