

FORTH HOUSING ASSOCIATION LIMITED

RENT ARREARS POLICY

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HM 05 Assignment
HM 11 End of Tenancy Procedures
HM 19 Start of Tenancy Procedures
HM 20 Subletting
HM 21 Succession
Gov 01 Standing Orders

Guidance: Human Rights Act 1998
Housing (Scotland) Act 2001
The Homelessness (Scotland) Act 2003
Bankruptcy and Diligence etc (Scotland) Act 2007
The Housing (Scotland) Act 2010
Equality Act 2010
Welfare Reform Act 2012
Data Protection Act 2018
Forth's Scottish Secure Tenancy Agreement
Social Housing Charter



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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 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 FHA's financial health. They are also a key performance indicator for the Housing Regulator.
- 1.3 FHA recognises that many of its tenants are financially and socially disadvantaged and therefore 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 referrals 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) Acts 2001 and 2010, the Social Housing Charter, Outcomes 11 & 13 and the Housing Regulator performance standards.

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.

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

4.0 GENERAL PRINCIPLES, AIMS & OBJECTIVES

Our aims and objectives are as follows:

- Prevent arrears occurring
- Minimise rent arrears
- Engage with tenants to control and reduce rent arrears
- Take legal action only where it is necessary
- Maximise rent and arrears collected
- To allow tenants to sustain their tenancy, and prevent homelessness where wherever possible.
- To be non-discriminatory.
- To meet all statutory and regulatory requirements, Scottish Government guidance and good practice guides.

- 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. FHA 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 via the Income Maximisation Service.
- 4.2 FHA 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.
- 4.3 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 FHA.
- 4.4 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 the arrears. Referral to Forth's Income Maximisation Officer and/or other appropriate services that may be able to help will be made. 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.
- 4.5 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.
- 4.6 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.
- 4.7 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.
- 4.8 FHA will maintain close links and contact with Stirling Council's Housing Benefit Team, Welfare Benefits advice service, the DWP 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 pay.
- 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 written 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 our solicitors 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. All prospective tenants will be interviewed by the appropriate Housing Services staff to ensure Housing Benefit/Universal Credit take up and advice on other benefits where appropriate. Tenants will be advised to contact the appropriate Housing Services staff member for advice and support if difficulties arise and they will be made aware of support and help services that are available.

- 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 and 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 1 week of a missed payment being identified.
- 6.4 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 on a weekly, fortnightly or monthly basis in accordance with payment dates to identify new arrears cases. Established arrears cases will be monitored on a weekly, fortnightly or monthly basis in accordance with payment dates and prompt action will be taken at all times to prevent arrears from escalating. Monitoring will be undertaken using up to date arrears reports drawn from the housing management system. These reports will also be used to identify where the arrear is due to late payment of Housing Benefit and Universal Credit, i.e. a 'technical' arrear.

7.2 Contact with the tenant

A variety of techniques will be used to gain the tenant's attention to the problem, and FHA will use the knowledge of Housing Services staff to inform the most effective approach. This may include letters, telephone calls, texts, e-mails, 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 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 maintain agreed repayments e.g. the impact on rehousing applications and the impact of court action and legal fees.

- 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 their arrear.
- 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, the DWP, mortgage lenders, the courts, solicitors and debt recovery agents.
- Staff will use regulations within the DWP 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 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 FHA 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 , universal credit and other types of financial assistance;
- Give information on debt advice.
- Make reasonable efforts to agree with the tenant a reasonable plan for future payments;
- Consider the likely result of any application for Housing Benefit and Universal Credit that has not yet been decided;

- Consider other steps the tenant is taking which are likely to result in paying arrears.
- 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).

8.2 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 and Universal Credit or delayed settlement of a housing benefit claim.

8.3 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, FHA's policy is to provide one last chance to the tenant to remedy the situation before instructing court action. This will involve the Tenant Services Manager undertaking an office based interview with the tenant so that a repayment agreement can be entered into.

8.4 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 FHA. FHA 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.

8.5 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.

8.6 Conjoined action

In the case of current tenant arrears, where debt action alone is not sufficient, FHA's 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.

8.7 Once legal proceedings have been initiated, FHA will continue its efforts to recover arrears and avoid the need for court action. If court action is instructed, the action may be cancelled, continued (i.e. deferred by a few weeks), 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 Where a decree is granted by the courts this will be enforced by staff at the earliest possible opportunity unless the following occurs:

- The tenant is granted a minute of recall, allowing the case to be reviewed by the court or,
- The outstanding arrear and any outstanding legal expenses are paid in full.

9.2 The enforcement of a decree will require to be authorised by the Director and the Chair and in the Director's absence by two Office Bearers, who will review the circumstances to satisfy themselves that an eviction is appropriate, in light of 9.1 above

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 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.
- 10.3 Where appropriate, and dependant on the amount of former tenant debt, a decree for payment and expenses should be sought for former tenant debt. If a former tenant resurfaces, debt is recoverable for a period of 5 years and a decree is enforceable for 20 years.

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 Tenant Services 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 The Management 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

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.

Annually, 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 Tenant Services Manager, a report should be presented to the Management Committee for approval.

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 CONFIDENTIALITY

All information provided to committee will be provided anonymously so that tenant(s) confidentiality is protected at all times.

15.0 CONTINUOUS IMPROVEMENT

We are committed to continuous improvement and we will achieve this by:

- Being committed to improving performance;
- Benchmarking against other organisations performance;
- Providing ongoing staff training;
- Providing a customer focussed service;
- Working in partnership with Housing Benefit, Stirling Council, Universal Credit and any organisations

15.0 REVIEW PERIOD

This policy will be reviewed at least every 3 years by the Management Committee and staff are responsible for ensuring that it meets legal and good practice requirements.