

**The Moray Council  
Community Services Department**

**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 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 offer early appropriate professional support and guidance to tenants to reduce rent arrears;
- To monitor levels of rent arrears and have early intervention mechanisms in place which prevent rent arrears arising;
- To take appropriate action in accordance with the level of rent arrears;
- To prevent homelessness arising and assist in the Councils wider strategic objectives.

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

- The Council's rent service is fair, equitable 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 across the service;
- Staff training is provided to ensure that staff are equipped to carry out the roles expected of them; and
- Communication with tenants and service users is in “plain language” and will make clear who the appropriate officer is to contact in the case of queries.

#### **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. This will include the following:-

##### Tenancy Agreement

It is the Council's duty to enforce the terms of the Council's Scottish Secure Tenancy Agreement to protect the interests of the Council. Specifically, Section 1.5, Terms of rent payable.

"The rent is £... every week payable in advance by you on or before the first day of each rental period."

##### Housing (Scotland) Act 2001

Where legal action is taken to recover arrears, the Council will comply with the rules as specified in the Housing (Scotland) Act 2001.

##### Data Protection Act 1998 and Freedom of Information Act (Scotland) 2002

The Council holds personal information about its' tenants which enables it to provide a housing service. It has a duty to handle this information responsibly and to respect the privacy of its tenants. It may only share this information with other Council departments and other agencies where we are legally required to do so.

Individuals are entitled to know what personal information the Council holds about them and to have any inaccuracies in that information corrected.

The Council also holds housing information such as policies, procedures and budgetary details. It aims to make as much of this information as possible available to the public through its publication scheme.

##### Matrimonial Homes (Family Protection) (Scotland) Act 1981

The Council will comply with the terms of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 when providing advice on the occupancy rights to people whose home is at risk due to eviction.

##### Housing (Scotland) Act 1987

The Council will comply with the Housing (Scotland) Act 1987 when providing advice to people whose home is at risk due to eviction.

##### Homelessness etc. (Scotland) Act 2003

The Council will comply with the Homelessness etc. (Scotland) Act 2003 when providing advice to people whose home is at risk due to eviction.

### Debt Arrangement and Attachment (Scotland) Act 2002

In the event that legal action is required, the Council will comply with the Debt Arrangement and Attachment (Scotland) Act 2002. Section 4 (2) of the Debt Arrangement and Attachment (Scotland) Act 2002 implies that the Council can still raise proceedings but cannot commence with "diligence" to enforce payment. This means that a Council can still raise an action for recovery of arrears but sists this to enable payments to rent and arrears by the way of the Debt Payment Programme. This will protect the Council's position in the event that payments are missed in terms of the Debt Arrangement Scheme.

## **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 that may affect their ability to pay their rent.
- 5.5 Tenants can choose to pay their rent from one of the following methods: -
  - Cash or cheque
  - Standing Order
  - Direct Debit
  - Credit or Debit Card
  - Post Office Giro (for tenants in Rural Areas)

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

- 6.1 At the start of a tenancy, the Council will make every effort to ensure that the tenant is informed of all costs associated with their tenancy. Tenants will be encouraged to complete application forms for Housing Benefit when signing a tenancy agreement.
- 6.2 Tenants will be offered help and advice on money management and welfare benefits, including an assessment of their entitlement to Housing Benefit and Income Support, where appropriate.
- 6.3 Where tenants experience difficulty with the completion of a benefits application form, assistance will be provided by housing staff, or a referral to the Housing Benefits or Welfare Benefit sections of the Council will be arranged.

- 6.4 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. Assessment, Support and Liaison with Other Agencies**

- 7.1 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. (Para 9.4)

- 7.2 During the assessment, the tenant in arrears, in consultation with the Area Housing Officer will be asked to identify possible sources of support. These may include: -

- Family/household members;
- Social Work;
- Trading Standards Section;
- Housing Benefit;
- Welfare Benefits;
- Homelessness Services;
- Dept of Work and Pensions;
- Moray Advocacy Service;
- Citizens Advice Bureau; and
- Any other appropriate voluntary agency.

## **8. Rent Arrears Recovery**

- 8.1 Rent arrears recovery will be based on a staged escalation process, up to and including repossession for non-payment of rent.

- 8.2 The process will be based on a preventative approach that seeks to maximise tenants' entitlement to benefits and secure regular payments. Emphasis will be placed on intensive management and personal contact by the Area Housing Officer whilst arrears are at a relatively low level, in order to prevent the escalation of arrears.

- 8.3 The Council will consider Legal action to recover rent arrears where management actions prove ineffective.

## **9. Early Action**

- 9.1 The Council will ensure that there is early intervention in rent arrears before a debt becomes unmanageable.

- 9.2 Housing staff will monitor rent accounts on a weekly basis.

- 9.3 Arrears control and recovery action will be activated as soon as a rent account falls into arrears.

- 9.4 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.
- 9.5 The Council will maintain a comprehensive record of all action taken and contact with a tenant in arrears.
- 9.6 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.
- 9.7 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.
- 9.8 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;
  - 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; and
  - Encourage tenants to advise the Council of a change in their circumstances that may affect their ability to pay rent.

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

- 10.1 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.
- 10.2 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.
- 10.3 Emphasis will continue on personal contact and ensuring that family members where appropriate are involved.

## **11. Repayment Arrangements**

- 11.1 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 ability to pay.
- 11.2 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.
- 11.3 Once the tenant has made an agreement to repay arrears, the rent account of the tenant will continue to be monitored. If payments continue to be missed, further action will be taken.

## **12. Legal Action**

- 12.1 Legal action is the last stage in the rent arrears process. 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. The court may make either (or both) an order for recovery of possession or an order for repayment. An award of court expenses will be sought.
- 12.2 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.
- 12.3 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.
- 12.4 Tenants will be kept informed and fully involved of the legal process involved in 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.

- 12.5 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.
- 12.6 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.
- 12.7 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. Former Tenant Arrears**

- 13.1 Former tenants are tenants who have terminated a tenancy and have outstanding rent arrears related to the property vacated.
- 13.2 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.
- 13.3 Arrears control and recovery action will be activated when the status of the tenancy changes to former tenant.
- 13.4 Former tenants in arrears will be encouraged to agree a repayment plan that is affordable and sustainable.
- 13.5 Detailed procedures for arrears recovery ensure that each case will be regularly monitored and appropriate action taken.
- 13.6 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.
- 13.7 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.
- 13.8 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.
- 13.9 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.

## **14. Lock-up Garage Rent Arrears**

- 14.1 The collection of any arrears of rent for a lock-up garage will be managed in accordance with the Moray Council's Debt Management Policy.
- 14.2 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.

## **15. Complaints and Review Process**

- 15.1 The Council operates a Complaints Procedure that is available to any applicant 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 Office or Access Point.
- 15.2 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. 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 Senior Area Housing Manager.

## **16. Performance Monitoring**

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

### **Statutory Performance Indicators**

- Current tenant arrears as a percentage of the net rent due in the financial year
- The Percentage of current tenants owing more than 13 weeks rent excluding those owing less than £250

### **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
- 16.2 The Community Services Committee of the Council will annually agree targets for current tenant arrears as a percentage of the net rent due in the financial year.

- 16.3 The performance indicators detailed in paragraph 15.1 will be reported quarterly to the Community Services Committee.
- 16.4 The Council will review the Rent Arrears Policy in April 2007. Amendments will be made as required after consultation with service users and other agencies.