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Former Tenant Debt Procedure

Procedure Reference:		HM04b	
Related Policy:		HM04	
Effective date:	June 2023	Review date:	June 2026
Approved by P&PRG:		June 2023	
Owner:	Fiona Ross	Job Title:	Head of Housing Services
To be issued to:		Housing Management Staff	
Method of Delivery:		Email Policy LearnPro	

Version Control

Date	Owner	Version	Reason for Change
April 2023	Lesley Henderson	3.0	3 Yearly Review

Summary of Changes

Section	Change
Whole Document	Updated Format
1.0	Updated reference to the relevant procedures
3.2	Changed from HoHS to SHSO
4.0	Removal of Finance Sub authorising write off
5.0	Change of responsibility from HoHS to SHSO Change from Small Claims Action to Simple Procedure Action
5.1	Change from Small Claims Action to Simple Procedure Action
6.1	Removal of need for Finance Sub approval
Appendix 6	Change to Simple Procedure Action



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1.0 Introduction

This procedure describes how we will seek to:

- Minimise the level of debt owed to Ark by former tenants;
- Take early action to maximise the recovery of debt, and follow up initial action quickly and pro-actively;
- Identify the debt which is either uneconomic to pursue or which is irrecoverable;
- Ensure that any debt that is uneconomic or irrecoverable is written off at regular intervals and correctly accounted for.

By 'debt' in the context of this procedure we mean:

- Rent arrears;
- Outstanding rechargeable repairs, including the cost of repairs recharged following the void inspection;
- Legal expenses.

This procedure supports HM04 [Rent Collection policy](#) and should be read in conjunction with the following procedures:

[HM04a Rent Collection](#)

[M13 Rechargeable Repairs](#)

[F04a Receipt of Income and Bad Debt Write Off.](#)

2.0 Termination of Tenancy

If a tenant who has arrears of rent or other charges gives us notice of termination of their tenancy the Housing Services Officer (HSO), as part of the pre-termination arrangements, will seek to have the arrears/outstanding charges paid before the tenancy ends.

If this is not possible the HSO will seek to agree a payment arrangement with the outgoing tenant, and wherever possible ensure that a forwarding address is provided so that contact can be maintained while the payment arrangement is in force.

Where the tenant is in receipt of housing benefit, the HSO will seek to have a Benefits Direct payment set up before the tenancy ends.

Further action will depend on whether the debt is paid off, either by or after the termination date, as detailed in the remainder of this procedure.

3.0 Post Termination with Forwarding Address

3.1 Stage 1

Where we have a forwarding address, and either no arrangement to pay off the debt has been made or an agreed arrangement has been broken, the HSO will write to the former tenant within 2 weeks of the termination of the tenancy or the arrangement being broken (Appendix 1a or 1b). The letter will offer the opportunity to agree (or resume) a payment arrangement.

If the former tenant sets up (or resumes) an arrangement the HSO will monitor receipt of payments.

3.2 Stage 2

If there is no response to the Stage 1 letter, or if a payment arrangement is broken without agreement the HSO will arrange for a further letter (Appendix 2) to be sent.

This letter will again offer the opportunity of a payment arrangement (but where there was a previous arrangement that was broken, the letter will state that this will be the final offer).

The letter may also state that if full payment is not made or an acceptable payment is not agreed and kept to, then the matter will be passed to a debt collection agency and if necessary legal action to recover the debt may also be taken.

3.3 Stage 3

If there is no response to the stage 2 letter the Senior Housing Services Officer (SHSO) will write with the details to the appropriate debt collection agency, according to where the former tenant is now living, with a request that they follow the matter up (Appendix 3).

Further action will depend on the outcome of any action taken by the debt collection agency and/or any legal action – see section 5 below.

At the end of the second financial year after the debt has arisen, if part or all of the debt is still outstanding it will be submitted for write-off, unless there is an acceptable payment arrangement in place and this is being followed.

4.0 Post Termination – No Forwarding Address

Where we do not have a forwarding address for the former tenant the HSO will make at least one attempt to obtain one by contacting any known relatives etc. from the information held on the system.

If the HSO has not traced the former tenant within 2 weeks they will ask a tracing agency to attempt to locate the former tenant. If the trace is successful then the action detailed in section 3 above will be followed.

If the former tenant cannot be traced, and where the outstanding amount is less than £250, no further action will be taken and the HoHS will approve the writing off of the amount in accordance with current writing off procedures.

Where the amount is over £250 the HSO will write with as much information as possible to the appropriate debt collection agency, requesting that they attempt to trace the former tenant and follow up payment of the debt.

Further action will depend on the outcome of any action taken by the debt collection agency. If at the end of the second financial year after the debt has arisen part or all of the debt is still outstanding, it will be written-off, unless the former tenant has been traced and there is an acceptable payment arrangement in place and being followed.

5.0 Legal Action

Where the former tenant's address is known but initial action by the debt collection agency has not resulted in any repayment, the HSO and SHSO will decide whether or not to initiate legal action for recovery.

Taking into account the costs involved, if the outstanding debt is £50 or less no further action will be taken and the HoHS will approve the writing off of the amount, as per paragraph 4 above.

If the amount due is over £50 the SHSO will write to the former tenant requesting payment within 7 days or legal action will follow (Appendix 4).

If there is no response to the letter, the following action will be taken:

If the debt is below £250, normally no formal legal action will be taken (but see paragraph 5.1 below on Simple Procedure actions). The debt collection agency will continue to seek payment, until a decision is made to write the outstanding debt off.

If the debt is £250 or above, the HSO and SHSO will review the case and where it is reasonable and appropriate to do so, the SHSO will instruct Sheriff Court action to recover the debt, unless a Simple Procedure Action is to be lodged (see below).

Factors to be taken into account will include:

- The likely legal costs;
- Whether the former tenant is in receipt of benefits only;
- If they have gone into a long term care facility etc.

Where court action is to be initiated the SHSO will write to the former tenant to warn them action is being taken (Appendix 5).

Where court action results in a decree against the former tenant the HSO will implement its provisions, taking action as required to secure payment of the debt.

5.1 Simple Procedure Actions

Where the amount owed is under £5,000 and does not merit the raising of an action in the Sheriff Court for recovery, we may initiate a Simple Procedure Action.

[Note: A Simple Procedure Action may also be raised against a current tenant with small but persistent rent arrears, or outstanding rechargeable repairs.]

The HSO will write to the former tenant advising that unless the debt is paid within 14 days a Simple Procedure Recovery Action will be started (Appendix 6).

Should the former tenant respond and a payment arrangement be agreed, the HSO will confirm to the former tenant in writing that this must be strictly kept to, to avoid legal action (Appendix 7).

At the end of the 14 day notice period, if some or all of the debt is still outstanding and an acceptable payment arrangement is not being followed, the HSO will lodge a Simple Procedure Action be initiated (for further background information on the Simple Procedure process, see Appendix 8 attached – hard copy only).

Where a Simple Procedure Action is started, no arrangements other than those imposed by the Sheriff Court will be considered.

Further guidance can be found at <https://www.scotcourts.gov.uk/taking-action/simple-procedure>

6.0 Making Provision for Bad Debts

At the end of each financial year the HoHS will agree with Finance staff the amount to be included in the annual accounts for 'bad debt provision'. This will normally be the total of the amount of rent arrears and other charges currently outstanding which are either still being followed up or are waiting to be written off.

6.1 Writing off bad debt

Any outstanding debt owed at the end of the second financial year after the debt arose will be written off, unless an acceptable payment arrangement is in place and is being followed.

The HoHS will prepare a schedule for the Head of Finance each year. Depending on the level of write-off the Director of Finance or the Finance Sub-Committee will approve the write off.

In each case brief details (anonymous) of the type of debt and any action taken to recover the debt will be given alongside each amount.

6.2 Action following write off

Even though a debt has been written off the details will still appear on the former tenant's account. Therefore should a former tenant's address subsequently become available, or should another landlord seek a reference for a former tenant with outstanding debt, the HSO, with the assistance of a debt collection agency if appropriate, will seek to recover some or all of the debt, including setting up a payment arrangement and/or taking legal action depending on the amount owed

7.0 Implementation

The Head of Housing Services is responsible for ensuring that this procedure is implemented.

8.0 Review

The Head of Housing Services will ensure that this procedure is reviewed at least every 3 years.

Appendix 1a – First Reminder

[Tenant name]
[Address 1]
[Address 2]
[Town]
[Postcode]

[Date]

PLEASE DO NOT IGNORE THIS LETTER

Dear [Salutation]

Former Tenant Debt

Following the recent ending of your tenancy at [tenancy address] I am writing to confirm that you still owe Ark Housing Association Ltd. the sum of £ [amount].

You need to pay this amount to us as soon as possible, so that we do not take legal action to recover the debt, which will increase the amount you owe us as you will have to pay our legal costs as well.

If it will help you, we will be happy to discuss a payment arrangement with you so that you can pay off this debt over an agreed period of time. If you wish to discuss this please contact me on the phone number below.

Please contact me to let me know how you wish to repay this debt as soon as possible, and by **[two weeks date] at the latest.**

If we do not hear from you by then we will take further action.

Yours sincerely

[Name]
Housing Services Officer
Direct line:
E-mail:

Appendix 1b – Repayment Agreement Stopped

[Tenant name]
[Address 1]
[Address 2]
[Town]
[Postcode]

[Date]

PLEASE DO NOT IGNORE THIS LETTER

Dear [Salutation]

Former Tenant Debt

Following the recent ending of your tenancy at [tenancy address] I am concerned to note that you have not continued with the payment arrangement to repay the amount you still owe to Ark Housing Association. At today's date you still owe us £[amount].

You need to pay this amount to us as soon as possible, so that we do not take legal action to recover the debt, which will increase the amount you owe us as you will have to pay our legal costs as well.

You need either to start the regular payments again, and keep to them, or clear the debt in some other way.

Please contact me to let me know how you wish to repay this debt as soon as possible, and by **[two weeks date] at the latest**.

If we do not hear from you by then we will take further action.

Yours sincerely

[Name]
Housing Services Officer
Direct line:
E-mail:

Appendix 2 – Second Reminder

[Tenant name]
[Address 1]
[Address 2]
[Town]
[Postcode]

[Date]

**THIS LETTER IS IMPORTANT
PLEASE DO NOT IGNORE IT**

Dear [Salutation]

Former Tenant Debt

We wrote to you on [Letter 1 date] regarding your outstanding debt to Ark Housing Association, but so far you have not been in touch to let us know how you will pay this debt.

OR [Delete the paragraph above or below, and this note]

We wrote to you on [Letter 1 date] after you stopped the arrangement to repay this debt. You re-started payments but I am concerned to note that they have stopped again.

I am writing to let you know that if you do not repay this amount, [OR restart the payments and this time keep them going until the debt is paid off,] we will be passing your details to a Debt Collection Agency who will follow up payment for us.

We will also consider taking legal action against you for recovery of the debt. This will increase the amount you owe us as you will have to pay our legal costs as well.

Please contact me to let me know how you wish to repay this debt as soon as possible, and by **[seven days date] at the latest.**

If we do not hear from you by then we will pass your details to a Debt Collection Agency.

Yours sincerely

[Name]

Housing Services Officer

Appendix 3 – Referral to Debt Collection Agency

[Name]
[Address 1]
[Address 2]
[Town]
[Postcode]

[Date]

Dear [Salutation]

[Former tenant name] - Outstanding Debt - £[amount]

The undernoted person ended their tenancy of [tenancy address] on [termination date] but still owes the Association £[amount].

Name:

Current address:

Phone number:

Dates of letters sent by Ark to former tenant: 1)

2)

Please start the process to recover the amount due.

[Name]
Housing Services Officer
Direct line:
E-mail:

Appendix 4 – Final Warning

[Tenant name]
[Address 1]
[Address 2]
[Town]
[Postcode]

[Date]

FINAL WARNING BEFORE LEGAL ACTION PLEASE DO NOT IGNORE THIS LETTER

Dear [Salutation]

Former Tenant Debt

Despite writing to you on at least 2 occasions and taking other action you have still not repaid the amount you owe us.

I am writing to let you know that if you do not repay this amount within 7 days from the date of this letter we will be instructing our solicitors to start legal action against you for recovery of the amount due.

Our legal costs, including court costs if we take action through the Sheriff Court, will be charged to you. This could cost you several hundred pounds.

To avoid having legal action taken against you must contact me **immediately**.

Yours sincerely

[Name]

Senior Housing Services Officer

Appendix 5 – Court Action Warning

[Tenant name]
[Address 1]
[Address 2]
[Town]
[Postcode]

[Date]

Dear [Salutation]

Former Tenant Debt – Sheriff Court Action

Following on from our previous letters, I am writing to confirm that legal action against you for recovery of the debt you owe us has started.

Our solicitors will be raising an action for a Decree against you in the Sheriff Court and you will receive formal notification of when the case will be heard in court.

You still have the opportunity to avoid court action if you repay the amount you owe. To do this please contact me **immediately**.

Yours sincerely

[Name]

Senior Housing Services Officer

Direct line:

E-mail:

Appendix 6 – Simple Procedure Warning

[Tenant name]
[Address 1]
[Address 2]
[Town]
[Postcode]

[Date]

Dear [Salutation]

Former Tenant Debt – Simple Procedure Action

Following on from our previous letters, I am writing to confirm that legal action against you for recovery of the debt you owe us has started.

As you have not responded to our offers and requests to repay the debt I am writing to let you know that we will be raising a Simple Procedure Action against you for recovery of this amount. You will be notified formally when the action will be heard in court.

You still have the opportunity to avoid court action if you repay the amount you owe. To do this you must contact me **immediately** and arrange to repay the amount due **within 14 days at the latest**.

Yours sincerely

[Name]

Senior Housing Services Officer

Direct line:

E-mail:

Appendix 7 – Repayment Confirmation

[Tenant name]
[Address 1]
[Address 2]
[Town]
[Postcode]

[Date]

Dear [Salutation]

Former Tenant Debt – Repayment arrangement

I am writing to confirm that you have agreed to a repayment arrangement as detailed below:

Amount of each payment: £

No. of payments:

Please note that you must keep to this arrangement. If the payments stop before the total amount owed has been paid we will not issue any further warnings but will take legal action for recovery.

Yours sincerely

[Name]

Housing Services Officer

Direct line:

E-mail: