

## **RENT ARREARS RECOVERY PROCEDURE**

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This policy is an update of the association's current Rent Arrears Recovery Procedure which was last reviewed by the Board in March 1998. It has been produced at the request of our auditors to reflect the changes in the association's field of operation and best practice with respect to arrears recovery.

As responsible landlords we have a duty to maximise the rental income of the association and to provide a caring housing management services to our tenants. For both these reasons it is important that tenants are contacted at the earliest possible stage about rent arrears. Such contact will never be confined to simply writing letters to tenants in arrears. Regular face to face contact and home visits will form an integral part of our action on arrears recovery. The following policy is designed to give guidance to housing management staff on the procedure and timescales for arrears control action.

It is accepted that it is not possible to keep strictly to a timescale for arrears control as the individual circumstances of tenants vary and on some arrears can be caused by events outside the control of the tenants. The following are guidelines and deviation from them is to be expected but this should always be done in consultation with the Housing Manager or Chief Executive.

It is the responsibility of the Housing Officers to arrange the writing of any necessary arrears letters to tenants and to make contact with them on arrears. Where arrears reach a level that indicates that they are outside the timescale for arrears control, the Housing Manager will supervise subsequent action until the arrears are resolved.

It should be noted that "arrears" in this policy refers to tenant arrears, as opposed to housing benefit/technical arrears, unless otherwise stated.

## **1. A NEW TENANT**

- 1.1 As part of the pre-letting interview, the tenant's responsibility to pay the rent should be outlined and the different methods by which the rent can be paid should be explained. It should be explained to the tenant that rent arrears are taken very seriously by the association and that the association will not tolerate non-payment of rent.
- 1.2 When a new tenant is given his/her Tenancy Agreement, the Housing Officer should always have Housing Benefit claim forms available. The Housing Officer should ensure that the tenant is given assistance in completing the Housing Benefit form when required. If possible, a copy of the housing benefit form should be kept on file.
- 1.3 It should be noted on the tenant's file if a tenant will be claiming Housing Benefit.
- 1.4 Where a tenant will be claiming Housing Benefit, the Housing Officer should advise the tenant that his/her Housing Benefit can be paid direct to the association. If the tenant wishes to have the Housing Benefit paid direct, a standard letter of authorisation should be completed and sent to Housing Benefit along with the completed Housing Benefit claim form.
- 1.5 The Housing Officer should give the tenant general advice on benefits in order to assist the tenant in maximising his/her income. This will help reduce the likelihood of rent arrears occurring.

## **2. ARREARS CONTROL**

- 2.1 The association creates weekly tenancies and it is our practice to collect the rent on a weekly basis.
- 2.2 The identification of arrears and monitoring of them should be carried out by the Housing Officer on a regular basis.
- 2.3 Housing staff responsible for rent arrears control will meet with the Housing Manager on a 2 weekly basis to ensure that appropriate action is taken on all arrears cases. The Housing Officer will report on each case with full details of the case history and in particular with full details of all action taken in the previous 2 weeks.
- 2.4 The arrears meetings should be at prearranged times and should be programmed in the diaries of those concerned at the beginning of the year. In order for proper arrears action to be carried out, there should only be exceptional circumstances under which members of the arrears team do not attend the prearranged meetings.

2.5 Following any contact with a tenant either by telephone or in person, a record of the contact should be made and placed on the tenant's file. The contact should only be made by the Housing Officer dealing with the case. It is important however, to use the opportunity to obtain all the appropriate information from the tenant and if possible to come to a suitable repayment arrangement. If the contact is with a member of staff other than the relevant Housing Officer, a record should be made of the name, address, and telephone number of the tenant and passed on to the Housing Officer.

### **3. TIMESCALE FOR ARREARS CONTROL**

3.1 Every 2 weeks the Housing Officer will identify tenants in [tenant] arrears.

3.2 Tenants in arrears of £100 - £200 receive an initial arrears letter.

3.3 Tenants in arrears of £201 - £400 receive a second arrears letter giving a date and time for an appointment with the Housing Officer either at the association's office or at the tenant's home, to take place usually within one week.

3.4 If an appointment takes place, the Housing Officer will use the interview as an opportunity to find out about the tenant's financial circumstances. The HO will note details of the family, their income and expenditure and use the opportunity to advise on any welfare benefits. The HO may in addition advise the tenant of any free counselling services available. Consideration will be given to offering a method of payment that will best suit the tenant's needs. These methods will comprise payments into the association's office, bank giro, standing order, payment of direct Housing Benefit and, where appropriate, by payment of arrears direct by the Department of Social Security. The tenant may also be advised of the possibility of voluntary deductions from wages. Tenants will be encouraged to pay at intervals which suit their own budgeting. Caution should be exercised in agreeing to monthly payments from tenants in high arrears. The HO will attempt to reach a reasonable agreement with the tenant for repayment of arrears [the minimum weekly amount in addition to the current weekly rent is the current amount paid by the DSS direct and the maximum acceptable amount is whatever the tenant can realistically afford]. It is recommended that the tenant signs an agreement form. If the form is signed at the association's office, a copy of the signed agreement is provided to the tenant. If it is signed at the tenant's home the HO will send the tenant a copy of the signed agreement within 7 working days.

3.5 If 7 days after the second arrears letter the tenant does not make contact or respond in any way, a warning letter will be sent advising the tenant that a Notice of Seeking Possession will be served if no action is taken to reduce the arrears and giving the tenant 7 days in which to respond.

3.6 The HO should contact the Housing Benefit department to double check whether the arrears are technical [ie arise from a delay by the Local Authority in processing the HB claim] If this is found to be the case, the HO's efforts will be directed towards encouraging the tenant to pursue this matter with the Local Authority. If, after 14 days of receipt of a Housing Benefit claim by the borough's Housing Benefit section there is a delay in processing a claim

which is not attributable to the tenant, the HO should make a written request to Housing Benefit for an “interim payment” of benefit.

- 3.7 If after 7 days of the warning letter the tenant does not make contact or respond in any way a Notice of Seeking Possession should be served. The tenant should be advised to contact his/her HO to explain their position, come to an agreement over repayment and to obtain advice on benefits if required.

#### **4. SERVICE OF NOTICE OF SEEKING POSSESSION FOR ARREARS**

- 4.1 After discussion with the Housing Manager, the NOSP is served by the HO responsible for the property.
- 4.2 A letter should accompany the NOSP. If necessary, the letter should be copied to the Housing Benefit office. The letter should include a clear warning that if an arrangement to reduce the arrears is not reached during the time the Notice is running, the association will automatically, upon expiry of the Notice, apply to the County Court for a Possession Order.
- 4.3 The period of Notice are is follows:-
- 4.3.1 A weekly tenancy: 4 weeks running from Monday to Monday.
- 4.4 NOSP should, wherever possible, be served personally by the HO responsible for the property.
- 4.5 If no-one is in when the NOSP is served, the NOSP should be delivered through the letterbox and a further copy sent by ordinary post.
- 4.6 If it is not possible to make a personal visit through a HO, the NOSP should be sent by recorded delivery and ordinary post.
- 4.7 The HO should make a note of the date on which the NOSP expires.
- 4.8 A NOSP lapses:-
- 4.8.1 On a Secure [Fair] Tenancy 12 months after the date specified on it when proceedings may first be brought.
- 4.8.2 On an Assured Tenancy [including Assured Shorthold Tenancy]12 months from the date of service of the NOSP
- 4.9 The proceedings must accordingly be commenced after the date specified but within the 12 months that follow.

As well as keeping a copy of the NOSP in the individual tenancy file, a central register will be kept of all NOPS served including a copy of the Notice, and a record of the names and addresses of the tenants, date of service, date of expiry, date of lapse, by whom served and method of service. This information must be kept up to date since it will be referred to by the Housing Manager when preparing the regular Housing Management report to the Board of Management.

#### **5. ACTION DURING THE PERIOD OF NOTICE**

- 5.1 If after service of the Notice, the tenant takes no action or does not make contact, a post NOSP letter should be sent, explaining that Court action will be commenced on expiry of the Notice and that the tenant will then incur Court costs. The letter should also reiterate that if an agreement to reduce the arrears

is made and evidence of payments reducing the arrears occurs before the Notice expires, it will not be necessary to enter the case into Court.

- 5.2 If the tenant is in direct receipt of Housing Benefit when 8 weeks rent is owing, the HO may contact the Housing Benefit department requesting that the benefit payments be made direct to the association.
- 5.3 A check should be made to see if other agencies are assisting the tenant eg., Social Services, and if so, these agencies should be notified.
- 5.4 If after expiry of the Notice the tenant clears the arrears but then falls into arrears again before the Notice has lapsed, it is advisable, although not required in law, to serve another NOSP to ensure that the Court is satisfied that the association is acting fairly.

## **6. APPLYING TO THE COUNTY COURT FOR A POSSESSION ORDER**

- 6.1 On the day of expiry of the Notice, if it has not been possible to reach agreement with the tenant to reduce the arrears, Court proceedings should be commenced following one of two procedures:-
  - 6.2 Do It Yourself [DIY] Court Action.
  - 6.3 Where DIY action is being taken, the DIY Possession guidelines should be followed.
  - 6.4 The HO has authority to apply for a Court hearing for arrears but should discuss any application with the Housing Manager before proceeding.
  - 6.5 The Housing Manager will authorise a cheque payment to the Court for the action to be taken.
  - 6.6 A letter should be written to the tenant to inform him/her that possession proceedings have been commenced and to give a further opportunity to discuss the arrears.
  - 6.7 The HO must continue to attempt to make contact with a tenant with the view that should matters need to proceed to Court, an arrangement will by then have been made with the tenants to reduce the arrears. Further attempts to obtain support or assistance from any other agencies in contact with a tenant should also be made.
  - 6.8 When there are likely to be difficulties, or where the action taken is complicated, the HO may recommend to the Housing Manager that solicitors are used. If this is the case:-
    - 6.9 A letter will be sent to the solicitors enclosing the following:-
      - 6.2.1 A copy of the NOSP
      - 6.2.2 The County Court Particulars of Claim Form.
      - 6.2.3 An affidavit sworn by the HO who served the NOSP may be necessary if that HO is unable to attend court. All affidavits will be sworn on the subject of the service of the Notice. Where the HO who served the Notice cannot attend, another HO should attend if possible and give evidence of arrears. Where the service HO does not attend court, proof of service will include details of the date and time when the HO served the NOSP on the tenant or on the tenant's property and will include details of whether the tenant was at home and received it or whether the NOSP was left at the property.
  - 6.8 If we know that the tenant is living at another address to our property, then further NOSP must be served at that different address.

6.9 The HO should continue to maintain contact with a tenant and should still attempt to achieve voluntary payment of the debt.

## **7. ONCE A COURT DATE HAS BEEN OBTAINED**

- 7.1 Seizure of goods:- we do not use this as a means of recovering rent arrears.
- 7.2 If shortly before the hearing the arrears have been cleared or reduced to below the level they were when the Notice was served, consideration will be given to seeking a general adjournment.
- 7.3 An Adjournment on Terms may be requested if Housing Benefit and/or arrears direct have been arranged [and there is little likelihood of benefit being withdrawn before the debt is cleared] and/or if the tenant has made an agreement to repay his/her arrears, the terms of that agreement being the terms the HO requests the judge to stipulate in the order.
- 7.4 If a decision is taken to adjourn the case, a letter will be sent to the tenant clearly explaining the action taken and our power to reinstate the hearing should the arrears increase.
- 7.5 In all events, efforts should continue to reach an agreement with the tenant for regular payments of full rent and contribution to arrears.
- 7.6 The HO will attend court and, if using our solicitor, should arrange to meet the solicitor prior to the hearing to advise them of the action the association requires. Where the tenant is at court and whether or not he/she has made himself available for interview prior to the hearing, the HO should advise the tenant to see the duty solicitor in the court and should attempt to reach an agreement with the duty solicitor for regular payments of full rent and a contribution to arrears and should explain that subject to that agreement, the association will be applying for a Suspended Possession Order or if not, an adjournment on the prearranged terms. If the tenant is not at court the HO should request the court for a Suspended Possession Order or an adjournment on terms, and ask that the terms of any agreement made with the tenant be stipulated in the order.
- 7.7 If we are unsuccessful in persuading the tenant to give us details of income and expenditure we can apply to the County Court for an Oral Examination. The County Court will serve on the tenant a date for a hearing before a Registrar when the tenant will be obliged to give full particulars of income and expenditure, thereby enabling the Court to decide a reasonable amount to be repaid to debtors including ourselves.
- 7.8 Preferred action will normally be a Suspended Possession Order upon payment of current rent plus arrears and court costs plus judgment.
- 7.9 It is not unusual to find that where a tenant has arrears of rent, he/she also has other debts and very often the rent arrears are just the tip of the iceberg of the total debt. The tenant's ability to pay the arrears can be made more difficult by having reached unrealistically high agreements with other creditors to discharge their debts. Quite often gas or electricity boards, hire purchase companies, and so on will place extreme pressure on their debtors to pay huge amounts to reduce their debts. The HO should be aware of the option of an Administration Order. The tenant should be advised that where he/she has at least one Court Order against him/her he/she is at liberty to apply to the court for an Administration Order. It then falls upon the Registrar to investigate the

tenant's income and outgoings including debts. The registrar will reduce the tenant's repayments on debts to a reasonable amount, which will often involve compelling debtors to accept lower weekly repayments. All creditors are compelled to accept the court's decision on repayment amounts following an Administration Order.

- 7.10 An attachment of earnings may be a useful way of recovering arrears where the tenant is employed. It is not possible to use it to recover arrears from a tenant who is self-employed. Its use lies in cases where the tenant is receiving an income but is making sporadic or nil payments of arrears. The HO can, when applying to the court for a judgment, ask for an attachment of earnings and if the court awards it, the responsibility falls upon the employer to deduct from the tenant employee's gross income the amount of repayment. The employer has to repay this amount to the association. A County Court will normally grant an attachment of earnings if we are able to show a pattern of broken agreements from the tenant and are able to demonstrate that we were not asking for an unreasonably high amount in repayment.
- 7.11 Efforts will be made to ensure that where a tenant may have difficulty in understanding English, an interpreter is on hand at Court. This service will be provided at no cost to the tenant.
- 7.12 The weekly amount by which the court orders the arrears to be repaid will be between the minimum and maximum amounts discussed elsewhere in this policy. Where the tenant has made a reasonable agreement with us to repay arrears the court should be requested to stipulate the terms of that agreement in the order.
- 7.13 The tenant will be advised by the HO of the amount of the Court costs awarded and will be told that the agreed payment towards arrears will continue after the arrears have been paid and until the court costs have been recovered.
- 7.14 Following the Court hearing a further letter should be written confirming the terms of the order, explaining the system proposed for repayment of the arrears and Court Costs.

## **8. ACTION WHERE THE TENANT DEFAULTS ON THE COURT ORDER**

- 8.1 If the tenant defaults on the Court Order, a letter should be sent warning the tenant of our power to seek an Eviction Warrant and notifying the tenant of the amount by which he/she has defaulted and giving 7 days for the tenant to clear the shortfall on the terms of the Court Order.
- 8.2 If, after 7 days, the tenant fails to respond to this letter, the HO will consider commencement of proceedings to obtain an eviction. A letter will be written to the tenant stating the Association's intention to evict. The letter will state that the tenant has a right to appeal.
- 8.3 The HO will write an eviction report which must be discussed with the Housing Manager.
- 8.4 The HO must notify the Homeless Persons Unit of the potential eviction.
- 8.5 The Housing Manager must be advised prior to applying for a Warrant for Eviction. Upon approval, the HO will apply to the County Court for a Warrant for Eviction and a letter should be sent to the tenant informing them of the decision.

## **9. PERSISTENT ARREARS**

- 9.1 It is often the case that tenants respond to contact from their HO, but that payments remain irregular and the debt reduces only when large occasional payments are made.
- 9.2 It is important that HO's check whether valid NOSP's exist as part of their reporting at the 2 weekly meetings and reissue Notices if the debt has not been satisfactorily reduced or cleared.
- 9.3 HO's should advise tenants who persistently fail to pay their rent that we have the power to apply for possession orders and request warrants for eviction on the grounds of persistent failure to pay rent, even when the tenant clears the debt in an attempt to avoid legal proceedings.

## **10. HOUSING BENEFIT**

10.1 In cases where the tenant advises that arrears are accruing because of delays with Housing Benefit claims, the normal timescale for action should be followed unless we receive confirmation from Housing Benefit of the processing or the claim or award of the benefit. Verbal confirmation is acceptable.

## **11. EVICTIONS**

- 11.1 As responsible landlords we should be taking every step possible to prevent an eviction. HO's should have tried all the following prior to an eviction:-
  - 11.1.2 Is the tenant receiving his/her maximum benefit entitlement.
  - 11.1.3 Have Housing Benefit and arrears direct been arranged.
  - 11.1.4 If the tenant is employed, can payments be made direct from the tenant's employer. This could either be voluntary or compulsory through an attachment of earnings.
  - 11.1.5 If the tenant is in receipt of a private pension, can direct payments be arranged.
  - 11.1.6 Can any other statutory or voluntary agencies or individuals assist in any way.
- 11.2 The Eviction – if the eviction is approved, a letter will be hand delivered and explained to the tenant. The solicitors/Court Bailiffs will be instructed to confirm the arrangements for eviction.
- 11.3 At any point up to and including the date of eviction, the Housing Manager may authorise suspension [reinstatable for up to a year] or cancellation of the eviction following full or substantial [in excess of 50% of the total debt] payment off the arrears. If the HO is in any doubt, he/she should consult immediately with the Housing Manager. The Court Bailiff will be requested to carry out the eviction, but the HO should arrange to be present at the eviction. In all cases we should pay the Bailiff's fee to prevent the Bailiff from recovering their charges from the tenant by seizure of goods. It is the tenant's responsibility to arrange for removal of furniture. In exceptional circumstances, the Housing Manager may authorise limited storage of the furniture at the ex-tenant's own risk. The HO will arrange for a repairs operative or contractor to be in attendance to change locks immediately following the eviction.

- 11.4 The Housing Manager will seek permission from the Chief Executive before any eviction takes place. The Housing Manager may apply to the Bailiff's office prior to being given permission, but the eviction should not take place until consultation with the Chief Executive as taken place.
- 11.5 The Board of Management will be given details through the Housing Management Board reports of all evictions that have taken place and all those that have been cancelled.

## **12. ARREARS CONTROL OF HOMELESS PERSONS UNITS**

- 12.1 The procedure for recovery of arrears for tenants in temporary accommodation [Homeless Persons Units] is the same as for permanent accommodation with the following exceptions:-
  - 12.1.1 Since the rents for HPU's are very high the potential for high level arrears is increased. Furthermore, the temporary nature of the tenancies, and the tendency towards a swift turnover of tenants, makes pre-emptive action and close management of these tenancies imperative. When the tenant signs the Tenancy Agreement a Section 21 Notice should be served on the tenant by the HO. This will enable the association to exercise its powers to evict the tenant using accelerated possession proceedings, where appropriate, should the tenant fall into high level arrears. Accelerated possession proceedings, however, will only be used in extreme cases, where the association believes it has no other means of recovering the arrears.
  - 12.1.2 If, after discussion with the Housing Manager, it is decided that accelerated possession proceedings should be used to recover arrears, the HO should contact our solicitor and forward a copy of the Section 21 Notice and other relevant information, instructing them to commence accelerated possession proceedings. Homeless Persons Services [LBTH] should be notified of all legal action taken in respect of HPUs.
  - 12.1.3 Due to the high level of the rents for HPUs [circa £200 p/w for a 1 bedroom property] the arrears bands employed for the first and second arrears letters [see Timescale for Arrears Control, 3.2 ; 3.3] are £200-£400 for the first arrears letter, and £401-£600 for the second arrears letter.