RENT ARREARS AND DEBT COLLECTION POLICY

ORKNEY Housing Association

Written by:	**Director of Housing & Operations**	Version:	**3**
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1. Introduction

1.1 The Association provides a range of services for which charges are payable. Rental income and payment of these charges is the main source of revenue for the Association and therefore it is important that we adopt rigorous policies and procedures around their collection.

1.2 We recognise that effective prevention and management of arrears is essential for maximising rental and service income. Our aim is to promote early intervention to prevent debt from accruing and to sustain tenancies.

1.3 This policy relates to all properties owned by the Association and to the people for whom we provide a service. The scope encompasses:

- Rent
- Service charges
- Occupancy charges
- Factoring charges
- Rechargeable Repairs
- Former tenant debts
- Recovery of legal or administrative costs incurred in the recovery of the above

1.4 This policy complies with the following Social Housing Charter (2022) outcomes:

- Outcome 1 – Equalities
- Outcome 2 – Communication
- Outcome 11 – Tenancy Sustainment
- Outcome 13 – Value for money
- Outcome 14 & 15 – Rents & Service Charges

1.5 The policy and its implementation will reflect the Association's statutory and contractual obligations. These include but are not limited to:

- The **Scottish Secure Tenancy** used by the Association describes the obligation that tenants have to pay rent and the required frequency of payment.

- The **Exclusive Occupancy Agreement** used by the Association describes the obligation that sharing owners have to pay their occupancy charge and the required frequency of payment.
- **Housing (Scotland) Act 2001** sets out the legal framework for any action by the Association to recover tenancies on the grounds of rent arrears.
- **Housing (Scotland) Act 2010** sets the standards and outcomes of the Scottish Social Housing Charter that all social landlords should aim to achieve when performing their housing activities and defines the legal obligations of the pre-action requirements.
- **Housing (Scotland) Act 2025** details specific requirements in terms of Domestic Abuse and amends Section 32 of the 2010 Act in relation to support that RSL's should provide to victims or those at risk of domestic abuse.
- **The Data Protection Act 2018** requires us to observe certain conditions regarding the gathering and sharing of information about residents.
- **The Homelessness etc (Scotland) Act 2003** requires us to notify Orkney Islands Council (OIC) if we are raising proceedings to recover a tenancy.
- **The Debtors Scotland Act 1987** enables us to seek wages arrestment from tenants owing rent arrears.
- **Property Factors (Scotland) Act 2011:** Code of conduct for property factors.
- **Bankruptcy (Scotland) Act 1985 (Low Income, Low Asset Debtors etc) Regulation 2008** introduced the **Common Financial Tool** to ensure fairness and consistency in the assessment of household income & expenditure.
- **The Equality Act 2010**.
- **Statutory Instrument 2012 No 127 Pre-Action Requirements Order 2012,** which requires RSLs to provide clear information to the tenant and to make reasonable efforts to provide advice and assistance to the tenant.
- **The Welfare Reform Act 2012,** introduced Universal Credit.

2. Objectives

2.1 The objectives of this policy are to ensure that:

- We have effective controls in place and a range of payment options available to maximise rental income and minimise debt.
- All residents know how much they are due to pay, when they are due to pay and how often they are expected to pay.
- All residents who need advice services will be referred or signposted to external agencies that can provide independent advice on welfare benefits, budgeting assistance or debt advice.
- We have a culture of tenancy sustainment where prevention and management of arrears and debt are a high priority.
- We monitor our performance in debt management and income collection by means of regular reports, target setting and benchmarking against other Registered Social Landlords (RSLs).

The prevention and effective management of arrears and debt is essential for the following reasons:

- To enable the Association to maintain and improve its housing stock
- To provide the resources needed for service delivery
- To ensure the Association's overall financial viability
- Tenancy sustainment

3. Debt Prevention

3.1 The Association recognises that the key to debt management is prevention. This is achieved through a pro-active approach to debt collection and providing residents with information, support and working with partner agencies in more complex cases.

New Tenants/Residents

- During the allocation process, applicants are advised of the rental and service charge of the property through the advert and formal offer of accommodation.
- During the Pre-Tenancy Check, applicants are asked how they intend to make their rent payments, and if they require any additional support with managing their income, tenancy and payments.
- At property handover, staff will discuss the rental charge of the property, entitlement to Universal Credit/Housing Benefit, any other relevant tenancy support and establish the applicant's preferred method of payment
- New tenants/residents will be advised of their responsibility to pay rent/ occupancy charge and this is confirmed in writing both at offer and handover stage.
- If a new tenant/resident is entitled to Housing Benefit or Universal Credit, Association staff will offer assistance to complete their initial claim. If required, a referral will be considered for specialist advice from an external agency. Tenants/residents will be advised of the importance of notifying either the Department of Work and Pensions (DWP) or the OIC Housing Benefits section, along with their Housing Officer, if there are changes to their household circumstances that may affect their housing cost entitlement.
- If a tenant is deemed to be under-occupying in accordance with the DWP criteria, staff will complete an application for Discretionary Housing Payments with the tenant and submit this to the Housing Benefit Department.
- Within 6 weeks of the tenancy starting, Housing Services staff will carry out a settling in visit. This is a useful and important opportunity to pick up on any potential or actual rent payment problems.

Existing Tenants/Residents

- All tenants/residents will be encouraged to approach the Association in the event of any change in household circumstances or income that may affect their ability to pay their charges.

- Association staff will seek to develop an empathetic and non-judgemental approach, which encourages early and sustained contact with tenants.
- The Association will use newsletter articles, our website, Facebook page and routine contact on tenancy matters to make all of its tenants/residents aware periodically of:
    - The importance of paying rent/occupancy charge
    - The importance of contacting the Association at the earliest possible stage if difficulties in paying rent/occupancy charge are being experienced.
    - Availability of advice and support services in Orkney
    - Fundamental changes to welfare benefits
    - Contacting the tenant/resident as soon as an account goes into arrears
    - Utilising a variety of contact methods such as phone call, text, email, evening visit to advise when arrears accrue.

Factoring

- Purchasers of a property, that receives a factoring service, should be notified by their legal representatives of the factoring charges they will be liable for and what they cover, prior to the sale completion.
- When the Association are made aware of a change of ownership we contact the new owner with details of the current factoring charge, what elements they cover along with a Statement of Service.
- All Factored residents are written to on an annual basis confirming the factoring charges for the upcoming financial year.
- Where Factored residents accrue arrears and attempts to make arrangement for payment are unsuccessful, the Association can consider serving a Notice of Potential Liability for Costs. This allows the Association to recover the debt when the property is next sold.

Former Tenants

- All tenants terminating their tenancy are required to pay any outstanding debt to the Association prior to vacating their tenancy. When they are unable to pay the amount in full they will be required to enter into a repayment plan. Failure to pay this debt and the implications of not maintaining the payment plan are detailed as follows:
    - The Association may employ the services of an external debt collector or raise a claim through the small claims court where we have been unsuccessful in securing payment from the former tenant/resident.
    - Through legal action for the recovery of the debt including the arrestment of wages or bank account funds where appropriate.
    - Suspending an applicant from receiving an offer of housing if the level of debt owed to the Association or another landlord exceeds rent equivalent to one calendar months' rent., unless an arrangement is in place and has been adhered to for a minimum of 3 months.

3.2 Collection of Rent/Occupancy Charge/ Factoring Debt

In order to assist with maximising the Association's income we provide tenants/ residents with a wide range of payment methods as noted below:

- **Direct Debit** (preferred option)
- **Cheque**
- **Debit/Credit Card** (in person, over the phone, or via the Association's website)
- **Standing Order**
- **Bank Transfer**
- **Housing Benefit** – Information and advice on Housing Benefit is given to tenants/residents before they sign a tenancy/occupancy agreement. Those in receipt of Housing Benefit are encouraged to have their rent paid directly to the Association.
- **Universal Credit** – Information and advice on claiming Universal Credit is given to tenants/residents before they sign a tenancy/occupancy agreement. Those in receipt of Universal Credit are encouraged to sign up to a direct debit to pay their housing element promptly. Where there is pre-existing debt to the Association, or an identified support need, the Association will seek to put in place an Alternative Payment Arrangement (APA). The tenant may also opt for an APA, and the Association has the option to seek an additional payment towards any rent arrears which is deducted from the claimant's ongoing entitlement. Every effort will be made to reach an agreement with the tenant before this is pursued.
- **Post Office/Paypoint** – The Association will offer Post Office and Paypoint payment facilities via Allpay.

3.3 The use of credit cards as a payment method may suggest the tenant/resident is struggling financially, and staff may discuss whether the customer wishes for a referral to be made to a relevant external agency to provide advice about budgeting and income maximisation.

3.4 The Association recognises that many of its tenants/residents are dependent upon benefits to pay their charges. Where appropriate, and in keeping with the pre-action requirements set out in the Housing (Scotland) Act 2010, we will contact the relevant agency handling the claim prior to taking any enforcement action. When required we will provide supporting evidence to the applicant or agency in respect of any benefit claims.

3.5 For tenants/residents who claim Universal Credit and have an entitlement to housing costs, they will be required to submit any change of circumstances through their Universal Credit online journal.

3.6 At either the commencement of a tenancy, or during a tenancy, if a customer meets the qualifying criteria, eg, is considered vulnerable and or has pre-existing arrears in excess of two months, the Association may seek to put in place an APA. This would see the payment of housing costs being made directly to the Association.

3.7 The DWP states that all cases must be assessed non-judgementally on an individual basis, taking into account all relevant details provided by claimants, their representatives and landlords. Their guidance provides Tier 1 and Tier 2 factors which should be used to help decide whether alternative arrangements are appropriate in an individual case.

3.8 Tier 1 factors are described as "highly likely/probable" needs for alternative payment arrangements. These are:

- **Drug, alcohol and other addiction problems.**
- **Learning difficulties, including problems with literacy or numeracy.** This may be linked to a medical condition and evidenced by low educational achievement.
- **Severe/multiple debt problems.** This could apply to claimants unable to meet credit commitments after necessary expenditure. Severe problems could be evidenced by multiple debts, at least two months' arrears and heavy use of local welfare assistance schemes.
- **Domestic violence and abuse**. This could include current or past financial, psychological, physical, sexual or emotional abuse, and threatening or coercive behaviour, between partners, family members and in 'forced marriages'.
- **Mental health condition.** This could include any condition which impairs the ability to manage affairs effectively – eg, phobias, bipolar disorder, severe depression.
- **Rent arrears/threat of eviction or repossession.** The guidance refers to those with two or more months' rent arrears, those evicted for rent arrears in the previous 12 months and those threatened with repossession or eviction.
- **16/17-year-olds and care leavers**. Many will have limited or no financial capability and be in hardship.
- **Families with multiple and complex needs**. They could be part of the government's Troubled Families Programme, or have a history of persistent offending, antisocial behaviour, mental health issues, and domestic violence or drug and alcohol issues.

3.9 Tier 2 factors are described as 'less likely/possible' needs for alternative payment arrangements. They will only be relevant where they impair a claimant's ability to effectively manage her/his financial affairs. They are:

- no bank or usable account;
- third-party deductions in place (eg, to repay utility arrears), or eligible for rent arrears because of more than two months' arrears;
- refugees or asylum seekers eligible for UC;
- history of rent arrears (in past 12 months) but not currently in arrears;
- previously homeless or in supported accommodation (in past 12 months);
- disability other than mental illness;
- recently left prison or hospital or bereaved (in last three months);
- English not first language;
- ex-service personnel (discharged in last 18 months);
- aged under 24 and not in education, employment or training.

4. Debt Recovery Action

4.1 Tenant and resident accounts will be monitored on a weekly basis to identify arrears at an early stage and take prompt action to contact tenants. Housing Services staff will at all times be aware of the need for early action and intervention.

4.2 The monthly rent/occupancy charge is due on the 1st of each month and payments are due in advance. Accordingly, payments are due on or before the 1st of the month for that proceeding month. Housing Services staff will however apply discretion in pursuing arrears whereby payments are received later than the 1st but, on a regular basis, and before the end of that accounting month.

4.3 Tenants/residents who fall into arrears will be offered the option to clear the debt in one payment or set up a repayment arrangement at a rate acceptable to the Association. Examples of acceptable arrangements would be where the debt is due to be cleared within 24 months.

Where payments are predicted to take more than 24 months they must be supported by a written financial assessment from an agency or individual qualified to assess personal debt and or provide personal budgeting advice. If the proposed repayment arrangement is unacceptable to the Association, we will consider applying directly for third party deductions with or without the consent of the tenant/resident if this option is available to us.

4.4 The Association will commence legal action for recovery of possession and/or arrestment of wages as a last resort where the resident's debt exceeds the value of two months rent and/or the resident is failing to engage with our support to help them reduce their debt.

4.5 Authorisation must be sought from the:

- Housing Services Manager to:
  - Escalate recovery action
  - Suspend recovery action of the debt

- Director of Housing & Operations to:
  - Enrol the case in court;
  - Suspend an Eviction (once granted by Management Committee) and

- Management Committee to:
  - enforce the Decree of Eviction.

4.6 When taking court action, the Association will seek to obtain, where applicable, Decree for Recovery of the outstanding housing debt, heritable property and legal costs including court fees.

4.7 Any decision not to pursue housing debt through the Courts must be authorised by the Director of Housing & Operations and will take account of the cost of recovering the debt and the likelihood of the debt being paid.

4.8 Where the housing debt is paid in full prior to Decree for Recovery being granted, the Association may decide to waive the legal costs. Any decision to waive these charges will be made on a case-by-case basis and will be at the discretion of the Director of Housing & Operations.

5. Sharing Owners

5.1 The process for debt recovery of occupancy charges differs from rent, and any formal action is carried out by the Association's solicitors. This is only when all other recovery methods have been exhausted.

5.2 Action may include notifying the lender to determine if they would initiate legal steps for the recovery of the property. If this action fails, the Association will have to consider a Division and Sale Action.

6. Housing Benefit, Universal Credit & Discretionary Housing Payment Overpayments

6.1 The Association receives direct payments of Housing Benefit, Universal Credit and Discretionary Housing Payments for some tenants. Where OIC or the DWP make a request for the repayment of an overpayment, the Association will consider the full circumstances to determine if the charge is repayable by us, or whether it is reasonable for the overpayment to be recovered directly from the tenant.

6.2 There may, in exceptional circumstances, be a case where a repayment from the Association will result in creating arrears on the account, which the Association will then have to recover from the tenant in line with this policy.

6.3 The Association will not normally make an overpayment which would result in arrears, but will consider the following when considering a decision to pay an overpayment:

- We were made aware of the tenant's change in circumstances
- OIC had not been notified of a change in circumstances that we had been made aware of
- The impact on the tenant's rent account in making the overpayment

6.4 Where appropriate, we can appeal a decision to recover an overpayment from the Association, and this should be done in writing within 28 days of the official notification.

6.5 We can also assist the tenant to appeal a decision if it is felt necessary, and we may do this through referring the tenant to an external agency.

7. Write Offs

7.1 The Association will normally pursue all routes to recover debs legitimately due to us. There are exceptional circumstances where, following all efforts, we may consider writing off debts. These may include circumstances where:

- Any arrears on a current or former tenant's account in the event of their death and where there is no estate to recover the debt from
- Any debt specified through a current or former tenant's account sequestration, bankruptcy or Protected Trust Deed
- Any former tenant debt identified through a debt collection agency as being untraceable or uncollectable
- Any former tenant arrear that is uneconomical to recover i.e. below £25

Any write-offs considered will be done so in line with the scheme of delegations.

8. Credit Balances

8.1 Credit balances can occur on both existing and former tenants rent accounts. These balances will be monitored regularly and staff will facilitate refunds to current tenants when requested and to former tenants where possible. This may be done through a reduction in a direct debit for the coming month, or in certain circumstances by an actual refund. Any outstanding arrears or recharges will be off-set against the credit balance before a refund is authorised. Where we are unable to refund a credit balance, eg, lost contact with former tenant, this will be resolved by using a credit balance write off at year end.

8.2 No refunds will be authorised without sufficient credit balance on the account.

9. Equality & Diversity

9.1 This Policy will be delivered in a way which recognises and respects diversity and in accordance with the Association's Equality & Diversity Policy.

10. Complaints and Appeals

10.1 Anyone who feels that the Association has not complied with this Policy can use the Association's Complaints Handling Procedure which is available by either contacting the office or on our web page at **www.ohal.org.uk**.

11. Monitoring & Reporting

11.1 The Association will report quarterly to the Performance & Monitoring Sub Committee on performance against targets relative to the appropriate peer group for comparison purposes. Key Performance Indicators will be set annually by Management Committee.

11.2 This policy will be reviewed when required by change in legislation, but at least every 5 years.