



ARREARS & DEBT MANAGEMENT POLICY

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1. Introduction

- 1.1 The prevention and effective management of rent arrears and other customer debt is crucial to the maximisation of resources available to the Association to improve and maintain its stock. It is therefore vital to maximise rental income, while maintaining affordable rents and having a clear and concise policy and procedures that will prevent or reduce the impact of rent arrears or other debt on the Association, its tenants and sharing owners. Debt management and recovery is also fundamental in assisting tenants and sharing owners in arrears to deal with their problems and prevent their debts increasing beyond their control. (NB Arrears of factoring charges for sharing owners and other factored owners are dealt with separately in the Factoring Policy).
- 1.2 Prevention of arrears will be the over-riding aim of this policy and related procedures. However it is recognised that situations will arise that result in arrears accruing and the Association will adopt a reasonable and early approach to recovery and minimization of debt. Our methods of recovery will be firm but fair, always recognising that tenants may be facing multiple debts and/or complex personal and financial difficulties. The Association will take account of individual circumstances when assessing what actions to take and will ensure at all times that it acts within the Law.
- 1.3 Welfare rights and general budgeting advice will be offered by the Association, as a means of helping to prevent and manage arrears.
- 1.4 The policy will be supported by written procedures to guide staff and Committee through the arrears recovery process and will include reasonable timescales and provide clear levels of responsibility at each stage of the process.

2. Legal, Regulatory & Good Practice Standards

- 2.1 The Association will ensure proper compliance with relevant legislation, regulatory standards and good practice in the operation of this policy and related procedures.
- 2.2 The legal framework in relation to rent management is set out within the Housing (Scotland) Act 2001 and as amended by the 2010 Act and the 2014 Act.
 - 2001 Act established the Model Scottish Secure Tenancy Agreement and details the grounds under which a landlord can initiate recovery of possession when the tenant has breached the conditions of their tenancy by accruing arrears.
 - 2010 Act established the Scottish Housing Regulator and the Scottish Housing Charter and sets out the “Pre-action Requirements” which must be met before raising legal action and also provides clarity for landlords dealing with tenants, following the granting of a decree on grounds of rent arrears.
 - 2014 Act replaced the 2002 Model Scottish Secure Tenancy Agreement for tenancies created on or after 1 May 2019 and made changes to the rights and responsibilities of all social housing tenants.

- 2.3 The Homelessness (Scotland) Act 2003 requires the Association to advise the relevant local authority in statutory form (as per Section 11 of the Act), of our intention to raise proceedings for recovery of possession.
- 2.4 The Scottish Social Housing Charter sets the standards and outcomes that all social landlords should aim to achieve when performing their housing activities, e.g.
- Outcome 1: Equalities – every tenant and other customer has their individual needs recognised, is treated fairly and with respect, and receives fair access to housing and housing services.
 - Outcome 11: Tenancy Sustainment – tenants get the information they need on how to obtain support to remain in their home; and ensure suitable support is available, including services provided directly by the landlord and by other organisations.
 - Outcome 13: Value for Money - tenants, owners and other customers receive services that provide continually improving value for the rent and other charges they pay.
 - Outcome 14: Rents and Service charges – a balance is struck between the level of services provided, the cost of the services and how far current and prospective tenants and other customers can afford them, and tenants get clear information on how rent and other money is spent, including any details of individual items of expenditure above thresholds agreed between landlords and tenants.
- 2.5 The Equality Act 2010 introduced nine protected characteristics and requires the Association to ensure that policies and procedures to provide fair and equal treatment for all.
- 2.6 The Welfare Reform Act 2012 which changed the rules concerning a number of benefits offered within the social security system including changes to Housing Benefit and introduction of Universal Credit.
- 2.7 Bankruptcy (Scotland) Act 2016 which details how a person (tenant) can deal with their debt and apply to be sequestered.

NB: At the time of writing, the Scottish Social Housing Charter is under review, following which the Scottish Housing Regulator will develop an updated version and ask the Scottish Parliament to consider the changes and approve a revised charter from 1 April 2022 (Proposed date now lapsed). There may therefore be changes required to this Policy following the outcome of this review

3. Aims and Objectives

- 3.1 The main aims of this policy and related procedures are to:
- (i) Minimise arrears of rent and other customer debt by adopting proactive and reactive strategies both pre and throughout a tenancy, which will encourage a payment culture and prevent the accumulation of debt.

- (ii) Ensure appropriate and effective management of arrears through early intervention, personal contact and the use of a firm but fair and consistent approach that encourages tenants to engage and take ownership of their arrears.
- (iii) Ensure accurate identification and pursuit of technical arrears.
- (iv) Provide access to good welfare benefits and budgeting advice.
- (v) Provide as many payment options as possible and consider all viable methods of rent collection, to meet the needs and preferences of tenants.
- (vi) Provide clear guidelines for staff and tenants on how debt should be recovered and when legal action is appropriate. Ensure clear lines of responsibility for staff in regard to timescales for action and decision-making.
- (vii) Ensure regular reports to Committee to assist their role of monitoring and review.
- (viii) Work in partnership with other agencies to sustain tenancies and prevent homelessness where possible. Encourage regular liaison and joint-working with other support services, e.g. Housing Benefit, Department of Work and Pensions (DWP), Universal Credit, Job Centre Plus, Social Work and other agencies.
- (ix) Ensure legal action is used appropriately and only after all other efforts have been exhausted and all pre-action requirements followed. Ensure that eviction is always a last resort and only enforced when it is deemed reasonable to do so.
- (x) Implement systems for the recovery of former tenants' debts and for the writing off of any such debts that are considered uneconomical to pursue, due to the level or age of the debt, or where the former tenant's whereabouts is unknown.

4. Preventative Action

- 4.1 The Association recognises that the legal process for recovering rent arrears and other debts is generally lengthy and seldom cost-effective, as it increases void turnover and homelessness, while reducing community stability. The Association will therefore focus on encouraging the prevention and minimisation of arrears by ensuring:-
- (i) All prospective tenants receiving a written offer of a tenancy are advised of the monthly rent due in advance as per the Tenancy Agreement and whether any welfare benefit restrictions may apply for the type or size of property offered.
 - (ii) The Association encourages rent in advance, to prevent tenants accruing arrears from the outset, to offset any benefit shortfalls due to payment being delayed or not awarded from the date of entry and to cover the four week notice period at the end of tenancy. Discretion may apply, but only where there are extenuating circumstances and a payment agreement will be agreed to cover the initial month's rent cost.
 - (iii) All tenants are clear about the various payment methods available, as well as any payment arrangements made and all possible consequences of not paying, including

the possibility of court action, court expenses and recovery procedures. This includes those who may be eligible for HB/UC being fully aware of their responsibility to apply for these benefits, ensure full payment is in place and that any shortfalls in entitlement are addressed by them directly.

- (iv) Regular monitoring of tenants' accounts to spot early signs of difficulty, enable a quick response and prevent arrears escalating outwith the tenant's control.
- (v) Appropriate information and advice is provided to tenants at their initial sign-up, via tenant handbooks, settling-in visits, general correspondence, one-to-one discussions, texts, email, website, newsletters and other consultation events.
- (vi) Access to our Welfare Rights Officer to encourage and assist tenants to maximise their income by applying for housing and other welfare benefits to which they may be entitled and by managing their budgets appropriately.
- (vii) The Association also encourages liaison with other support and/or funding agents, to which tenants can be sign-posted or referred, in order to receive more specific practical advice, information and assistance in regard to debt management, fuel poverty, tenancy sustainment, job searching, etc.
- (viii) Liaison with the HB, UC, DWP and Job Centre Plus services to enable an up-to-date exchange of information in regard to any reforms of benefit or changes in procedures that may affect tenants' eligibility or payments to the Association.
- (ix) Adequate staff training is available, both in-house and externally to develop and maintain the knowledge and skills needed to deliver effective arrears management and provision of up-to-date advice on housing and related benefits.
- (x) Every effort is made to ensure tenancies are terminated effectively, to prevent former tenant arrears accruing and that abandoned properties are identified and dealt with quickly, to prevent unnecessary build up of arrears.

5. Range of Payment Options

5.1 The Association ensures various payment options are available to suit individual needs and preferences and encourage payment. Every tenant receives an Allpay payment card, which they can use (at no charge) to pay their rent in the following ways:-

- at any Post Office or Paypoint terminal
- by debit card over the phone to Allpay, which is a 24 hour service, or
- by debit card over the phone or at the Association's office during office hours
- on line at www.allpayments.net
- by using their smartphone and downloading the Allpay APP
- by Direct Debit via their bank account, or a BACS payment
- by cheque to the office
- via HB, UC, APA (Alternative Payment Arrangement) or DWP deductions from ongoing benefits, which would only be applied for where the tenant does not engage with the Association and fails to make any payments directly

- 5.2 The Association does not accept regular cash payments at the office for security reasons, but will accept cash in extenuating circumstances, where deemed appropriate.
- 5.3 Tenants can also use their credit card to pay over the phone or on line. However while this facility is available, it is neither advertised nor encouraged, but only intended for use in very limited circumstances, e.g. to make payment to prevent eviction following decree.

6. Arrears Management and Control

- 6.1 The Association holds computerised records of information on all tenants' rent accounts and arrears case management, with notes of contact and actions, together with copies of relevant correspondence being recorded or attached within each tenant's diary entries. Rent statements are also produced from this system as appropriate.
- 6.2 All information collected and shared with others will be in accordance with GDPR requirements and for the purposes relayed to tenants in the Fair Processing Notice.
- 6.3 Payments are generally posted daily, to ensure accounts are up to date and arrears of rent or broken payment arrangements are more effectively managed.
- 6.4 Early contact is critical when an arrear occurs or a payment is missed. This may be by letter, interview at the office or home visit, calling cards left prompting the tenant to contact the office, or by telephone calls, text or email messages. Staff will determine the most appropriate method in each case, to establish contact and build up a relationship with the tenant that will determine the reason for non-payment and facilitate agreement as to how this may be resolved.
- 6.5 Written communication will also be used to record formal steps in the pre-court requirements process, confirm actions and agreements and ensure tenants are fully aware of the legal implications of failing to pay their rent.
- 6.6 Direct payments or APA's may also be sought where applicable, e.g. where the tenant has failed to maintain a voluntary arrangement, where the tenant accrues more than 8 weeks rent, where the tenant has requested it, and/or meets the vulnerability criteria.
- 6.7 Tenants may be asked to sign a mandate to allow the Welfare Rights Officer or other Property Services staff member to discuss a specific issue relating to their HB or UC claim. (This is to satisfy the GDPR requirements for accessing personal data)
- 6.8 Tenants can also visit the Association's website and register for a Tenant Register/Login which will enable them to view their last 6 rent transactions and monitor their account.

7. Welfare Rights and Advice

- 7.1 Maximising benefit entitlement and debt counselling are considered vital in assisting tenants to maintain rent payments. The Association's in-house Welfare Rights Officer will

provide support to all potential and existing tenants, while working closely with the Property Services Officers, to increase the tenants' ability to pay.

- 7.2 The Association also works closely with local authority HB, UC and DWP Departments, to ensure that claims for tenants are processed efficiently and accurately.
- 7.3 The Welfare Rights Officer, together with the assistance of other Property Services staff, will advise and support tenants in various ways, by:-
- (i) Identifying where an appeal against a benefits decision may be appropriate and helping tenants prepare and follow the correct benefit appeal process
 - (ii) referring clients onto colleagues or other agencies, as appropriate, for specialist help with issues that fall outside the remit of the service.
 - (iii) assisting tenants with on-line benefit applications, where they don't have access to the internet and/or the necessary skills to use the internet.
 - (iv) Investigating and applying for other funds, e.g. charitable grants, and working with other agencies that will improve tenant welfare, fuel poverty, etc.
 - (v) Supporting clients with their Universal Credit (UC) claims, help develop a better understanding of UC as it is rolled out and how it may affect clients' claiming both Income Related and Contribution Based legacy Benefits.
 - (vi) Providing and promoting basic money advice, including household budgeting, money saving tips and referral to specialist agencies.

8. Legal Action

- 8.1 The initial stage of legal action is the serving of a Notice (NOP) in accordance with the Housing (Scotland) Act 2001 and as amended by the 2010 and 2014 Acts. This will only be served where it is intended to take the tenant to court and will also be served on any qualifying occupiers, where applicable. Prior to the Notice being served, the Association will ensure all "pre-action requirements" have been satisfied.

If a tenant has previously been to court and subsequently failed to clear any outstanding court expenses linked to that action, the Association will also include this debt in the NOP, in order to pursue repayment of these expenses and the rent arrears.

- 8.2 Any tenant served with a Notice will also be given information, advice and assistance on how to rectify the situation and made fully aware of the seriousness of their situation. Only reasonable offers of repayment will be accepted and monitored at this stage.
- 8.3 Where arrears continue to escalate and the tenant persistently fails to respond to the Notice or other correspondence and/or fails to make and keep to a payment arrangement, the Association will, as a last resort, pass the case to court. All potential court cases will be discussed with the Senior Property Services Officer or in their absence, the Property Services Manager, prior to any court instructions being sent.

- 8.4 Once a court date has been fixed, the case will still need to call in court, even if an acceptable payment offer has been received. Cases may subsequently be continued to monitor payment arrangements agreed, or sisted, where payment arrangements have been adhered to and arrears have significantly reduced.
- 8.5 Tenants will be kept informed at every stage of the legal process.
- 8.6 Agreement of the SPSO/ Property Services Manager will be required prior to seeking Decree for the Recovery of Possession. Where Decree for Arrears and/or Recovery of Possession is to be sought, the Association will also seek the award of court expenses associated with these proceedings. Where the debt is cleared prior to the court date, the Association may seek an expenses only decree.
- 8.7 Where a Sheriff awards Decree for Recovery of Possession, the Association will generally enforce this on receipt of the Extract Decree. However, as housing law allows up to six months in which to enforce decree, the Association may at its discretion, accept full payment of the debt and any expenses awarded against the tenant, rather than implementing decree for recovery of the property.

9. Other Issues

9.1 This section summarises policy issues concerning certain other areas involved in the management of debt. These areas are:

- Technical arrears
- Former tenant arrears
- Write Offs
- Sequestrations
- Trust Deeds
- Debt Arrangement Schemes (DAS)

9.2 Technical Arrears

The definition of technical arrears as provided by the Scottish Housing Regulator is:-

- (i) outstanding housing benefit payments due for the reporting period but not received until after the start of the new reporting period.
- (ii) outstanding payments from people who have an agreement to pay their rent slightly later than the landlord's normal monthly rent cycle
- (iii) The Association will accurately quantify and record technical arrears, to enable accurate evaluation of arrears performance and pursuit of Housing Benefit / UC due.

9.3 Former Tenant Arrears

Where notice of termination of tenancy is given, the outgoing tenant will be advised of all payments that are due to be paid by their termination date and a forwarding address will be requested. Where full payment is unlikely by the termination date, a payment arrangement

will be sought at that stage. However, former tenants' arrears are typically more difficult to recover, once the relationship between landlord and tenant has ended and particularly where there is no forwarding address or other contact details for the person involved. The Association will take all practical steps to pursue former tenant arrears, particularly where decree for recovery of the debt has previously been granted, and/or where a forwarding address, place of employment or bank account details are known and it is considered economical to do so.

9.4 **Write-Offs**

Where the pursuit of former tenant arrears or other debts is considered impractical or uneconomical, the Association may decide to write-off these debts. The Operations Sub-Committee will be asked to approve such write-offs at the end of each financial year, with the proviso that should further information come to light at a later stage, the debt may still be pursued. Further details are in the Debt Management Procedures.

9.5 **Sequestration**

This is the legal process of rendering an individual bankrupt by putting aside a person's assets and vesting them in a trustee for the benefit of creditors. In such cases, creditors (e.g. the Association) cannot pursue the person for any debt owed up to the date of sequestration and would only receive payment should the person do so voluntarily. Sequestered debt is generally discharged after one year, which means the person no longer has a personal liability to pay the debt and it should therefore be written off at that point. However, where there has been non-compliance with the trustee, this may result in the personal liability to pay the debt being continued for a longer period. The Association will seek legal advice where appropriate.

9.6 **Trust Deed**

While less formal than sequestration, this voluntary document is still legally binding and transfers the debtor's assets to a trustee, to manage for the benefit of the creditors, but also requires the debtor to pay a sum over to the trustee from their income to contribute to payments to the creditors. The insolvency practitioner will assess a reasonable level of contribution based on the person's excess income, although there is no guarantee of this being accepted by creditors. It is similar to sequestration, in that creditors cannot pursue the person for any debt up to the date the Trust Deed was granted, but while sequestered debts can be discharged after one year, debts covered by Protected Trust Deed may take up to four years to be discharged, at which point they too may be written off, although the Association may again seek legal advice before doing so.

9.7 **Debt Arrangement Schemes (DAS)**

A DAS gives an individual help and time to pay off their debts and only applies if the debtor has surplus income. DAS is an informal agreement that offers a debtor advice on managing debts, protection from court enforcement, bankruptcy and loss of their home (provided they keep up the mortgage or rent payments). A third party negotiates with creditors and agrees a monthly contribution that the third party then distributes to creditors. It gives the debtor time to pay off their debts and a provision for varying the payment arrangement should their circumstances change. While someone is involved in a DAS, creditors cannot take any further action against them to pursue the debt and where any of the debt would generally

incur interest this is generally reduced or waived by the creditors. However a DAS doesn't normally allow for any of the debt to be written off and creditors should look to receive at least 90% of the debt within a reasonable time (e.g. ten years maximum).

10. Performance Monitoring and Review

- 10.1 Regular and continuous monitoring is essential to ensure this policy and associated procedures are implemented effectively. This will be carried out by the Property Services Officers and overseen by the Senior Property Services Officer and Property Services Manager, together with the Association's Property Services Sub-Committee. The following measures will be used to monitor performance:-
- (i) setting and measuring performance against targets to reduce both current and former tenant arrears. This is part of the Association's internal management planning process and will be derived with reference to Calvay's current performance and general standards achieved by other Housing Associations, as published by the Scottish Housing Regulator and other good practice forums.
 - (ii) comparing the Association's current performance with that of previous and continually striving to improve.
 - (iii) considering trends in arrears cases, costs and outcomes of legal actions, evictions and abandonments and drawing on these to inform future policy and procedures in the management and pursuit of debt.
 - (iv) benchmarking with our peers, through membership of SHN (Scottish Housing Network) as well as attendance at information and performance forums on practical and good practice issues.
 - (v) comparison with other landlords via the ARC (Annual Return on the Charter), as published by the Scottish Housing Regulator and disseminated to tenants for comment and feedback.
 - (vi) considering annual reports of other organisations as well as regular information and discussion on policy and procedural issues with EHRA members, both at Manager and Senior Officer level meetings.

11. Confidentiality / GDPR

- 11.1 In accordance with the GDPR requirements, all tenants will be issued with a Fair Processing Notice which explains why the Association collects information about them as a customer of Calvay and how that information may be used and shared. A copy of this notice together with our Privacy Statement will also be placed on the Association's website for future reference and can also be made available at our offices.
- 11.2 Reports to Committee regarding arrears monitoring and court actions, will be provided in such a way that protects the identity of the tenant at all times.

- 11.3 Should any leak of arrears information or any other personal data occur, this will be passed to the Corporate Services Manager / GDPR Co-ordinator, who will investigate the matter and take the appropriate action, as per the Association's Privacy Policy and Data Protection Policy, to ensure this does not recur.

The Association will comply with the Data Protection Act 2018 and the General Data Protection Regulation in relation to all personal information held.

The GDPR includes the following rights for individuals:

- What personal data we hold about them;
- The purposes of the processing
- The categories of personal data concerned
- The recipients to whom the personal data has/will be disclosed
- How long we intend to store your personal data for
- If we did not collect the data directly from them, information about the source
- The right to have incomplete or inaccurate data about them corrected or completed and the process for requesting this
- The right to request erasure of personal data (where applicable) or to restrict processing in accordance with data protection laws, as well as to object to any direct marketing from us and to be informed about any automated decision-making that we use
- The right to lodge a complaint or seek judicial remedy and who to contact in such instances

If a tenant/former tenant wishes a copy of relevant personal information which the association holds about them, subject access requests can be requesting in writing to the Association and we will respond within one month of this request. Further information regarding how we process your data can be found on our website along with a Subject Access Template.

12. The Role of Committee

- 12.1 The role of Committee in regard to rent arrears and debt management will involve:-

- (i) agreeing and reviewing the policy
- (ii) monitoring outcomes of the policy through reports
- (iii) considering complaints via the complaints process

- 12.2 Reports will be presented to the Property Services Sub-Committee as undernoted:-

Annually

- (i) Write off report for former tenant arrears
- (ii) Annual overview of rent arrears performance

Quarterly via the Property Services Sub and/or KPI's to Management Committee

- (i) non-technical arrears outstanding for tenants and sharing owners and
- (ii) % of the possible gross rent receivable (Property Services Sub)
- (iii) Gross rent arrears for tenants and former tenants as % of gross rent due (Mgt Cttee)

- (iii) Reports of any other issues relating to the recovery of rent arrears
- (iv) Rent lost through voids and as a % of the possible gross rent receivable. (Property Services Sub & Mgt Cttee)

12.3 All actions, timescales and levels of responsibility are detailed further in the working document, Arrears and Debt Management Procedures.

13. Declaration of Interest

13.1 It is accepted by the Association that no conflict of interest is deemed to exist where a Committee Member is in arrears so long as a payment agreement is in place and is being adhered to. Where this is not the case, it is the duty of the Property Services Manager to bring this to the attention of the member in question, who, if present at a meeting where arrears are being discussed, must declare an interest and take no part in any such discussions.

14. Equal Opportunities

14.1 In executing this policy and related procedures, staff will have regard to the Association's Policy on equal opportunities.

14.2 The Association will ensure that the implementation of this policy will be achieved without discrimination against any individual, group, organisation or company based upon disability, gender reassignment, marriage or civil partnership (in employment only), pregnancy and maternity, race, religion or belief, sex and sexual-orientation.

15. Complaints

15.1 The Association has a separate Complaints Policy which would consider complaints regarding:-

- (i) the outcome of a policy
- (ii) the treatment by a staff member
- (iii) how a tenant or sharing owner has been dealt with

15.2 Copies of the Complaints Policy are available from the Association's offices on request, or can be downloaded from the website. Anyone who remains dissatisfied after following the Association's Complaints Policy will be advised that they have final recourse to the Scottish Public Services Ombudsman.

16. Policy Review

16.1 This Policy will be reviewed three years from the date of approval, or earlier should the need arise to reflect changing circumstances or changes in legislation or good practice standards.