



## **RENT ARREARS POLICY**

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# **Cadder Housing Association Ltd**

## **Rent Arrears Policy**

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## **1.0 Introduction**

- 1.1 Cadder Housing Association is a registered social landlord, set up in 1994 to improve the living conditions for residents in the Cadder estate in the north of Glasgow. It operates on a “not-for-profit” basis, and is run by an elected Management Committee, consisting mainly of local residents who employ a staff team to manage the Association on a day-to-day basis.
- 1.2 This document outlines the Association’s Rent Arrears Policy, which is one of the key documents we produce. In line with good practice, the underlying principles are to:
  - (i) help tenants avoid accruing arrears on their rent accounts, and;
  - (ii) ensure that these are dealt with in a fair and effective manner when they do.

The Association is committed to prevention of arrears through early action and this will have a positive impact in the prevention of homelessness.
- 1.3 The Association’s main source of income is rents and it is therefore critical that losses in this area are kept to an absolute minimum. Ultimately, high rent arrears could prevent the Association from having sufficient funds to maintain and manage the housing stock in the long term and adversely impact upon day to day services.
- 1.4 The Welfare Reform Act 2012 has introduced many challenges for tenants and the Association. These include the significant reduction in the annual Benefit Cap amount (£26,000 to £20,000); DLA (Disability Living Allowance) claims being cancelled or migrated onto PIP (Personal Independence Payment) at lower rates; stricter DWP sanction regime for benefit claimants; reduced Housing Benefit backdate periods and Universal Credit.
- 1.5 Cadder is amongst the most deprived communities in Scotland. The Scottish Index of Multiple Deprivation (SIMD) is produced by the Scottish Government to map deprivation levels throughout the country. Cadder is represented through four Data Zones, of which its two main Zones are in the most deprived 8% (2016 figures). Previously Cadder’s main Data Zones were in the worst 10% (2012 figures). Revised data confirms that one in three Cadder residents are now ‘Income Deprived’, compared to the Glasgow average of one in five.
- 1.6 This Policy advises of the support measures that the Association has in place for its tenants and its approach to arrears management.

## **2.0 Policy Aims & Objectives**

2.1 The overall aim of the Rent Arrears Policy is to minimise the level of rent arrears in a sensitive but effective manner.

The main objectives of the Policy are:

- To monitor levels of rent arrears and have early intervention mechanisms in place which prevent rent arrears arising
- To offer early, appropriate support and guidance to tenants to reduce rent arrears
- To respond quickly to non-payment of rent and attempt to make personal contact as soon as possible
- To adopt an approach to arrears management which is firm but also focuses on preventing homelessness and takes account of tenants' individual circumstances
- Ensure that actions taken are compliant with legislation and good practice
- To take appropriate action in accordance with the level of the rent arrears
- To promote joint working with relevant external agencies, such as Housing Benefit Department, Department of Work & Pensions, Social Work Services, etc.

## **3.0 Legislation, Regulation & Guidance**

3.1 This policy complies with the following legal requirements:

*Scottish Secure Tenancy* – the Association's tenancy agreement contains specific conditions in relation to the payment of rent and other tenancy related charges. Non-payment of these charges represents a breach of the tenancy conditions involved.

*Housing (Scotland) Act 2001* - the policy adheres to the provisions of the Housing (Scotland) Act 2001, including the guidance in relation to the recovery of possession of a tenancy when a tenant has breached the conditions of their tenancy agreement by accruing rent arrears.

*Homelessness (Scotland) Act 2003* - The Association will comply with the terms of Section 11 of the Homelessness (Scotland) Act 2003 by giving the local authority in the area in which it operates early notice of households at risk of homelessness due to eviction. In compliance with the legislation, notice will be given when raising proceedings for possession or the service of certain other notices as specified in the Act.

Housing (Scotland) Act 2010 – The policy has been drafted to take account of the arrears and eviction related provisions to be introduced through Section 14 of the 2010 Act. These include the provision of clear information to tenants on their tenancy and arrears situation; direct provision of advice and assistance; provision of information about other sources of information and advice; agreeing reasonable repayment plans; and revised arrangements for when a Notice of Proceedings can be served.

Housing (Scotland) Act 2014 – Part 2, Section 6 allows social landlords to set a minimum period before any applicant (except applicants being assessed as homeless by the local authority) is eligible for the allocation of housing for various circumstances, including rent arrears, unless the applicant is taking meaningful steps to repay the debt.

Data Protection Act 1998 - The Association will adhere to the Data Protection Act 1998 in order to ensure that information provided by an applicant or sought by the Association is relevant only to assessing their housing issue and is treated in the strictest confidence. Under the provisions of the Data Protection Act 1998 individuals are entitled to request personal data which is held by the Association. The Association may make a charge covering the administrative costs of providing this information.

Equality Act 2010 - The Equality Act 2010 applies to everyone who provides a service to the public and is based on all persons having the right to be treated with dignity and respect. The Association will ensure that the Equality Act 2010 is adhered to during its management of rent accounts. We will ensure that all residents are treated fairly, with support needs being met when required.

An Equality Impact Assessment accompanies the Policy.

The Bankruptcy and Debt Advice (Scotland) Act 2014 - Sets out the legal framework for recovery of debt, including rent arrears.

### 3.2 Regulation – Scottish Social Housing Charter

The Social Housing Charter came into effect in April 2012 and this sets the standards and outcomes that all social landlords should aim to achieve when performing their housing activities. The Association's Rent Arrears Policy will take account of and comply with the relevant Outcomes contained within the Social Housing Charter:

Outcomes 1; 9; 11; 13:

- (1) 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.

- (9) People at risk of losing their homes get advice on preventing homelessness.
- (11) 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.
- (13) Tenants, owners and other customers receive services that provide continually improving value for the rent and other charges they pay.

The Scottish Housing Regulator is responsible for monitoring, reporting and assessing how well social landlords are achieving the Charter's outcomes and standards. The Association is required to gather evidence to demonstrate to the Regulator, tenants and service users that it is meeting the outcomes, which includes the management of rent arrears.

3.2.1 This policy is aligned to Standard 3 and 5 of the SHR's Regulation Framework:

Standard 3 - 'The RSL manages its resources to ensure its financial well-being and economic effectiveness'.

Standard 5 – 'The RSL conducts its affairs with honesty and integrity'

3.3 Guidance

This Policy has taken account of the guidance contained within Evictions of Tenants in the Social Rent Sector (Scottish Government); Rent Collection under Universal Credit (Chartered Institute of Housing); Managing Rent Arrears (Accounts Commission); Guidance for Social Landlords on Pre-Action Requirements (Scottish Government) and Homelessness Duty Protocol (Glasgow City Council).

<b>4.0 Strategic Objectives</b>
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4.1 The aims and principals of mitigating against non-payment of rent and maximising rental income are aligned to the below Strategic Objectives for 2016-19:

- Provide a high quality housing service that is continually responsive to the expectations of our tenants and other customers
- To engage and build relationships with our customers to ensure our services and activities meet their needs and aspirations of our tenants and other customers
- To invest in our people to ensure they have good knowledge and skills to excel in their role within the Association
- Maintain the financial viability of the Association through sound business planning, control and achievement of best value in all that we do

## **5.0 Consultation**

- 5.1 Consultation with the community and resident participation has always been one of the key aspects of the way in which the Association operates. We therefore welcome the statutory provisions in the Housing (Scotland) Act 2001 which require all social landlords to take tenants' views into account when formulating key service delivery policies.
- 5.2 There are two strands to policy consultation within Cadder:
- ❖ Firstly, we believe it is important to inform all tenants when a policy review is due. Where required, we will provide information on what changes are likely to be proposed by the Association
  - ❖ Where required, the next stage will be to invite feedback from tenants and service users (where applicable) on any changes to the policy, in relation to:
    - how well they feel the proposals address the needs of the community and;
    - whether there are any particular amendments they would like to see.
- 5.3 The Association has a Resident Participation Strategy which outlines our commitment to encourage participation and consultation in the review of our policies and service areas, where required. It clearly states that the Association will only consult on any changes to the policy where these changes significantly affect tenants and service users.
- 5.4 Where appropriate, the Association will also consult with Cadder Community Council and the Cadder Customer Services Working Group (Scrutiny Panel) and any other relevant organisations.

## **6.0 Prevention**

### **New Tenants**

- 6.1.0 The first objective of this policy is to minimise rent arrears through prevention. Prevention should be viewed as the key to the success of the policy. Prevention starts at the beginning of a tenancy, and it is important that all applicants who receive an offer of housing are provided with the following information:
- The monthly rent due
  - Where possible, the rent is due in advance, including the amount due at

sign-up (unless they are entitled to housing benefit / Universal Credit\* which is paid in arrears).

- Advice and assistance with the completion of any Housing Benefit application
- Summary of the Rent Arrears Policy
- Details of the Association's Financial Inclusion services
- Details of the Glasgow Home Energy Advice Team (fuel advice)
- Ways to Pay booklet
- Rent payments should be made by the last day of each month at the very latest
- The Association's Benefits & Debt Advice booklet
- Tenancy Support Service and summary leaflet
- Universal Credit advice and summary booklet

[\*In the case of Universal Credit, there is an initial 6 week waiting period for the first payment and there is no housing element paid within the award for the first seven days]

- 6.1.1 At the sign-up stage, when a new tenant is being taken through the tenancy agreement, the Customer Services Administrator / Coordinator will make the tenant aware of the various methods of paying rent. The procedure for making payments by their preferred method will be explained and, where possible, we will encourage the use of the Direct Debit facility. Where a new tenant applies for Housing Benefit, staff will assist with the application and ask the tenant to authorise payment directly to the Association.
- 6.1.2 Staff will also establish any alternative communication needs, such as other preferred language; large print; sign language or appointed advocate, etc. Where this is established, a flag up message will be placed on our software system (SDM) and Technical Services staff will be informed.
- 6.1.3 The Financial Inclusion Team will attend sign-ups and carry out checks for any other benefits that the new tenant may be entitled to and where required, provide money / debt advice and available services. An assessment of any Housing Benefit claim to be made will also be carried out and the new tenant will be advised of the estimated rent charge and of the amount to be paid. Staff should be particularly aware of any non-dependant deductions that may affect the total amount of Housing Benefit paid and should ensure that tenants are also aware that these will apply. We will remind the tenant that it is their responsibility to ensure that their rent is paid timeously, and this includes the payment of their Housing Benefit by Glasgow City Council. This approach will help to mitigate against rent arrears accruing whilst the Housing Benefit claim is being assessed.
- 6.1.4 We will ensure that single tenants aged under 35 are aware of the pending changes to Housing Benefit payments, which will be aligned to the Local Housing

Award (LHA) rate for Glasgow. This applies to such tenancies which commenced on or after 1 April 2016 and will take effect from 1 April 2019, at which point affected tenants are likely to have a shortfall in any Housing Benefit as Association rent levels are higher than the LHA level, which is based on the shared accommodation rate.

- 6.1.5 Customer Services staff will promote and engage assistance from the Tenancy Support Officer to help new and existing tenants manage issues and sustain the tenancy. Staff will promote the service through tenant engagement and enclosing customised leaflets with correspondence. The service will also be promoted on the Association's website.
- 6.1.6 The Rent Arrears policy and procedure will be explained and the tenant will be provided with a summary leaflet. In particular, the tenant will be advised to contact the Association as soon as they become aware of any problems whatsoever in making the rent payments.
- 6.1.7 The Customer Services Coordinator / Officer will carry out a new tenancy home visit within six weeks of the tenancy commencing. This will be used as an additional measure to discuss any rent problems and the action required to resolve matters.

### **Early Action / Support**

- 6.2 The Association operates a tracking system that monitors the progress of all rent accounts where tenants are in arrears. The tracking system will highlight whether the current balance on an individual tenant's rent account has reduced, increased or remained static against the preceding monthly balance. The information is input into the tracking system from the SDM arrears summary analysis within five working days from the first working day of each calendar month. (SDM is the name of our computer package that holds information on tenant's rent accounts). The Finance Officer should ensure that all rent payments from banks and building societies are processed within 2 working days of being received.
  - 6.2.1 Where arrears have newly accrued or have not reduced in line with arrangements, staff will contact tenants within 5 days to discuss the matters in detail. The tracking system should be used in conjunction with SDM and staff should monitor existing arrears cases depending on their frequency of repayment for example weekly, fortnightly to ensure cases are actioned efficiently.
  - 6.2.2 Staff should place a greater emphasis on personal contact with tenants, i.e. telephone, house visits. Under no circumstances should a new arrear / existing arrear where the tenant has breached their repayment arrangement be allowed to exist for an entire debit period without good effort being made to contact the tenant.
  - 6.2.3 A record of all contact should be kept on the rent accounting diary of the SDM

computer package for the purposes of showing an audit trail. This is extremely important should the Association ultimately take legal action, as poor record keeping may affect the Association's position in Court. Good record keeping is also important for follow-on discussions with the tenant and for other staff members dealing with the account.

- 6.2.4 If, once the tenant has been contacted, it becomes clear that the arrear is not going to be cleared immediately, the involved Customer Services Team member will make an arrangement for repayment. This will be set a fair amount and confirmed in writing. The tenant will be made aware of the Financial Inclusion Team, Tenancy Support Service and the involved staff member contact details.
- 6.2.5 To minimise the risk of arrears increasing in certain accounts, staff will make proactive contact with identified tenants in advance of agreed payments. This approach will be used to remind certain tenants of their due payments and will only be taken with tenants with a poor payment history.
- 6.2.6 The Financial Inclusion Team will be promoted to tenants and benefits checks will be arranged / offered.
- 6.2.7 In addition to the support that will be provided by Customer Services staff, tenants (where required) will be offered supporting services of Glasgow Simon Community (GSC) or Quarriers. GSC and Quarriers bring extensive tenancy support experience and can help assist rent / debt and many other issues. Upon consent, the staff member should complete the appropriate referral form to the support provider and thereafter ensure safe receipt. The referring officer should regularly liaise with the support service until identified issue(s) are suitably addressed.

## **7.0 Rent Collection / Payment Options**

- 7.1 The Association has a variety of payment methods to allow tenants to have accessible and convenient payment options to pay their rent. These are:
- ❖ Swipe cards that can be used at the Post Office and Pay Point outlets
  - ❖ Direct Debit facility through their Bank / Building Society
  - ❖ Housing Benefit direct
  - ❖ Arrears Direct (deductions taken at source from state benefit payment)
  - ❖ Via internet
  - ❖ By telephone
  - ❖ Cheque
  - ❖ Allpay app
  - ❖ Payments at the Association (debit card)
  - ❖ Managed Universal Credit (housing element) payments [where DWP conditions are met]

- 7.1.1 The Association has produced a 'How to Pay' leaflet, which is issued with rent correspondence. This provides details of the above options and is also displayed on the Association's website and reception area.
- 7.2 The Association has a target of updating tenants' payments within two days of receiving the relevant documentation from the payment agent, Allpay or Bank / Building Society for direct debit payments. This will ensure that tenants receive accurate information on their rent accounts. It will also enable staff to concentrate on current rent arrears and take prompt action when agreed / required payments have not been made.

## **8.0 Housing Benefit / Universal Credit**

### **Housing Benefit**

- 8.1 On average, 65% of Cadder tenants receive full or partial Housing Benefit payments. There are two main causes for a disruption to a tenant's Housing Benefit payments. These are:
  - 8.1.1 Many arrears cases occur when tenants undergo a change in their personal circumstances. To ensure the impact of these changes is minimised the Association seeks to identify changes or cancellations in tenants' Housing Benefit entitlement at the earliest stage. This is achieved through the provision of information from Glasgow City Council which advises of changes in tenants' Housing Benefit awards.
  - 8.1.2 As the Housing Benefit Department do not provide details as a result of data protection, the Customer Services Administrator / Coordinator / Officer will establish the reason for the change or cancellation of Housing Benefit entitlement through personally contacting the tenant within 2 working days. In the event that there are no changes in the tenant's circumstances, the tenant will be given assistance to have the Housing Benefit award reinstated. Where there is a change in circumstances the Customer Services Administrator / Coordinator should liaise with the Financial Inclusion Team. This will be with the aim of calculating an approximate rent charge the tenant is due to pay until they receive formal notification from Housing Benefit.
  - 8.1.3 As backdated Housing Benefit payments are now normally only made for a period of one month (previously six months), when suspension notifications are received, it is vital that the Customer Services Administrator / Coordinator (or if involved, the Customer Services Officer) make personal contact with the tenant within two working days. Under no circumstances should a letter to the tenant be a first contact attempt. In such cases, time is a critical factor and every effort should be

made to have the claim reinstated to avoid the claim being cancelled, which will result in arrears being left on the account, even if a new claim from the tenant is successful. The Association has and will continue to inform tenants of the reduced backdated period.

- 8.1.4 The Association will be advised of any identified overpayment of Housing Benefit. The Association's Financial Inclusion Team will then contact the tenant to offer assistance in terms of challenging the overpayment or applying for reduced repayment deductions from the tenant's ongoing Housing Benefit payment.
- 8.1.5 Where Housing Benefit Overpayment demands are made directly to the Association for settlement, these will be forwarded to the Financial Inclusion Team for assessment, as certain demands may be subject to challenge. There will be demands where payment will clearly be due, such as Housing Benefit being paid to a former tenant account after the tenancy has ended, resulting in the account being in credit.
- 8.1.6 The Association will offer to deliver all Housing Benefit forms and other related documents to Glasgow City Council and obtain a receipt for these. This will ensure proof of delivery and avoid delays in tenants submitting forms themselves.
- 8.1.7 Aside from Housing Benefit issues, there are other reasons why an arrear may appear on a rent account. For example, the tenant may be experiencing difficulties in making the rent payments. Whatever the reason, it is clear that early action helps.
- 8.1.8 The Welfare Reform Act 2012 introduced the Social Size Criteria ('Bedroom Tax') within social housing. This has had the effect of reducing Housing Benefit payments (on the eligible rent amount) for working aged tenants under-occupying their homes by one bedroom (14%) or two or more bedrooms (25%). The Scottish Government is currently protecting all tenants against by awarding Discretionary Housing Payments (DHP) to offset the reductions. The Social Size Criteria remains to be an active component of the Welfare Reform Act and is therefore still in place within Scotland. The Scottish Government intends to abolish the 'Bedroom Tax' as part of its Social Security Bill. The Association will assist tenants complete DHP applications for other financial hardship reasons, which causes difficulties in the payment of rent.
- 8.1.9 The tenant should always be made aware of the Association's Financial Inclusion Team, where the clear aim is for tenants and residents of Cadder to receive the benefits / financial assistance they are entitled to and in maximise their income.

### **Universal Credit**

- 8.2 Universal Credit (UC) is being introduced throughout the UK and encompasses

Housing Benefit; Job Seekers Allowance (income bases); Employment & Support Allowance (income based); Income Support; Working Tax Credit and Child Tax Credit into a single monthly payment.

Tenants who receive UC, will normally have their housing costs (Housing Benefit) paid directly into their bank / building society accounts as part of their single payment. This presents a significant risk to rent collection rates and ensuing costs to the Association.

- 8.2.1 The Department of Work & Pensions (DWP) are expected to notify the Association in advance of tenants being moved onto UC. When any such notifications are received, personal contact should be made with the tenant within 2 working days to discuss future rent payments and any identified application for an Alternative Payment Arrangement as result of existing rent arrears and or capacity issues with regard to the tenant's ability to manage the rent account.
- 8.2.2 The Association will assist tenants in making and updating claims for Universal Credit (UC). When it is known that a tenant is migrating onto UC and s/he meets any of the criteria for an Alternative Payment Arrangement (the direct payment of housing costs from Universal Credit to the landlord), we will apply to the DWP for such a payment to be made.
- 8.2.3 The Association will also submit Third Party Deduction applications to the DWP where tenants are in receipt of UC and who have accrued rent arrears of eight weeks or more. This will be carried out within three working days of the rent debit being raised.
- 8.2.4 The Association will provide welfare benefit updates to residents through its newsletter and website and promote its Financial Inclusion service through letters and personal contact with tenants.
- 8.2.5 The Association's liaison meetings with the DWP's Partnership Manager will inform its strategic approach to mitigating the impact of UC. We will also contact the DWPs Partnership Manager when case issues are not being resolved through normal DWP channels.
- 8.2.6 The Social Security (Scotland) Bill, when enacted, will give the Scottish Government the powers to deliver a number of benefits devolved as part of the Scotland Act 2016. It also provides for tenants to have their UC housing costs element paid directly to their landlord and to have UC paid fortnightly.

## **9.0 Making a Fair and Effective Repayment Arrangement**

- 9.1 Outcome 11 of the Scottish Social Housing Charter directs social landlords to ensure that suitable support is available to tenants in rent arrears so as to sustain tenancies. We Will therefore ensure that:-
- The repayment amount will be informed by the amount that the tenant can afford
  - Missed payments will be acted upon quickly (within five days of the arrears tracking system being updated)
- 9.2 A repayment arrangement pro-forma will be completed for all new cases where the arrear will not be cleared prior to the next debit period. When making an arrangement, the staff will:
- Be sensitive and non-threatening whilst communicating the seriousness of the situation
  - Be mindful that some situations can be exacerbated by a home visit, for example domestic abuse. (SFHA's Guidance Booklet 10 "Dealing with Domestic Abuse" discusses ways in which these situations might be handled sensitively)
  - Consider whether the tenant has any particular needs or requirements such as an interpreter or someone to advocate on their behalf and act accordingly, being aware of confidentiality and the Data Protection Act 1998 – a mandate should always be signed, if possible
  - Provide services to meet individual needs. For example, providing interpreters in the case of people with hearing impairments or other communication needs
  - Establish the household composition to assist with our responsibilities to Qualifying Occupiers over the age of 16 in any future legal action
  - Assess whether the tenant could benefit from the services of the Financial Inclusion Team and make a repayment arrangement / an appointment as necessary
  - Discuss future migration of any Housing Benefit payment onto UC and future rent payments
- 9.3 The amount to be paid toward the arrear should be based on the ability of the tenant to afford the payments. There is therefore no minimum or maximum amount except that the equivalent to the DWP Arrears Direct weekly deduction should be paid unless exceptional circumstances prevail. Where required, the Association will apply for Arrears Direct deductions from the tenant's benefit payment for cases with eight weeks' or more rent arrears, which is the minimum level of arrear that the DWP will consider applications for.
- 9.4 The tenant should be made aware of the Financial Inclusion Service and offered a

benefit health check appointment as this may improve household income and the tenant's ability to pay the rent charge.

9.5 A letter should be sent to the tenant in plain language within 5 working days of a new arrangement being made. This should detail:

- The current balance
- The total amount payable broken down into the net charge and the amount going to the arrear
- The frequency of the payments
- How to pay details
- Contact arrangements which the tenant must follow if she/he is unable to adhere to the agreement
- The potential consequences of a breached repayment arrangement and the next stage in the arrears recovery procedure
- Details of the local homelessness service (where applicable)
- Information on the Association's Financial Inclusion Team
- Information on debt services
- Summary copy of the Rent Arrears Policy
- Direct dial telephone numbers of staff
- Court expenses (where applicable)

9.6 In situations where tenants are contacting the Customer Services Team to discuss / confirm basic details relating to their rent account, for example, when missed / late payments will be paid, it will be sufficient to update the SDM diary and only take action where there is non-compliance.

## **10.0 Personal Approach**

10.1 There should be an emphasis on personal contact between Customer Services staff and tenants, as this approach is key to better engagement and improved recovery of outstanding monies. The clear majority of arrears work by staff should involve personal contact being made with tenants. This can be:

- Home visits
- Office Appointments
- Telephone calls
- Text messages
- E-mails

10.2 It is proven that a letter based approach to arrears recovery is less effective than a person based approach. Direct communication allows for improved outcomes for the tenant and can provide a better understanding of presenting issues and in turn, provision of support.

- 10.3 Letters should only be issued at key milestones of the arrears process, such as new repayment arrangements, Housing Benefit awards, court action being raised and court outcomes. Where non-written contacts are made, the staff member should record these on SDM.
- 10.4 The main aim of arrears recovery is to engage quickly and directly with tenants when arrears accrue or increase. Such an approach will mitigate against days being lost on letters being drafted, posted and responses being made by the tenant (if any).
- 10.5 Where the tenant has agreed to carry out a certain task, such as making a payment on a specified date, contacting the Housing Benefit Department, etc., the involved staff member should update SDM and record this on their Outlook Calendar or SDM daily Task run as a check reminder. If the task has not been carried out, the staff member should contact the tenant personally within two working days to discuss matters. Letters should not be the first approach in such situations.
- 10.6 The overall objective of arrears management is the successful recovery of outstanding monies. An over-prescriptive approach is not necessary or conducive to meeting this objective. The approach taken by staff in the management of arrears cases should focus on the outcome, which can be achieved better by ongoing personal contacts with tenants, as opposed to an overuse of letters.

## **11.0 Payment Culture**

- 11.1 The Association promotes a payment culture and continually reminds and supports tenants to make timeous rent payments. This is achieved through:
- Regular newsletter articles
  - Benefit and payment articles placed on website
  - Pro-active work to assist tenants with Housing Benefit forms – new and existing housing benefit claims / reviews and change of circumstances
  - Effective monitoring system to track all new / existing arrears cases that will facilitate early action
  - Letter to tenants confirming rent repayment arrangements within 5 working days
  - Pro-active payment contacts
  - Extensive circulation of the 'How to pay your rent leaflet'
  - Issuing tailored seasonal letters (lead up to festive period)
  - Specific promotion of Direct Debits
  - Payment frequency options (weekly; fortnightly; monthly)

## 12.0 Legal Action

12.1 The Housing (Scotland) Act 2001 allows the Association to take legal action against tenants in arrears under certain circumstances (these are described in more detail below). The Association may take legal action where:

- A tenant fails to co-operate in reducing the arrears
- The repayment arrangement is repeatedly broken

12.1.1 Legal action is a serious matter that could result in a tenant losing his/her home and, as such, it will not be entered into lightly. The converse of this is that, when legal action is started, it will be on the basis that the Association is prepared to carry it out and ultimately evict the tenant. Tenants will therefore be made aware that the sanction of legal action is not viewed as an empty threat.

### Legal Remedies

12.2 The Association may take one of the following:

- Seek to recover the property only
- Seek to recover the arrear only (with the tenant remaining in the property)
- Seek to recover both the property and the arrear – this is known as a conjoined action.

12.2.1 The Association's policy is to pursue a conjoined action. In the event that the Sheriff rules in favour of the Association, an award of legal expenses against the tenant will also be sought by the Association's attending solicitor.

### The Procedure for Taking Legal Action

12.3. The procedure for serving a Notice of Proceedings is governed by section 14(2) of the Housing (Scotland) Act 2001 and applies to all of the Association's tenants. The Notice must state the grounds for recovery and the date after which the Association can raise recovery proceedings. The relevant ground for recovery for rent arrears is Ground 1, Schedule 2, Part 1, which states:

*“Rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy has been broken.”*

## **Pre Action Requirements**

12.4 As introduced by the Housing (Scotland) Act 2010, the Association will be compliant with pre-action requirements that landlords must meet before serving a Notice on a tenant. We will ensure that the following criteria have been fulfilled upon a Notice being issued:-

1. That the Association has given clear information about the tenancy agreement and the unpaid rent or other financial obligations;
2. That the Association has made reasonable efforts to give help and advice on eligibility for housing benefit and other types of financial assistance;
3. That the Association has given information about sources of help and advice with the management of debt;
4. That the Association has made reasonable efforts to agree with the tenant a reasonable plan for future payments;
5. That the Association has considered the likely result of any application for housing benefit that has not yet been decided;
6. The Association has considered other steps the tenant is taking which are likely to result in payment within a reasonable time;
7. The Association will have considered whether the tenant is complying with the terms of an agreed plan for future payments; and
8. It can be shown that the Association has encouraged the tenant to contact their local authority (where the local authority is not the landlord).

When preparing Notices, staff must be mindful of the above criteria and evidence within the body of issued Notices how these have been considered / met.

## **Homelessness (Scotland) Act 2003 - Section 11**

12.5 Section 11 of the Homelessness etc (Scotland) Act 2003 requires that landlords notify their local authority when court action is raised against a tenant.

12.5.1 The Association's solicitors will issue Glasgow City Council (GCC) with a Section 11 Notice when court actions are raised on behalf of the Association. A copy of the Notice will be e-mailed to the Association. This will provide GCC's Social Work Services Department the opportunity to contact the Association to discuss any cases.

12.5.2 The Customer Services Coordinator / Officer will be responsible for ensuring that Section 11 activities are recorded on SDM and the tenant's file.

### **The Right of Non-Tenants to be Heard in Court**

12.6 All persons aged 16 years of age and over are categorised as 'Qualifying Occupiers' within the provisions of the Housing (Scotland) Act 2001 and therefore, have the right to be heard in Court. Qualifying Occupiers can include:

- A member of the tenant's family
- A person to whom the tenant has assigned or sub-let part or all of the tenancy
- A person whom the tenant has taken in as a lodger, with the consent of the Association

12.6.1 There may, of course, be situations where the Association is unaware that someone has moved into the household and, therefore, the Notice is not served to that person.

12.6.2 There is a contractual duty upon tenants to keep their landlord (Cadder Housing Association) informed of all those living in the property but, nevertheless, failure to include qualifying known Qualifying Occupiers in a legal action could invalidate the action. The Association's approach will be to take all reasonable steps to ingather updated information. For example:

- ❖ Check household composition when carrying out arrears interviews, particularly when completing the income and expenditure pro-forma.
- ❖ Emphasise the requirement to keep the Association informed of who is living in the property at the sign-up, including successions and assignments
- ❖ Letter all tenants to confirm occupants of the house prior to issuing Notices, and where there is no response a house visit will be carried out.

### **When Should Legal Action be Taken?**

12.7 When an arrear occurs or an arrangement is broken, the Association will make personal contact with the tenant within five / one working day(s). If there is no contact within another five working days, the Customer Services Coordinator / Officer, once he/she is reasonably satisfied that the tenant is not away from their home, should issue an arrears letter requesting the tenant to make contact within five days, as well as carrying out a visit to the tenant's home. If the tenant still does not respond, then a second letter should be sent with an appointment for interview in either the tenant's home or the Association's office. At this time, the tenant should also be advised that failure to attend the appointment (or contact the Association to arrange a more suitable time) will result in the first stage of legal

action being taken – the summary Rent Arrears Policy should be included at this stage.

12.7.1 The purpose of the above is to help ensure that an arrangement for repaying the arrear is made before a second monthly charge is raised. If no contact is made, however, the second missed charge may occur. In addition to issued letters, the responsible staff should also make regular efforts to personally contact the tenant if required, and these should be recorded on the tenant's file within SDM.

12.7.2 By the time the tenant has missed an appointment, two charges will have been missed and the Association should prepare the Notice of Proceedings for Recovery of Possession (Notice).

The Association will consider serving legal notices on tenants who are in rent arrears to facilitate legal action. The decision will be based on reasonability and the following factors will be taken into account: -

- ❖ Level of arrears
- ❖ Continued non-payment of rent
- ❖ Number of breached repayment arrangements
- ❖ Responses to communication or contact from the Association to set repayment arrangement
- ❖ Maintenance of repayment arrangement.

Staff will be mindful of the criteria set with the Pre-Action requirements as contained within the Housing (Scotland) Act 2010.

### **Authorising Legal Action**

12.8 The Customer Services Coordinator / Officer will have the discretion to decide whether a Notice should be served within the terms of the policy.

Staff should record the reasons for issuing a Notice, the covering letter to the Notice that is issued to the tenant and qualifying occupiers and the SDM Diary facility. In cases where a Notice is not issued, the responsible staff member should detail the reasons in the SDM diary for not issuing a Notice.

12.8.1 The Customer Services Coordinator / Officer should identify any cases being considered for court action to the Customer Services Team Leader / Manager. The Customer Services Team Leader (or in his /her absence the Customer Services Manager) will interview all tenants before court action is initiated to reinforce the seriousness of the situation and thereafter, the importance of maintaining their repayment arrangement up to and beyond a court calling date. To ensure the tenant has maximised their entitlement to housing and other benefits, they will be

encouraged to meet with the Association’s Financial Inclusion Team.

Where tenants fail to attend a meeting with the Customer Services Team Leader / Manager, a letter will be issued to the tenant, confirming their non-attendance. The letter will inform the tenant of required actions / payments and that court action may / will be taken.

Tenants will also be advised of available debt advisory services, such as Citizens Advice Bureau.

12.8.2 In the event that there continues to be non-payment of rent and/or a breach of the repayment arrangement the decisions for and during the formal court action will be delegated as follows:

Action	Delegated Authority
Decision to commence / recall formal court action on the grounds of non-payment of rent	Customer Services Team Leader / Manager
Decisions that would not result in the award of an order for repossession being granted, for example continuation, sist.	Customer Services Officer / Team Leader
Decisions to pursue a decree for repossession	Customer Services Officer / Team Leader
Decision to enforce the decree and evict the tenant from their tenancy	Management Committee

12.8.3 Where court action is raised against a tenant, the Customer Services Officer will issue letters to the tenant, Social Work Services and the North West Homeless Casework Team, advising that the case has been passed to the Association’s solicitors for proceedings to be raised at Glasgow Sheriff Court. The Customer Services Officer will record the issuing of these letters on SDM. This will support the Section 11 process. The Customer Services Officer will keep the tenant and agencies updated in matters relating to court outcomes.

12.8.4 When Decree for eviction has been obtained against a tenant, the Customer Services Team Leader will provide a report to Committee for its consideration. The Committee will decide whether to evict the tenant or otherwise. The report will contain household composition details, an overview of the case history, other relevant information and a recommendation. At no point, will the identity of the

tenant be revealed to Committee.

- 12.8.5 The Customer Services Team Leader will write to the tenant in advance of the Committee meeting, advising of the award of Decree and the pending decision to be made by Committee. The tenant will be encouraged to contact the Association and will be provided with a copy of the Association's summary Arrears Policy booklet, which contains details of advice / support agencies.
- 12.8.6 Where the Committee decides to evict the tenant, the Association will advise the tenant of their decision. In addition we will, subject to Data Protection considerations, contact Social Work Services and Glasgow's Homelessness service (North West Community Casework Team).
- 12.8.7 Where Committee authorise enforcement of Decree, the Customer Services Officer will notify its solicitors to prepare necessary notification to the tenant. Such notification of eviction will be arranged through sheriff officers and will provide the tenant with a minimum period of 14 days notice [Bankruptcy and Diligence etc. (Scotland) Act 2007].
- 12.8.8 The Director / Customer Services Manager will keep Committee updated in matters after their decision has been reached. Committee will be advised if decrees have been enforced or otherwise.

## **13.0 Violent Profits**

- 13.1 When a Decree is granted, there is often a delay between obtaining the Decree and deciding whether to evict the tenant. Any money paid by the tenant during this time should be treated as "violent profits" as opposed to rent – this should be made clear to the tenant, preferably via his/her solicitor. This is because the Association may be adjudged to have created a new tenancy through accepting rental payments, thus effectively rendering the Decree meaningless.
- 13.2 Where the issue of violent profits arises, the Customer Services Officer / Team Leader should liaise with the Finance Officer to ensure that a separate account exists for the money to be deposited.

## **14.0 Other Arrear Types**

This section deals with other types of arrears, they are

- ❖ Technical arrears and
- ❖ Former tenant arrears
- ❖ Sequestered Arrears

- ❖ Committee member arrears

### **Technical Arrears**

14.1 The Association will categorise technical arrears as:

- ❖ The amount that is due as Housing Benefit is paid 4 weekly against the monthly rent debit
- ❖ Monies that are due from Housing Benefit but to date have not been paid due to delays in processing Housing Benefit claims
- ❖ Where the Customer Services Team staff member is satisfied that the amount owed is going to be cleared once Housing Benefit is paid, for example claimants in receipt of income support. The Association's approach will involve contacting the Housing Benefit Department with a view to securing payment as soon as possible – this is preferable to trying to get the tenant to make payments that they are likely to be unable to afford

14.1.1 The Customer Services Team staff member must be satisfied that the Housing Benefit will be paid. The steps to be taken will depend on individual circumstances, but are likely to involve the following:

- ❖ Confirmation of the tenant's income and whether or not they receive Income Support or income based Job Seeker's Allowance
- ❖ Details of any non-dependants living in the household and their ages/income levels in order to determine the amount of any deductions
- ❖ Confirmation that a benefit claim has been made and that any award is going to be backdated

14.1.2 If an arrear that is thought to be technical is not ultimately covered by Housing Benefit, then it will become a non-technical arrear and will be pursued in the usual manner.

### **Former Tenant Arrears**

14.2 The Association will adopt the principle of early action in pursuing payment of arrears of rent from former tenants. The Customer Services Coordinator / Officer will seek a repayment arrangement and forwarding address details with a tenant who is in arrears of rent and wishes to terminate their tenancy. The Association will monitor compliance with any repayment arrangement from a former tenant. In the event that a former tenant fails to maintain their repayment arrangement on more than one occasion their case will be forwarded to the Association's Solicitors for management by their Debt Collection Department.

14.2.1 In situations where the tenant terminates the tenancy but has not agreed a repayment arrangement and provided a forwarding address, the Customer Services Administrator / Coordinator will make reasonable investigations to establish the former tenant's forwarding address. The Customer Services Administrator / Coordinator will issue arrears letters to the former tenant in the following sequence and timescales following their date of leaving:

- 1<sup>st</sup> Letter - Will include balance details and encourage the tenant to make contact with Association. This letter will be issued within 5 working days of the date of leaving
- 2<sup>nd</sup> Letter - Will again provide balance details and advise the tenant of potential legal proceedings should they continue not to respond to this matter. The tenant will be encouraged to contact the Association to agree a repayment arrangement. This letter will be issued within 10 working days from non-response to letter 1
- Final Letter - Will confirm that the case will be the subject of legal proceedings should the tenant fail to respond to this matter. It will highlight the implications of possible legal action, for example Payment Decree. This letter will be issued within 10 working days from non-response to letter 2.

Thereafter the case will be forwarded to our solicitors to issue a 7 day letter, which informs the former tenant of possible court action and to contact the Association to make an arrangement.

14.2.3 If at any time the tenant's address is not known and/or correspondence is returned 'gone away', the case will be forwarded to the Association's solicitors to trace the former tenant's new address.

14.2.4 There can be considerable practical problems in pursuing former tenant rent arrears and this has tended to lead to low collection rates across the housing association movement. It may therefore not be economical for the Association to pursue amounts where: -

- ❖ The balance outstanding is low
- ❖ Despite attempts to find out the forwarding address, this is still not known
- ❖ It is estimated that the incurred legal costs will be high and therefore not proportionate to the amount owed

### **Sequestration**

14.3 The Association will declare a tenant debt as part of the sequestration/ trust deed process to the Accountant in Bankruptcy/ Insolvency Firm. However, it is rare for these debts to be repaid once declared and approved as part of a sequestration. As

a result the Association will consider writing off sequestered balances through Committee approval when the Accountant in Bankruptcy has confirmed details.

- 14.3.1 Bad debt write off reports are normally submitted to Committee for consideration in September and March.
- 14.3.2 Sequestered tenants must maintain their ongoing rent payments after a sequestration is in place. If they do not, then legal action will be considered as normal against any new debt.

### **Committee Member Arrears**

- 14.4 The Management Committee is responsible for determining the Association's Rent Arrears Policy and considers individual arrears cases.
  - 14.4.1 It is therefore important that there should be no conflict of interest for committee members in arrears making decisions on arrears policy or deciding on action against tenants in arrears.
  - 14.4.2 Management Committee members in rent arrears must declare an interest at any meeting where the topic being discussed involves rent arrears.
  - 14.4.3 Also, the Rules of the Association state that a Management Committee member is ineligible to serve on the Committee if he/she is involved in any legal proceedings in any Court of Law by or against the Association.

## **15.0 Liaison with Other Agencies**

The Association will work closely with other agencies to pursue the objectives of this policy, as well as complying with relevant law such as Housing (Scotland) Act 2001, Housing (Scotland) Act 2010, Homelessness (Scotland) Act 2003, and Children (Scotland) Act 1995. Our work with these organisations centers on both operational (tenant) and strategic levels.

### **15.1 Glasgow City Council – Housing Benefit Department**

In view of the tenants who are in receipt of full or partial Housing Benefit payments, there inevitably has to be a close working relationship between Housing Benefit and Association staff, which will involve: -

- ❖ Discussion about individual cases
- ❖ Support to maximise the return of housing benefit review application forms
- ❖ Meetings to discuss the service delivery and performance

The Association's day to day contacts with the Housing Benefit Department are supported with regular liaison meetings with senior Housing Benefit officers, which mainly discuss current / pending benefit issues and strategy.

#### **15.2 Glasgow City Council – Social Work Department**

The Association will liaise closely with the Social Work Department in the event of potential court action for elderly tenants, tenants with children or tenants who may be vulnerable (for example mental health issues).

The Social Work Department will be kept fully informed of progress and in particular where the Association receives a Decree for eviction and the Management Committee agrees for its enforcement.

#### **15.3 Glasgow City Council – Homelessness Service**

The Local Authority has the statutory duty to deal with homeless persons and the Association will advise any tenant who is to be evicted from their home and are unable to secure alternative accommodation to contact the City Council's Homelessness Service.

They will provide advice on the tenant's options for re-housing following the enforcement of the Decree. The Code of Guidance on Homelessness, 2005, Paragraph 7.17 states, "It should not be assumed automatically that an applicant is intentionally homeless where they have lost their accommodation because of rent or mortgage arrears. Reasons should be fully explored and decisions made as to whether arrears resulted from deliberate acts or omissions".

The Association will advise the North West Community Casework Team of the impending eviction of the tenant whilst observing the Data Protection Act 1998.

#### **15.4 Department of Work & Pensions**

The Association will liaise with DWP on strategic and operational levels through its set regular meetings in relation to the benefit issues / changes, introduced by means of the Welfare Reform Act 2012. There will be particular focus on Universal Credit and its expansion and effects on Cadder tenants and collection of rent.

#### **15.5 SFHA / GWSF / SHN**

The Association has active membership of the Scottish Federation of Housing Associations (SFHA); Glasgow & West of Scotland Forum of Housing Associations and Scotland's Housing Network.

These memberships provide for attendance at forums, benchmarking, knowledge /

good practice sharing and guidance on welfare reform related matters.

The Association receives regular updates from the organisations and enjoys access to their welfare reform libraries on their respective websites.

### **Other Agencies**

- 15.6 The Association will liaise with other agencies who represent the interests of our tenants to ensure they receive the current situation regarding the tenant's rent account. The Association in observing the Data Protection Act 1998 will require a mandate from the tenant to allow for discussion with their representatives on the tenant's rent situation. These agencies include the Department of Work & Pensions, Citizens Advice Bureau, Ethnic Minority Law Centre, Glasgow Simon Community, Quarriers, Positive Action in Housing, Shelter, Legal Services Agency.

The Association will also make referrals to these organisations on the agreement of the tenant.

## **16.0 Performance Monitoring**

- 16.1 In order to measure the success of this policy and procedure, Committee will monitor performance on a quarterly basis. Individual cases will not be considered (apart from when there is an eviction Decree), rather performance against targets and trends in evidence will be examined.
- 16.2 The Committee will agree an annual target for non-technical arrears as part of the internal management planning process. The annual target for non-technical arrears will be confirmed to the Customer Services Team. The Customer Services Team Leader will monitor arrears performance each month, ensuring cases are being managed effectively by involved staff.
- 16.3 The Customer Services Team Leader will meet bi-monthly with Customer Services staff to assess individual arrears cases. Progress will be also monitored monthly through assessment of the performance indicators / targets at both Area and Association level, these are:
- ❖ The total amount of rent arrears (technical, non-technical and former tenant)
  - ❖ Arrears owed as a percentage of the annual rent debit
  - ❖ Trends
  - ❖ Comparisons with similar sized RSLs
  - ❖ The number of tenants in arrears and the amount in each banding:

£0–250	(Customer Services Administrator)
£251–1,000	(Customer Services Coordinator)
£1,000+	(Customer Services Officer)

- ❖ The number of Notices currently effective
- ❖ The number of court cases pending
- ❖ Measure notice and court cases by age, gender, race

- 16.4 The Customer Services Team Leader will carry out audits of a random sample of arrears cases each month to ensure policy, procedural, legislative and good practice compliance. These outcomes from these monthly audits will be collated and reported to Committee each year. This audit will compliment the Association’s internal and external audit schedules, as well as the inspection by the Scottish Housing Regulator.
- 16.5 An annual statement on arrears will be made in the Annual Report and Annual Report on the Charter.
- 16.6 The Association recognises the risks that rent arrears and welfare reform present to its Business Plan and this is affirmed by their inclusion within the Association’s Corporate Risk Register and Internal Management Plan, which provides for a further level of monitoring.
- 16.7 The Association also has a Welfare Reform Action Plan which is regularly updated and reported to Committee. This advices of current and pending risks to tenants and the Association and of the mitigations actions being taken.

<b>17.0 Review</b>
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- 17.1 This policy will be reviewed in line with the Association’s Risk Management Strategy
- 17.2 This Policy will be reviewed in August 2020, or earlier to take account of: -
- ❖ Legislative, regulatory and good practice requirements
  - ❖ Association performance
  - ❖ The views of tenants and staff