

WISHAW AND DISTRICT HOUSING ASSOCIATION

RENT ARREARS POLICY

As with all the Association's policies and procedures, this document, where required, can be translated into other community languages on request. For people with visual impairment, taped, large print or Braille versions can also be provided. Further information on the implementation of this policy is available at the office.

Wishaw and District Housing Association acknowledges that, under the Housing (Scotland) Act 2001, it is required to consult with residents on policies that directly affect the management of the properties. The consultation process on the Rent Arrears Policy took place between January and February 2010.

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1.0 INTRODUCTION

Wishaw and District Housing Association is a non-profit making organisation and relies solely on the income it receives from rents to fund its activities and services such as carrying out repairs and improvements, repaying loans for new building, office costs and management services. It is therefore extremely important that the Association ensures that it minimises the loss of rental income in order to safeguard the Association's financial position.

At the same time the Association recognises that many individuals do experience periods of financial difficulties and may struggle to meet all their commitments. The Association also realises that where high rent arrears accrue, they are often part of a wider financial problem. As such, the issue of rent arrears can be embarrassing and emotional for people and the Association wishes to be seen as a sympathetic and supportive landlord.

The Rent Arrears Policy is intended to determine an overall approach to the recovery of arrears that will protect the Association's financial position while taking into account the difficulties and circumstances of the individual tenant. In doing so the policy will provide guidance to both staff and tenants as to the type of service and support that can be given, as well as the consequences and the action that will be taken in the event of persistent non-payment and/or co-operation.

2.0 LEGAL FRAMEWORK

In all aspects of the process of recovery of arrears, the Association will conform and comply with all legislation, performance standards, guidance and good practice that directly and indirectly affect the recovery procedures.

THE HOUSING (SCOTLAND) ACT 2001 requires the Housing Association to provide tenants with a written document stating the terms of the tenancy, including the obligation to pay rent lawfully due.

Section 16 and Schedule 2, Part 1 of the Act gives the grounds for repossession of a Scottish Secure Tenancy and Section 14 lays out the procedures for possession.

THE RACE RELATIONS ACT 1974, THE RACE RELATIONS (AMENDMENT) ACT 2000 AND THE RACE RELATIONS ACT 1976 (AMENDMENT) REGULATIONS 2003 make it unlawful for an Association to discriminate on the basis of colour, ethnic or national origin, race or nationality. Also importantly places a general duty to promote race equality.

THE SEX DISCRIMINATION ACT 1975 makes it unlawful for the Association to discriminate on the basis of sex.

THE DISABILITY DISCRIMINATION ACT 1995 as amended and extended by THE DISABILITY DISCRIMINATION ACT 2005 makes it unlawful for the Association to discriminate against disabled people by treating them less favourably than someone else.

THE DATA PROTECTION ACT 1998 imposes obligations on the Association not to disclose personal information held on computer or certain types of non-computerised data.

ACCESS TO PERSONAL FILES ACT 1987 gives individuals the right to have access to personal information about themselves in files held by the Association.

THE CIVIL PARTNERSHIP ACT 1999 obliges the Association to ensure that civil partners are given the same rights as married couples.

THE EQUALITY ACT 2006 brought together various equality strands and created the *Commission for Equality and Human Rights (CEHR)*. The Act placed a gender duty similar to duties on race introduced by the **Race Relations (Amendment) Act 2000**. This Act made it unlawful to discriminate in the provision of goods, facilities and services across three equality strands, being sexual orientation, age and religion and belief. Required public bodies to prepare and publish Schemes to address inequalities and to conduct impact assessments.

3.0 AIMS AND OBJECTIVES

The primary aim of the policy is to provide a framework that will encourage tenants to show a commitment to fulfilling their responsibilities to pay their rent and to assist tenants to keep control of their rent accounts and prevent arrears accruing. In doing so, the Association will ensure that it's financial position is protected by maximising it's income and minimising the expense of legal action to recover high levels of monies owed.

Arising from these overall aims of the policy are a number of key objectives which will influence the Association's approach to the recovery of rent arrears and will determine the day-to-day procedures that will be implemented by staff. These objectives are;

- Identify the arrears control function as a priority task within Tenancy Services activities.
- Provide an effective arrears prevention and control system.
- Give the highest priority to the early control of arrears.
- Wherever possible, recover monies owed with the voluntary co-operation of the tenant.
- Provide good quality information and advice.
- As far as possible avoid further hardship, distress and/or financial difficulties for the tenant.
- Use the most appropriate method of debt recovery.
- Ensure fair, equal and sensitive treatment is offered to all tenants.
- Emphasise the responsibility of the tenant to ensure that the rent is covered and foster a 'payment culture' amongst tenants. Use the legal procedures for the recovery of the debt only when all other avenues have been investigated.
- Pursue legal action for eviction only as a last resort.
- Meet all performance standards and good practice guidelines.
- Set realistic performance targets and have effective monitoring procedures in place.

4.0 SCOPE OF THE POLICY

The terms of this policy shall also be applied to Sharing Owners but, due to the complexities of the legal process for repossession of a share in a property and the need for joint action with lenders, the sections dealing with serving of notices and pursuing legal action will not be appropriate.

5.0 DEFINITION OF ARREARS

5.1 Arrears due to Non-payment of Rent

Under the terms of the Scottish Secure Tenancy Agreement, a tenant's rent becomes lawfully due on the 28th day of each month and should be paid one month in advance. Rent due that is not paid by this date constitutes an arrear and will show as money due on the individual's rent account.

5.2 Technical Arrears

There are occasions when arrears will accrue in a rent account for reasons other than non-payment of rent by the tenant. Technical arrears can arise due to:-

- Delays in payments being posted to individual rent account.
- Banking delays in processing payments such as Bank Standing Orders.
- Payment cycles of Housing Benefit.
- Delays in processing Housing Benefit claims.
- Approval from the Association to make 'late' payments

In practice, most technical arrears will not be pursued as an arrear with the tenant. However, where delays in processing the Housing Benefit claim are as a result of tenants not returning review forms or required information to the housing benefit office, the Association will hold the tenant responsible for the non-payment and may pursue the tenant for payment.

5.3 Arrears due to repayment of Overpaid Housing Benefit

As arrears created by the repayment of overpaid housing benefit cannot be taken into account in any legal action taken for the recovery of possession of the property and/or rent arrears, such arrears will be removed from the current rent account and transferred into an individual 'Debtors Account'.

These arrears will be treated as a separate debt to the Association and will be pursued in line with the policy and procedures for the recovery of other monies owned to the Association such as Rechargeable Repairs, Factoring, etc.

5.4 Former Tenant Arrears

An arrear becomes a Former Tenant arrear at the end of the tenancy and, as such, can not be recovered by means of serving notices for the recovery of possession of the property and/or monies owed. However, the former tenant shall remain responsible for clearing the arrear.

6.0 FACTORS AFFECTING ARREARS

It is accepted that the tenants that are most likely to fall into arrears are, mainly, those:

- In low paid employment or have a constantly changing income.
- On Housing Benefit but have a non-dependents deduction.
- In casual or temporary employment.
- Temporarily off work through illness and claiming Housing Benefit.

However, it is also recognised that a good 'payment culture' greatly helps to keep levels of arrears low as tenants place a greater priority on paying the rent. The Association will, therefore, seek to encourage tenants to attach the highest level of importance to the payment of rent.

7.0 METHODS OF PAYMENT OF RENT AND/OR ARREARS

7.1 Allpay Swipe Card

Every tenant will be issued with an Allpay swipe card to allow them to make payments in cash, by cheque or by debit card at outlets around the country. Tenants will also be provided with details of how and where payment can be made.

7.2 Direct Debit

Tenants can mandate Allpay on the Association's behalf to set up a direct debit with their bank to allow regular payments to be collected directly from their account. Payments will be automatically adjusted by the Association to reflect any changes in the tenants' charges (e.g. as a result of the annual rent increase).

7.3 Bank Standing Order

Tenants can make their own arrangement with their bank to have regular payments paid to the Association directly from their account. With bank standing orders, the onus is on the account holder to make any adjustments required as a result of changes in their rent charge.

7.4 Callpay (Telephone Banking)

Tenants will be issued with details on how they can make debit card payments into their rent account via the telephone banking system.

7.5 Allpay Internet Banking

Tenants will be provided with information and advice on how they can make debit card payments via the internet.

7.6 Bank Payments

Cash and cheque payments can be made through the Clydesdale Bank. This facility is made available, when no other payment method is suitable, due to the costs and the timescales involved in processing payments.

7.7 Cheque Payments

Any payments made by cheque that are not honoured by the tenant's bank due to insufficient funds being available in the account will incur cost that will be added to the tenant's rent account.

7.8 Direct Payments from Tenant's Bank Accounts

Any payments to be made by Bank Standing Order or direct debit that are not honoured due to insufficient funds being available in the tenant's account will incur a cost that the bank will automatically recharge to the tenant.

PLEASE NOTE – Cash and/or cheque payments will not normally be accepted at the Association's office.

8.0 ASSOCIATION RESPONSIBILITIES

8.1 Processing Payments

The Association will ensure that all payments of rent and/or arrears are processed and recorded as quickly as possible in order that both staff and tenants can be provided with an accurate rent statement at any time. Efficient processing of payments will also ensure that staff are not pursuing an arrear that has, in fact, been paid or taking action when arrangements are being adhered to.

8.2 Communications with Tenants

Staff are committed to helping tenants with problems they may experience in paying their rent and, to that end, will seek at all times to resolve problems by communicating directly with the tenant. Residents will be given every opportunity to co-operate with the Association and to enter into a manageable payment arrangement that, as far as possible, will avoid further financial hardship for the household.

However, where tenants refuse to maintain communication with the Association or continually default on arrangements made, the Association will actively pursue recovery action. Tenants will be advised in writing of any action being taken by the Association and will, at all times, be given the opportunity to discuss available options with staff.

8.3 Record Keeping

Staff will maintain accurate and comprehensive records of all payments, communications and action taken in relation to an individual's rent arrears, including copies of letters and legal notices sent, correspondence with external agencies, details of telephone calls and copies of e-mails sent and received.

8.4 Advice and Assistance

Staff will take a supportive approach when dealing with tenants that are in arrears and will, wherever possible, offer appropriate advice and assistance, including:-

- Referrals to independent advice agencies such as Money Advice, Citizens Advice Bureau, Welfare Rights Officers, etc.
- Benefits advice, particularly on entitlement to Housing Benefit.
- Help in completing Housing Benefit application forms.

8.5 Rent Collection

Although staff are committed to assisting individual tenants to deal effectively with any rent arrears, it is recognised that staff also have responsibilities to other tenants and the Association. A priority for staff, therefore, must be to ensure as far as possible that rent lawfully due is paid by tenants, thereby maximising the income of the Association. By doing so, the Association will be in a better position to fulfil its obligations to its tenants to maintain the stock to the highest possible standard and to provide a first class management service.

9.0 RESPONSIBILITIES OF TENANTS

9.1 Payment of Rent

Under the terms of the Scottish Secure Tenancy Agreement, tenants of the Association are obliged to ensure that the rent for the property is paid in advance by 28th of each month. This obligation still applies to residents entitled to housing benefit who have responsibilities to ensure that they:

- Submit an application for Housing Benefit.
- Provide all information required by Housing Benefit to process their application within the timescales.
- Return all review forms on time.
- Liaise with the Housing Benefit department to check on progress of claim appeals or requests for backdated benefit.
- Advise the Housing Benefit department and the Association of any changes in their circumstances that would effect their entitlement to benefit.

9.2 Contact with the Association

In the event that a tenant does accrue an arrear in their rent account, the Association will contact the resident requesting that they contact the Association to discuss the situation and enter into an arrangement to make payments that will cover the rent due and contribute towards clearing the arrears.

Tenants are expected to respond to such requests, to maintain contact with the Association and to advise of any change in circumstances that affects their ability to adhere to the payments arrangements made. Failure to do so will be seen as unwillingness to co-operate with the Associations and will be taken into account when deciding on appropriate action for recovery of the debt.

9.3 Clearing Arrears

When tenants accrue arrears in their rent account, they have a responsibility to clear the account as quickly as possible by strictly adhering to the payments arrangement made.

10.0 POLICY METHODS

In order to achieve the Association's goals and objectives with respect to rent arrears, the Association will have in place comprehensive procedures for arrears control and recovery that will reflect the following policy methods:-

10.1 Arrears Prevention

The over-riding approach towards rent arrears will be that the best means of control is through prevention. Tenants will be encouraged to give the payment of their rent the highest priority and will be given assistance, advice and support to ensure that they are in a position to meet their responsibilities to pay the rent due. New tenants will be advised of this obligation at the commencement of their tenancy both in writing and at 'signing-up interviews' and 'settling-in' visits from staff.

The Association will seek to have all Housing Benefit payments paid directly to the Association and will encourage tenants to make rent payments via Direct Debit wherever possible.

The Association will also liaise with Housing Benefits department to ensure that all claims are processed as quickly as possible and to ensure that payments due are paid promptly.

10.2 Arrears Control

The Association will seek to develop a firm but sympathetic and non-judgemental atmosphere which will encourage tenants to sustain contact with the office and enter into frank and honest discussions regarding their circumstances. The Association will seek to establish early contact directly with the tenant and will endeavour to maintain contact until the arrear is cleared or under control.

Early action and contact with the tenant will be a priority for staff in order to deal with the problem and, wherever possible, avoid a higher level of arrear accruing on the account.

10.3 Arrears Recovery

Although all tenants that accrue arrears will be dealt with in line with the Association's policy and procedure, the method of contact and the approach towards the recovery of the debt will be influenced by the tenant's individual circumstances and the level of co-operation and commitment they display towards clearing the arrear.

Wherever possible, voluntary arrangements to repay the arrear will be made that are realistic, manageable and will not cause further financial hardship for the household. Where voluntary arrangements are not adhered to and/or the tenant fails to make or maintain contact with the Association, all methods of debt recovery will be considered. The method of recovery adopted will be that which is felt by staff to cause the least amount of distress and financial hardship on the household.

No means of recovery will be implemented without the tenant being informed in writing and being given the opportunity to enter into a voluntary arrangement with the Association or to appeal the decision. Where applicable, the resident will be referred to external agencies such as Debt Counselling, Money Advice, etc. and the Association will liaise with any such organisation mandated to represent the tenant.

Whilst the Association will endeavour to be sympathetic toward the tenant's financial difficulties, the financial well being of the Association must remain a paramount consideration in the recovery of arrears.

10.4 Means for Recovery of Arrears

Where all attempts to reach a voluntary agreement with the tenant for the repayment of the arrear have failed, the Association will consider other means of recovery of the debt.

10.4.1 *Direct Payment of Housing Benefit*

Where there is no mandate for Housing Benefit payments to be paid directly to the Association, the Association will automatically request direct payments for any tenant whose rent account is eight weeks in arrears. The tenant will be advised of the Association's request but, in line with Housing Benefit legislation, their permission is not required.

10.4.2 *Arrears Direct*

Where the tenant is on Income Support or equivalent and is at least eight weeks in arrears of rent, the Association can apply to have payments deducted from the tenant's benefits and paid directly to the Association via Arrears Direct. Alternatively, with the tenants consent, deductions can start when at least four weeks arrears of rent is outstanding.

10.4.3 *Wage Arrestment*

The Association may consider making application to the courts for an arrestment of the tenant's wages. The application will normally also include a claim for expenses.

10.4.4 *Small Claims Court*

Where the arrear is below £3,000 and is not increasing but has been outstanding for some time, the Association may consider applying to the courts for an order of payment. The application will normally also include a claim for expenses.

10.4.5 *Credit Consultants/Debt Collection Agencies*

Credit consultants and/or Debt Collection Agencies will not normally be used for the recovery of rent arrears from current tenants of the Association.

10.5 Legal Action for Recovery of the Property

No legal action for the recovery of either the property and/or the debt will be instigated until all other means of recovery have been considered or have proved unsuccessful.

In order to meet statutory timescales the Housing Operations Manager will have the delegated authority to instruct and/or issue a Notice of Proceedings.

The Housing Operations Manager has the delegated authority to instruct the Association's solicitor to pursue court action for the recovery of the property and/or monies owed and will determine the course of the action being sought (e.g. whether to sist or continue the case). Where the most appropriate course of action is determined to be application for a decree for eviction, this must be approved by The Board of Directors.

No eviction decree will be sought at the court without the prior approval of the Board of Directors unless the cycle of meetings prohibits Board consideration in time for the calling date at court. In these circumstances authorisation of the Chairman, Vice Chair and Chief Executive will be sought.

Legal action will normally be raised as conjoined action for recovery of the property and monies owed. As the Association's legal expenses cannot be recovered without a court Decree actions raised will normally also allow for the recovery of legal costs incurred by the Association. In cases where it is not considered appropriate to seek possession of the property, the Housing Operations Manager may authorise action for the repayment of the sum outstanding only.

10.6 Enforcing Decrees for Eviction

Where a decree for an eviction is granted by the Courts the decree will be enforced in accordance with the Association's Evictions Policy and Procedures.

11.0 SERVICES TO TENANT

11.1 Improvements to Rented Properties

Where a tenant has accrued substantial arrears, has consistently refused to co-operate with the Association and has had Notices served on them, the Association retains the right to withdraw that tenant's home from any programme of improvement works such as the renewal of kitchens, bathrooms, window units, etc.

The decision to remove a property from the improvement programme will be considered jointly by the Assistant Chief Executive and the Technical Services Manager and will take into account the costs and effects on the Association. A property will only be removed from the improvement programme with the authorisation of the Assistant Chief Executive.

11.2 Right To Purchase Applications

In keeping with Sections 46 and 47 of the Housing (Scotland) Act 2001, the Association will not process any application to purchase a property where the tenant(s) has outstanding rent arrears on their account. However, the tenant(s) will be given the opportunity to clear the arrear and then re-apply to the Association to purchase their home.

12.0 REFUNDS TO TENANT

Before the Association refunds all or part of a credit that has accrued in a tenant's rent account, the Association will take into consideration:-

- The previous pattern of payment.
- Any history of arrears.
- Housing Benefit entitlement.
- Any monies owed to the Association.

The Association retains the right to withhold up to one month's rent from the total credit in order to ensure that the account complies with the terms of the tenancy agreement which states that the rent is due monthly in advance.

Where the tenant owes monies to the Association (for example Rechargeable Repair) the tenants' permission to use the credit towards clearing the debt will be sought.

13.0 WRITE-OFFS OF ARREARS AND CREDITS

An arrear may be written off when it is considered to be irrecoverable. Factors taken into consideration can include;

- The tenant has died and there is no estate or other responsible person.
- The tenant has been sequestrated and the debt has become irrecoverable at law
- The Association has no forwarding address and has exhausted all reasonable means of establishing one.
- All avenues for recovering the debt have been tried and have been unsuccessful.
- It is felt by the Association that it would not be cost effective to continue to pursue the monies owed.

Although an arrear may be written-off it may be resurrected at any time, within 5 years, and be actively pursued by the Association, except where the tenant has died or has been sequestrated.

Credits will normally only be written off from former tenant accounts and when:-

- The former tenant has died and there are no known next of kin or estate details.
- The Association has no forwarding address and has taken all reasonable steps to establish one.

The Housing Operations Manager has the authority to approve write-offs up to £100.00. Amounts greater than this need to be approved by the Board of Directors.

14.0 MONITORING OF ARREARS

Members of the Tenancy Services Department shall be responsible for identifying and pursuing new arrears cases as well as the regular monitoring and pursuing of ongoing individual arrears cases. The Housing Operations Manager shall be responsible for the overall monitoring of individual staff member's performance in relation to arrears and for ensuring that the Association, as far as possible, meets its targets.

The Board of Directors shall receive regular reports on the overall arrears trends and are charged with monitoring departmental performance on arrears prevention and recovery.

The Board of Directors will be provided with a range of detailed reports on rent arrears levels, other statistics and performance trends. Reports will be reviewed from time to time, to ensure they are providing the Board with sufficient and relevant information.

15.0 ARREARS TARGETS

When setting the Association's internal performance target for rent arrears, consideration will be taken of past and current performance, as well as the latest peer group and sector performance figures published as part of Scottish Registered Social Landlords Statistics.

The current figure set by the Association's Board of Management is 3.0% of annual net rent (that is, the rent collectable AFTER the deduction of any Housing Benefit payments).

16.0 DELEGATION OF AUTHORITY

The practical implementation of the policy and the day-to-day operation of the procedures for the prevention of arrears and the recovery of debt will be undertaken by members of the Association's Tenancy Services Department.

17.0 CONFIDENTIALITY

All arrears record and files, including financial details and personal information, will be treated with the strictest confidence and no details will be divulged to any other body or person other than those mandated by the tenant.

Details of an arrears case will only be given to those members of staff that are required to know the information in order to carry out their duties and provide the appropriate service to the tenant.

All arrears reports and individual cases presented to the Board of Directors will be anonymous and no information that could identify the tenant will be given to Directors.

The Chief Executive will be advised of any member of the Board of Directors that accrues arrears with the Association in order that the procedures under the Policy on Personal Interest may be implemented. In all other respects the arrears of Directors will be treated in line with the Arrears Procedures and dealt with in accordance with the Rent Arrears Policy.

18.0 ACCESS TO PERSONAL FILES

The Association maintains computerised rent accounts and arrears records and in line with the Data Protection and Access to Information legislation will therefore respond to written requests by a tenant for access to any records pertaining to their rent account and/or arrears. Under normal circumstances there will be a fee of £10.00 made for requests for copies of information. This fee is to cover administration, stationary, postage and incidental expenses. However, the Association reserves the right to waive the fee where it is felt appropriate to do so.

In line with the Association's Equal Opportunities Policy, no charge will be made in respect of charges incurred by the Association in providing information in alternative formats, such as large print, Braille, or languages other than English.

19.0 EQUAL OPPORTUNITIES

Wishaw and District Housing Association is committed to Equal Opportunities and will endeavour to ensure that all functions within the arrears procedures are carried out in an equal and undiscriminating manner in line with both the Rent Arrears Policy and the Equal Opportunities Policy.

In particular, the Association will not discriminate on the grounds of race, colour, culture, age, gender, religious beliefs, sexual orientation, national or ethnic origin, political affiliations or beliefs, disability, marital status or social background and medical conditions.

To ensure that the Association's rent arrears procedures are understood by all tenants and that everyone affected has access to the relevant information and advice, translation and interpretation services will be provided where required and, where appropriate information will be made available in other formats including tape, Braille and large print. These services will be provided in line with the Association's Translating & Interpreting Policy.

20.0 THE RIGHT TO APPEAL

Tenants have the right to appeal any decision made by the Association regarding their rent account and/or arrears and will be advised of this right in writing, where applicable. Tenants may also make a complaint if they feel aggrieved at the treatment they have received from staff during the implementation of the arrears procedure.

Appeals and complaints will be dealt with in accordance with the Association's Complaints Procedures. In line with these procedures, tenants have the right to have their appeal or complaint referred to the Association's Complaints and Grievances Committee for consideration.

A copy of the Association's Complaints Procedures is available from the office on request.

21.0 INFORMATION & ADVICE

Information on the Association's Rent Arrears Policy and Procedures will be made available to advise and assist tenants.

A summary of the policy will be made available on request and, where necessary, will be made available on tape or in Braille or will be translated into other languages as required.

22.0 REVIEW OF THE POLICY

The full Rent Arrears Policy will be reviewed at least once every three years. However elements of the policy may be referred for review within that timescale if required.

23.0 CONSULTATION

The Association will seek to carry out a consultation exercise prior to final approval being given for any proposed review and/or amendment to the Association's Rent Arrears Policy and will seek comments and views of interested and affected parties including its tenants and other partners. All comments and views formally expressed and notified to the Association as part of the consultation exercise will be considered prior to final implementation.

However, in order to allow the Association to provide as high a standard of service as possible the proposed reviewed and/or amended policy may be implemented as an interim policy during the consultation period, pending final approval.

Document History

First Adopted at Management Committee	–	20 November 1989
First Revision by Management Committee	–	17 March 1998
Second Revision by the Board of Management	–	18 December 2001
Third Revision by the Board of Management	–	3 June 2003 (only to make alterations as required by the Housing (Scotland) Act 2001
Fourth Revision by the Board of Directors	–	4 July 2006
Fifth Revision by the Board of Directors	-	26 January 2010

Written by EL