

Policy and Procedures in Respect of Rent Arrears

AS WITH ALL OF THE ASSOCIATION'S POLICIES and PROCEDURES, THIS GUIDE, IN FULL AND IN PART, CAN BE MADE AVAILABLE IN SUMMARY, ON TAPE, IN BRAILLE, AND IN TRANSLATION INTO MOST OTHER LANGUAGES –

PLEASE ASK A MEMBER OF STAFF IF YOU WOULD LIKE A VERSION IN A DIFFERENT FORMAT

Approved By	Committee of Management at the meeting on 5 th December, 2007
Interim Review	Committee of Management at the meeting on 6 th March 2013
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1.0 INTRODUCTION

1.1 This document outlines the policy and procedures that the Association will endeavor to follow in relation to the prevention, control and recovery of rent arrears.

1.2 It takes account of Chapter 15 of the Scottish Federation of Housing Associations' publication, *Raising Standards in Housing* and seeks to achieve compliance with section AS1.8 of *Performance Standards for social landlords*, which requires the Association's approach to be fair and effective.

It is divided into the following:

Section 1:	Introduction
Section 2:	Policy Statement on Control and Management of Arrears
Section 3:	Definition of Arrears
Section 4:	The Role of Staff
Section 5:	The Role of the Management Committee
Section 6:	Legal Procedures
Section 7:	Court Action
Section 8:	Former Tenant Arrears
Section 9:	Procedures in Respect of Small Claims
Section 10:	DSS Direct Payments
Section 11:	Monitoring of Performance in Arrears
Section 12:	Training

1.4 The Policy and Procedure should be read in conjunction with Appendix 1 (Schedule of Standard Letters), Appendix 2 (Flow Chart of Procedures) and Appendix 3 (Criteria for Deducting DSS Direct Payments).

1.5 Equality and Diversity Policy

1.5.1 The Association operates an **Equality and Diversity Policy** under which it is committed to promoting an environment of respect and understanding which aims to eliminate discrimination by and towards members of the public, Committee Members, contractors and staff.

1.5.2 The Association will at all times endeavour to ensure that in all its activities, primarily the provision of services, the principles of the **Equality & Diversity Policy** will be fully applied.

- 1.5.3 In order to ensure that this can occur, all of the Association's Policies and Procedures are designed to be clear and comprehensive and seek to avoid discrimination, no matter how inadvertent. To this end all Policies and Procedures when being developed or reviewed will consciously be considered as to whether they might in some way lead to discrimination and, if found to be possible, this will be rectified.
- 1.5.4 The **Arrears Policy** has been developed to be consistent with the aims of the Association's **Equality and Diversity Policy**.

2.0 POLICY STATEMENT

- 2.1 The vast majority of the Association's income is from rental income. Consequently, this means that the Association is heavily reliant on this income to:
- (i) be able to manage and maintain the properties on a day-to-day basis;
 - (ii) service the private loans taken out to help with the development programme; and
 - (iii) ensure that sufficient funds are being set aside for long-term maintenance.
- 2.2 It is therefore critical to protect the Association's and the community's interests in keeping income lost through rent arrears to an absolute minimum. Accordingly, the policy and procedures are primarily based on preventative methods of control and are designed so that any case of arrears is picked up as early as possible and is pursued in accordance with an agreed system.
- 2.3 The standard agreed system is intended to clearly define the respective roles of Staff and the Management Committee and specifies the steps that Staff can and must take without referral to the Committee. It also specifies the manner and frequency of reporting to the Committee.
- 2.4 Apart from having the important benefit of avoiding delays or misunderstandings which could arise if the Staff/Committee roles are not clearly defined, the system should also be able to ensure that those falling into arrears are dealt with in a fair and consistent manner.
- 2.5 In order to achieve policy objectives the Association is committed to managing arrears in a firm and effective manner. The following principles will, therefore, apply:

- (i) the over-riding priority will be to **prevent** arrears from arising;
- (ii) where a new arrear does appear on a rent account, the Association will take **prompt action** to recover the arrear (see 4.3);
- (iii) if a payment is missed or an arrangement broken and the amount due cannot be paid before the next debit, a **fair and effective** repayment arrangement will be made with the tenant (see 4.4);
- (iv) arrears that accrue due to a reduction in Housing Benefit as a result of under-occupation will be pursued in the same manner as other rent arrears owed by the tenant.
- (v) the Association will be mindful of the distinction between **technical** and **non-technical** arrears, and will pursue each appropriately (see 3.1 and 3.2);
- (vi) where appropriate and Pre-Notice Requirements have been satisfied, **legal action** will be considered and taken;
- (vii) staff and Committee will be provided with adequate training on issues relevant to the efficient, effective management and control of rent arrears;
- (viii) the policy and procedures will be reviewed every three years unless otherwise required.

3.0 DEFINITION OF ARREARS – NON TECHNICAL AND TECHNICAL ARREARS

3.1 Non-Technical Arrears

- 3.1.1 For the purposes of this policy and procedure, the term Non-Technical Arrears refers to arrears caused by non-payment of rent that is not related to outstanding housing benefit.
- 3.1.2 Under the terms of the Tenancy Agreement, Tenants are required to pay their rent “in advance” by the 28th of the month. The Association operates a payment card system (allpay.net), which enables tenants to make rent payments as follows:
 - using cash or debit card at post offices and designated retail outlets (i.e. Pay Point outlets)
 - direct to allpay.net using a debit card by phone, on-line, SMS text message or by downloading the allpay.net App onto their mobile phone

- at or by phone to the Association's offices using debit card

Tenants can also choose to pay through their bank account by Direct Debit or Standing Order.

Payments made by all of the above methods should be credited to the tenant's rent account within 24 hours.

- 3.1.3 While the end of the month is the cut-off date which would "freeze" the arrears position as reported to Management Committee, the Housing Officer would nonetheless check if any payment had been made after that date prior to taking any action. If no payment has been made by the time that the Housing Officer has checked the monthly rent arrears print out, which should take place as soon as possible following the month end (the aim would always be to have checked the arrears print out within ten working days of month end at latest), the arrear will be pursued by the methods described in 4.3 below.

3.2 Technical Arrears

3.2.1 For the purpose of this policy and procedure, technical arrears relate to:

- (i) Late payments in respect of properties leased to external agencies (i.e. Crossreach, GCC Leaving Care Services, Loretto Housing Association) - in such cases, reminder letters will be sent to the agency concerned as appropriate.
- (ii) Amounts that are due to be covered by Housing Benefit but are outstanding due to delays in processing Housing Benefit claims. Where the Association is satisfied that the amount owed is going to be cleared once Housing Benefit is paid, then the approach will involve contacting the local Benefits Office of Glasgow City Council Financial Services with a view to securing payment as soon as possible – this is preferable to trying to get the tenant to make payments that they could well be unable to afford.

3.2.2 The critical point, however, is that the Association **must** be satisfied that the Housing Benefit will, indeed, be paid. The steps to be taken will depend on individual circumstances, but are likely to involve the following:

- (i) confirmation of the tenant's income and whether or not they receive Income Support or income based Job Seeker's Allowance;
- (ii) details of any non-dependants living in the household and their ages/income levels in order to determine the amount of any deductions;

(iii) confirmation that a benefit claim, incorporating all information requested by Glasgow City Council Financial Services, has been made and that any award is going to be backdated;

(iv) The Association's Welfare Rights Officer will have a major role in providing advice and support to staff and tenants in relation to benefit-related questions. For example, in cases where the Welfare Rights Officer's assessment is that Housing Benefit is likely to meet only a proportion of rent due, the tenant will be required to make an appropriate contribution towards their rent pending a decision on their Housing Benefit application.

3.2.3 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 by the methods described in 4.3 below.

3.2.4 It should be noted that while the Association will do all it can to assist tenants in applying for Housing Benefit, it will be made clear that application is the tenant's responsibility. Consequently, failure to apply and/or provide relevant information to the City Council's benefits staff will be treated in the same way as deliberate non-payment of rent.

3.2.5 In relation to notification of Housing Benefit received by the Association, the local Benefits Office of Glasgow City Council Financial Services provides at least two payment schedules ('Third Party List') per four week period which list all Housing Benefit payments being paid direct to the Association in respect of its tenants' in the period.

It should be noted that although tenants' have the option of receiving their Housing Benefit payment direct, the Association encourages tenants' to sign a mandate by which they agree to have the Housing Benefit to which they are entitled paid direct to the Association. The vast majority agrees to this request. In cases where the tenant is entitled to Housing Benefit, receives their benefit payment direct but has fallen into three months arrears, the Association can instruct the Benefits Office to pay all subsequent Housing Benefit payments due to this tenant direct to us.

3.2.6 On receipt of the payment schedules from the Benefits Office, the Association's Finance Staff require to input each individual amount plus dates of entitlement into Hometeam.Net. All changes in Housing Benefit entitlement (e.g. amount of Housing Benefit due, dates in respect of ongoing Housing Benefit entitlement, entitlement to Housing Benefit ended, etc) should also be input into each individual tenants rent account 'file' in Capita. Updating changes in Housing Benefit entitlement in Hometeam.Net in this way ensures that any non-payment of rent by the tenant is clearly highlighted as a tenant arrear (i.e. not a technical arrear) and, therefore, should be pursued as such.

4.0 THE ROLE OF STAFF

4.1 The role of staff reflects the Association's emphasis on arrears prevention and, where necessary, early action to recover arrears where they have occurred. This will be achieved using a number of methods, as outlined below.

4.2 Arrears Prevention

4.2.1 On signing a new tenancy agreement all tenants (including transfers, assignments and successions) will be advised:

- (i) of the monthly rent due;
- (ii) of any arrears due from a previous tenancy (i.e. in cases of transfers, assignments and successions)
- (iii) that rent is due in advance each month;
- (iv) that rent due from date of sign up to month end, less any Housing Benefit entitlement, must be paid at sign up (to be stressed in offer letter);
- (v) of the rent payment methods available;
- (vi) of the Association's Arrears Policy, a summary of which will be contained within the Tenants Handbook.

4.2.2 Housing benefit advice will be arranged where eligibility requires to be confirmed. This will involve an appointment being made with the Association's Welfare Rights Officer as soon as possible following sign up. New tenants should always be encouraged to have housing benefit paid direct to the Association.

4.2.3 The Association's Tenancy Sustainment Officer will aim to carry out settling in visits to all new tenants (which normally take place within 4-6 weeks of a tenancy commencing) to identify any problems in terms of rent payments, Housing Benefit claims, etc and take appropriate action and/or offer appropriate advice and support to the tenants concerned.

4.2.4 It must, however, be stressed to tenants that the role of the Association in respect of housing benefit applications is that of advice and support. Ultimately, it is the responsibility of the tenant to pursue their housing

benefit application and ensure that their rent account is kept up to date (see 3.2.4 above). Any arrear which occurs as a result of the tenant failing to pursue a housing benefit application to do so will be treated as non payment of rent by the tenant and pursued as described in 4.3 below.

- 4.2.5 Staff should strive to keep all tenants informed of major changes in housing benefit rules and/or where the Housing Benefit Office is carrying out reviews. Such information will be made available through newsletters, mail shots, etc
- 4.2.6 The Association will endeavor to advise tenants of any changes that may have a direct effect on their entitlement to Housing Benefit and, in consequence, the amount they require to pay the Association from their own funds to meet their full monthly rent. Such information would be detailed in a letter personally addressed to each tenant concerned.
- 4.2.7 Tenants should be advised in writing at least twenty-eight days in advance of any increase in rent and service charge.
- 4.2.8 Tenants will also receive a twice-yearly statement, which details their current rent account balance.
- 4.2.9 All letters in respect to rent increases, arrears and rent statements will encourage tenants to make use of the Welfare Rights Service. All such letters will also reaffirm the importance of reporting changes of circumstances to Glasgow City Council Financial Services in order that the tenant's entitlement to housing benefit may be re-assessed.

4.3 Arrears Control and Recovery

- 4.3.1 The Association's procedures in respect of arrears control are based on the principles of early identification of arrears in order to facilitate the earliest possible remedial action. Early contact means that the Association should endeavor to make contact with the tenant in arrears within fourteen days of the payment being late (See also 3.1.4 above). Contact will include letters, phone calls, text messages, visits and interviews in the Association's offices. An arrear, which is not subject to an arrangement, should not be allowed to exist for an entire debit period without all reasonable effort being made to contact the tenant. The specific procedures to be followed are outlined below.
- 4.3.2 Tenants who have failed to make the monthly payment due (i.e. net of any Housing Benefit entitlement) should receive a letter which details the

monthly rent, the outstanding balance and which makes clear that the amount outstanding should be paid within seven days. The letter should also specify the next rent payment due in advance at the 28th of the month.

4.3.3 Tenants who have failed to respond to the first letter should receive a further reminder letter which points out:

- (i) the level of arrears and that payment is now due;
- (ii) that a further payment is due by the 28th of the month;
- (iii) that an arrangement must be made immediately if the tenant is unable to pay the outstanding amount;
- (iv) that failure to pay, or to make an arrangement, will lead to the Association proceeding with legal action; and
- (v) that the Association has a Welfare Rights Officer who should be contacted for advice.
- (vi) At both this and the previous stage, the Housing Officers' will, in addition to letters sent, seek to establish contact through telephone, text message or personal visit as workload and other competing priorities permit.

4.3.4 In cases where, following a second letter (and other means of making contact which staff may have tried) the tenant has still failed to make payment, the Housing Officer will endeavour to visit the tenant before any further letters are resorted to. The aim of the visit is to establish personal contact with the tenant and seek an arrangement by which the tenant agrees to pay off the arrears immediately or at an agreed rate over a specified time. (See Section 4.4 below for further guidance). If the tenant keeps to the arrangement, then it will not be necessary to take further action at this stage. If no access is gained when attempting to visit, the Housing Officer will leave a card outlining the purpose of the visit and urging the tenant to make immediate contact.

4.3.5 If the tenant falls behind in making the agreed payments, the Housing Officer will issue a written reminder which requests that the Tenant contact the Association seven days.

4.3.6 If the tenant fails to keep to the arrangement, or it has proven impossible to agree an arrangement with the tenant (possibly because the tenant fails to respond to a home visit or request for a meeting), and the Housing Officer is confident that the tenant still resides in the flat, appropriate notices in terms of Section 14 of the Housing (Scotland) Act,

2001, will be served on the tenant and any qualifying occupiers (i.e. Notice of Proceedings for Recovery of Possession).

4.3.7 However, in cases where, following appropriate investigations, the Housing Officer suspects the tenant is no longer resident, an Abandonment Notice should be served under the terms of the Housing (Scotland) Act 2001. If the Housing Officer's suspicions are correct, this course of action will enable the Association to regain possession of the flat without resorting to court action. On the other hand, if the Housing Officer's suspicions are not correct and the tenant is still residing in the flat the serving of an Abandonment Notice may prompt them to make contact with the Association to discuss their rent arrears.

4.3.8 In cases where a tenant who has been served with a Notice of Proceedings or an Abandonment Notice contacts the Association, legal action will only be stopped if the tenant makes and maintains an acceptable arrangement to pay (see 4.5.1 below). In the absence of such contact by the tenant, the Housing Officer will, subject to the approval of the Housing Manager, instruct court action (see 7.1 below).

4.3.9 A record will be maintained of all notices served, court action, etc. on the central database set up for this purpose as well as in each individual tenant's file within Capita and within the individual 'hard copy' case file.

4.3.10 Cases subject to legal action (see 6.0 below) will be monitored by the Housing Manager through, for example, discussions with Housing Officers' at monthly 'patch' meetings.

4.3.11 To summarise, it is important that the following general principles are observed:

- (i) establish early contact with the tenant;
- (ii) establish cause of non payment, check benefit entitlement and make an appropriate arrangement to pay off the arrears;
- (iii) all arrangements made must be confirmed in writing and, where possible, signed by the tenant (see also paragraphs 4.5.5 and 4.5.6 below);
- (iv) where considered appropriate, abandonment procedures should be initiated;
- (v) in cases which comprise solely of or include arrears that have resulted from a reduction in Housing Benefit due to under-occupation, there should be a clear record of the following:
 - o that the tenant has been made fully aware that they are required

- to pay the balance of rent due following the reduction in Housing Benefit due to under-occupation
- o that they have been given appropriate advice and had the opportunity to submit a transfer or mutual exchange application for a smaller property-this will include advice and information provided by letter, interview and newsletter
- o details of any offers/refusals of a transfer to a smaller property

(vi) for the purpose of showing an audit trail consistent with Pre-Notice Requirements, a record must be kept of all contact with the tenant and action taken (see also (v) above), including letters, telephone calls, visits, interviews and, where court action is initiated, instructions to the Association's solicitor – accurate record keeping is extremely important in all cases, but particularly so should the Association ultimately take legal action as poor record keeping is likely to compromise the Association's position in court;

(vii) direct payment of Housing Benefit / DWP Arrears Direct should be arranged where appropriate (see Section 4.4 below);

(viii) all reasonable effort should be made to ensure privacy and confidentiality in dealing with arrears cases.

4.4 DWP DIRECT PAYMENTS

4.4.1 Applying for direct payments to the Department of Work and Pensions (DWP) is a useful method of controlling rent arrears. The rules governing direct payments are to be found in Schedule 9 of Social Security (Claims and Payments) Regulations 1987(see Appendix 3) which details the criteria used in the Regulation.

4.5 Making a Fair and Effective Repayment Arrangement

4.5.1 Section AS1.8 of *Performance Standards* states that arrears should be recovered “fairly and effectively”. This means that:

(i) the repayment arrangement should be realistic and, by taking account of their household budget, be an amount that the tenant can be reasonably expected to afford, and;

(ii) missed payments will be acted upon quickly (i.e. within fourteen days of

a payment due failing to appear in the rent account).

4.5.2 When making an arrangement, the Association will consider the following, in line with section 4.3 of Raising Standards (Chapter 15):

- (i) be sensitive while communicating the seriousness of the situation;
- (ii) be mindful that some situations can be exacerbated by a home visit, for example in respect of domestic abuse.
- (iii) 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 Data Protection issues – a mandate should always be signed, if possible;
- (iv) be sensitive to cultural and gender issues;
- (v) establish whether there are any qualifying occupiers over the age of 16 (or currently 15) in the household for reference in any future legal action (see also 6.3.1 and 6.3.2 below);
- (vi) consistent with Pre-Notice Requirements:
 - (a) assess whether the tenant could benefit from 'in house' Association services such as welfare rights advice and/or the input of the Association's Tenancy Sustainment Officer and offer to make arrangements / an appointment as appropriate.
 - (b) consider if it is appropriate to make referrals to relevant external agencies for money advice, debt counseling and/or legal advice

4.5.3 As noted in paragraph 4.5.1(i), the amount to be paid toward the arrear should take account of the ability of the tenant to afford the payments. There is, therefore, no maximum amount **although as a minimum** the equivalent to the DWP Arrears Direct weekly deduction should at least be paid unless exceptional circumstances prevail – the Association will encourage tenants eligible for DWP Arrears Direct to agree this method of payment (see 4.4 above).

4.5.4 In cases where the tenant is unwilling to discuss their household income and expenditure or is otherwise unwilling to agree an arrangement the Association will set what it considers to be an appropriate amount for repayment.

4.5.5. Within a maximum of five working days after an arrangement has been made, a letter should be sent out outlining the details of the arrangement and which stresses that the tenant **must** contact the Association if they think that there might be a problem in keeping to the arrangement. A summary of the Arrears Policy should also be sent. Where possible, the tenant's signature should be obtained confirming their knowledge and acceptance of the arrangement although it is recognised that, for a number of reasons, it may not always be practicable to do so.

4.5.6. In cases where the tenant's signature has not been obtained, the letter confirming the arrangement will make clear that unless the tenant responds to the contrary it will be reasonable for the Association to assume that they (the tenant) understands and agrees with the arrangement.

4.6 Legal Procedures

4.6.1 Refer to Sections 5, 6 and 7 below for details of the legal procedures that the Association will ultimately follow if the other methods of management and control of arrears have failed.

5.0 THE ROLE OF THE MANAGEMENT COMMITTEE

5.1 The Management Committee has a key role in agreeing and monitoring the Association's rent arrears strategy. This is separate from the ongoing day-to-day arrears management work undertaken by the staff team and this distinction needs to be clear.

5.2 As part of the Internal Management Planning process the Committee has the responsibility of setting operational and strategic targets and work plan objectives across all of the organisation's functions. In relation to rent arrears this means:

- (i) setting the annual target for rent arrears taking account of:
 - (a) historic performance
 - (b) peer group performance
 - (c) national benchmarks

- (ii) receiving performance reports from staff in line with the annual reporting

calendar which, for arrears, is bi-monthly (See Section 11 below). Where performance is not as expected, then the Committee should be provided with an explanation and details of any remedial action that staff have taken or plan to take;

(iii) approving, following consultation with tenants and recommendations from staff, revisions to the Arrears Policy;

(iv) where a decree for eviction has been granted by the court, approving that this be enforced (see 5.3 and 5.4 below).

5.3 The Committee should **not** become involved in day-to-day arrears issues – involvement in individual cases will normally be limited to deciding whether to evict a tenant against whom the Association has already secured a Decree to Evict from the Court. Committee approval **must always** be sought prior to an eviction being carried out. In order to enable Committee to give each case concerned their full consideration staff will provide a report detailing appropriate background information. All information passed to the Committee will be identified with a code number to preserve confidentiality. The report will include:

- (i) as much detail of the tenant's family composition as is considered appropriate in terms of maintaining anonymity;
- (ii) current monthly rent;
- (iii) current total arrears;
- (iv) type of tenancy;
- (v) any other information considered relevant to the circumstances of the case, including all previous steps taken by staff to deal with the arrear.

5.4 Requests to approve an eviction will not be subject to the bi-monthly reporting cycle but will be taken to Committee for approval as soon as possible following a Decree for Eviction having been granted by the court.

5.5 Conflict of Interest

5.5.1 There is a potential conflict of interest in terms of Committee involvement in dealing with arrears related issues where a Committee member themselves has rent arrears.

5.5.2 The general rule to be applied in the case of existing Committee members is that if the Committee member concerned has responded immediately to notification of their arrears by paying these off in full or by

entering into and maintaining an appropriate arrangement under the terms of the Association's Rent Arrears Policy then the conflict would be considered satisfactorily resolved. Otherwise, the Committee member concerned would be considered to have a conflict of interest and consequently would be required not to participate in any discussions relating to rent arrears. This would require declaring an interest in the relevant Agenda Item of any Committee Meeting. The same general rule would apply to tenants joining Committee as new members.

- 5.5.3 Immediately upon identifying a Committee member with rent arrears the Housing Officer will, in addition to following Policy as for all other tenants, advise the Housing Manager of the case. The Housing Manager will, in turn, raise the case with the Association's Chief Executive who will approach the Committee Member to discuss their responsibilities should they not immediately contact the Housing Officer to deal with the arrear.

6.0 LEGAL PROCEDURES

- 6.1 As stated in Section 4 above there are appropriate letters to be served on a tenant with arrears, examples of which are attached. While the letters will follow a standard format, the Housing Officers will be expected to add to or amend these as suitable to reflect their knowledge of a particular tenant's situation where appropriate.
- 6.2 All Notices required under the Housing (Scotland) Act 2001 (see Paragraph 4.3.8) and as outlined in the Scottish Secure Tenancy Agreement as well as being consistent with Pre-Notice Requirements, will be served by a Housing Officer or Sheriff Officer. When it is a joint tenancy, both tenants plus all other qualifying occupiers (see also 6.3.1) will be served a Notice.

6.3 The Right of Non-Tenants to be Heard in Court

- 6.3.1 Under the terms of the Housing (Scotland) Act, 2001, all "qualifying occupiers" have the right to be heard in Court – "qualifying occupiers" are all those living in the household who are aged 16 or over, including members of the tenant's family and their children. This means that Notices must be served on each person living in the household who is aged 16 or over. If this is not done, then the Association is running the risk that the action will fail.

6.3.2 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. What is likely to happen in such circumstances has yet to be tested in Court. Consequently, although there is a contractual duty upon tenants to keep the landlord informed of all those living in the property, failure by the Association to include qualifying occupiers in legal action could invalidate the action. Until some case law has been established, the Association's approach will be to take all reasonable steps to keep household information up to date. For example:

- (i) stress the requirement to keep the Association informed of who is living in the property at the sign-up, including successions and assignations;
- (ii) place a notice in reception advising tenants that they must inform the Association if the household composition changes (this may also be advised in a newsletter from time to time);
- (iii) check household composition when carrying out arrears interviews;
- (iv) pay particular attention to children who are 15 years old at the time the Notice is served as the Association is required to serve this individual with a Notice when they become 16.

7.0 COURT ACTION

7.1 Court action will normally be instructed following expiry of the period of notice stipulated in a Notice of Proceedings for Recovery of Possession (see 4.3.6 above) on condition that:

- (i) the tenant has not contacted the Association during the period of notice to agree and maintain an acceptable repayment arrangement (see 4.3.8 and 4.5.1 above);
- (ii) the Housing Manger has approved that court action should proceed.

7.2 In cases where the Association's solicitor has been instructed to proceed with court action, staff will send a Section 11 Notice to Glasgow Homeless Partnership (Section 11 Team). A copy of the Section 11 Notice with the appropriate covering letter will also be sent

to the local Social Work Department and the local Community Casework Team.

- 7.3 Following instruction to proceed with court action, the Association's Solicitor shall advise staff of the Court date for each case prior to the hearing so that up-to-date details of the total arrears and monthly rent can be made available.
- 7.4 Staff should be aware that the court serves notice on the tenant about the initial hearing date and that, therefore, there is no need for the Association to also write to the tenant confirming the date. However, where the court hearing is postponed and a new hearing date set (e.g. where the case is 'continued'), the court will not advise the tenant of the new date. In such cases it is the responsibility of the Association to write to the tenant confirming the new court hearing date as soon as this information is available.
- If the Association is seeking a decree at the new hearing the Association's solicitor must receive a copy of the letter sent to the tenant confirming the date.**
- 7.5 Staff would not generally attend the Court hearing unless requested to do so by the Association's solicitor for the purpose of giving evidence at a proof hearing. It is expected that the Association's Solicitor will attend such hearings or place the case in the hands of a competent agent.
- 7.6 On the approval of the Management Committee to enforce the Decree for Eviction (see Section 5), the Association's Solicitor will be instructed to engage Sheriff Officers to serve the Court Order on the tenant. The Sheriff Officers will contact the Housing Officer dealing with the case and agree the date for the eviction. The Sheriff Officers should generally give the tenant 24 hours from the service of the Order to quit the premises. (In the interest of Health and Safety, it is not deemed appropriate that Association staff attend the eviction).
- 7.7 It should be recognised that there may be cases when, following Committee approval to enforce a Decree, the tenant contacts staff to discuss payment towards the amount outstanding in order to retain their tenancy with the Association.

It is the Association's policy that in such circumstances the eviction will only be cancelled if the tenant agrees to pay in full the amount owed in rent plus any court expenses that have been awarded.

It should also be noted that the granting of a Decree by the court does not in itself end the tenancy, which will only come to an end when eviction takes place. Accordingly, any payments received after the

decree is granted do not make the decree unenforceable nor is it necessary to enter into a new tenancy agreement with the tenant.

The period during which a Decree remains enforceable will be determined by the Sheriff and notified to the Association by our solicitor.

- 7.8 Staff will report on any cases where enforcement of a decree has been approved by Committee but not carried out at the next scheduled Committee of Management meeting.

8.0 FORMER TENANT ARREARS

- 8.1 The decision to pursue a former tenant arrear and the method used is dependent on a number of factors. However, in general terms, the overriding consideration will be how cost effective any proposed action is likely to be. This will take account of, for example:

- (i) the amount of the arrear;
- (ii) whether the Association has, or is able to obtain, a forwarding address;
- (iii) prospects for recovery (e.g. is the former tenant a house owner or in employment).

- 8.2 In cases where the Association seeks recovery there are a number of methods which may be used, for example;

- (i) sending reminder letters;
- (ii) conducting home visits;
- (iii) using a tracing and/or debt recovery agency;
- (iv) taking legal action, for example, seeking a court order in respect of arrestment of earnings or arrestment of bank account.

- 8.3 However, as noted in *Raising Standards in Housing*, there can be considerable practical problems in pursuing former tenant rent arrears and this has tended to lead to low collection rates across the sector. It may therefore not make administrative sense to continue to pursue amounts where:

- (i) the balance outstanding is low (e.g. under £100) or;
- (ii) despite attempts to find out the forwarding address, this is still not

known.

Accordingly, at the outset of each financial year staff will identify an amount in respect of former tenant arrears which it is estimated will require to be written off over the forthcoming twelve-month period. This figure will be presented to the Management Committee for approval as a bad debt provision within the Annual Budget. Thereafter, throughout the financial year, **bi-monthly** reports will be prepared by the Housing Manager for the Management Committee detailing the total amount of former tenant arrears and recommending an amount that is to be written off (see 10.4 below).

9.0 PROCEDURE IN RESPECT OF SMALL CLAIMS

9.1 Under certain circumstances, the Association may consider suing the tenant for the arrears (i.e. the debt) rather than seeking repossession of the property. Accordingly, where considered appropriate the Association's solicitor will be instructed to raise a Small Claims action in order to obtain a decree for payment. This allows for an arrestment of the tenants bank account provided the tenant does not make payment within the terms of the decree. It also allows for an arrestment of earnings subject to Sheriff Officers having served a charge on the tenant to repay the debt within fourteen days.

Such action is only likely to be taken in the following situations:

- (i) a former tenant who has left arrears;
- (ii) an existing tenant with less than 2 month's arrears and no other means of recovery.

10.0 MONITORING OF PERFORMANCE IN ARREARS

10.1 An arrears report will be produced for the Management Committee on a **bi-monthly** basis in a pre-agreed format.

10.2 The manner in which arrears are reported may, therefore, vary and develop over time but is likely to illustrate certain key performance measures such as:

- (i) total arrears split into non-technical and technical;

- (ii) the above figures compared to the Association's gross rental income in percentage terms;
- (iii) current arrears figures compared to historic performance and targets agreed by Committee;
- (iv) the Association's arrears figures compared to appropriate benchmarks and peer group performance as identified by the Scottish Housing Regulator.

10.3 In addition to the above, other aspects of arrears performance may be reported to Committee, for example, in respect of 'Aged Arrears' (i.e. the time bands over which arrears have existed), arrears levels split by area/streets, the number of arrears cases subject to an ongoing repayment arrangement or the number of cases subject to ongoing legal action. Any such additional information may be presented on either a regular (e.g. bi-monthly) or periodic basis as considered appropriate to enable Committee to fulfill its role of agreeing and monitoring the Association's Rent Arrears Strategy and of measuring actual performance in arrears against agreed targets.

10.4 A report recommending the amount of Former Tenant Arrears to be written off will also be presented to the Management Committee on a bi-monthly basis (see Section 8.3 above). The report will detail the current amount of former tenant arrears, the amount proposed for write-off in respect of the preceding quarter and also show the running total written off for the financial year to date. The Management Committee will, therefore, be in a position to assess the overall amount and trends in terms of former tenant arrears written off throughout the financial year and also be able to compare this against the bad debt provision agreed for the year.

11.0 TRAINING

11.1 Staff and the Management Committee require training and retraining in order to develop and enhance their skills and knowledge on issues which affect and influence rent arrears prevention and recovery. This will include training on interviewing and counselling skills, dealing with confrontation and also receiving updates on legal matters, statutory responsibilities and guidance/best practice in respect of benefits advice and arrears prevention, control and recovery.