

RENT ARREARS POLICY 2019

1.0 INTRODUCTION

The effective control of rent arrears is a crucial element of financial management for the Association. Tenants' rent and payments are the major source of income to meet our loan commitments, management and repair costs and to make provision for future investment in our housing stock. The prevention, management and recovery of rent arrears are a key element of our overall financial viability.

Rent arrears are a major issue for tenants and the Association has a responsibility to prevent tenants from accumulating rent arrears that may trap them within a cycle of poverty or lead to their eviction.

We aim to take prompt, appropriate and effective action to prevent and control rent arrears.

2.0 LEGISLATIVE AND REGULATORY FRAMEWORK

Relevant legislation and regulatory guidance includes:

2.1 The Housing (Scotland) Act 2001

This establishes the regime of Scottish Secure Tenancies, the terms of such Tenancies and the arrangements for repossession of a tenancy

2.2 The Housing (Scotland) Act 2010

This set out the terms of Pre-action Requirements under sections 14 and 14A of the Housing (Scotland) Act ("the 2001 Act") as amended by section 155 of the 2010 Act and Repossession Orders under section 16 of the 2001 Act as amended by Section 153 of the 2010 Act.

2.3 The Equality Act 2010

The Public Sector equality duty requires public authorities to have due regard to the need to eliminate discrimination, promote equality of opportunity and foster good relations. This duty covers RSLs in the exercise of public functions. There are specific duties which also require some public authorities to publish schemes setting out how they will promote equality, including their method for formal impact assessment of policies and practices. While RSLs are not subject to these specific duties, the Equality and Human Rights Commission (the enforcement body for these duties) encourages other bodies to take on board the principle of these duties and do equality impact assessments.

The Equality Act 2010 has introduced 9 protected characteristics:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- Sexual orientation.

2.4 The Data Protection Act 2018

Sets standards for the gathering and sharing of personal information.

2.5 The Human Rights Act 1998

Has an effect on housing management functions, including Recovery of Possession Proceedings.

2.6 The Bankruptcy and Diligence (Scotland) Act 2007

Sets out the legal framework for recovery of debt, including rent arrears

2.7 The Homelessness (Scotland) Act 2003

Requires the Association to advise the relevant local authority in statutory form when legal proceedings to raise proceedings are commenced.

2.8 The Social Housing Charter

The Social Housing Charter Outcome 11 requires Social landlords to:

Ensure that tenants get the information they need on how to obtain support to remain in their home; and ensure suitable support is available, including services provided directly by the landlord and by other organisations. This outcome covers how landlords can help tenants who may need support to maintain their tenancy. This includes tenants who may be at risk of falling into arrears with their rent, and tenants who may need their home adapted to cope with age, disability, or caring responsibilities.

The Social Housing Charter Outcome 13 requires Social Landlords to manage all aspects of their businesses so that tenants, owners and other customers receive services that provide continually improving value for the rent and other charges they pay. This standard covers the efficient and effective management of services. It includes minimising the time houses are empty; managing arrears and all resources effectively; controlling costs; getting value out of contracts; and giving better value for money by increasing the quality of services with minimum extra cost to tenants, owners and other customers.

2.9 Welfare Reform Act 2012

The Welfare Reform Act 2012 changes to the rules concerning a number of benefits offered within the social security system and it became law on 8 March 2012 although its provisions will be phased in over a number of years. The Act includes:

- The introduction of Universal Credit
- Stronger penalties for fraud and error
- New "claimant commitment"
- Phasing out of Disability Living Allowance and replacement with Personal Independence Payment
- Reform of Housing Benefit, including introduction of under-occupancy charges
- Changes to the Social Fund, including greater power to local authorities
- Reform of Employment and Support Allowance
- Changes to child support

While the most significant of these is the change to arrangements for supporting tenant's housing costs, all aspects of the Act will have significance for tenant's ability to pay their rent and meet the other essential costs associated with maintaining a tenancy, and so may impact on rent payment and arrears.

2.10 Corporate Management Plan

- *To provide a comprehensive and responsive customer service to tenants, sharing and factored owners which supports sustainable tenancies and delivers customer satisfaction (**Strategic Objective 2) (Customer Service)***
- *To ensure that the Association's work is underpinned by effective financial, administrative, and management processes set within a framework of effective corporate governance (**Strategic Objective 5) (Financial Management & Governance)***

2.11 Housing Services Departmental Service Plan

1. To maximise the level of income generated by our housing stock and minimise rent arrears by sensitive and supportive interventions with tenants (CS6).
2. To achieve consistently high levels of customer satisfaction from the delivery of services (CS4);
3. To provide a range of quality housing and maintenance services to tenants and other customers (CS1);

3.0 OBJECTIVES AND GENERAL PRINCIPLES

The Association's objectives are to:

- Prevent arrears arising wherever possible
- Minimise rent arrears where they cannot be prevented
- Constructively engage tenants in rent arrears in joint efforts to control and reduce rent arrears
- Take legal action to repossess only where it is necessary to do so.

3.1 We will:

- Ensure that all tenants receive full information on the level of rent charges at the beginning of their tenancy and at each rent charge review.
- Clearly specify the amount of rent due in the tenancy agreement
- Secure inter-departmental communication in the management of rent arrears, led by Housing Services and involving other departments. One method of achieving this will be through the use of Diary Notes on rent accounts in arrears. The Association will not withhold services from tenants in arrears.
- Ensure that all tenants and applicants are given clear and helpful information on their responsibility to pay rent and how to pay their rent
- Ensure that every tenant is given good quality information about agencies that may be able to help, for example, through the provision of welfare benefit advice and debt counselling services
- Ensure that staff receive appropriate levels of training in relation to welfare benefits.
- Offer the services of, and encourage tenants to engage with our Tenancy Sustainment Service

3.2 **Promoting the Culture of Payment**

Rent payment options will be discussed and payment method selected at allocation interview and confirmed at accompanied viewing.

Direct Debit will be promoted where appropriate.

At the time of agreeing to accept an offer of tenancy, an applicant who advises that they will pay their rent by Housing Benefit they will be provided with assistance to make a claim.

Following introduction of the Universal Credit, the Association will assist tenants in making and updating claims for Universal Credit. Where a tenant meets any of the criteria for an Alternative Payment Arrangement (i.e. the direct payment of Housing Support Costs from Universal Credit to the Association) we will apply for such a payment to be made.

3.3 **Measures to Minimise Rent Arrears**

We will:

- Advise tenants of any arrears or an unacceptable payment pattern immediately after these arise.
- Emphasise personal contact between tenants and housing services staff as the key to successful prevention, control and recovery. The clear majority of arrears work by housing staff should involve personal contact with tenants. In order to achieve this we recognise that some time working outside usual office hours is necessary to accommodate the needs of working tenants

- Secure lump-sum repayment wherever possible and if not possible, secure an agreement for payment of arrears that is affordable and based on knowledge of tenants' income and expenditure.
- Allocation interviews and accompanied viewings should be completed in all of cases as they are a key part of the arrears control process
- All new tenants are given the opportunity to get information and assistance from the Tenancy Sustainment Service.
- All new tenants are visited by the Housing Services Officer within 6 weeks of taking up occupancy. This enables early identification of any problems and gives the tenant an opportunity to raise any issues they may wish clarified. The Association aims to complete 100% of all New Tenancy Visits, however priority will be given to:
 - those in their first tenancy,
 - those who are under 25, receiving support or are vulnerable,
 - tenants who are formerly homeless, with a history of arrears or anti-social behaviour
- Housing Services Officers should offer tenants in arrears the opportunity of an interview by the Tenancy Sustainment Officer when arrears arise and at any point where they feel that a significant change of circumstances has occurred.
- We will apply for arrears direct deductions from Benefits (including Universal Credit) where the conditions for such deductions are met.

3.4 Rent Payment Methods

Tenants are able to make payments to their rent accounts in ways that suit their lifestyle.

The Association accepts a variety of Rent Payment methods, including:

- Directly mandated payment of Housing Benefit where available.
- Alternative Payment Arrangement for Universal Credit
- Card payment system with Allpay.net which allows tenants to pay their rent at any Post Office and any outlet which displays the "Pay point" sign.

Other payment methods that are available to tenants include the following;

- Direct Debit – this is the preferred method of payment for tenants in employment with bank accounts and the Housing Services Officer should actively encourage tenants to choose Direct Debit in these circumstances
- Online Banking
- Our "Streamline" and Callpay options allow the Association to accept credit or debit card payments including payments made with the cardholder not present.

We prefer not to take payments in the office; however these will be accepted when offered

3.5 Use of text messages and telephone calls as a means of contact with tenants

The Associations SDM system allows text messages to be sent to mobile phones. Text messages or telephoning should be used in the first instance in preference to sending a letter.

Housing Services staff should prioritise the use of the telephone in initiating discussion with tenants in arrears. Telephone calls will be the usual initial method of contact with tenants, whose accounts show unacceptable payment patterns, following reminders sent by text. Telephone calls are a time efficient use of staff time, allowing a large number of tenants to be contacted in a short period of time, without abortive travel time and with minimisation of any health and safety risks.

When contacting tenants by telephone staff should ensure that they are speaking to the tenant (or a joint tenant, if applicable) or the tenant's partner before making clear the reason for their call.

Messages to call back, either with other household members or by answering machines should be discreet or consist only of your name that you are calling from Ochil View Housing Association and a return telephone number.

Calling tenants at their place of work or on a mobile phone is appropriate but staff should bear in mind that the tenant may not be able to discuss the matter in detail as they may not be able to speak privately.

Telephone calls are not appropriate for detailed discussions concerning, for example consequences of legal action, income and expenditure assessments etc. These should be carried out at arranged interview, either in the tenant's home or in the office.

Brief notes of the date, time and content of the call should be recorded in the Tenant Account Diary on SDM, along with details of any arrangements made and a confirmation letter sent to the tenant.

Where an arrangement is made in the course of a telephone contact with a tenant, the repayment arrangement form should be completed and sent to the tenant for signature and return.

3.6 Use of Letters as a Means of Contact with Tenants in Arrears

The Association does not emphasise the use of letters in the arrears prevention and management process as we believe they are generally ineffective.

They are often not read or acted upon by recipients, and letters are not consistent with our principle of emphasising personal contact. Nevertheless we accept that written communication has a role to play.

Some tenants may not be contactable by telephone. We will maintain a library of appropriately worded standard letters for use where necessary. Letters will include

payment details, and be clear and unambiguous and written in plain English. Large print, translated or other formats should be used as necessary, where the tenant is known to have particular communication needs.

Officers should be aware of our membership of Happy to Translate and use communication support methods set out there if necessary.

Letters will;

- Show the date they are sent
- Show the balance of arrears due.
- Encourage and emphasise the need for the tenant to make contact with a named individual (usually the responsible Housing Services Officer)
- Offer the possibility of a home visit for tenants who are unable to visit the office.
- Clarify that contact will help establish eligibility for financial support with housing costs
- Advise the tenant of the serious implications if the arrears situation is not addressed.
- Advise that it is possible to come to an arrangement to pay the arrears by instalments as part of a programme of debt counselling
- Give a deadline for contact or payment.

Letters sent should be recorded in the Tenant Account Diary on SDM.

3.7 Use of Home Visits or Office Interviews

If the tenant cannot be contacted by phone, a letter should be sent to arrange an appointment either as a home visit or an office interview, and asking the tenant to confirm the appointment.

Speculative calls to tenant's homes are not preferred as they:

- Are likely to be unsuccessful – the tenant may not be at home, or if at home, the tenant will not be prepared to hold a thorough discussion.
- Are not considered to be an efficient use of time. Tenants should be prepared for the content of a home visit or office interview by ensuring that they are aware that the interview may last some time and involve detailed discussion on their income, expenditure, their entitlement to benefit and the consequences of continued non-payment

In the case of joint tenants, both tenants should be present, if possible. If the tenant has a spouse or partner, they should be present as well, if possible. Staff managing arrears should aim to secure the informed consent of all parties to the tenancy including non-entitled spouses or partners to any agreement made to reduce rent arrears.

Home visits and office interviews should be recorded by means of an Interview Form. This contains details of the tenancy and rent account, income and expenditure details, the reason for arrears and agreements made and the consequences of breach of agreements. This should be signed by the Association and tenant, a copy given to the

tenant, the original filed and the details of the interview noted on the SDM Tenant Account Dairy.

3.8 The Payment of Arrears by Instalments

The Association prefers that arrears will be cleared by lump sum payment and this will be our first request to the tenant. Where a tenant is unable to repay the arrears in full an affordable repayment arrangement may be made as an alternative. This will be based on knowledge of the tenant's income and expenditure as discussed at a recorded interview.

Where the tenant declines to provide such information to the Association, the acceptance of an arrangement to pay will be conditional on the tenant seeking advice and assistance from a benefit advice/debt counselling agency. The consequence of not adhering to the repayment arrangement must always be stressed to the tenant and the tenant made aware that broken arrangements will result in legal proceedings. The tenant's understanding of this should be recorded on the Interview Form.

3.9 Other Means Of Reducing Rent Arrears

Where a tenant in arrears may stand to benefit from the Association e.g. winning the £30 prize for returning the customer satisfaction survey prize draw action the money will be offset against the arrear. Staff should consult the Customer Payments Policy for further guidance on this point.

4.0 HOUSING BENEFIT LIAISON

While it remains in payment, which is expected to be for some time as yet, although on a reducing scale, we recognise the essential role that housing benefit has, as it is the major income stream in our rent collection process. We will maintain close liaison with the housing benefit section of the local authority. Any changes to benefit entitlement will be relayed to the tenant as soon as possible to prevent arrears accruing.

The Association participates in the verification framework. On behalf of the local authority, the Association's staff ensure that all the required information is provided at the beginning of the housing benefit claim and that it is verified as correct. This enables Housing Benefit applications to be processed more speedily avoiding arrears accruing.

No repossession will take place as a result of an arrear accruing solely due to housing benefit reclaim. Housing Services Officers will contact Housing Benefit Officers and seek prompt assessment of any outstanding claim /reassessment of benefit where arrears have reached a level where service of a Notice of Intention is appropriate. Advice on Housing Benefit entitlement is available to Housing Services Officers from the Tenancy Sustainment Officer.

As benefit cases become the responsibility of the DWP the Association will offer such assistance as it is possible to do so, however the nature of Universal Credit claims and the emphasis on claimant responsibility, this may prevent us from acting on the tenant's behalf.

5.0 GENERAL INFORMATION AND ADVICE

The Association's Tenant's Handbook contains information on payment of rent, and Housing Benefit and Universal Credit and is provided to tenants when signing up to their tenancies.

Regular newsletters also provide any relevant information and advice as available and appropriate.

6.0 TIMESCALES IN THE MANAGEMENT OF RENT ARREARS

Rent arrears will be monitored to identify accounts that are newly in arrears or where payment arrangements have not been kept. If a tenant falls into arrears or breaks an agreement the Association will respond within 5 working days by taking measures to contact the tenant and recover the arrears. The responsibility for managing rent arrears in specific tenancies lies with the Housing Services Officer with responsibility for that tenancy.

Where a tenant is known to be in receipt of Universal Credit, with housing costs paid directly to the tenant., the Housing Services Officer with responsibility for that tenancy will note the payment date and contact the tenant immediately prior to the payment date in order to remind the tenant that payment is due.

Timescale for response by Housing Services Manager for request to begin legal action: One working day.

Timescales for instruction of Solicitors to commence legal action following approval to commence legal action: One working day.

6.1 Alternatives to Repossession Action

The Association will consider whether alternatives to repossession action such as Debt Action and Payment Decree. Where such actions are possible and show a good prospect of success these will be taken as an alternative to repossession. Prospects of success will be considered in relation to the information held about employment, the level of wages and any other wages arrestment's known to be in effect.

6.2 The Pre-Action Requirement

The Housing Scotland Act 2010 has established the requirement for Registered Social Landlords to meet a number of conditions, together referred to as the Pre Action Requirements, and to document how they have done so, before beginning legal action to end a tenancy. The requirements are that the Association must:

- Give clear information about the tenancy agreement and the unpaid rent or other financial obligations;
- Make reasonable efforts to give help and advice on eligibility for housing benefit and other types of financial assistance;
- Give information about sources of help and advice with the management of debt;

- Make reasonable efforts to agree with the tenant a reasonable plan for future payments;
- Consider the likely result of any application for housing benefit that has not yet been decided;
- Consider other steps the tenant is taking which are likely to result in payment within a reasonable time;
- Consider whether the tenant is complying with the terms of an agreed plan for future payments
- Encourage the tenant to contact their local authority (where the local authority is not the landlord).

The Association will not commence repossession action unless these requirements have been met and we can document that we have done so.

7.0 THE REPOSSESSION PROCESS

The Association aims to minimise rent arrears and avoid legal action and eviction. However this may be necessary from time to time and where it is necessary, this will be done within a framework of delegated authority and accountability.

Issue/renewal of Notice of Intention to Raise Proceedings: Housing Services Officer, with approval required by Housing Services Manager, Director of Customer Services, Depute Chief Executive or Chief Executive

Instruction to Solicitor to commence Proceedings for Recovery of Possession: This will usually be in the form of a conjoined action for recovery of possession and payment of arrears and recoverable legal expenses. Housing Services Officer (with approval required by Housing Services Manager, Director of Customer Services, Depute Chief Executive or Chief Executive.

The Housing Services Officer will then provide the following documents to the Solicitor:

- Tenancy Agreement
- Notice of Intention to raise proceedings and proof of service
- Rent statement covering relevant period
- Court Report (summary of relevant actions and stages, including compliance statement confirming the Pre-Action Requirement)

When the case calls in Court, the Association may decide whether to;

- Sist (or suspend) the case – this will be the usual course of action where the tenant has firmly established a pattern of regular payments since legal action was instructed and the Housing Services Officer feels that these payments are likely to continue .
- Continue the case – this will be the usual course of action where the tenant has engaged with the Association’s Arrears Recovery Process, but the situation is not stable to the Housing Services Officer’s satisfaction. With approval required by Housing Services Manager, Director of Customer Services, Depute Chief

Executive or Chief Executive. Continuation, where granted, will result in the case returning to court. At that point the Association must decide again which instruction to give the Solicitor. It is unlikely that we would seek a further continuation, and the choice would be made between Sist (or suspending) and Decree, according to the tenant's actions in the interim.

- Seek Decree for Repossession and Payment - this will be the usual course of action where the tenant has not engaged with the Association in any constructive manner, or not at all.

In all cases approval of the Housing Services Officer's recommendation is required by the Housing Services Manager, Director of Customer Services, Chief Executive (or Depute)

The Housing Services officer shall instruct the Solicitor in respect of the Association's decision on the day before day before the case calls in court.

Where a case is sisted (suspended) the Housing Services Officer will seek to have the sist (suspension) recalled where the established payment arrangements breaks down. When the case calls in court on a second occasion, the Association must decide the appropriate course of action. This may include a further sist (suspension), continuation, or Decree.

In cases where it is proposed to enforce the Decree, the Housing Services Manager shall prepare a report for the next scheduled Management Committee detailing the circumstances of the case in the format prescribed for such reports and recommending that Decree shall be enforced.

Decree may only be enforced with the express approval of Management Committee.

Where approval is granted, the Housing Services Manager shall instruct Sherriff Officers to complete the eviction with minimum possible delay. The Housing Services Manager may decide to cancel a programmed eviction where sums are paid in full, even at the last moment.

On the appointed date for an eviction, two members of Housing Services staff will attend the property with the Sheriff's Officer(s) and a joiner. If felt to be necessary, the Police should be advised. The Sheriff's Officers shall complete the eviction in accordance with due process and the Association staff shall enter the property and carry out a void inspection. If the tenant is present, a forwarding address and arrangement for payment of outstanding sums due will be sought. The joiner shall change the locks of the property and any additional measures felt to be necessary such as security screens will be carried out.

Where a Minute of Recall is served, the Association will pause any programmed eviction in accordance with due process.

The Management Committee will receive a report at the next scheduled business meeting to advise of the outcome of their decision.

8.0 MEASURING OUR SUCCESS IN CONTROLLING RENT ARREARS

We aim to achieve our annual arrears targets which will be set within the Departmental Management Planning process. The actions necessary to achieve this will be set out in the annual Customer Services Departmental Plan.

Targets will be set for Key and General Performance Indicators and performance will be reported to the Management Committee (Key Performance Indicators) and Customer Services Committee (Operational Performance Indicators).

9.0 SECTION 11 OF THE HOMELESSNESS (SCOTLAND) ACT 2003

The Association will advise the appropriate local authority, in statutory form, of our intention to raise proceedings for possession. .

Where a Decree for repossession has been obtained against a tenant the Association will contact both the Social Services and the Homelessness section of the local authority to make them aware of the situation.

10.0 FORMER TENANT ARREARS MANAGEMENT

The method of pursuing and recovering former tenants' arrears is different from that of pursuing a tenant for current arrears. Any action taken must be cost effective to the Association. The attached procedures describe the process for recovery of former tenant arrears but should initial action is unsuccessful in obtaining payment or an arrangement for payment the debt will be referred to a Debt Collection Agency.

When a termination of tenancy is notified to the Association all tenants are advised that the rent account must be clear prior to the termination of tenancy. Where former tenant's arrears do arise these will be monitored on a monthly basis.

All former tenancy arrears of £1,000 or more will be referred to DCA within one month of the termination of tenancy.

All former tenancy arrears will be referred to DCA within one month of the breach of the agreement where payments arrangements are broken.

The "write off" of former tenancy arrears and other debt is an accounting procedure used by the Association to ensure that its accounts demonstrate a true and fair view of its financial position. Where sums remain showing as due, this can present an unfair view if these sums are not likely to be collected. When a debt is written off, it remains collectable and payable in full.

The decision to undertake legal action to recover Former Tenancy Arrears is a judgement based on the information available concerning the former tenant's current

circumstances, how these impact on the likelihood of collection and the costs of legal action.

Hence the Association would not take legal action if a former tenant in arrears was making regular payments.

We would consider legal action if regular payments were not made. However we would only proceed with legal action if the former tenant was known to be in paid employment. We would not proceed if the tenant was known to be on benefits, or if their circumstances were not known. In that case, we would continue to rely on non-judicial recovery through our Debt Collection agency .

The Association will write off former tenancy arrears where;

- We have no forwarding address, our efforts to obtain one and the efforts of Debt Collection Agencies to trace the former tenant fail to discover an address
- Where the former tenant has died or is known to have emigrated
- If the former tenant has moved to residential or nursing care
- If the tenant is not expected to be in a position to make payments in the foreseeable future
- Where the debt has been Sequestered
- Where it is not economic to pursue the debt

The decision to write off former tenancy arrears requires Management Committee approval. A report will normally be made twice each year.

11.0 CREDIT BALANCES

The Housing Services Assistant will check rent accounts in credit on a quarterly basis and advise tenants in credit to amend payment patterns, and arrange any refunds.

12.0 DATA PROTECTION

The Association requires to comply with the Data Protection Act 2018 to ensure information provided to and sought by the Association is relevant only to the payment of rent, managing rent arrears and that all such information is treated in the strictest confidence

The Housing (Scotland) Act 2001 requires that qualifying occupiers must be served a Notice for Recovery of Possession in addition to the tenant. In this case the rights of qualifying occupiers supersede the Data Protection Act provisions. Qualifying occupiers require information about any intended legal action against a tenant to enable them to defend their legal rights. Qualifying occupiers are members of a tenant's family, aged 16 years and over, living with the tenant in the property.

13.0 REVIEW

This policy will be reviewed at least every three years.

Graeme Wilson
Head of Customer Services

February 2019

Considered by the Management Team on	Not applicable
Reviewed by Involved Residents Group	Not applicable
Considered by the Customer Services Committee on	7 March 2019
APPROVED BY THE MANAGEMENT COMMITTEE ON	28 March 2019
Date of Next Review	March 2022

APPROVED