



# INCOME RECOVERY POLICY

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## **1 Introduction**

- 1.1 This policy outlines our approach to preventing, managing and collecting rent, arrears and other money owed to the Council arising from housing that is owned or managed by the Council. This includes:
- a) Rent accounts
  - b) Service charge accounts
  - c) Court costs
  - d) Rechargeable repairs
  - e) Former Accounts
- 1.2 This policy applies to:
- a) General needs accommodation
  - b) Older persons' accommodation
  - c) Leaseholder accommodation
  - d) Temporary accommodation
  - e) Garages
- 1.3 When we refer to “rent” in this policy we mean rent, services charges and any other payments that form part of the tenancy agreement, licence or lease.
- 1.4 When we refer to “general needs accommodation” in this policy we mean accommodation occupied by tenants paying a social or affordable rent. General needs tenants may hold secure tenancies, starter tenancies, fixed term tenancies and/or contractual tenancies. Residents that occupy a property on a use and occupation basis will be considered a licensee and will be liable for a licence fee or charge as per the terms of the licence.
- 1.5 When we refer to “older persons’ accommodation” in this policy we mean sheltered housing which specifically caters for older people.
- 1.6 When we refer to “leaseholder accommodation” in this policy we mean leaseholders, shared owners (residents who have purchased a percentage share of the lease of their property) and freeholders who have a service charge liability to the Council.

## **2 Aims and Objectives**

- 2.1 The aim of this policy is to make sure that all reasonable steps are taken by us to collect rent due and minimise the level of arrears and other debts, while also providing support and advice on income maximisation and tenancy sustainment.
- 2.2 We rely on rent income to pay for services to tenants such as tenancy management and repairs. It is therefore essential that rent income is maximised through effective management of rent arrears so that essential services are delivered.

2.3 This policy will assist us to make consistent decisions when preventing, managing and collecting rent arrears and other housing related charges payable to the Council.

### **3 Legal Framework**

3.1 The Council will ensure that this policy meets legislative and good practice requirements contained within the following Acts and Codes of Practice:

- a) Housing Act 1985
- b) Housing Act 1996
- c) Housing Act 2004
- d) Deregulation Act 2014
- e) Landlord and Tenant Act 1985
- f) Pre-Action Protocol for Possession Claims by Social Landlords
- g) Human Rights Act 1998
- h) General Data Protection Regulations 2016 and Data Protection Act 2018
- i) Protection from Eviction Act 1977
- j) Equality Act 2010
- k) Welfare Reform and Work Act 2016
- l) Localism Act 2011
- m) Homelessness Act 2002
- n) Homelessness Reduction Act 2017
- o) The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020

### **4 Our Approach**

4.1 In delivering this policy all officers responsible for rent collection, tenancy sustainment and Financial Inclusion will adopt the following principles:

#### **4.2 Prevention**

4.2.1 We promote a rent payment culture from the start of a Council tenancy by asking tenants to pay their rent in advance and explaining the support we can provide if they fall into financial difficulties.

4.2.2 We recognise the importance of early intervention in preventing arrears building up. We monitor rent accounts regularly and notify tenants when their rent account falls into arrears.

4.2.3 We will always give due regard to a tenant's full circumstances to enable us to take into consideration when addressing each case appropriate. This may include how we provide repayment options and will endeavour to give support and advice on income maximisation at each stage of the arrears process to minimise any arrears of rent. We will use various methods available to contact our tenants including email,

telephone calls, letters, visits and SMS text message. Consideration will be given where we are aware that English is not the tenant's first language or where any other adjustments may need to be made.

### **4.3 Tenancy Sustainment**

4.3.1 Where we know tenants are vulnerable, we will provide advice and support to them on how to sustain their tenancy. If tenants require specialist support, we will make referrals to external support agencies where possible.

4.3.2 Some examples of 'vulnerable' tenants are:

- a) those who are elderly,
- b) those with a disability,
- c) those with illness, or
- d) those whose households include children.

4.3.3 For specialist support, we will make a direct referral to the appropriate agency or department within the Council with the tenant's consent.

4.3.4 Where tenants are in a debt moratorium or experiencing mental health crisis in accordance with the meaning of The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020, we will comply with our obligations of the same.

4.3.5 We will provide advice and guidance to tenants in relation to their income and expenditure and their ability to pay their rent and any arrears that have accrued.

### **4.4 Fair, Clear and Legal**

4.4.1 Our rent arrears processes will comply with our legal obligations as a landlord. When communicating with tenants we will be clear that there is a requirement to pay rent and this is due in advance regardless of the frequency, or source of payment. We will follow the Pre-Action Protocol for Rent Arrears, when appropriate, in managing income collection.

4.4.2 We will give tenants clear information about our reason for contacting them and what we are asking them to do and why.

4.4.3 Where a lease, tenancy agreement or other occupancy agreement permits for interest to be charged, this may be charged at the discretion of the Council.

## **5 Tenant Responsibilities**

5.1 We expect tenants to pay their rent in advance and in accordance with the terms of their tenancy agreement and to let us know if they are unable to make payment.

- 5.2 Joint tenants are jointly and severally responsible for paying their rent and any arrears on their rent account. Joint tenants are also responsible for obtaining any welfare benefits they are entitled to.
- 5.3 Where tenants receive Universal Credit, we will apply for the housing cost element to be paid directly to us if the tenant meets the criteria for alternative payment arrangements in line with the Department for Work and Pension's guidance.
- 5.4 We will look to provide income and welfare benefit advice or sign-posting to those who are experiencing financial difficulties and tenants, leaseholders, shared owners and licensees will be encouraged to utilise this service. We will also advise that they are able to seek independent advice from agencies such as the Citizens Advice Bureau.

## **6 Payment Methods**

- 6.1 We want to make it as easy as possible for tenants to pay their rent but we will encourage all tenants to pay via direct debit. Payments can be made:
- 6.2 By direct debit, standing order, debit/credit card:
  - a) By phone
  - b) Online
  - c) By Swipe card - AllPay
  - d) By Benefit Direct
  - e) By Cheque

## **7 Enforcement**

- 7.1 Tenants will be considered in arrears usually when they have missed one payment. Tenants will be encouraged to settle the amount owed in full immediately. However, where this is not possible, we will look to negotiate an acceptable repayment plan to gradually reduce the arrears owed in order to avoid the need for legal action. This will usually be by securing a lump payment to reduce the amount owed and agreeing a weekly/monthly amount to be paid on top. When calculating the repayment amount we will take into account the circumstances of the household including their income, expenditure and other outstanding debts. We will also take into account the amount of time remaining on a tenancy if it has a fixed term.
- 7.2 Before deciding to take enforcement action we will make sure we have provided the tenant with appropriate advice on income maximisation so they can repay the debt owed to us. We will also make sure that we have provided advice and support where the tenant agrees to engage with such.

- 7.3 Where we are aware that tenants have vulnerabilities, we will check that we have offered to support them or make suitable referrals to external support agencies so that they can sustain their tenancy.
- 7.4 If a tenant fails to clear their arrears owed or come to an acceptable repayment agreement then possession action may be taken. We will serve the appropriate notice to inform the tenant of the enforcement action we intend to take.
- 7.5 Our notices will clearly advise the amount outstanding and the earliest date that Court action can be taken. Advice will be provided on seeking independent legal advice and what steps to take to avoid legal action.
- 7.6 For cases where attempts to arrange an acceptable repayment agreement with the tenant have not been successful, then an application for possession of the property may be made. Any possession proceedings will only be carried out after careful consideration of the circumstances of an individual case.
- 7.7 We will always ask the Court to award Court costs. Tenants will be responsible for payment of these where successfully awarded by the Court.

## **8 Eviction**

- 8.1 For cases where an outright possession order has been granted, or the tenant has breached the terms of a suspended possession order, we will consider taking steps to evict the tenant. This decision will be subject to internal review and approval by the Neighbourhood Services Manager
- 8.2 We will let tenants know why we are taking eviction action and provide details of the Bailiff appointment. We will also contact any known support agencies, so they are aware that the tenancy is in danger of failing. We will follow our consent and information processing policy in doing so.
- 8.3 We will work closely with the housing options team prior to making an application to the court and inform them that we are doing so.

## **9 Former Tenant Arrears**

- 9.1 We will pursue former tenant arrears regardless of the amount and may use a third party to carry this out.
- 9.2 Only where debt is found to be statute barred or otherwise uncollectable, will we consider writing it off as a last resort. All write offs must be approved by Group Head of Residential Services.

## **10 Garage Arrears**

- 10.1 We expect licence charges to be paid regularly in advance in accordance with the garage licence agreement.
- 10.2 Where arrears build up on the licence charges account, we expect them to be cleared in full. If the licensee fails to bring their account up to date, we will serve a Notice to Quit in accordance with the terms of the Licence.
- 10.3 If the garage arrears are not cleared in full on expiry of the Notice to Quit we will change the locks. The licensee is expected to remove all belongings from the garage by the end of the Notice to Quit.
- 10.4 If belongings remain, we will serve a Torts Notice and dispose of them once the Torts Notice expires.

## **11 Leaseholder and Shared Ownership Arrears**

- 11.1 Rent and other charges are usually payable monthly in advance depending on the provisions in the lease.
- 11.2 We will always try to reach an acceptable agreement for any arrears to be cleared by the shared owner or their mortgage lender. Leaseholders and shared owners may have particular circumstances which have contributed to their arrears or impact on their ability to repay the debt. We will use knowledge of such circumstances to inform the arrears repayment plan that we will seek, or legal/ enforcement actions that we take to recover money that is owed or due to the Council. The Council will advise leaseholders and shared owners who are experiencing financial difficulties to seek debt advice from independent agencies such as the Citizens Advice Bureau.
- 11.3 The Council expects all leaseholders and shared owners to pay their rent where applicable and other charges in accordance with their lease. We will regularly monitor accounts and contact those leaseholders and shared owners whose accounts have fallen into arrears. There is no general right to withhold service charge payments and leaseholders and shared owners who withhold service charges will be deemed to be in arrears and subject to this policy.
- 11.4 In the case of leaseholders and shared owners we will normally expect any arrears to be cleared in a maximum of 6 monthly instalments. Payment agreements with more than 6 monthly instalments will usually only be entered into if a substantial lump sum is paid as a first instalment. Payment agreements which are more than 6 months in duration will be approved by a senior manager.
- 11.5 Where a repayment agreement with a leaseholder or shared owner who has a mortgage, we will approach the homeowner's mortgage lender to recover the sums owed. The Council has a legal obligation to do so due to the mortgage lender's



interest in the property. If the mortgage lender agrees to repay the debt outstanding, the amount repaid is usually added to the homeowner's mortgage.

- 11.6 If the Council is unable to recover the debt from the leaseholder or shared owner or its mortgage lender then the Council will commence legal action. We will serve notices on the shared owner's mortgage lender prior to any legal proceedings being taken in accordance with our own procedures and will comply with our legal obligations as a landlord. Approval to commence legal action will be sought from the Group Head of Residential Services and/or Director of Services before any legal action is taken to be satisfied the action is proportionate.
- 11.7 If a leaseholder or shared owner has arrears a County Court claim may be issued against the leaseholder or shared owner. The Council will determine which legal or enforcement action to take on a case by case basis, considering the circumstances of each case. The Council will notify leaseholders in advance of any legal action or enforcement action that it intends to take. Any legal costs incurred by will be added to the debt. If a judgment is obtained in the County Court, it can be enforced in any way that is lawfully available to the Council which may include (note that this is not an exhaustive list of enforcement action):
- a) Request payment from any mortgage lender;
  - b) Forfeiture – where the Council recovers possession of the property;
  - c) Charging Order and/or Order for Sale;
  - d) Voluntary Charge
- 11.8 In the case of shared ownership arrears, should the shared owner fail to enter into a repayment agreement with the Council or fail to comply with a repayment agreement, the Council will consider serving a Notice of Seeking Possession (NOSP). Where the resident has a mortgage lender, the NOSP will also be sent to the mortgage lender. Discretionary grounds for possession will generally be used. However, the use of the mandatory Ground 8 of the 1988 Housing Act will be considered where in excess of eight weeks' or two months' rent is owed.
- 11.9 Where a legal determination has been made by a Court or Tribunal in relation to service charges the service charges will become immediately due and payable in line with the Court order or Tribunal decision and any instalment agreements will be at the discretion of the Council.
- 11.10 Freehold arrears cases will be determined on a case by case basis. The Council will notify freeholders in advance of any legal action that it intends to take.

## **12 Temporary Accommodation Arrears**

- 12.1 We will manage the arrears recovery of any rent or licence charges owed for temporary accommodation in accordance with our own procedures and will comply with our legal obligations as a landlord.

12.2 We will liaise with the housing options team before taking any action to ensure the tenant or licensee is given the correct advice and support to resolve outstanding debt.

12.3 If the tenant fails to engage or make acceptable payments to clear the arrears, we will serve a Notice to Quit and take legal action to seek vacant possession of our property and recover any monies owed.

### **13 Data Protection, Confidentiality and Information Sharing**

13.1 The Council will ensure it complies with the requirements of the General Data Protection Regulations 2016 and Data Protection Act 2018 and its own data protection policies when managing information it holds about its tenants, shared owners or licensees.

### **14 The Equality Act 2010 and The Human Rights Act 1998**

#### **14.1 Equality Act 2010**

14.1.1 The Equality Act 2010 identifies protected characteristics. Examples of these are: age, disability, race, sex, religion or belief, and sexual orientation.

14.1.2 Where required, the Council must in the exercise of its functions have due regard to the need to:

- a) eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation and any other conduct prohibited under the Act)
- b) advance equality of opportunity between people who share a relevant characteristic and people who do not, and
- c) foster good relations between people who share a protected characteristic and people who do not

This is called the Public Sector Equality Duty. The duty may mean treating those with protected characteristic more favourably than others, having due regard to the wider duty. The Courts have held that the public sector equality duty applies to decisions about recovering possession and evictions.

#### **14.2 Human Rights act 1998**

14.2.1 Any interference with a person's human rights must be proportionate to their rights under the Human Rights Act 1998. This means balancing the rights of the individual with the duties and responsibilities of the Council as a landlord. The Council is responsible for showing that the actions it takes are necessary and therefore proportionate. Thus, the principles are directly relevant to the day to day decision making of officers.

14.2.2 These rights do not necessarily prevent the Council from managing its housing stock, but the Council must act in accordance with the law and in a way that is in pursuit of a legitimate aim and both necessary and proportionate. This is a balancing exercise between the human rights of a tenant or occupier and the rights of others. The convention does not prohibit the Council from taking proportionate measures to encourage or enforce payment or other compliance with legal obligations.

## **15 Equalities Impact Assessment**

15.1 This policy will be implemented in accordance with our Equality and Diversity Statement, ensuring that we will not discriminate against anyone on grounds of their protected characteristics. We are committed to equality and diversity. This policy has considered the Equality Act 2010 and we have completed an Equalities Impact Assessment. We will make sure that all of our communication is fully accessible and to achieve this if a policy or document needs to be available in other formats we will provide them.