

Policy and Procedures in Respect of Rent Arrears

**AS WITH ALL OF THE ASSOCIATION'S POLICIES and PROCEDURES,
THIS GUIDE, IN FULL AND IN PART, CAN BE MADE AVAILABLE IN
SUMMARY, ON TAPE, IN BRAILLE, AND IN TRANSLATION INTO MOST
OTHER LANGUAGES –**

**PLEASE ASK A MEMBER OF STAFF IF YOU WOULD LIKE
A VERSION IN A DIFFERENT FORMAT**

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1.0 INTRODUCTION

- 1.1 This document outlines the policy and procedures that the Association will endeavor to follow in relation to the prevention, control and recovery of rent arrears.
- 1.2 The Policy and Procedure should be read in conjunction with Appendix 1 (Pre-Action Requirements as laid down in Section 155 of the Housing (Scotland) Act 2010), *Appendix 2 (Schedule of Standard Letters and Notices), *Appendix 3 (Flow Chart of Procedures).

*(*Still under development prior to formal introduction of the policy)*

2.0 POLICY STATEMENT

- 2.1. The vast majority of the Association's income is from rental income. Consequently, this means that the Association is heavily reliant on this income to:
- (i) be able to manage and maintain the properties on a day-to-day basis;
 - (ii) service the private loans taken out to help with the development

programme; and

- (iii) ensure that sufficient funds are being set aside for long- term maintenance.

2.2 It is therefore critical to protect the Association's and the community's interests in keeping income lost through rent arrears to an absolute minimum. Accordingly, the policy and procedures are primarily based on preventative methods of control and are designed so that any case of arrears is picked up as early as possible and is pursued in accordance with an agreed system.

2.3 The standard agreed policy and procedures are intended to clearly define the respective roles of staff and the Management Committee and specifies the steps that staff can and must take without referral to the Committee. It also specifies the manner and frequency of reporting to the Committee.

2.4 Apart from having the important benefit of avoiding delays or misunderstandings which could arise if the Staff/Committee roles are not clearly defined, the policy and procedures should also be able to ensure that those falling into arrears are dealt with in a fair and consistent manner.

2.5 In order to achieve policy objectives the Association is committed to managing arrears in a firm and effective manner. The following principles will, therefore, apply:

- (i) the over-riding priority will be to **prevent** arrears from arising;
- (ii) where a new arrear does appear on a rent account, the Association will take **prompt action** to recover the arrear (see 7.3);
- (iii) if a payment is missed or an arrangement broken and the amount due cannot be paid before the next debit, a **fair and effective** repayment arrangement will be made with the tenant (see 7.5);
- (iv) the Association will be mindful of the distinction between **technical** and **non-technical** arrears, and will pursue each appropriately (see 6.1 and 6.2);
- (v) where appropriate and on condition that Pre-Notice Requirements have been satisfied, **legal action** will be considered and taken;
- (vi) staff and Committee will be provided with adequate training on

issues relevant to the efficient, effective management and control of rent arrears;

(vii) the policy and procedures will be reviewed every five years unless otherwise required.

3. LEGISLATION

The policy takes account of the undernoted legislation:

- Housing (Scotland) Act 2001
- Equality Act 2010
- Housing (Scotland) Act 2010
- Housing (Scotland) Act 2014
- Human Rights Act 1998
- Data Protection Act 2018
- Welfare Reform Act 2012

4. GOOD PRACTICE GUIDANCE AND SSHC STANDARDS AND OUTCOMES

The policy seeks to comply with published good practice in relation to dealing with rent arrears management and control, including all relevant standards and outcomes contained in the Scottish Social Housing Charter (SSHC).

5. EQUALITY AND DIVERSITY POLICY

5.1 The Association operates an **Equality and Diversity Policy** under which it is committed to promoting an environment of respect and understanding which aims to eliminate discrimination by and towards members of the public, Committee Members, contractors and staff.

5.2 The Association will at all times endeavour to ensure that in all its activities, primarily the provision of services, the principles of the **Equality & Diversity Policy** will be fully applied.

5.3 The **Arrears Policy** has been developed to be consistent with the aims of the Association's **Equality and Diversity Policy**.

6.0 DEFINITION OF ARREARS – NON TECHNICAL AND TECHNICAL ARREARS

6.1 Non-Technical Arrears

6.1.1 For the purposes of this policy and procedure, the term Non-Technical Arrears refers to arrears caused by non-payment of rent that is not related to outstanding Housing Benefit or Discretionary Housing Payments (DHP).

It should be noted that even where the Housing Element of Universal Credit is paid direct to the Association by DWP, through a Managed Payment to Landlord(MPTL)/Alternative Payment Arrangement (APA), due to the manner in which such payments are administered, including the five week delay between sign up and the first payment received from DWP, outstanding rent payments will be treated as a non-technical arrear.

6.1.2 Under the terms of the Tenancy Agreement, Tenants are required to pay their rent “in advance” by the 28th of the month. The Association operates a payment card system (allpay.net), which enables tenants to make rent payments as follows:

- using cash or debit card at post offices and designated retail outlets (i.e. Pay Point outlets)
- direct to allpay.net using a debit card by phone, on-line, SMS text message or by downloading the allpay.net App onto their mobile phone
- or by phone to the Association’s offices using a debit card

Tenants can also choose to pay through their bank account by Direct Debit or Standing Order.

Payments made by all of the above methods should be credited to the tenant’s rent account within 24 hours.

Only in exceptional circumstances (e.g. a tenant with whom the Association has experienced difficulty in engaging offers to make a substantial payment towards outstanding arrears) will the Association accept a cash payment at the office.

6.1.3 While the end of the month is the cut-off date which would “freeze” the arrears position as reported to Management Committee, the Housing Officer should wherever possible routinely check rent payments on a weekly basis using the Mobyssoft (RentSense) software purchased by the Association to assist with rent arrears control and management. If on checking a tenant’s rent account the Housing Officer ascertains that there has been a missed or reduced payment without prior arrangement, the arrear will be pursued by the methods described in 7.4 below.

6.2 Technical Arrears

6.2.1 For the purpose of this policy and procedure, technical arrears relate to:

- (i) Late payments in respect of properties leased to external agencies (i.e. Crossreach, GCC Leaving Care Services, Loretto Housing Association) - in such cases, reminder letters will be sent to the agency concerned as appropriate.
- (ii) Late payments agreed with tenants, generally in cases where the tenant pays the rental amount due on a monthly basis but not on the 28th of each month because of, for example, the timing of their salary/wages payment from their employer.
- (iii) Amounts that are due to be covered by Housing Benefit or DHP*(see note below) but are outstanding due to delays in the processing of a claim for Housing Benefit or DHP. Where the Association is satisfied that the amount owed is going to be cleared once a payment of Housing Benefit or DHP is received, then the approach will involve contacting Glasgow City Council Financial Services with a view to securing payment as soon as possible – this is preferable to trying to get the tenant to make payments that they could well be unable to afford.
- (iv) Ongoing payments of Housing Benefit and/or DHP made direct to the Association on the tenants behalf which due to the cycle of such payments not being in line with the Associations monthly debit on the 28th of each month lead to a short term arrear each month
- (v) Note that as indicated in 6.1.1, payments of the Housing Element of Universal Credit paid direct to the Association by an APA **will not** be considered a technical arrear.

6.2.2 The critical point in treating an amount owed in rent as a technical arrear, however, is that the Association **must** be satisfied that Housing Benefit or DHP applied for in a particular case will, indeed, be paid. The steps to be taken will depend on individual circumstances, but are likely to involve the following:

- (i) confirmation of the tenant's income and whether or not they receive Income Support or income based Job Seeker's Allowance;

(ii) details of any non-dependants living in the household and their ages/income levels in order to determine the amount of any deductions;

(iii) confirmation that a benefit claim, incorporating all information requested by Glasgow City Council Financial Services, has been made and that any award is going to be backdated;

(iv) The Association's Welfare Rights Officers will have a major role in providing advice and support to staff and tenants in relation to benefit-related questions. For example, in cases where the Welfare Rights Officer's assessment is that Housing Benefit or DHP is likely to meet only a proportion of rent due, the tenant will be required to make an appropriate contribution towards their rent pending a decision on their Housing Benefit/DHP application.

6.2.3 If an arrear that is thought to be technical is not ultimately covered by Housing Benefit then it will become a non-technical arrear and will be pursued by the methods described in 7.4 below.

6.2.4 It should be noted that while the Association will do all it can to assist tenants in applying for Housing Benefit and Universal Credit, it will be made clear that application is the tenant's responsibility. Consequently, failure to apply and/or provide relevant information to Glasgow City Council in respect of a Housing Benefit claim or to DWP in respect of a Universal Credit claim will be treated in the same way as deliberate non-payment of rent.

Staff can refer to the Housing Benefit and Universal Credit online portals to assess the status of claims in respect of individual tenants for Housing Benefit and Universal Credit.

6.2.5 Tenants have the option of receiving their Housing Benefit payment direct, however, the Association encourages tenants' to sign a mandate by which they agree to have the Housing Benefit to which they are entitled paid direct to the Association. The vast majority agree to this request. In cases where the tenant is entitled to Housing Benefit and receives their benefit payment direct but has fallen into three months arrears, the Association can instruct Glasgow City Council Financial Services to pay all subsequent Housing Benefit payments due to this tenant direct to us.

6.2.6 On the introduction of Universal Credit by the UK Government it was the intention that the payment of the Housing Element of any Universal Credit claim be paid direct to the tenant rather than the landlord with only a very

limited number of exceptions relating to the circumstances of the tenant. However, particularly in Scotland, this has been relaxed and tenants can opt to have the Housing Element of their Universal Credit paid direct to the Association as an APA following their first monthly payment, which is still required to go direct to the tenant. The Association will always encourage the tenant to apply for an APA at the earliest opportunity.

In cases where the tenant receives Universal Credit direct and has fallen into eight weeks of rent arrears the Association can apply to the DWP to have the Housing Element of Universal Credit direct to the Association as an APA.

Furthermore, due to the minimum five week delay sign up date to the Association receiving the first payment of the Housing Element of Universal Credit, leading to the equivalent of a five week arrear from the outset of a tenancy, Universal Credit applicants will always be encouraged to make an additional payment towards their rent with the aim of reducing that arrear over time.

- * Note that DHPs' can be made for a number of 'one off' reasons dependent on a claimants circumstances at a particular point in time. However, in Scotland by far the most common use of DHPs' is to mitigate the effect of the 'Bedroom Tax' (i.e. Reduction in Housing Benefit due to under-occupation) introduced by the UK Government in April 2013. In essence, the Scottish Government has approved the use of monthly DHPs' to make up the shortfall in payments of Housing Benefit/The Housing Element of Universal Credit in respect of total monthly rent due as a result of the 'Bedroom Tax'.

7.1 THE ROLE OF STAFF

7.1 The role of staff reflects the Association's emphasis on arrears prevention and, where necessary, early action to recover arrears where they have occurred. This will be achieved using a number of methods, as outlined below.

7.2 Arrears Prevention

7.2.1 On signing a new tenancy agreement all tenants (including transfers, assignments and successions) will be advised:

- (i) of the monthly rent due;
- (ii) of any arrears due from a previous tenancy (i.e. in cases of transfers, assignments and successions)

- (iii) that rent is due in advance each month;
- (iv) that rent due from date of sign up to month end, less any Housing Benefit or UC Housing Element, must be paid at sign up (to be stressed in the offer of accommodation letter);
- (v) of the rent payment methods available;
- (vi) of the Association's Arrears Policy, a summary of which will be contained within the Tenants Handbook.

7.2.2 Housing benefit/ UC Housing Element advice will be arranged where eligibility requires to be confirmed. This will involve an appointment being made with the Association's Welfare Rights staff at or as soon as possible following sign up. New tenants should always be encouraged to have Housing Benefit/UC Housing Element paid direct to the Association when the appropriate criteria are met.

7.2.3 The Association's Tenancy Sustainment Officer will aim to carry out settling in visits to all new tenants (which normally take place within 2-3 weeks of a tenancy commencing) to identify any problems being experienced with the tenancy, including rent payments, welfare benefit claims, etc and take appropriate action and/or offer appropriate advice and support to the tenants concerned.

This may often involve making a referral to the Association's Tenancy Support services in respect of Welfare Rights, Money and Debt Advice and/or Energy Advice.

7.2.4 It must, however, be stressed to tenants that the role of the Association in respect of welfare benefit applications (Housing Benefit/Discretionary Housing Payment/Universal Credit) is that of advice and support. Ultimately, it is the responsibility of the tenant to pursue their welfare benefit application and ensure that their rent account is kept up to date (see also 6.2.4 above). Any arrear which occurs as a result of the tenant failing to pursue a Housing Benefit/Discretionary Housing Payment/Universal Credit claim will be treated as non payment of rent by the tenant and pursued as described in 7.4 below.

7.2.5 The Association should keep all tenants informed of major changes in Welfare benefit rules and/or of any ongoing/pending reviews to benefit entitlement. Such information and updates will be made available through the Association's website, newsletter articles, mail shots, etc

- 7.2.6 Association staff will endeavor to advise individual tenants of any changes that may have a direct effect on their personal entitlement to welfare benefits and, in consequence, the amount they require to pay the Association from their own funds to meet their full monthly rent. Such information may be given to the tenant by a variety of methods, including by phone, office interview, etc but must also always be detailed in a letter personally addressed to the tenant concerned.
- 7.2.7 Tenants should be advised in writing at least twenty-eight days in advance of any increase in their rent.
- 7.2.8 Tenants will also receive a twice-yearly statement, which details their current rent account balance.
- 7.2.9 All letters in respect to rent increases, arrears and rent statements will encourage tenants to make use of the Association's Tenancy Support Services (i.e. Welfare Rights Service, Money and Debt Advice, Energy Advice and Tenancy Sustainment). All such letters will also reaffirm the importance of reporting changes of circumstances to Glasgow City Council Financial Services or, where appropriate, DWP in order that the tenant's entitlement to Housing Benefit or the Housing Element of Universal Credit may be re-assessed.

7.3 Housing Benefit Overpayments (HBOPs')

Housing Benefit Overpayments (HBOPs') occur when Glasgow City Council (GCC) identify that a tenant has received Housing Benefit to which they are not entitled, generally due to the tenant not having advised GCC of a change in their circumstances which would affect their benefit entitlement.

In order to reduce the possibility of arrears happening due to HBOPs', we will aim to contact tenants promptly when notified of housing benefit cancellations or change in circumstances. Whilst it is acknowledged and should always be stressed to the tenant that it is their responsibility to manage their Housing Benefit claim, including responding to GCC in relation to the claim as and when required, we will offer appropriate welfare rights advice and support where necessary.

In cases where HBOPs' are identified the Association will carry out thorough investigations to ensure the grounds for recovery meet statutory requirements and in circumstances where there may be dispute our welfare rights staff will assist in appealing decisions if deemed necessary.

Direct recovery from the tenant for HBOPs will be the preferred method of recovery to prevent arrears. Where financial hardship is identified, we will offer assistance to help reduce repayments to the minimum amount.

In cases where we are required to repay Housing Benefit to the GCC, the sum will be credited from the tenant's rent account and recovered as an arrear as described in 7.4 below.

7.4 Arrears Control and Recovery

- 7.4.1 The Association's procedures in respect of arrears control are based on the principles of early identification of non-technical arrears in order to facilitate the earliest possible remedial action. Early contact means that the Association should endeavor to make contact with the tenant in arrears within seven days of the payment being late (See also 6.1.3 above). Contact will include letters, phone calls, text messages, emails, video calls, house visits and interviews in the Association's offices. **However, wherever possible, every effort should be made to make personal contact with the tenant, either through a house visit or office interview.** A non-technical arrear, which is not subject to an arrangement, should not be allowed to exist for an entire debit period without all reasonable effort being made to contact the tenant. The specific procedures to be followed are outlined below.
- 7.4.2 Tenants who have failed to make the monthly payment due (i.e. net of any Housing Benefit/Discretionary Housing Payment entitlement) should receive a first reminder letter *(see note below regarding letters specific to tenants in receipt of the Housing Element of Universal Credit) which details the monthly rent, the outstanding balance and which makes clear that the amount outstanding should be paid within seven days. The letter should also specify the next rent payment due in advance at the 28th of the month.
- 7.4.3 Tenants who have failed to respond to the first letter should receive a second reminder letter *(see note below regarding letters specific to

tenants in receipt of the Housing Element of Universal Credit) within seven days which points out:

- (i) the level of arrears and that payment is now due;
- (ii) that a further payment is due by the 28th of the month;
- (iii) that an arrangement must be made immediately if the tenant is unable to pay the outstanding amount;
- (iv) that failure to pay, or to make an arrangement, may lead to the Association proceeding with legal action; and
- (v) that the Association has Tenancy Support Services staff who should be contacted for advice as appropriate (depending on the advice and support needs of the tenant)
- (vi) At both this and the previous stage, the Housing Officers' will, in addition to letters sent, seek to establish contact through phone calls, text messages, email, video calls, house visit or office interview as workload and other competing priorities permit.

7.4.4 In cases where, following a second reminder letter (and other means of making contact which staff may have tried) the tenant has still failed to make payment, the Housing Officer will endeavour to visit the tenant before any further letters are resorted to. The aim of the visit is to establish personal contact with the tenant and seek full payment of the arrears immediately or an acceptable arrangement by which the arrears are paid off at an agreed rate over a specified time. (See Section 7.6 below for further guidance).
If no access is gained when attempting to visit, the Housing Officer will leave a card urging the tenant to make immediate contact to discuss their rent account.

7.4.5 If the tenant fails to make contact to discuss and agree repayment of the arrears the Housing Officer will issue a Final Warning letter which requests that the Tenant contact the Association within three days.

7.4.6 If the tenant fails to respond to the Final Warning and the Housing Officer is confident that the tenant still resides in the flat, appropriate notices in terms of Section 14 of the Housing (Scotland) Act, 2001, will be served on the tenant and any qualifying occupiers (i.e. Notice of Proceedings for Recovery of Possession).

- 7.4.7 However, in cases where, following appropriate investigations, the Housing Officer suspects the tenant is no longer resident, an Abandonment Notice should be served under the terms of the Housing (Scotland) Act 2001. If the Housing Officer's suspicions are correct, this course of action will enable the Association to regain possession of the flat within, subject to the 28 day Abandonment Notice period, without resorting to court action. On the other hand, if the Housing Officer's suspicions are not correct and the tenant is still residing in the flat the serving of an Abandonment Notice may prompt them to make contact with the Association to discuss their rent arrears.
- 7.4.8 In cases where a tenant who has been served with a Notice of Proceedings legal action will only be stopped if the tenant clears the arrears in full or makes and maintains an acceptable arrangement to pay and clear the amount owed (see 7.6 below). In the absence of such contact by the tenant, the Housing Officer will, subject to the approval of the Housing Manager, instruct court action (see 10.1 below).
- 7.4.9 A record will be maintained of all notices served, court action, etc. on the central database set up for this purpose as well as in each individual tenant's file within Capita and within the individual 'hard copy' case file.
- 7.4.10 Cases subject to legal action (see 9.0 below) will be monitored by the Housing Manager through regular discussions with Housing Officers'.
- 7.4.11 To summarise, it is important that the following general principles are observed:
- (i) establish early contact with the tenant;
 - (ii) stress the seriousness of the situation and that non-payment of rent could lead to the Association taking legal action to repossess the property;
 - (iii) establish cause of non payment, check benefit entitlement and, where the tenant cannot pay off the outstanding amount in full, make an appropriate arrangement to pay off the arrears (See also Section 7.6);
 - (iii) all repayment arrangements made must be confirmed in writing and, where possible, signed by the tenant either at office interview or house visit (see also paragraphs 7.6.5 and 7.6.6 below);
 - (iv) where considered appropriate, abandonment procedures should be initiated;

(v) for the purpose of showing an audit trail consistent with Pre-Action Requirements as laid down in Section 155 of the Housing (Scotland) Act 2010-see Appendix 1 for details, a record must be kept of all contact with the tenant and action taken, including letters, telephone calls, visits, interviews and, where court action is initiated, instructions to the Association's solicitor – accurate record keeping is extremely important in all cases, but particularly so should the Association ultimately take legal action as poor record keeping is likely to compromise the Association's position in court;

(vii) direct payment of Housing Benefit / DWP Arrears Direct/APAs' should be arranged where appropriate (See also Section 7.5 below);

(vii) all reasonable effort should be made to ensure privacy and confidentiality in dealing with arrears cases.

(viii) be mindful that some situations can be exacerbated by a home visit, for example in respect of domestic abuse.

(ix) consider whether the tenant has any particular needs or requirements such as an interpreter or someone to advocate on their behalf and act accordingly, being aware of confidentiality and Data Protection issues – a signed mandate authorizing the advocate should always be obtained, if possible;

(x) be sensitive to cultural and gender issues;

**Note that the first and second reminder letters sent to tenants that the Association believes has made a claim for Universal Credit to DWP are different from those sent to other tenants to reflect the processes, timescales and payment schedules to which the Housing Element of such claims is subject.*

7.5 DWP Direct Payments

7.5.1 Applying for direct payments to the DWP is a useful method of controlling rent arrears. The rules governing direct payments are to be found in Schedule 9 of Social Security (Claims and Payments) Regulations 1987 which details the criteria used in the Regulation.

Specific rules regarding APA'S and Managed Payments in respect of UC are found in Schedule 6 of The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013

7.6 Making a Fair and Effective Repayment Arrangement

7.6.1 In making and managing repayment arrangements it is essential that staff ensure that the amount agreed upon is the maximum the tenant can reasonably afford having taken account of their household budget based on an assessment of income and expenditure.

However, the standard position to be taken is that the rent arrear is paid off in full as soon as practicable, ideally immediately, and any repayment arrangement works back from this position.

Wherever possible, discussions regarding a repayment arrangement should be through **personal contact** and not conducted by phone or other means of communication.

Having agreed an arrangement it is essential that the details of this are recorded in the tenancy diary in Capita, closely monitored and that missed payments are acted upon quickly (i.e. within seven days of a payment due failing to appear in the rent account).

Staff will also take account of the principles applying to arrears recovery action in relation to privacy, confidentiality, sensitivity to cultural and gender issues and potential domestic abuse.

7.6.2 When making an arrangement, staff will ensure the following:

- (i) that the seriousness of the situation is stressed to the tenant and that they are made aware that non-payment of rent could lead to the Association taking legal action to repossess the property;
- (ii) establish whether there are any qualifying occupiers over the age of 16 (or currently 15) in the household for reference in any future legal action (see also 9.3.1 and 9.3.2 below);
- (iii) that any action taken is consistent with Pre-Action Requirements;
- (iv) assess whether the tenant could benefit from the Association's Tenancy Support Services (i.e. Welfare Rights Service, Money and Debt Advice, Energy Advice and Tenancy Sustainment)

(v) consider if it is appropriate to make referrals to relevant external agencies depending on the specific circumstances and vulnerabilities of the tenant

7.6.3 As noted in paragraph 7.6.1, the amount to be paid toward the arrear should be the maximum staff consider the tenant can reasonably afford based on a detailed assessment of the tenants income and expenditure. There is, therefore, no maximum amount of repayment towards arrears (with the Association's favoured option always being full repayment of the outstanding sum within the shortest possible timescale) **although as a minimum, and only in exceptional circumstances**, the equivalent to the current level of DWP Arrears Direct weekly deduction should be paid. In cases where the tenant is eligible for DWP Arrears Direct the Association will insist that they (the tenant) agrees to this method of payment (See 7.5 above).

7.6.4 In cases where the tenant is unwilling to discuss their household income and expenditure or is otherwise unwilling to agree an arrangement the Association will set what it considers to be an appropriate amount for repayment.

7.6.5 Within a maximum of five working days after an arrangement has been made, a letter (AR1) should be sent out outlining the details of the arrangement and which stresses that the tenant **must** contact the Association if they think that there might be a problem in keeping to the arrangement. A summary of the Arrears Policy should also be sent. Where possible, the tenant's signature should be obtained confirming their knowledge and acceptance of the arrangement although it is recognised that, for a number of reasons, it may not always be practicable to do so.

7.6.6 In cases where the tenant's signature has not been obtained, the letter confirming the arrangement will make clear that unless the tenant responds to the contrary it will be reasonable for the Association to assume that they (the tenant) understands and agrees with the arrangement.

7.6.7 That all tenants entering into a repayment arrangement are advised that immediately their income changes they should contact the Association in order that a further income and expenditure assessment is carried out and where appropriate a revised repayment arrangement agreed.

7.6.8 Notwithstanding 7.6.7, repayment arrangement will be routinely reviewed every six months.

7.6.9 If an arranged payment is missed a reminder letter (AR2) will be sent within seven days of the missed payment confirming that if the tenant fails to respond and/or does not make up the missed payment within seven days the Association will resort to Arrears Recovery action (as outlined in Section 7.4) which could lead to court action being initiated to repossess the property.

7.6.10 If the tenant responds to the reminder letter (AR2) the arrangement will be reinstated. However, each occasion that the Association requires to have taken this course of action will be considered a **failed arrangement**.

7.6.11 If an arrangement fails three times the tenant will be called to an office interview with the Housing Officer and Housing Manager to discuss the conduct of the tenancy and, dependent on the circumstances of the case, a decision will be taken as to whether or not court action to recover repossession of the property is initiated.

7.6.12 Consistent with the audit trail requirements indicated in Section 7.4 (Arrears Control and Recovery) it is essential that a comprehensive record is maintained of all contact with a tenant in respect of a repayment arrangement/failed arrangement(s), including letters, income and expenditure assessments, phone calls, texts, emails, video calls, interviews, etc to ensure that if the Association proceeds to court action for repossession of the property it can demonstrate that it has met the criteria laid down in Pre-Action Requirements (See 7.4.11(v)) and to ensure its position will not be compromised in court.

8.0 THE ROLE OF THE MANAGEMENT COMMITTEE

8.1 The Management Committee has a key role in agreeing and monitoring the Association's rent arrears strategy. This is separate from the ongoing day-to-day arrears management work undertaken by the staff team and this distinction needs to be clear.

8.2 As part of the Internal Management Planning process the Committee has the responsibility of setting operational and strategic targets and work plan objectives across all of the organisation's functions. In relation to rent arrears this means:

- (i) setting the annual target for rent arrears taking account of:
 - (a) historic performance
 - (b) peer group performance

- (c) national benchmarks
 - (ii) receiving performance reports from staff in line with the annual reporting calendar which, for arrears, is quarterly (See Section 14 below). Where performance is not as expected, then the Committee should be provided with an explanation and details of any remedial action that staff have taken or plan to take;
 - (iii) approving, following consultation with tenants and recommendations from staff, revisions to the Arrears Policy;
 - (iv) where a decree for eviction has been granted by the court, approving that this be enforced (see 8.3 and 8.4 below).

8.3 The Committee should **not** become involved in day-to-day arrears issues – involvement in individual cases will normally be limited to deciding whether to evict a tenant against whom the Association has already secured a Decree to Evict from the Court. Committee approval **must always** be sought prior to an eviction being carried out. In order to enable Committee to give each case concerned their full consideration staff will provide a report detailing appropriate background information. All information passed to the Committee will be identified with a case number to preserve confidentiality. The report will include:

- (i) as much detail of the tenant's family composition as is considered appropriate in terms of maintaining anonymity;
- (ii) current monthly rent;
- (iii) current total arrears;
- (iv) type of tenancy;
- (v) any other information considered relevant to the circumstances of the case, including all previous steps taken by staff to deal with the arrear.

8.4 Requests to approve an eviction will not be subject to the bi-monthly reporting cycle but will be taken to Committee for approval as soon as possible following a Decree for Eviction having been granted by the court.

8.5 Conflict of Interest

8.5.1 There is a potential conflict of interest in terms of Committee involvement

in dealing with arrears related issues where a Committee member themselves has rent arrears.

- 8.5.2 The general rule to be applied in the case of existing Committee members is that if the Committee member concerned has responded immediately to notification of their arrears by paying these off in full or by entering into and maintaining an appropriate arrangement under the terms of the Association's Rent Arrears Policy then the conflict would be considered satisfactorily resolved. Otherwise, the Committee member concerned would be considered to have a conflict of interest and consequently would be required not to participate in any discussions relating to rent arrears. This would require declaring an interest in the relevant Agenda Item of any Committee Meeting. The same general rule would apply to tenants joining Committee as new members.
- 8.5.3 Immediately upon identifying a Committee member with rent arrears the Housing Officer will, in addition to following Policy as for all other tenants, advise the Housing Manager of the case. The Housing Manager will, in turn, raise the case with the Association's Chief Executive who will approach the Committee Member to discuss their responsibilities should they not immediately contact the Housing Officer to deal with the arrear.

9.0 LEGAL PROCEDURES

- 9.1 As stated in Section 7 above there are appropriate letters to be served on a tenant with arrears (See Appendix 1). While the letters will follow a standard format, the Housing Officers will be expected to add to or amend these as suitable to reflect their knowledge of a particular tenant's situation where appropriate.
- 9.2 All Notices required under the Housing (Scotland) Act 2001 (see Paragraph 4.3.8) and as outlined in the Scottish Secure Tenancy Agreement as well as being consistent with Pre-Notice Requirements (See 7.4.11(v)) will be served by a Housing Officer or Sheriff Officer. When it is a joint tenancy, both tenants plus all other qualifying occupiers (see also 9.4.1) will be served a Notice.

9.3 The Right of Non-Tenants to be Heard in Court

- 9.3.1 Under the terms of the Housing (Scotland) Act, 2001, all "qualifying occupiers" have the right to be heard in Court – "qualifying occupiers"

are all those living in the household who are aged 16 or over, including members of the tenant's family and their children. This means that Notices must be served on each person living in the household who is aged 16 or over. If this is not done, then the Association is running the risk that the court action will fail.

9.3.2 There may, of course, be situations where the Association is unaware that someone has moved into the household and, therefore, the Notice is not served to that person. What is likely to happen in such circumstances has yet to be tested in Court. Accordingly, although it is recognized that under the terms of The Housing (Scotland) Act 2014 there is a responsibility upon tenants to inform the landlord in writing of all changes to those living in the property, failure by the Association to include qualifying occupiers in legal action could invalidate the action. Until some case law has been established, the Association's approach will be to take all reasonable steps to keep household information up to date by, for example::

- (i) stressing the requirement to keep the Association informed of who is living in the property at the sign-up, including successions and assignments;
- (ii) place a notice in reception and on the Association's website advising tenants that they must inform the Association if the household composition changes (this message will also be included as a standard item in the Association's periodic newsletters);
- (iii) check household composition in all direct contact with tenants, including but not exclusive to when carrying out arrears interviews;
- (iv) pay particular attention to children who are 15 years old at the time the Notice is served as the Association is required to serve this individual with a Notice when they become 16.

10.0 COURT ACTION

10.1 Court action will normally be instructed following expiry of the period of notice stipulated in a Notice of Proceedings for Recovery of Possession (see 7.4.6 above) on condition that:

- (i) the tenant has not contacted the Association during the period of notice to agree and maintain an acceptable repayment arrangement (see 7.6 above);

- (ii) the Housing Manger has approved that court action should proceed.

10.2 In cases where the Association's solicitor has been instructed to proceed with court action, staff will send a Section 11 Notice to Glasgow Homeless Partnership (Section 11 Team). A copy of the Section 11 Notice with the appropriate covering letter will also be sent to the local Social Work Department and the local Community Casework Team.

10.3 Following instruction to proceed with court action, the Association's Solicitor shall advise staff of the Court date for each case prior to the hearing so that up-to-date details of the total arrears and monthly rent can be made available.

10.4 Staff should be aware that the court serves notice on the tenant about the initial hearing date and that, therefore, there is no need for the Association to also write to the tenant confirming the date. However, where the court hearing is postponed and a new hearing date set (e.g. where the case is 'continued' or 'sisted'), the court will not advise the tenant of the new date. In such cases it is the responsibility of the Association to write to the tenant confirming the new court hearing date as soon as this information is available. The main reasons for a new hearing date will be in respect of:

- (i) **A Continuation:** Usually this will occur if our tenant has made a further repayment arrangement or confirmed a claim for benefits in which the Association may request and/or the sheriff decide to continue the case to monitor for payment. A date will be set for a further calling in a set period of time (e.g. 6 or 12 weeks).
- (ii) **Sist** – Where there has been a reasonable resolution to the arrears, for example a large payment and/or agreed repayment arrangement, the Association may request that the case be 'sisted'(e.g. suspended). We will continue to monitor the payments and can recall the sist for non-payment at any time in the future without re-serving a notice.

If the Association is seeking a decree at the new hearing the Association's solicitor must receive a copy of the letter sent to the tenant confirming the date.

- 10.5 Staff would not generally attend the Court hearing unless requested to do so by the Association's solicitor for the purpose of giving evidence at a proof hearing. It is expected that the Association's Solicitor will attend all court hearings or place the case in the hands of a competent agent.
- 10.6 On the approval of the Management Committee to enforce the Decree for Eviction (see Section 8), the Association's Solicitor will be instructed to engage Sheriff Officers to serve the Court Order on the tenant. The Sheriff Officers will contact the Housing Officer dealing with the case and agree the date for the eviction. The Sheriff Officers should generally give the tenant 24 hours from the service of the Order to quit the premises. Association staff will generally attend an eviction unless, in the interest of Health and Safety, it is not deemed appropriate to do so due to, for example, the risk of violence towards the staff member by the outgoing tenant. It may also be deemed appropriate in some cases to request the attendance of The Police at an eviction.
- 10.7 It should be recognised that there may be cases when, following Committee approval to enforce a Decree, the tenant contacts staff to discuss payment towards the amount outstanding in order to retain their tenancy with the Association.

It is the Association's policy that in such circumstances the eviction will only be cancelled if the tenant agrees to pay in full the amount owed in rent plus any court expenses that have been awarded.

It should also be noted that the granting of a Decree by the court does not in itself end the tenancy, which will only come to an end when eviction takes place. Accordingly, any payments received after the decree is granted do not make the decree unenforceable nor is it necessary to enter into a new tenancy agreement with the tenant.

The period during which a Decree remains enforceable will be determined by the Sheriff and notified to the Association by our solicitor.

- 10.8 Staff will report on any cases where enforcement of a decree has been approved by Committee but not carried out at the next scheduled Committee of Management meeting.

11.0 FORMER TENANT ARREARS

- 11.1 The decision to pursue a former tenant arrear and the method used is dependent on a number of factors. However, in general terms, the

overriding consideration will be how cost effective any proposed action is likely to be. This will take account of, for example:

- (i) the amount of the arrear;
- (ii) whether the Association has, or is able to obtain, a forwarding address;
- (iii) prospects for recovery (e.g. is the former tenant a home owner or in employment).

11.2 In cases where the Association seeks recovery there are a number of methods which may be used, for example;

- (i) sending reminder letters;
- (ii) using a tracing and/or debt recovery agency;
- (iii) taking legal action, for example, seeking a court order in respect of arrestment of earnings or arrestment of bank account.

11.3 However, it is generally recognised that there can be considerable practical problems in pursuing former tenant rent arrears and this has tended to lead to low collection rates across the sector. It may therefore not make administrative sense to continue to pursue amounts where:

- (i) the balance outstanding is low (e.g. under £100) or;
- (ii) despite attempts to find out the forwarding address, this is still not known.

Accordingly, at the outset of each financial year the Housing Manager will identify an amount in respect of former tenant arrears which it is estimated will require to be written off over the forthcoming twelve-month period. This figure will be presented to the Management Committee for approval as a bad debt provision within the Annual Budget. Thereafter, throughout the financial year quarterly reports will be prepared by the Housing Manager for the Management Committee detailing the total amount of former tenant arrears and recommending an amount that is to be written off (see 13.4 below).

12.0 PROCEDURE IN RESPECT OF SMALL CLAIMS

12.1 Under certain circumstances, the Association may consider suing the tenant for the arrears (i.e. the debt) rather than seeking repossession of the property. Accordingly, where considered appropriate the Association's solicitor will be instructed to raise a Small Claims action in order to obtain a decree for payment. This allows for an arrestment of the tenants bank account provided the tenant does not make payment within the terms of the decree. It also allows for an arrestment of earnings subject to Sheriff Officers having served a charge on the tenant to repay the debt within fourteen days.

Such action is only likely to be taken in the following situations:

- (i) a former tenant who has left arrears;
- (ii) an existing tenant with less than 2 month's arrears and no other means of recovery.

13.0 MONITORING OF PERFORMANCE IN ARREARS

13.1 An arrears report will be presented to the Management Committee on a quarterly basis in a pre-agreed format.

13.2 The manner in which arrears are reported may, therefore, vary and develop over time but is likely to reflect the requirements of the Annual Report on the Charter (ARC) submitted to the Scottish Housing Regulator each year. Accordingly, based on current ARC requirements the following key performance indicators will routinely be presented to Committee:

- (i) gross rent arrears (i.e. current tenant arrears and former tenant arrears combined, including any arrears write offs which have taken place during the financial year);
- (ii) the above figures compared to the Association's gross rental income in percentage terms;
- (iii) current arrears figures compared to historic performance and targets agreed by Committee;

(iv) former tenant arrears written off as a percentage of total former tenant arrears

13.3 In addition to the above, other aspects of arrears performance may be reported to Committee, for example, comparing average arrears levels for Universal Credit claimants with overall average arrears per tenant, arrears levels split by area/streets, the number of arrears cases subject to an ongoing repayment arrangement or the number of cases subject to ongoing legal action. Any such additional information may be presented on either a regular (e.g. quarterly) or periodic basis as considered appropriate to enable Committee to fulfill its role of agreeing and monitoring the Association's Rent Arrears Strategy and of measuring actual performance in arrears against agreed targets.

13.4 A report recommending the amount of Former Tenant Arrears to be written off will also be presented to the Management Committee on a quarterly basis (see Section 11.3 above). The report will detail the current amount of former tenant arrears, the amount proposed for write-off in respect of the preceding quarter and also show the running total written off for the financial year to date. The Management Committee will, therefore, be in a position to assess the overall amount and trends in terms of former tenant arrears written off throughout the financial year and also be able to compare this against the bad debt provision agreed for the year.

14.0 TRAINING

Staff and the Management Committee require training and retraining in order to develop and enhance their skills and knowledge on issues which affect and influence rent arrears prevention and recovery. Training may be provided internally or from external sources. Examples of training that may take place include::

- (i) updates on legal matters and statutory responsibilities
- (ii) welfare benefit updates and guidance
- (iii) training and updates on the best use of rent arrears management software (e.g. Mobyssoft/RentSense)
- (iv) guidance/updates on general best practice in respect of arrears prevention, control and recovery.
- (v) general training on interviewing and counselling skills, dealing

with confrontation, etc;

The above list is not exhaustive and specific training will be identified as required or considered appropriate.

15.0 POLICY REVIEW

The Rent Arrears Policy will be reviewed and submitted to Committee for approval every five years, or sooner if considered necessary, due to changes in legislation, regulatory requirements or best practice guidance.