

**The Moray Council  
Housing and Property Service**

**Rent Arrears Policy**

**1. Scope of the Policy**

- 1.1 This policy describes the activities and responsibilities involved where tenant rent accounts of both current and former tenants are in arrears. The term "rent arrears" applies to both rent and service charges.
- 1.2 The Rent Arrears Policy applies to all rented property owned or managed by the Housing and Property Service.
- 1.3 The Rent Arrears Policy complies with and supplements the Moray Council's financial regulations.
- 1.4 The Moray Council will ensure the promotion of equal opportunities by publishing information and documentation in different languages and other formats such as large print, tape and braille, as required.
- 1.5 The Moray Council will ensure that no individual is discriminated against on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or other personal attributes, including beliefs, or opinions, such as religious beliefs or political opinions.

**2. Local Housing Strategy/Corporate Plan/ Service Plan**

- 2.1 The Rent Arrears Policy will assist the Council to meet its Corporate Plan, Local Housing Strategy, Homelessness Strategy, and Service Plan aims and priorities. In particular it will assist the Council achieve its strategic objectives and "Best Value" in the use of its resources.
- 2.2 Detailed procedures will be developed to guide staff on the key processes involved.

**3. Objectives and Principles of the Policy**

- 3.1 The overall aim of the Rent Arrears Policy is to minimise the level of rent arrears in a sensitive but effective manner.
- 3.2 The specific objectives of the Rent Arrears Policy are:

- To assist with the prevention of homelessness and ensure that other corporate obligations such as Child or Adult Protection are recognised within the operation of the policy;
- To ensure that all legal requirements have been met before taking any legal action, including pre-action requirement conditions;
- To offer early appropriate professional support and guidance to tenants to minimise rent arrears in response to their specific needs and circumstances;
- To work with other Council services and agencies to ensure that appropriate support and assistance is delivered to tenants and their families, that risks are identified and agreed outcomes met;
- To monitor levels of rent arrears and have early intervention mechanisms in place which prevent rent arrears arising;
- To ensure that tenants are given relevant information about entitlement to welfare benefits/income maximisation services and to encourage optimum take up from tenants; and
- To maintain contact with tenants to ensure effective communications and ensure tenants meet their statutory responsibilities for the payment of rent.

3.3 The above objectives will be achieved by implementing the following principles:

- The Council's rent arrears management service is fair, open and transparent;
- The Council promotes joint working where necessary with other Council Departments and external agencies with appropriate agreements;
- Detailed procedures and agreed practices are applied uniformly and cross the service;
- Staff training is provided to ensure that staff are equipped to carry out the roles expected of them in a consistent way;
- All communication with tenants and service users is in “plain language”, will be clear, concise, simple to understand and free of jargon and will make clear who the appropriate officer is to contact in the case of queries;
- That tenants are supported where appropriate to meet their tenancy responsibilities to pay their rent; and

- The Council will research and prepare for any changes in legislation which may affect tenants' abilities to pay their rent and ensure that appropriate responses are considered by elected members. For example, developing responses to Welfare Reform.

#### **4. Legal Framework**

4.1 The Council will ensure that the Rent Arrears Policy meets with legislative and good practice requirements in minimising rent arrears. In approving and implementing the Rent Arrears Policy and associated procedures the Council aims to comply with the following legislation:

- The Equality Act 2010
- Adult Support and Protection Act 2007
- Children (Scotland) Act 1995
- Housing Benefit Regulations 2006
- Homelessness (Scotland) Act 2003
- Debt Arrangement and Attachment (Scotland) Act 2002
- Housing (Scotland) Act 2001
- Housing (Scotland) Act 2010
- Data Protection Act 1998
- Freedom of Information Act (Scotland) 2002
- Matrimonial Homes (Family Protection) (Scotland) Act 1981
- Disability Discrimination Act 1995

4.2 The Council will take account of any alterations and amendments to the legislative framework and review this policy accordingly.

4.3 The Council will also draw upon recognised professional good practice and appropriate guidance, for example, research issued by the Chartered Institute of Housing or the Scottish Housing Regulator.

#### **5. Tenants' Responsibilities**

5.1 The term 'tenant' includes sole and any joint tenants.

5.2 If two or more people have signed the Tenancy Agreement, they are jointly and severally liable for the payment of rent. This means that each person is fully responsible for the payment of rent and any arrears of rent.

5.3 Tenants have an obligation under the Terms and Conditions of their Tenancy Agreement to pay rent due every week, in advance on or before the first day of each rental period.

5.4 Tenants have a responsibility to notify the Council of any change in their circumstances that may affect their ability to pay their rent.

- 5.5 Tenants can choose to pay their rent from one of the following methods: -
- Cheque
  - Paypoint Outlet using a “Council House Rent” barcoded payment card
  - Standing Order
  - Direct Debit
  - Credit or Debit Card via the Council’s Customer Contact Centre or 24hr automated payment line
  - Online

## **6. Prevention of Rent Arrears**

- 6.1 The Council will use preventative measures and practices, which aim to avoid debts mounting up, including providing regular advice and information to tenants on the amount of rent and the dates by which it is due.
- 6.2 At the start of a tenancy, the Council will make every effort to ensure that the tenant is informed of all the costs and payment responsibilities associated with their tenancy.
- 6.3 When signing up a new tenancy, the Council will ensure that those eligible for Housing Benefit complete claims. Where a tenant is responsible for paying some or all of their rent that the rent is paid at the tenancy sign up.
- 6.4 In addition to the above, the Council will provide all new tenants with information on pending changes from ‘Welfare Reform’ measures (effective from 1 April 2013). The three principal changes that impact on housing include:
- Introduction of direct payments as part of the move to ‘Universal Credit’ – requiring those in receipt of welfare benefit to take responsibility and make arrangements to pay their rent to the Council from their own bank accounts or other chosen payment methods.
  - A limit on the total welfare benefit that households can receive, termed the ‘Benefits Cap’ (leading to reductions in the amount payable for housing benefit if household income from benefits is over specific limits); and
  - An ‘Under-Occupancy Charge’ leading to a reduction in the amount paid towards housing benefit by 14% for a spare bedroom and a 25% reduction for two or more spare bedrooms.
- 6.5 At the housing offer and tenancy sign up stage, the Council will advise all new tenants of these changes, whether in receipt of welfare benefits or not.

- 6.6 The establishment of a good relationship between tenant and landlord at this early stage cannot be stressed too strongly. Preventative measures to be taken will include:
- A pre-tenancy interview with each new tenant;
  - Follow up contact will be made with all new tenants within six weeks of the start of their tenancy;
  - Wherever possible, and particularly where tenants are considered vulnerable or at risk of arrears, follow up contact will be made within 2 weeks of the start of their tenancy;
  - Support provided by appropriate staff and services where this is merited, for example, by Housing Options Staff.
  - Personal contact by officers by phone, home visits and letters to encourage tenants to contact the Council at the earliest opportunity should they experience a change in their circumstances or face difficulties paying their rent;
  - All correspondence regarding arrears will be written in plain language and will draw attention to the availability of advice and housing benefit;
  - Citizens Advice Bureau / money advice referrals and income maximisation checks; and
  - Signposting to debt counselling agencies and local Credit Unions where applicable.
- 6.7 The Council will promote a positive payment culture by including information in the tenants' handbook, discussing rent payment at viewings, sign-ups, settling in visits and regularly publish articles in the Tenants' Voice newsletter reminding tenants of the importance of paying their rent.
- 6.8 Officers will consider tenants and their family's circumstances through the use of a Risk Assessment Plan to help shape appropriate responses to help them pay their rent and comply with legislative requirements.
- 6.9 Under Universal Credit, due to be phased in between October 2013 and October 2017, working-age tenants will receive a single monthly payment directly from the Department of Work and Pensions (DWP). This will include support for housing costs.
- 6.10 Wherever possible, the Council will make the use of "rent direct" payments for tenants in arrears.
- 6.11 The Council will agree appropriate arrangements for the direct payment of benefits where tenants fall into arrears following agreement of appropriate protocols with the Department of Work and Pensions and the Council.

6.12 The Council will consult with tenants regarding any change to the rent payable and will give tenants 28 days written notice of any increase in rent.

## **7. Early Intervention**

7.1 The Council will ensure that there is early intervention in all cases of arrears before a debt becomes unmanageable.

7.2 Officers will monitor all rent accounts in arrears on a weekly basis.

7.3 Once arrears have arisen, prompt action will be taken to ensure that the arrears do not increase. The Council will make sure that current rent is paid, and then ensure that the arrears are recovered.

7.4 The Council will maintain a comprehensive record of all action taken and all contact with tenants in arrears.

7.5 Detailed procedures for rent control and arrears action ensure that each case is regularly monitored and the necessary checks made at each stage of the control and recovery action. Tenants who regularly go into arrears will be contacted and a financial assessment will be completed to ensure that regular payments are sustained.

7.6 The Council will provide tenants in arrears with clearly written arrears letters which detail the current balance on an account, what action they need to take with appropriate phone numbers to get assistance.

7.7 The Council will provide tenants in arrears with a financial assessment of their circumstances with a view to making realistic and sustainable arrangements to pay off the arrears.

7.8 The Council will: -

- Give priority to establishing personal contact with tenants and members of their family over 16 years of age throughout the debt recovery process;
- Enable an appropriate assessment of their needs and circumstances to inform the delivery of support if required;
- Ensure that relevant departments and agencies are alerted where appropriate to deliver support and respond to identified concerns, for example, through Education and Social Care for vulnerable adults or child protection.
- Enable money management advice and assistance;

- Provide effective controls on the recovery of debts, with legal action being taken only when all other means of recovery of rent arrears have been exhausted;
- Encourage tenants to advise the Council of a change in their circumstances that may affect their ability to pay rent; and
- Check progress of agreed specific outcomes with tenants at regular intervals to make sure rent arrears are minimised.

## **8. Assessment, Support and Liaison with Other Agencies**

- 8.1 The Council will offer a detailed assessment (financial assessment) to all tenants when it is identified that their rent account is in arrears in order to assist in the management of his/her tenancy and ensure that rent is paid.
- 8.2 During the assessment, the tenant in arrears, in consultation with the Area Housing Officer/Housing Assistant will be asked to identify possible sources of support. These may include: -
- Family/household members;
  - Social Work: Adult Services, Children Services
  - Trading Standards Section;
  - Housing Benefit;
  - Welfare Benefits;
  - Homelessness Services;
  - Shelter;
  - Dept of Work and Pensions;
  - Moray Advocacy Service;
  - Citizens Advice Bureau; and
  - Any other appropriate voluntary agency.

## **9. Rent Arrears Recovery**

- 9.1 Rent arrears recovery will be based on a staged escalation process, up to and including repossession for non-payment of rent.
- 9.2 The process will be based on a preventative approach that seeks to maximise tenants' entitlement to benefits and secure regular payments.
- 9.3 Emphasis will be placed on personal contact by the Area Housing Officer/Housing Assistant at all stages in the process, particularly in the early stages, in order to prevent escalation of arrears. During this contact, staff will encourage tenants in arrears to seek independent advice and information from appropriate organisations to ensure they are receiving all their entitlement to housing and other welfare benefits.
- 9.4 A checklist will be used to ensure all pre-action requirements have been met before taking legal action.

9.5 The Council will only consider legal action to recover rent arrears where management actions have proved ineffective.

## **10. Welfare Reform**

10.1 It is a tenant's responsibility to pay any shortfall in the rent as a result of any changes to their benefit entitlements in order to avoid rent arrears.

10.2 In all cases, the Council will seek to ensure that tenants understand their ongoing responsibilities to meet changes to their benefit entitlement such as the under occupancy charge payment on their tenancy. In pursuing the payment of under occupancy charges, the Council will, however be mindful of the individual circumstances of such households.

10.3 Where the Council is satisfied that tenants who are subject to a reduction in benefit through under occupancy are doing all they reasonably can to avoid falling into arrears, the Council will use all legitimate means to collect rent arrears.

10.4 The Council will maintain appropriate records to assist 'client profiling' to identify and target support to vulnerable tenants or those at risk of arrears quickly escalating. All data gathered will be managed to comply with data protection legislation.

## **11. Serious/Persistent Arrears Action**

11.1 Serious arrears action will commence when arrears continue to rise, or direct contact with the tenant has failed. This may include initial stages of raising legal proceedings against the tenancy.

11.2 The Council will write and inform the tenant that if the payment of rent and arrears are not made on a regular basis, that a Notice of Proceedings for Recovery of Possession will be served and that legal action may be taken.

11.3 Emphasis will continue on personal contact and ensuring that family members where appropriate are involved.

11.4 At each stage of the process, the tenant will be reminded of their responsibility to pay their rent and offered support where this is needed.

## **12. Repayment Arrangements**

12.1 In cases where the tenant cannot clear the arrears in a single payment, the Council will agree an affordable payment to reduce the arrears in realistic and sustained instalments over a specific period of time. Any



repayment agreement will be based upon a detailed assessment of the tenant's finances and ability to pay.

- 12.2 A written agreement will be made with the tenant, where possible, on how to manage and reduce their rent arrears. This agreement should include the level of current arrears, the tenant's ability to pay, the size and frequency of arrears repayments, the repayment dates and the method of making future rent payments.
- 12.3 Arrangements will be regularly monitored and if broken contact will be made with the tenant to find out why and a new arrangement will be agreed. If arrangements are continually broken, and as a result the arrears are not being reduced, further action will be taken.

### **13. Legal Action**

- 13.1 Legal action is the last stage in the rent arrears process. Tenants will be kept informed of and fully involved in the legal process at all stages of legal action. Legal action may include a payment decree or ejection decree. In all cases, the Council will seek recovery of expenses. Expenses may be awarded where the arrears have been repaid. Where appropriate, the Council will refer the tenant to suitable agencies to provide advice or assist in representation at court hearings.
- 13.2 The decision to request that an action for recovery of possession of the property and payment of arrears of rent be raised will only be taken when all other means of recovery of rent arrears have been exhausted.
- 13.3 The Council must serve the tenant with a Notice of Proceedings for Recovery of Possession at least 28 days before court proceedings will commence. Before serving a Notice of Proceedings for Recovery of Possession the Council will make reasonable inquiries to establish, so far as is reasonably practical, whether there are any qualifying occupiers in the house. The Notice of Proceedings for Recovery of Possession must also be served on all qualifying occupiers of the house. A qualifying occupier is a person who occupies the house as his/her only or principal home and who is:
- a member of the tenant's family aged at least 16; or
  - a person to whom the tenant has, with the landlord's consent, assigned, sublet or otherwise given up possession of the house; or
  - a person who is a lodger and the landlord has given consent.
- 13.4 Tenants in rent arrears will be informed that any qualifying occupiers will be notified of the rent arrears and may at the tenant's discretion be invited to contribute to the financial risk assessment process. Tenants will be encouraged to seek the wider support of family members within their household where this is appropriate. Ultimately however, this will be the tenant's decision.

- 13.5 Where the court orders the repayment of arrears, it may order an open decree for repayment, which the Council can enforce for full payment of the debt, or it may make an instalment decree requiring the tenant to clear the arrears at an agreed rate.
- 13.6 In the event that a tenant has made an application for a Debt Payment Programme under the Debt Arrangement Scheme the Council will continue to raise proceedings. However, the Council will not commence "diligence" to enforce the payment of rent arrears.
- 13.7 Separate and complementary procedures will be developed to guide staff where evictions are approved. Evictions will only be considered as a last resort where all other alternatives have failed.
- 13.8 The Housing (Scotland) Act 2010 addresses the termination of a tenancy where an order for eviction (decree) has been granted on the grounds of rent arrears. The decree no longer terminates the tenancy at the date on which it becomes effective. Instead, the tenancy will only be terminated when the Council recovers possession. This aims to resolve the uncertainty where a tenant is allowed to remain in a property if suitable payments are being made following the grant of decree. The Scottish Secure Tenancies (Repossession Orders) (Maximum Period) Order 2012, sets a maximum period of six months for which an eviction decree based on arrears is effective. Decisions in relation to decrees will be made within six months but not more and will comply with the Council's Evictions Policy.
- 13.9 Officers will encourage tenants, through personal contact, specific letters and telephone, to contact the Council at the earliest opportunity should they experience a change in their circumstances or face difficulties paying their rent.

#### **14. Former Tenant Arrears (House, Garage and Site Rental)**

- 14.1 Former tenants are tenants who have terminated a tenancy and have outstanding rent arrears related to the property vacated.
- 14.2 All tenants, when terminating their tenancy, are encouraged to pay any outstanding arrears of rent and will be advised of the implications involved if rent arrears are not paid in full.
- 14.3 Arrears control and recovery action will be activated when the status of the tenancy changes to former tenant. Recovery is based on a staged escalation process.
- 14.4 Former tenants in arrears will be encouraged to agree a repayment plan that is affordable and sustainable.

- 14.5 Detailed procedures for arrears recovery ensure that each case will be regularly monitored and appropriate action taken.
- 14.6 Where attempts to recover arrears by letter have failed, or the former tenant's whereabouts are unknown, the debt will be referred to the Debt Collection Agency used by the Council.
- 14.7 Legal action to recover the arrears will be taken in cases where, an assessment of the former tenant's financial circumstances, indicate that such action would be appropriate.
- 14.8 Where the arrears are in respect of a deceased tenant action will be limited to contacting the next of kin or executor to claim against the estate.
- 14.9 Where a debt is uneconomic to pursue or there is no prospect of recovery, the debt will be written off in accordance with the Council's policy on irrecoverable debt.

## **15. Lock-up/Garage Site Rent Arrears**

- 15.1 The collection of any arrears of rent for a lock-up garage will be based on a staged escalation process.
- 15.2 In the event that attempts to recover rent arrears fail, the Council will take action to terminate the lease and recover the lock-up garage or garage site with assistance from Legal Services..

## **16. Complaints and Review Process**

- 16.1 The Council operates a Complaints Procedure that is available to any tenant who is not satisfied with the way in which their case has been dealt with. Details of the Complaints Procedure can be obtained from any Council Access Point.
- 16.2 Separate from the Complaints Procedure, a Review Process exists for tenants who dispute the amount of rent arrears or any repayment programme. In the first instance, tenants can ask for an explanation from their Area Housing Officer/Housing Assistant. If the tenant is not satisfied with the explanation, they can ask for an appointment with their Area Housing Manager. The Area Housing Manager will review the case and in the event of any dispute will refer the case to the Housing Services Manager.

## **17. Performance Monitoring**

- 17.1 The Council will monitor performance on rent arrears using both statutory and local performance indicators as follows:

### **Statutory Performance Indicators**

- Rent collected as a percentage of total rent due
- Gross rent arrears as at 31 March each year as a percentage of rent due
- Current tenant arrears as a percentage of the net rent due in the financial year

### **Local Indicators**

- The total amount of current tenant arrears
- Current tenant arrears by band showing number of accounts and total arrears due for each band
- Total former tenant arrears due
- Number of tenants evicted due to rent arrears

17.2 The Communities Committee of the Council will annually agree targets for current tenant arrears as a percentage of the net rent due in the financial year.

### **Other Issues**

17.3 The performance indicators detailed in paragraph 17.1 will be reported bi-annually to the Communities Committee.

17.4 The Council will review the Rent Arrears Policy in 2015. Amendments will be made as required after consultation with service users and other agencies.