

## Debt Management Options

<b>Procedure Reference:</b>		HM04e	
<b>Related Policy:</b>		HM04	
<b>Effective date:</b>	Jan 2022	<b>Review date:</b>	Jan 2022
<b>Approved by SLT:</b>			
<b>Owner:</b>	Fiona Ross	<b>Job Title:</b>	Head of Housing Services
<b>To be issued to:</b>		Housing Management Staff	
<b>Method of Delivery:</b>		Email Procedure	

## Version Control

Date	Owner	Version	Reason for Change
Mon YYYY	Insert Name	Insert No.	Insert Reason
Dec 2021	Fiona Ross	3.0	3 yearly review

## Summary of Changes

Section	Change
All	Into new format
Name	Change in Name of Procedure as now includes Trust Deeds
S5	Addition of information relating to Trust Deeds



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### Contents

1.0 Introduction .....	3
2.0 Sequestration .....	3
2.1 Action Following Sequestration .....	4
2.1.1 Notification by tenant/former tenant .....	4
2.1.2 Formal notification by Trustee .....	5
2.1.3 Writing off arrears .....	5
2.1.4 Sequestration and housing benefit .....	5
2.2 Post Sequestration arrears .....	6
3.0 Trust Deeds .....	6
3.1 Protected and Unprotected Trust Deeds .....	6
3.2 Action on Receipt of Trust Deed Claim Form .....	7
4.0 Implementation and Review .....	7
4.1 Implementation .....	7
4.2 Review .....	7

## 1.0 Introduction

This procedure describes the action we will take once we are advised that a tenant or former tenant who owes the Association money has been sequestrated or entered into a Trust Deed.

For the purpose of this procedure, the following terms are used:

- Sequestration – bankruptcy term in Scotland
- Debtor – person who owes money
- Creditor – person or organisation that money is owed to
- Trustee – person appointed to oversee finances in cases of sequestration
- Accountant in Bankruptcy – Organisation responsible for bankruptcy in Scotland

## 2.0 Sequestration

Sequestration involves the transfer of a debtor's assets and property to a Trustee. The Trustee's role is to prepare a statement of the debtor's finances, and they have a duty to sell assets or property to repay the debts owed.

A person is sequestrated by the Sheriff Court following application by:

- A creditor;
- A Trustee, where a debtor has previously set up a trust deed to handle their debts but is not complying with the terms of the deed;
- Themselves.

To be considered for sequestration, a debtor must:

- Have debts totalling more than £3,000;
- Been a resident of Scotland or have lived in Scotland in the last year;
- Have not been made bankrupt in the last five years;
- The period of sequestration will normally last a year, but if the application was by a creditor or Trustee the period may sometimes be extended on further application to the court.

For a creditor, the main impact of sequestration is that from the date the order is granted by the court a creditor is no longer able to pursue or take legal action against a debtor to recover what is owed, even if there is decree.

## 2.1 Action Following Sequestration

### 2.1.1 Notification by tenant/former tenant

If a tenant advises of sequestration, the Housing Services Officer (HSO) must ask for the following in order to confirm sequestration:

- The date sequestration is granted;
- The name and address of the trustee;
- A copy of the certificate of sequestration from the tenant.

Confirmation of sequestration should be checked on the Register of Insolvencies on the Accountant in Bankruptcy website <https://www.aib.gov.uk/>

Following confirmation of sequestration, the HSO will write to the Trustee requesting a formal 'Notice to Creditor' and a claim form for completion.

Following receipt of claim form, the HSO will:

- Note the date on the system so that there can be a clear separation between any pre-sequestration arrears and any arrears that arise after the sequestration date.
- Calculate the rent and service charge arrears to the sequestration date and note this amount on the Housing Management System.
- Check with Finance staff for any other outstanding debt such as rechargeable repairs and note the amount(s) and type(s) of debt on the system and in the file.

It is important to ensure that all staff are clearly notified and aware of the sequestration date. From that date no monies may be accepted directly from the debtor to pay off pre-sequestration debts. All payments and any other dealing regarding pre-sequestration debt must be made through the Accountant in Bankruptcy.

The HSO will submit a claim on the debtor's assets for the amount owed to Ark up to the sequestration date.

### 2.1.2 Formal notification by Trustee

If the debtor has advised the Trustee that they owe money to Ark, the formal Notice from the Trustee may be received with no prior warning. Depending on what information the debtor has given the Trustee, the HSO may be asked to provide details of the amount owed to Ark and submit a claim up to the date of sequestration.

### 2.1.3 Writing off arrears

The action of being sequestrated means that it is very unlikely that Ark will recover any debt outstanding prior to the date of sequestration. At the end of one year from the sequestration date it will be discharged and only if there are any funds left in the estate will they be distributed between the creditors.

At this time, if there is still an amount owed to Ark after any distribution of funds this will be written off, as no further action can be taken to recover any pre-sequestration date debt.

If no further legal action is going to be taken, e.g. in the case of a former tenant, the normal position will be that we will write off the pre-sequestration debt at the end of the financial year in which we are notified that the sequestration has been discharged.

### 2.1.4 Sequestration and housing benefit

Where part of the debt at the date of sequestration is classed as 'technical arrears' because it is housing benefit due directly to Ark, the HSO will ensure that the housing benefit part of the debt is **not counted** as part of the claim that is submitted to the Trustee, and that it is **not** written off.

When the housing benefit is received it will be processed to the rent account in the normal way. This will result in only the non-technical arrears and any other charges being the pre-sequestration debt amount which may or may not be recovered and/or written off in due course.

## 2.2 Post Sequestration arrears

If a current tenant continues to accrue arrears after they are sequestrated then we can still take court action regarding any post-sequestration date debt, including seeking a decree for re-possession.

While we cannot enforce any decree covering pre-sequestration debt we may refer to the debt and the fact that the tenant has been sequestrated in the court proceedings as evidence of the history of non-payment of rent by the tenant.

## 3.0 Trust Deeds

A Trust Deed is generally viewed as a suitable alternative to Sequestration for those who have debts greater than £5,000. A trust deed is a voluntary agreement between a person and the people they owe money to. It is a legally binding agreement. The debtor agrees to pay a regular amount of money towards their debts and at the end of a fixed time the rest of their debts will be written off. The period of time is usually three years.

### 3.1 Protected and Unprotected Trust Deeds

A trust deed can become 'protected' if the majority of creditors are happy with the terms of the trust deed. This means that the trust deed is binding on all creditors and they cannot take any steps to recover the money owed to them.

If a trust deed is not 'protected' then it will not be binding on all of the creditors and they could still take action to recover the money owed to them.

When a tenant enters into a trust deed, any tenancy debt is affected only if that trust deed proceeds to become protected.

If, however, the trust deed proceeds to become protected, the landlord can only recover any debts outstanding as at the date of protection from the Trustee. This means the debtor cannot be pursued for the debt which is outstanding at the date of protection. However the debt can be claimed from the debtors estate which is being administered by the Trustee. The Creditors have 5 weeks from the date of the notice of Trust Deed to object. If more than half of creditors, whose claims amount to more than one third of the total debt, do not object then the trust deed will become protected. This means the debt can no longer be pursued.

If the majority of creditors do object and the individual owes more than £1500.00 then the trust deed will not become protected, it is likely a petition for Sequestration will then be lodged. If granted apparently in the majority of cases there are no pay outs for creditors.

### 3.2 Action on Receipt of Trust Deed Claim Form

Ark should receive a claim form from the trustee, which allows Ark to set out the details of the debt due and provide an opportunity to object to it becoming protected. The Housing Services Assistant (HSA) should scan and email a copy of the claim form to the HSO with high importance and follow up with a phone call if the HSO is out of office. If the HSO is unavailable, the paperwork should be passed to the Senior Housing Services Officer (SHSO) to ensure the response deadline is kept.

The HSO should discuss the case with the SHSO and agree an appropriate response. The HSO should complete and return the claim form within 2 working days, noting details on the Housing Management System and saving a scanned copy in the tenancy file.

The HSO and HSA should ensure all copies of information received relating to the trust deed should be forwarded to the SHSO for inclusion in the monthly finance report for bad debt provision.

Ark should receive a dividend from the debtors estate in proportion to the debt due (for example, 10p is paid back to creditors for every £1 due). However unless the tenant has assets or low level debts, the likelihood of recovery of arrears remains low. The tenant is still directly responsible and liable for any ongoing rental charges or debts which accrue after the date of protection/sequestration.

## 4.0 Implementation and Review

### 4.1 Implementation

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

### 4.2 Review

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