

**Topic:** Rent Arrears Policy - Draft

**Approved:** 2021

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**Code:** HM04

## **THE PURPOSE**

To ensure help is provided to tenants to avoid accruing arrears on their rent accounts and ensure they are dealt with in a fair and effective manner when they do. This policy advises of the support measures that the Association has in place for its tenants and its approach to arrears management.

## **Introduction**

Shettleston Housing Association operates in accordance with the following documents in the formulation and implementation of all its policies:

- Statutory requirements
- The standards set down in the Scottish Social Housing Charter
- The requirements of the Scottish Housing Regulator

SHA seeks to fulfil its corporate aims through the development and implementation of its policies and all SHA's policies operate to achieve its Strategic Objectives as set out in its Business Plan.

## **Equalities and Diversity**

SHA is committed to providing equality of opportunity to all persons or groups within its area of operations in every aspect of its activities.

In operating this policy SHA will endeavor to ensure equality of opportunity for all, at all times, and in all circumstances. The potential impact of this policy, either positive or negative, on any protected characteristic, was considered when developing this policy. In line with this commitment to equality this policy, and any summary or information leaflet, can be made available, free of charge, in a variety of formats including; large print, translation into another language or audio tape.

## **Access To Policy Information**

SHA will ensure that its policies are made fully available to all tenants, applicants, members, persons or groups within its areas. Every effort will be made by SHA to support access and promote awareness of its policies by posting these on its website, developing summaries, guidance and information leaflets as appropriate.

## **Tenant Involvement and Consultation**

SHA is committed to meet the requirements of the Housing (Scotland) Act 2010 in all of its policies and to meet the requirements of the Scottish Social Housing Charter.

SHA will involve tenants in the development of its policies and seek feedback in appropriate circumstances. It will ensure that any material change to services affecting tenants in this and other policies will be the subject of consultation.

### ***Policy Monitoring***

SHA is committed to ensure that adequate monitoring of the implementation of its policies is undertaken. This will be achieved through regular review by the Board, customer/tenant feedback surveys and regular consultation with tenant/resident groups.

### ***Risk Management and Assessment***

SHA has a detailed Risk Management Policy in place and it will assess the risks to the Association in the implementation of each of its policies as part of its risk management strategy.

### ***Procedures***

SHA will develop a detailed set of procedures identifying actions, roles and responsibilities in the implementation its policies. These procedures will be subject to regular review and audit.

### ***Training***

SHA will ensure that its staff are properly trained in terms of their knowledge and understanding of statutory requirements and the requirements of the Scottish Social Housing Charter pertaining to its policies. It will ensure that appropriate staff are kept up to date with all procedures pertaining to the implementation of policies. The Board will have access to training to ensure that it can maintain appropriate control and overview of the policy and procedures.

## 1. Introduction

This policy covers all aspects of the management and debt recovery practices operated by Shettleston Housing Association (SHA).

This is a key document as the Association requires to maximise its income to allow it to fulfil its obligations as a social landlord in terms of service delivery.

Early intervention and supporting tenants are key principles in managing our approach to dealing with arrears management. Housing officers will play a central role in managing our arrears. Their duties will include ensuring all tenants comply with their tenancy agreement, including the payment of rent when it is lawfully due. Housing Officers will manage their duties within a specific “patch” and will act as the main point of contact for dealing with arrears management issues within their patch. We will ensure that staff understand the Arrears Management Policy and associated procedures which are aimed at minimising loss of rental income by prompt, effective recovery of arrears.

The Association recognises that many tenants get into financial difficulties through an inability to pay and we will support and assist those on low incomes or those with budgeting issues to maintain a repayment arrangement while at the same time adopt firm measures for the minority who refuse to pay.

## 2. Policy Aims and Objectives

- 2.1** The overall aim of the Rent Arrears policy is to minimise the level of rent arrears. Rental income is the largest part of the Association’s cash flow. Maximising income and the effective control of arrears is crucial to SHA’s financial wellbeing. Ultimately, high rent arrears could prevent the Association from having funds to invest in the housing stock and adversely impact upon day to day services. In order to maximise its rental income the Association requires an efficient and effective procedure for dealing with rent arrears. This policy aims to minimise the level of rent arrears in a sensitive but effective manner.

The main objectives of the Policy are:

- To ensure we have efficient monitoring systems in place to respond quickly to balances arising
- To provide all tenants with early advice on benefits, inform tenants promptly of changes to their rent charges and make early personal contact with tenants whose accounts go into arrears
- To emphasise to tenants in arrears that our aim is to assist them to come to a sensible and affordable repayment arrangement with the Association but that we will take action against those who persistently or wilfully do not pay
- To provide as much advice and assistance to tenants as possible to maximise benefit entitlement and debt counselling
- To adopt an approach to arrears management that is firm but fair with a focus on preventing homelessness and takes account of tenants’ individual circumstances
- To ensure any actions taken are compliant with legislation and good practice

### **3. Legal and Regulatory Requirements**

This policy aims to be consistent with all relevant legal and regulatory requirements including those set out below:

#### **3.1 The Housing (Scotland) Act 2001**

Sets out the provisions in relation to the recovery of possession of a tenancy when a tenant has breached the conditions of their tenancy agreement by accruing rent arrears.

#### **3.2 The Housing (Scotland) Act 2010**

Sets out the terms of the Pre-action Requirements under Section 14 and 14A of the Act.

#### **3.3 The Housing (Scotland) Act 2014**

Under Part 2, Section 6 sets out the terms which allow social landlords to set a minimum period before any applicant (except applicants being assessed as homeless by the local authority) is eligible for the allocation of housing for various circumstances, including rent arrears, unless the applicant is taking meaningful steps to repay the debt.

#### **3.4 Homelessness (Scotland) Act 2003**

Under Section 11 of the Act Registered Social Landlords are required to give the Local Authority in the area in which it operates early notice of a household at risk of homelessness due to eviction.

#### **3.5 Data Protection Act 1998 and General Data Protection Regulations 2016**

Sets out standards for gathering, processing and sharing personal data.

#### **3.6 The Bankruptcy and Debt Advice (Scotland) Act 2014**

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

#### **3.7 Equality Act 2010**

Sets out the duty required of all agencies who provide a service to the public and is based on all persons having the right to be treated with dignity and respect.

#### **3.8 Scottish Secure Tenancy Agreement & Short Scottish Secure Tenancy Agreement**

Sets out the specific conditions in relation to the payment of rent and other tenancy related charges. Non-payment represents a breach of these conditions.

#### **3.9 Regulatory Framework – Scottish Social Housing Charter**

We will comply with the Scottish Social Housing Charter requirements most relevant to this Policy:

- Outcomes 9; 11; 13
- Outcome 9 - People at risk of losing their homes get advice on preventing homelessness.

- Outcome 11 - 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.
- Outcome 13 - Tenants, owners and other customers receive services that provide continually improving value for the rent and other charges they pay.

#### **4. PREVENTION**

- 4.1** A key objective of this policy is preventing arrears arising. Prevention starts at the beginning of a tenancy and therefore it is important all new tenants are advised of the following:
- The monthly rent due
  - New tenants will be asked to pay a full month's rent in advance
  - Advice and assistance with the completion of any Housing Benefit or UC claim
  - Ways to pay information
  - Monthly rent payment is due on the 1st of each month and monthly rental payments should be received on or before the 1st of each month and no later than the 7th day of that month unless a weekly repayment arrangement has been agreed.
- 4.2** At sign-up the method of payment will be agreed. We will encourage the use of direct debit or the Allpay Recurring Payment method.
- 4.3** The Welfare Rights Officers will attend sign-ups and carry out checks for any other benefits that the new tenant may be entitled to. An assessment of any underlying entitlement to Housing Benefit or Universal Credit will also be carried out and the tenant advised of the estimated rent charge and any amount to be paid. Where a tenant has debt/budgeting issues a referral can be made to the Money Advice team.
- 4.4** The services of the tenancy sustainment service will also be promoted to new tenants via direct referrals by the Allocation/Housing Management staff. Information leaflets explaining the Service will also be provided.
- 4.5** A key to managing arrears throughout the tenancy will be personal contact with the tenant and housing staff. Tenants will be encouraged to contact the Association as soon as they become aware of any problems with making their rent payment.
- 4.6** A new tenant visit will be carried out by the Housing Officer 6 weeks from the tenancy commencement date which will offer an opportunity to discuss any issues with rent and identify support required.
- 4.7** Housing Officers should make a referral for tenants in arrears to the Welfare Rights/Money Advice teams when arrears arise and at any point when they feel that a significant change in circumstances has occurred.
- 4.8** Application for arrears direct from Benefits should be made for those tenants who are in receipt of a Legacy Benefit or Alternative Payment Arrangement where the tenant is in receipt of Universal Credit if the conditions for such deductions are met.

## 5. Rent Collection & Payment Options

- 5.1** The Association offers a variety of payment options, however, the preferred method will be Direct Debit or Allpay Recurring Payment.
- Direct debit facility via Bank/Building Society
  - Recurring Payment via Allpay – this can be arranged by staff at Association’s office
  - Allpay rent card is provided to all tenants and can be used at any Post Office/Paypoint
  - Online payment at [www.allpay.net](http://www.allpay.net)
  - Callpay - phone payments can be accepted that links into the Allpay system.
  - Cheque - tenant’s reference number must be noted
  - Housing Benefit direct
  - Universal Credit - alternative payment arrangement (i.e. direct payment of housing costs from Universal Credit to Association)
  - Cash Payments - no cash payments will be accepted unless in exceptional circumstances which will need the approval of housing manager and finance manager
- 5.2** The Association will ensure that “How to Pay” information is provided with rent correspondence and details will be available on our website.
- 5.3** Tenants’ rent accounts will be updated with payments made within two working days of receipt of payment. This will help ensure tenants have accurate information on the balance on account and allow staff to take prompt action if agreed repayment has not been made.

## 6. Housing Benefit/Universal Credit and available support

- 6.1** Arrears can occur when tenants experience a change in circumstances. Housing Officers will monitor accounts to identify changes or cancellations in benefit entitlement. Given the Housing Benefit department and/or Department of Works & Pension (DWP) cannot provide details under data protection housing staff will make personal contact with the tenant to establish the reason for the change in benefit within **2 working days**. Where there is no change in circumstances the tenant will be assisted to have their benefit reinstated. If a change has occurred the Housing Officer will liaise with the Welfare Rights team to determine any underlying entitlement to benefit and to estimate ongoing rent liability.
- 6.2** The pre-action requirements of “the 2010 Act” state a landlord must provide information to the tenant on the following before the serving of a Notice of Proceedings in relation to advice:
- 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;
  - The services of Association's welfare rights and partnership money advice service will be offered to all tenants in arrears.
- 6.3** Tenants making claims for housing costs under Universal Credit will be required to submit changes of circumstances by updating their online journal. Assistance will be offered to tenants who require help with this digital process. The Association will, on receipt of Housing Costs Verification forms via the DWP portal, complete these within same working day.
- 6.4** On receipt of a notification of an overpayment of Housing Benefit the Housing Officer will contact the tenant to offer the assistance of the Welfare Rights Officer if a challenge is to be made to the overpayment decision or assist in requesting a reduction in the level of repayment deductions if the tenant is struggling financially.
- 6.5** Housing Benefit overpayment demands made direct to the Association for payment will be passed to the Welfare Rights Officer for assessment and decision as to whether there are grounds for challenge before payment is made. Any appeal against an overpayment decision will be made by the Welfare Rights Officer.

If the demand is accurate the Housing Officer will make arrangement for payment.

## 7. ARREARS MANAGEMENT

- 7.1** Complementary to this Policy is written procedures (**Appendix 1**) for all staff involved in arrears control, which is intended to ensure that there is good practice and consistency of approach to the principles contained in this Policy. Specific issues highlighted within this guidance include:
- The requirement for accurate and up to date information to be maintained in order to alert housing officers to emerging rent arrear cases. This will involve all rent payments received being posted to the accounts within **2 working days** of receipt.
  - Rent accounts will be monitored on a weekly basis to identify arrears at an early stage. Action should start as soon as a rent payment is missed. There should be an emphasis on personal contact between the Housing Officers and tenants, as this approach is key to better engagement and improved arrears recovery. The Housing Officers may use a variety of methods to contact tenants including:
    - ❖ Home visits
    - ❖ Office appointments
    - ❖ Telephone calls
    - ❖ Text messages
    - ❖ E-mails
  - The main aim of arrears recovery is to engage quickly and directly with tenants when arrears accrue or increase. Such an approach will mitigate against days being lost on letters being drafted, posted and responses being made by the tenant (if any).

- Direct communication allows for improved outcomes for the tenant and can provide a better understanding of presenting issues and, in turn, provision of support.
- There may of course be occasions when a simple reminder letter will be sufficient and letters will be required to formally document action taken at key stages including repayment arrangements, Housing Benefit/UC awards, court action being raised and court outcomes.
- All forms of contact and outcomes should be recorded as a diary entry on the IBS system.
- Repayment arrangements should be monitored using the monitoring reports set up on the Insight Dashboard. The amount and date of repayment should be recorded as an attribute on the tenancy screen and this is automatically updated via the internal monitoring report. Reminders can be sent in advance of payment due and any broken arrangement should be actioned within two working days by making personal contact with the tenant.
- Home visits or other methods of communication between the Association and tenants in arrears will be used out with office hours if it is proving difficult to make contact with the tenant.
- Minimising arrears and successfully recovering debt is the key objective of this Policy. An over-prescriptive approach is not necessary or conducive to meeting this objective. The approach taken by staff in the management of arrears cases should focus on the outcome, which can be achieved better by ongoing personal contacts with tenants, as opposed to an overuse of letters.

## 8. LEGAL ACTION

- 8.1** In circumstances where a tenant persistently fails to pay rent, has broken agreements for payment and where the Association believes no other alternative action is appropriate legal action will be commenced.
- 8.2** The Housing (Scotland) Act 2001 allows the Association to take legal action against tenants in arrears. The Grounds for Recovery are stated in Schedule 2 of the Act. The relevant ground for rent arrears is found under Schedule 2, Part 1, which states:

***“Rent lawfully due from the tenant has not been paid or any other obligation of the tenancy has been broken”.***

Prior to commencing legal action the tenant and all qualifying occupants (all known members of the household over the age of 16 years) will be issued with a Notice of Proceeding. This will allow the Association to take legal action over the duration of a six month period starting 1 month from the date the Notice is delivered.

### Pre Action Requirements

- 8.3** The Housing (Scotland) Act 2010 introduced pre action requirements that Registered Social Landlords must satisfy before serving a Notice of Proceedings on a tenant. To meet



these Requirements, the Association must provide evidence that the following steps have been taken before pursuing legal action:

- Give 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 efforts to agree with the tenant a reasonable plan for future payments
- Take into account the likely result of any Housing Benefit application not yet awarded
- Consider other steps the tenant has taken which are likely to result in payment within a reasonable time
- Consider whether any arrangement plan has been maintained for future payments
- Encourage the tenant to contact their local authority in the event of homelessness

The decision to serve a Notice of Proceedings rests with the Housing Officer. All Pre Action Requirements must be fulfilled and the Housing Officer must complete the Notice of Proceeding template to document that these requirements have been met.

#### **Homelessness (Scotland) Act 2003 – Section 11**

- 8.4** Section 11 of the 2003 Act places a duty on landlords to notify their local authority when court action is being raised against a tenant for repossession of a property. This is to alert the local authority that the household is at risk of homelessness. A section 11 notice will be prepared by the Association's acting solicitor and sent to Glasgow City Council's Social Work Services Department (SWD) to notify it details of the family facing impending court action. This will provide SWD with the opportunity to intervene and contact the Association to discuss any cases. The Housing Officer will be responsible for recording in the tenant diary that the Section 11 Notice has been served.

#### **Legal Rights of Household Members to be Participate in Court Action**

- 8.5** Anyone over 16 years of age on date of service of Notice is classed as a qualifying occupier and is entitled to receive a copy of any Notice of Proceedings and can take part in any court proceedings. Qualifying occupiers can include:
- A member of the tenant's family
  - A person to whom the tenant has assigned or sub-let part or all of the tenancy
  - A person whom the tenant has taken in as lodge, with the consent of the Association
- 8.6** Tenants have a contractual duty to keep the Association updated on all those living in the property. There may, however, be occasions where the Association is unaware of all those forming part of the household composition and therefore a Notice is not served on a qualifying occupier. To ensure the Association takes all reasonable steps to gather household details the following action will be taken:

- Household composition details will be checked with the tenant during arrear interviews
- During the sign up process emphasis will be placed on the requirement to keep the Association informed of who is living in the property
- Regular updates will be placed in newsletters informing all tenants of this requirement, given legal implications
- A letter and household composition form will be issued prior to the service of the Notice to establish who is currently resident in the property.

### Court action

- 8.7** The Association's solicitor will lodge the legal action request with the Sherriff Clerk's office and a hearing date will be set. A summons will be sent to the tenant from the court and the Association's solicitor will inform the Association.
- 8.8** The Association will be represented at court by its solicitor. Prior to the actual court date, the Housing Officer should agree the appropriate action with the Senior Housing Officer or Housing Manager and final instructions should be given to our solicitor. At this stage the following will be considered:
- **Continue the case** – solicitor requests court for a later date (possibly 6/8 weeks) to allow Association to monitor any arrangement or offer of lump sum that has been made by the tenant or to find out a decision from Housing Benefit, direct payments or any other housing costs entitlement that may be due.
  - **Sist the case** – this allows the Association to suspend the action in court where the case has previously been continued and payments are being maintained. The case can be recalled in court at a later date should the arrangement default.
  - **Seek Decree for Expenses only** – this allows the Association to claim legal costs in cases where the tenant has cleared the debt.
  - **Seek Decree for Repossession and Recovery of the Debt** – this will be used as a last resort where every other alternative for reducing the debt has been exhausted and we have had no or insufficient payment from the tenant(s).
- 8.9** Legal costs involved in Arrears action will be added to the tenant's account if awarded by the Court.

### Legal Proceedings

- 8.10** The Association will only take legal action against a tenant as a last resort. Housing Officers must ensure every effort has been made to contact the tenant to arrange a payment, including early/late visits and using all other available means of personal contact prior to referring a case for Court Action. Legal action is a serious matter that could result in a tenant losing his/her home and as such, it will not be entered into lightly. However, when legal action is commenced it will be on the basis that the Association is prepared to carry it out and ultimately evict the tenant. Tenants will be made aware that this is the agreed approach taken by the Association.

- 8.11** Where there is no satisfactory arrangement to clear the arrears of rent and/or where an arrangement has been repeatedly broken legal proceedings will be entered into and the delegated authority will be as follows:

Action	Delegated Responsibility
Agreement to commence legal action or recalled case on ground that rent lawfully due has not been paid	Senior Housing Officer/Housing Manager
Decision to continue, suspend, or seek decree for expenses only	Senior Housing Officer/Housing Manager
Agreement to pursue decree for repossession	Housing Manager/Director of Customer & Community Services
Agreement to enforce court decree and evict tenant	CEO

- 8.12** In the event that the Court grants an order for possession of the property the tenancy is not ended on the court date but ends when the Association recovers possession of the property.

On obtaining Decree the Association will write to the tenant inviting them to attend an interview with the Housing Manager/Director of Customer & Community Services to provide one final opportunity to make an arrangement to clear the debt and avoid eviction.

If the tenant attends the Association will consider the following options that will prevent the enforcement of the decree.

- Option 1 - make full payment to clear the monies outstanding.
- Option 2 - make payment to reduce half the balance plus an arrangement that will ensure the balance is cleared within an acceptable period, which will be no longer than 6 months.
- Option 3 - make a repayment arrangement that will clear the outstanding balance over an acceptable period, which will be no longer than 6 months.

During this interview process the tenant will be made fully aware that failure to keep to the arrangement entered into will result in the Association obtaining final approval to enforce decree and evict the tenant from the property.

Where there is no agreement entered into at the interview stage, or the tenant fails to take the opportunity of a final interview to enter into an agreement to repay the debt or breaks the final agreed repayment arrangement then a report will be prepared by the Housing Officer and authorised by the Housing Manager/DCCS for the CEO to authorise enforcement of the Decree. The report will provide the case details, confirming all proper procedures have been carried out as per policy and that every form of assistance has been offered by staff.

Once final approval has been obtained the Housing Officer will notify the Association's solicitor to instruct Sherriff Officers to arrange a date to carry out the eviction. A minimum period of 14 days' notice will be provided and the tenant will be duly notified and advised to contact the Local Authority Homeless Service.

## 9. Former Tenant Arrears

**9.1** The Association's approach to the recovery of former tenant arrears will broadly similar to the recovery of current tenant arrears in that the Association will pursue all former tenant arrear cases.

**9.2** The Association will adopt the principle of early action in pursuing the payment of arrears of rent from former tenants. The Association recognises that a key stage in the recovery process is to provide the outgoing tenant with information that a rent arrear is outstanding when they give notice of termination of tenancy. This will form part of the exit interview and the outgoing tenant will be advised of outstanding rent or other debt, agree an affordable repayment plan and make arrangements for payment through Direct Debit, Allpay etc.

The Association will make every effort to obtain a forwarding address, telephone or email address from the tenant to enable communication once the tenancy ends.

**9.3** The Association will minimise former tenant arrears by:

- Maintaining accurate information and closely monitoring repayment arrangements.
- Where an arrangement is broken or the tenant terminates without agreeing repayment of the debt the Association will issue 3 reminder letters prior to arranging a letter from the Association's solicitor warning of potential action for recovery of the debt depending on circumstances and the level of individual former tenant arrears. Legal recovery may include earnings arrestment, small claims action or bank arrestment.
- The Association will also consider using Debt Recovery Agents where appropriate, however, it is recognised that the success rate may be low and therefore uneconomical to pursue.

**9.4** With some cases where, despite all efforts to recover the outstanding debt to the Association, there may be situations which prevent recovery action or are uneconomical to pursue.

Debt in the following circumstances will be considered for write off:

- The tenant is deceased and there is no estate which would allow recovery of the debt.
- The age/level of debt – 5 years/below £50.00. The Association will treat any debt under £50.00 as uneconomical to pursue, given costs involved would exceed debt on account.
- The tenancy has ended with no forwarding address and despite attempts by staff Debt Recovery agent whereabouts of the Former Tenant remains unknown.
- The tenant has been declared bankrupt or has been sequestered. However, sequestered tenants must maintain their ongoing rent payments after a sequestration is in place. If they do not then legal action will be considered as normal against any new debt.

The Housing & Community Services Sub-Committee (HCSC) will consider writing off current and former tenant arrears and credit balances normally once a year prior to the financial year end.

A report will be provided to Committee for consideration and approval.

## 10. Targets & Performance Monitoring

**10.1** The Association shall maintain internal information systems which are based around ensuring effective monitoring, control and reporting on its rental income.

**10.2** The Association will set clearly defined targets for gross, current and former tenant debt on an annual basis. The Association will:

- Establish realistic arrears targets on a patch basis
- Monitor targets monthly and review targets annually
- Present regular arrears reports to Housing & Community Services Sub-Committee detailing arrears owed as a percentage of the annual rent due, trends, number of tenants in arrears and the amount in each banding, number of notices of proceedings served, court actions undertaken and orders granted.
- Quarterly reports will be made to the Board against Key Performance Indicators (KPIs).

In addition, the Scottish Housing Regulator monitors all Registered Social Landlords (RSLs) rent arrear performance via the Annual Return on the Charter (ARC). The ARC Indicators that we will report on include:

- Rent collected as a percentage of total rent due
- Gross rent arrears (current tenant arrears, former tenant arrears and write offs)
- Evictions

## 11. Review

The Policy will be reviewed every three years or earlier if there is a requirement to do so.

### **Document history:**

v1.0 (draft) prepared by Anne McAlpine, Director of Customer & Community Services