

Approved by Management Committee 23/02/23

Date Issued	January 1996
Last Reviewed	February 2023
Department	Housing Management
Title	Rent Arrears and Tenancy Debt
Objective	To maximise income by ensuring that rent and other tenancy charges are collected and arrears are effectively controlled.
Responsible	Director of Housing
Next Review	February 2028

1.0 Introduction

1.1 Maximising rent collection will start prior to the commencement of a tenancy when we will emphasise the importance of paying rent and promote our Key Tenant Scheme, including payment by Rent Collector and Direct Debit. We will also make new tenants aware of the various welfare benefits, particularly Universal Credit and Housing Benefit, to which they may be entitled.

1.2 We will:

- Promote a positive payment culture through being consistent in the application of our policy and procedures and, publicity via our e-news, quarterly newsletter, mail shots and leaflets
- Focus on arrears prevention to minimise arrears and maximise rental income
- Recover arrears fairly and effectively and ensure that staff adopt a responsive, empathetic and practical approach to assist tenants in arrears to sustain their tenancy
- Provide a clear framework for staff engaged in arrears control to work within
- Emphasise early intervention, a customer centred approach and early involvement of appropriate external agencies (e.g. our independent Money & Home Energy Advice Service, Citizens Advice Bureau, Social Work Department and Shelter)
- Reward regular payment through our Key Tenant Scheme
- Use legal action appropriately and in accordance with Best Practice

2.0 General Principles

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- 2.1 Our policy and procedures emphasise prevention and early intervention, a customer centred approach and early involvement of appropriate external agencies (for example our independent Money & Home Energy Advice Service, Citizens Advice Bureau, Housing Options Team, Social Work and Shelter).
- 2.2 Personal contact is our preferred means of engaging with tenants. However, we recognise that tenants with rent arrears may prefer to avoid face to face meetings and that continual unsuccessful home visits are not the best use of our staff resources. We operate an online rent account management system that allows tenants to change the date of their rent payment or make a rent repayment agreement through their My Home account without having to speak to staff. Dependent upon the proposed agreement, a tenant may be required to complete an income and expenditure form during the process so we can ensure that the repayment agreement is affordable.
- 2.3 If online agreements are unsuccessful we will attempt to make personal contact with tenants using a range of contact methods including letters, text messaging, email, social media and phone. We will always encourage tenants to telephone their Housing Officer to discuss problems.
- 2.4 Staff will maintain accurate records of all contact with the tenant by telephone, letter, e-mail, text or in person.
- 2.5 Where we have difficulty contacting tenants to discuss their rent arrears we will try phoning or visiting in the evening or early morning. Staff carrying out home visits to tenants will comply with our Lone Working Policy at all times.
- 2.6 All staff involved in rent arrears recovery will receive training in order to ensure that they are able to offer appropriate advice to tenants.

3.0 Getting it Right From the Start

- 3.1 Paying rent is an essential requirement of the Scottish Secure Tenancy and prevention of arrears is more effective than control.
- 3.2 We will:
 - Carry out Experian credit checks on all prospective tenants so that we can discuss with them, any concerns about their ability to sustain a tenancy at the pre-allocation visit
 - Identify tenants at risk of financial vulnerability at the pre allocation stage by interviewing the applicant, seeking tenancy references and through the use of the SFHA Affordability Tool (we will, where appropriate, ensure that additional support, including Money, Benefits and Budgeting advice is put in place before the tenancy begins)

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- Encourage the right attitude and behaviour towards rent payment by expecting all new tenants to pay rent due when signing a tenancy agreement (unless they are participating in the My New Home process and accessing a Rent Discount) and agreeing with them payments dates if they prefer not to pay on the first of each month
- Require all new tenants to provide an emergency contact for us to speak to in the event that we are unable to contact the tenant
- Clearly explain our Arrears Policy to new tenants as part of the signing up process
- Encourage all tenants to pay by the Rent Collector so that they can gain the maximum benefit from our Key Tenant Scheme discounts
- Provide a range of convenient ways to pay for those who are unable or unwilling to pay by the Rent Collector, and help tenants to choose the method best suited to them
- Accept payments at the frequency (fortnightly, weekly etc) best suited to the tenant's income patterns
- Actively assist tenants to access any available help paying their rent, especially at the start of a tenancy
- Prioritise visits to financially vulnerable tenants very soon after the start of the tenancy to begin developing effective relationships and encouraging the tenant to contact us if problems arise

4.0 Universal Credit and Housing Benefit

- 4.1 The Housing Cost Element of Universal Credit and, for those tenants who still qualify, Housing Benefit, are essential for some of our tenants to be able to pay rent.
- 4.2 We will ensure that advice and assistance is available to all tenants who need it in managing claims for Universal Credit or Housing Benefit.
- 4.3 We will encourage our tenants to have all of their Benefits paid to themselves and to make rent payments in accordance with their Tenancy Agreement so that they take responsibility for their rent account and can qualify for rent discounts through our Key Tenant Scheme.
- 4.4 Where arrears are accruing and attempts to encourage the tenant to manage their rent payments are unsuccessful, we will apply for Payment Direct to Landlord and Third Party Deductions to control arrears and prevent evictions.

5.0 Arrears Control

- 5.1 We will check accounts regularly to ensure that missed or reduced payments and broken repayment arrangements are identified at an early stage.
- 5.2 We will contact the tenant appropriately by letter, text, email, phone or home visit as soon as a payment is missed.
- 5.3 We will assess the tenant's income and expenditure to ensure that they can afford the repayment arrangement we agree with them and to identify when specialist Money Advice is required.
- 5.4 We may ask tenants to consider **why** arrears have arisen so that the course of action agreed with them to resolve the problem has the maximum chance of success and will maintain regular contact with tenants in arrears until the debt is under control.
- 5.5 We will explore all possible means of ensuring rent payments are made regularly, such as the use of voluntary mandates at an early stage in the arrears procedure.
- 5.6 Unfortunately, not all tenants will respond positively to early intervention and the help we are able to offer. Communication with the tenant will become progressively firmer and the consequences of failing to make regular rent payments will be fully explained at an early stage in the arrears procedure.

6.0 Sharing Owners

- 6.1 If a sharing owner falls behind with Occupancy Charge payments we will provide advice and be happy to enter into a repayment agreement to repay the debt. If more than two months arrears accrue we will inform the sharing owner's lender.
- 6.2 If we incur any costs in pursuing Occupancy Charge arrears (for example searches to determine the identity of the sharing owners' lender) we will seek to recover these from the Sharing Owner.
- 6.3 We will not instruct legal action to recover any debt before offering debt counselling, including advice about benefits.
- 6.4 Repossession action will be taken as a last resort when all other action has failed. We aim to carry out all such actions jointly with the owner's mortgage lender.

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6.5 Further information regarding Sharing Owners can be found in our Shared Ownership Policy.

7.0 Legal Action

7.1 We will always follow Best Practice when deciding on a course of legal action. The Simple Procedure will normally be instigated where it is considered appropriate. Repossession Actions will always be conjoined (i.e. eviction and payment) and will comply with the requirements of the Cost of Living (Tenant Protection) (Scotland) Act 2022. This temporary legislation places a moratorium on evictions (except in some specified cases) until at least 30 September 2023 with an option to extend for a further six months if required.

7.2 If Repossession Action is considered, we will ensure that we also comply with the pre-action requirements as detailed in the Housing (Scotland) Act 2010; and legal action, in the form of a Notice of Proceedings, will be issued by the Housing Officer with the approval of the Housing Manager.

7.3 In accordance with section 11 of the Homelessness Etc. (Scotland) Act 2003 we will, in all cases, notify East Lothian Council's Housing Options Team when we refer a tenant for court action. We will also notify the Social Work Department and ask for assistance in respect of cases involving children and vulnerable adults.

7.4 If the debt increases between instructing the legal action and it calling in Court, then we will ask for the sum being sued for to be increased, to reflect the arrears outstanding wherever possible.

7.5 We will make full use of continuations and sists to minimise legal expenses and to avoid the necessity of obtaining a Decree of Possession. If a tenant has been maintaining a repayment arrangement prior to a Court hearing we will request to sist the case; whereas if a repayment arrangement has only just been entered into; or if circumstances have recently changed, we may request to continue the action to monitor payments. The decision to sist or continue a case lies with the Sheriff.

We will monitor all sisted actions on a regular basis and may recall an action and dismiss it, where a tenant has maintained a repayment agreement for at least a year.

7.6 When we are awarded a Decree of Possession, we will take a pragmatic approach when deciding whether to enforce it and evict the tenant, seeking to ensure the best chance of collecting the debt and minimising arrears write off. Our priority is to keep a tenant in their home and decisions will be made on a case by case basis, taking into account the extent to which a tenant is engaging with us. However generally, we will expect tenants to clear the debt within 6 months of the Decree being awarded; the legal time limit within which a Decree can be used.

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- 7.7 We will take account of The Cost of Living (Tenant Protection) Act 2022
- 7.8 Before implementing a Decree of Possession and arranging an eviction, the Housing Manager will make contact with the tenant and will report to the Director of Housing giving a detailed case history. The Director of Housing must have approved any eviction before it can be carried out and will report all evictions to the Audit & Assurance Committee.
- 7.9 We will inform East Lothian Council's Housing Options Team and Social Work Department (if involved) before an eviction proceeds.
- 7.10 We will only carry out eviction as a last resort when all other appropriate methods to recover arrears have been exhausted.

8.0 Other Tenancy Debt

- 8.1 Other tenancy debts such as chargeable repairs, Benefit overpayments, legal expenses and Sheriff Officer fees may be incurred by a tenant and are accounted for separately to rent arrears. We will always attempt to recover these debts and will expect tenants to make arrangements to clear them if they want a transfer or an exchange. However, if a tenant has both rent and other tenant debt, then the recovery of the rent arrears will take first priority.

9.0 Sequestration

- 9.1 We will not advise tenants who are in significant financial difficulty to seek sequestration but we will refer them to an appropriate agency who may advise that it is in their best interest to do so.
- 9.2 Tenants who are undergoing sequestration proceedings will not be put under any duress to clear the debt but we will insist on them continuing to pay their monthly rent, and will advise them to consider making voluntary payments to the debt as these can be set at a very low amount.
- 9.3 We reserve the right to raise repossession action against any tenant who is sequestrated but will normally only consider such action, when a tenant is sequestrated on more than one occasion.

10.0 Reporting and Administrative Procedures

- 10.1 The level of rent arrears and bad debt write off is a Key Performance Indicator monitored by our Management Committee whereas more detailed arrears reports are presented quarterly to the Audit & Assurance Committee.

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10.2 The arrears reports to the Audit & Assurance Committee will include:

- Arrears as a percentage of rent receivable
- Technical arrears
- Net arrears
- Amount of arrears and number of cases in excess of three months
- Number of legal actions instructed, sisted, decrees granted and evictions carried out
- Number of Universal Credit cases, amount of arrears, number of Alternative Payment Arrangements and Third Party Deductions in place
- Former tenant arrears analysis and recommended write offs
- The impact of welfare reform, particularly Universal Credit, on arrears levels

10.3 Internal performance will be monitored regularly to ensure our policy and procedures are working effectively.

11.0 Former Tenancy - Debts

11.1 Former tenant arrears and other tenancy debts, such as chargeable repairs; legal expenses, Sheriff Officer Fees and Benefit overpayments will be pursued, however the amount of staff time expended will be kept to a minimum.

11.2 Where the tenant's whereabouts are known or we have an email address, we will write to the former tenant warning that the debt will be passed to a debt collection agency for recovery if they do not clear the debt or enter into a suitable repayment arrangement.

11.3 If writing proves unsuccessful or the tenants' whereabouts are unknown, a debt collection agency (approved by the Management Committee), will be instructed to pursue the debt.

11.4 We may take legal action to recover former tenancy or other tenancy debts and will take a pragmatic approach to this taking into account the costs that will be incurred as a result of such action, the best chances of collection and minimising debt write off.

11.5 If we obtain a Payment Decree we will instruct wage arrestments if we know the former tenant is in employment.

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11.6 Whilst we know that bank account arrestments are not normally very successful we will not rule out this course of action as a method of recovery.

12.0 Equal Opportunities

12.1 We will provide clear, unambiguous information, help and advice and will not discriminate unreasonably in the operation of this policy on the basis of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity; race, religion or belief, sex, or sexual orientation.

12.2 We are members of Happy to Translate and on request will take practical steps such as arranging interpreting and translation services if this is easier for tenants.

12.3 We aim to promote equal opportunities and comply with the requirements of the Equality Act 2010.

13.0 Policy Review

13.1 This policy complies with all relevant law and best practice and will be reviewed if any changes necessitate an early review.

13.2 The policy and supporting procedures have also been checked to ensure that opportunities for bribery or corruption in terms of the Bribery Act 2010 have been minimised.

13.3 The Director of Housing will ensure that this policy is reviewed at least every five years and that any amendments required are submitted to the Management Committee for approval.