

## **FORTH HOUSING ASSOCIATION LIMITED RENT ARREARS POLICY**

### **1.0 POLICY STATEMENT**

- 1.1 The purpose of this policy is to set out Forth Housing Association's (FHA) approach to rent arrears prevention and management, including legal action for recovery of debt or possession; and its systems for monitoring and reviewing policy outcomes and good procedural practice.
- 1.2 Forth Housing Association (FHA) aims to minimise current and former tenants' rent arrears through an effective policy framework, and effective and efficient procedures, which are sensitively implemented. Effective rent collection and arrears control are essential to the Association's financial health. They are also a key performance indicator for Communities Scotland.
- 1.3 FHA recognises that many of its tenants are financially and socially disadvantaged. Its approach to arrears control and recovery will be firm, fair and consistent, while also being sensitive and responsive to the situation of tenants in arrears.
- 1.4 FHA will offer information, advice and support to tenants which aims to:
- maximise tenants' income through take up of housing and other benefits;
  - ensure appropriate referral to other sources of help;
  - prevent arrears arising;
  - intervene early to resolve arrears problems that arise.
- 1.5 In implementing the rent arrears policy. FHA will ensure other corporate policies are applied e.g. equal opportunities, complaints policy, data protection and confidentiality.
- 1.6 FHA will comply with all relevant legislation, such as the Housing (Scotland) Act 2001, and satisfy Communities Scotland regulatory performance standards. It will also meet the SFHA/Communities Scotland Raising Standards in Rent Arrears Management good practice requirements.

### **2.0 WHAT THIS POLICY COVERS**

- 2.1 This policy delegates authority from the Management Committee to staff to manage rent arrears within the policy framework set out in the rest of the document.
- 2.2 The policy covers outstanding rent or charges due by current tenants, sharing owners, former tenants and former sharing owners. The word 'tenants' will be used to describe all these categories except where specific policy is detailed. There are some overlaps between this policy and other FHA policies e.g. on allocations and transfers.

### **3.0 LEVELS OF RESPONSIBILITY AND AUTHORITY**

- 3.1 The Management Committee is responsible for adopting policy on rent arrears and other debts. It also has responsibility for monitoring implementation and reviewing performance as described in section 12.
- 3.2 The Housing Manager will hold the lead responsibility for implementing the policy and developing procedures to support and guide staff.

- 3.3 All Housing Management staff play a role in the prevention and control of rent arrears, and are accountable to and supported by the Housing Manager.
- Housing Officers carry the day-to-day responsibility for current tenant arrears management, in close communication with housing and finance colleagues.
  - Housing Officers play a key role in the prevention of current and former tenant arrears and in the management of sharing owner and former tenant arrears.
  - The Housing Manager and Director are authorised signatories for Notices of Proceedings.
  - The Housing Manager and Director have delegated authority to instruct legal action against a tenant, sharing owner or former tenant.
  - The Management Committee will make the final decision in relation to eviction.

#### **4.0 GENERAL PRINCIPLES**

- 4.1 FHA will ensure that tenants understand their obligation to pay the rent by the due date and the options available for doing so. Tenants will be made aware of the action that will be taken if they fall into arrears, and of the support that staff can offer to avoid this situation arising. It will seek to maximize tenant incomes by providing housing benefits advice and ensuring that Welfare Benefits and debt counselling services are available and accessible to all tenants.
- 4.2 FHA will deal with all arrears cases in a fair, consistent and comprehensive way. Arrears will be tackled promptly, with emphasis placed on early intervention, personal contact and prevention of a build up in individual arrears. In pursuing arrears and legal actions, where this is necessary, the objectives are to promote discussion, come to a repayment agreement and to recover monies due to the Association.
- 4.3 Many tenants in debt are under considerable financial stress. They will be offered support and guidance to recognise the priority of housing debt and to reduce and clear arrears, and referral to other appropriate services that may be able to help. FHA wishes to prevent homelessness and sees eviction as very much the last resort. Before seeking to evict, FHA will satisfy itself that all other reasonable methods of dealing with the arrears, including action to recover the debt, have been fully explored.
- 4.4 FHA understands that effective arrears management relies on accurate, up-to-date information being available from FHA's rent accounting system and will ensure that this is available and accessible to staff responsible for arrears management.
- 4.5 FHA will ensure that staff have clear procedural guidance and that these procedures incorporate internal checks and balances, especially in relation to legal action that could lead to repossession. FHA will ensure that staff have the necessary skills, knowledge, training, support and supervision to prevent and control rent arrears effectively.
- 4.6 The outcomes of the policy will be monitored regularly by Committee, which will set performance standards and targets and consider key performance indicator reports in relation to maximising rental income received and minimising both current and former tenant arrears.
- 4.7 FHA will maintain close links and contact with Stirling Council's Housing Benefit Team, Welfare Benefits advice service and other statutory and voluntary agencies that offer advice and support to tenants.

## **5.0 INFORMATION AND COMMUNICATION**

- 5.1 Communication with tenants, written or verbal, will be clear and courteous. Tenants will be clear about their responsibilities for rent payment, how to fulfil them and the consequences if they do not. Tenants will receive a minimum of annual rent statements recording charges made and rent received in the period.
- 5.2 FHA will find out if a tenant prefers or needs information in a particular format or if they have communication support needs e.g. BSL interpreter. This information will be noted on the house file and relevant computer screens and acted on.
- 5.3 FHA will find out from the tenant if they have particular needs which would be better met by another agency or staff member e.g. support with managing money or correspondence.
- 5.4 FHA will respect the tenant's right to confidentiality about their affairs and will not discuss these with external parties, or cause them to become known. FHA may seek permission from the tenant to share prescribed information with third parties in order to obtain additional support for the tenant in managing money or debt e.g. housing benefit, social work, and advice organisations. FHA is however obliged to serve a Notice of Proceedings on all qualifying occupiers who occupy the house and this legal requirement overrides any right to confidentiality or privacy. Where FHA is obliged to share information in order to pursue an action or to protect the tenant or other members of their household, the tenant will be advised in writing, and by their preferred communication method, of the intention to do so.
- 5.5 If FHA proceeds with court action it will advise relevant departments within Stirling Council.
- 5.6 Staff involved in housing and arrears management will ensure a good and regular flow of information between staff to support arrears prevention and recovery processes.

## **6.0 ARREARS PREVENTION**

- 6.1 Prior to the start of a tenancy the new tenant will be given full and accurate advice and information in relation to their responsibilities for the tenancy and payment of rent, and on housing benefit. Tenants will be advised to contact the Housing Officer for advice and support if difficulties arise.
- 6.2 A Tenancy profile pro-forma will be completed for every new tenant - at tenancy sign up and at a New Tenancy visit after the tenancy has commenced. These individual meetings will provide opportunities to reinforce the need for prompt and regular payment, to gather information to assist with effective arrears management. They will also enable staff to identify any vulnerability or need for additional support with understanding and meeting the tenancy conditions on rent payment. This will be followed up and acted on.
- 6.3 There will be close and effective monitoring of tenant rent accounts, with action taken within 2 weeks of a missed payment being identified.
- 6.5 There will be clear procedures on termination of tenancy, which aim to prevent and minimise former tenant arrears.

## **7.0 ARREARS CONTROL AND RECOVERY**

### **7.1 Regular monitoring**

All rent accounts will be monitored regularly, to identify new arrears cases, monitor established arrears cases, and take prompt action at all times to prevent arrears from escalating. This process will be undertaken at least on a weekly basis using up to date arrears reports drawn from the computer system. It will also be used to identify where the arrear is due to late payment of housing benefit i.e. a 'technical' arrear.

### **7.2 Contact with the tenant**

A variety of techniques may be used to gain the tenant's attention to the problem, and will use the knowledge of housing and arrears staff to inform the most effective approach. This may include letters, telephone calls, home visits and office interviews, with a particular emphasis on personal contact as the most effective arrears recovery approach.

- Arrears letters will be well designed providing a courteous but clear and unambiguous message to the tenant. Letters will be written in plain English.
- Where a first, or second, arrears letter (depending on the circumstances) has not elicited payment, every effort will be made to establish and maintain personal and face-to-face contact throughout the debt recovery process.
- Tenants will be given information about their rights, benefits and about sources of information, support, legal advice and advocacy. They will also be given information about the short and long term consequences of failing to make agreed repayments e.g. impact on transfer or rehousing applications, impact of court action.
- Tenants will be encouraged to make formal signed agreement to pay arrears in realistic instalments, and to take such other actions as may be agreed or recommended to assist the tenant in reducing the arrear e.g. applying for housing and other benefits.
- Staff will recognise and respond appropriately where arrears have arisen as a result of a tenant - landlord dispute, for example the legitimate withholding of rent.

### **7.3 Contact with other agencies**

- Where appropriate, tenants should be supported to access targeted welfare benefits and debt counselling advice. Similarly, where appropriate, tenants who are vulnerable or have dependants may be referred to relevant agencies.
- Depending on the nature of the arrear, staff should initiate and maintain contact with other agencies involved in the debt e.g. housing benefit departments, DWP, mortgage lenders, the courts, solicitors, debt recovery agents.
- Staff will use regulations within the housing benefit and income support systems to secure voluntary or compulsory direct deductions from benefit towards arrears.

### **7.4 Record keeping and follow up action**

FHA will keep comprehensive records of action taken at every stage of the arrears recovery process. In particular, all contact, and attempted contact, with the tenant will be fully recorded. The outcome of any personal contact with the tenant or their representatives will be confirmed in writing to the tenant.

## 8.0 LEGAL PROCEEDINGS

### 8.1 Notice of proceedings

Tenants who fail to respond to earlier attempts to recover the arrear will be served with a Notice of Proceedings (NOP). Notices should only be issued where there is a clear intention to proceed with legal action in the event of failure to respond. The NOP should not be used as an idle threat or where the threat of legal action is not appropriate or the most effective way of addressing the problem. FHA considers that court action is not appropriate where the arrears are due primarily to delayed payment of housing benefit or delayed settlement of a housing benefit claim.

### 8.2 Last Chance Action

Where the arrears procedures have been followed and a NOP has been served, but still no payments have been made or the arrears continue to increase, the Association's policy is to provide one last chance to the tenant to remedy the situation before instructing court action.

### 8.3 Court action

FHA recognises that legal action against a tenant can result in the tenant losing their home and can result in irrecoverable legal costs for the Association. It will proceed, with either debt action or a conjoined action for recovery of possession of the property and the debt, together with a claim for legal expenses, when all other attempts at recovery have failed. As all grounds for repossession are discretionary, FHA will also ensure that it can demonstrate to the court the reasonableness of its decision to proceed.

- Debt action

Where possible and financially cost effective, FHA will take action to recover the debt only, where it does not think it necessary or appropriate to seek to recover the property. Depending on the amount of rent due, this may be a small debt action or an ordinary debt action. The Debtors (Scotland) Act 1987 and Debt Arrangement and Attachment (Scotland) Act 2002 sets out the available remedies for arresting wages, freezing bank accounts and seizing luxury goods only. It also introduces alternative schemes to be offered to the debtor to assist in managing the debt and FHA will participate in these where this offers the best chance of recovering the debt.

- ***Conjoined action***

In the case of current tenant arrears, where debt action alone is not sufficient, FHA policy is to take a conjoined action for recovery of the property and the debt, and recovery of legal expenses. This means that once the tenancy is ended, the decree can still be used to recover debt from a former tenant.

8.4 Once legal proceedings have been initiated, the Association will continue its efforts to recover arrears and avoid the need for court action. The action may be cancelled, continued (i.e. deferred by a few weeks) or suspended (sisted) where there is a clear offer to pay arrears at an agreed rate, or dismissed with an award for expenses only if arrears are cleared in full. Tenants will continue to receive information about their rights and sources of advice and support throughout. They will be encouraged to seek advice from a solicitor or other agencies and to be heard or represented at court when their case is heard.

## **9.0 ENFORCEMENT OF DECREES**

### **9.1 Eviction**

Eviction will be approved, only as a last resort, where:

- the tenant has not proposed or maintained instalment or lump sum payments
- has not cleared the outstanding rent balance and legal expenses due.

AND

- no acceptable reason is put forward for this failure
- no alternative approach to the management of the tenancy and debt can be achieved, which would ensure repayment of the debt.

9.2 When a court date is set, the Director will consider a full report on the circumstances from the Housing Manager and refer the final decision, within the above framework, to the Management Committee, that eviction should either proceed, be suspended for a short period (for example to allow the tenant to find alternative accommodation) or a new tenancy should be created. A decision must be made and recorded for every case where a decree is received. The Director shall have discretion to create a new tenancy where legal expenses are still outstanding.

9.3 Between receiving the extract decree and the termination date, FHA will ensure the tenant is aware of the consequences and seek payment of debt due. Eviction procedures will be managed carefully and sensitively, with continued support and advice offered. FHA will notify Stirling Council homelessness department in all cases, and social services where a tenant is known to be vulnerable or where there are dependants.

### **9.4 Debt action**

Where a debt recovery or conjoined decree has been granted, a decision will be made as to whether it is cost effective and reasonable to implement this. Implementation that will result in, for example, earnings attachments or the freezing of a bank account will be in line with procedural guidelines and subject to accurate and up to date information about the circumstances of the tenant and family.

## **10.0 FORMER TENANTS ARREARS**

10.1 Former tenant arrears will be pursued rigorously, using the approaches already described. If FHA does not already hold a debt recovery decree, where the tenant's whereabouts and financial situation is known, it may take such action. In addition, FHA may use the services of debt collection agents, and services of tracing agents for the recovery of former tenant debts where this is a cost effective approach.

10.2 The appointment of any debt recovery firm will be subject to satisfactory references and Management Committee approval.

10.3 Where it is not possible or cost effective to recover a former tenant arrear, these arrears will be written off with the approval of the Management Committee, and according to its policy on the writing off, of bad debts.

## **11.0 SHARED OWNERSHIP**

- 11.1 The principles and most of the procedures for arrears control in shared ownership properties will mirror those applying to tenanted properties at the earlier stages. The aim is to encourage regular payment, prevent arrears arising and ensure sharing owners have access to the same quality of advice and assistance e.g. in relation to benefits advice. Where arrears do arise, action should be taken to contain these and to prevent homelessness.
- 11.2 Contact and discussion with mortgage lenders will ensure the most appropriate form of recovery action is taken, which may include negotiated or forced sale of the property.

## **12.0 MONITORING AND REVIEW**

### **12.1 Performance review**

The Housing Manager will support staff to provide a fair and consistent service, regularly reviewing a sample of all arrears cases and carrying out a monthly review of all serious arrears cases (over £500). In addition arrears performance figures and trends will be reviewed monthly.

- 12.2 FHA will seek feedback from tenants, through the Tenant Satisfaction Survey and other tenant consultation processes, on the effectiveness of different approaches and consult with them on any suggested changes to these.
- 12.3 The Management Committee (or delegated sub committee), will receive regular arrears reports in order to monitor levels and trends in arrears, including serious arrears and use of legal action. It will set annual performance targets and receive regular reports on these. The Association will also benchmark its performance against that of selected peer Associations.

## **13.0 BAD DEBTS WRITE OFF POLICY**

Former tenants may leave arrears and other debts, such as rechargeable repairs or legal expenses, owing to FHA. These debts will be pursued according to the rent arrears policy. However from a financial point of view, FHA will take a decision on the amount that should be provided for within its accounts for bad debts. This is an estimate of the sums due, which it believes it, may not recover.

Every six months, FHA will review its former tenants arrears and consider which debts it should write off i.e. accept that these debts will not be recovered.

In making a decision to recommend write off, the following criteria should be applied after the former tenant's arrears recovery procedures have been exhausted:

- the arrears or debt are at a level that is not economic to pursue any further: the guideline figure for this is £50.
- the arrears or debt are less than £50, have endured for more than a year and there is no repayment arrangement
- the former tenant died and has left no estate
- the former tenant is unlikely to have the funds to repay the debt in a reasonable time scale e.g. if the tenant is on Income Support. However the debt may nevertheless be passed to a debt collector.
- there is no readily available forwarding address to pursue debts
- where a housing benefit underpayment has not been addressed by the local authority in over a year

- the debt was passed to a tracing agent or debt collector but no monies have been recovered in the last six months.

Where write off is recommended by the Housing Manager, a report should be passed Finance Manager, and the Management Committee approval for write off sought.

Computer rent accounting records should be adjusted to reflect the write off. However tenancy records will continue to record the debt, and this will be considered in the case of a former tenant re-applying for housing, while complying with the Housing (Scotland) Act 2001. Should the opportunity arise to recover a debt that has been written off, the rent arrears policy and procedures will be applied, and appropriate financial procedures will accommodate receipt of payment.

## **14.0 DATA PROTECTION**

14.1 When implementing the policies and procedures of Forth Housing Association all staff and committee members must adhere to and be aware of the requirements of the Association's approved Confidentiality Policy and the Data Protection Act 1998. In situations where there may be any doubt about the requirements of the Data Protection Act 1998 it is recommended that the Association seeks the views of its legal advisors.

## **15.0 EQUAL OPPORTUNITIES**

15.1 Forth Housing Association believes that certain sectors of the population are disadvantaged by individual and group values, as well as by organisational structures. Forth Housing Association seeks to avoid all such forms of discrimination by ensuring that there will be no discrimination on the grounds of race, colour, nationality (including citizenship), ethnic or national origins, religion, social background, disability, marital status, responsibility for children or dependants, gender, age or sexual orientation.

## **16.0 COMPLAINTS**

16.1 The Association aims to ensure that the service provided to residents is of the highest quality. If this is not the case, a Complaints Policy and Procedure is established to allow all residents or affected parties to state their grievance. The Scottish Public Services Ombudsman is the final stage of this process.

## **17.0 REVIEW PERIOD**

17.1 This Policy/Procedure will be reviewed three years from the date of approval.

17.2 Consideration will also be given periodically to any changes in legislation, good practice or operational changes which may affect the content.

Non-Technical Rent Arrears	3.0% Annual Rent Receivable
Technical Rent Arrears	3.0% Annual Rent Receivable
Total Current Rent Arrears	6.0% Annual Rent Receivable

08/94 Management Committee Approval

04/96 Revised

04/97 Revised

02/99 Revised

12/02 Revised

08/05 Revised