

Current rent arrears recovery Policy



LODDON
HOMES



BERRY BROOK
HOMES

Reference:	Version 2	Author: Sue Needham
Scope:	Loddon Homes Berry Brook Homes	Approved by: Respective boards of Loddon Homes and Berry Brook Homes
Legislation:	Landlord and Tenant Act 1985 Housing Act 1988 Housing Act 1996 The Human Rights Act 1998 The Equality Act 2010 Protection from Eviction Act 1977 The Localism Act 2011 Welfare Reform Acts 2012 & 2016 Data Protection Act 2018	Date: September 2020 Date of review: September 2023
Regulatory/ Governance:	Civil Procedure rules: pre-action protocol for possession claims by social landlords	
Related Policies:	Rent setting policy Former tenant arrears policy Tenancy policy Allocations policy Service charge policy Succession policy	

1. Policy Statement

- 1.1. This policy applies to Loddon Homes and Berry Brook Homes which collectively will be referred to as the Local Housing Companies (the LHC).
- 1.2. The LHC has delegated responsibility to Wokingham Borough Council (WBC) Housing Services for ensuring that this policy is implemented and delivered. The relevant procedure and toolkit has been developed and this is being delivered by WBC Housing

Services.

- 1.3. Although WBC has been delegated responsibility, the LHC will be consulted and sign off the following proposed actions in delivering this policy:
 - The affordability of the rent for a prospective applicant
 - The serving of a mandatory notice for possession for arrears of rent
 - Authorising any proposed eviction
 - Forfeiture of a shared ownership lease.
- 1.4. The LHC as social landlords must minimise current rent arrears in order to maximise income. This supports the organisation in sustaining financial viability, meeting its business objectives and delivering a high level of service.
- 1.5. The LHC is committed to supporting residents to pay their rent when due and will proactively support residents to tackle any arrears and will take enforcement action only to manage increasing debt to the organisation.

2. Scope

2.1 This policy relates to the rent arrears of the following tenures in LHC's stock

- Assured
- Starter
- Assured Shorthold
- Fixed Term
- Shared owners
- Licences

2.1 This policy therefore applies to general needs, supported housing and sheltered housing residents, garages, and shared owners.

2.2 This policy also applies to licenses and use and occupation accounts.

2.3 Aims of the policy:

- To maximise income for the LHC.
- To ensure that residents comply with their tenancy agreement by paying the rent and service charge when due and in advance.
- To ensure early intervention and to contact residents at the earliest possible time when they fall into arrears.
- To maintain a consistent and effective approach to arrears recovery.
- To assist residents who fall into arrears to access the most appropriate support and advice.
- To implement a holistic approach to improve the household incomes and financial capability of our residents.
- To collaborate with agencies and organisations representing our residents.
- To use legal action when residents fail to take reasonable steps to clear their arrears.

3. Roles and Responsibilities

- 3.1. The Housing Services team and in particular the Rental Income team, is responsible for the management of rent arrears.
- 3.2. The team will work closely with welfare and support agencies to ensure that residents with rent arrears are maximising their welfare benefits and are given guidance on budgeting their household income.
- 3.3. The team will work in partnership with all relevant external agencies to ensure that a comprehensive arrears management service is delivered.
- 3.4. The Rental Income Team Leader will be responsible for signing off the proportionality statements, signing the notices and the pre action protocol.
- 3.5. The Assistant Director of Housing, Income and Assessment will sign off any request to apply for the bailiff's warrant, and an Officer from the LHC will sign this off too.

4. Definitions

- 4.1. Rent arrears are rent payments that are overdue
- 4.2. Static arrears are rent arrears which are neither increasing nor decreasing. These are usually caused by missed payment[s] which are not settled at a later date.
- 4.3. Cyclical arrears are rent arrears which both accrue and are cleared on a regular cycle. As an example, the frequency and timing of housing benefit payments accrues this type of arrears.

5. Rent payment

- 5.1 The LHC offer a wide range of methods to pay the rent due which are designed to meet the diverse needs of residents. The options include:
 - Direct debit [monthly: on the 1st, 10th, 20th of the month]
 - Standing order [weekly or monthly]
 - Debit or credit card over the phone either by the automated phone system or through speaking to the Rental Income Team
 - Paying by key fob for use at Post Offices and Payzone outlets.
 - Online
 - Direct payments from Wokingham Borough Council as Housing Benefit
 - Alternative Payment Arrangements (APA) and Third Party Payments (TPP) from the DWP.

5.1.1 Direct debit is the preferred method of payment and residents will be encouraged to use this method where possible.

5.1.2. All resident will be encouraged where possible to make arrangements to pay the rent in advance, either weekly or monthly. This includes asking for a week's advance rent at new tenancy sign ups.

6.0 Arrears prevention

6.1 New residents

6.1.1 Housing Services will undertake a pre- tenancy assessment of all prospective tenants to ensure that the rent is affordable. A prospective resident will therefore (unless

there are mitigating circumstances for which there is a sustainable solution) be refused a property should i) the rent prove unaffordable as a result of such an assessment or ii) if they fail to provide the requested information required to undertake an assessment.

6.1.2 All new residents are clearly advised of their responsibility to ensure that the rent is paid in full and on time. New residents are also advised that it is their responsibility to ensure that they make and maintain any claims for Housing Benefit and Universal Credit.

6.1.3 At sign up of the tenancy, one week's rent payment is required to be paid as a minimum. If the resident is in receipt of Universal Credit or Housing Benefit then an estimate is made of their likely Universal Credit Housing Costs, and the resident asked to pay the estimated net rent. For residents receiving Universal Credit, we will ask for the full week's charge to be paid.

6.1.4 Housing Services will ensure that residents granted a starter tenancy will be visited 3 times [at 4 weeks, 4 months and 9 months] so that any tenancy sustainability issues can be addressed; including paying the rent and managing rent arrears.

6.1.5 Any resident transferring internally or any new residents in supported or sheltered accommodation [i.e. with assured or fixed term tenancies only] will receive a visit after six weeks to ensure they have settled in and to address any concerns with the rent. The visit will be conducted by the relevant officer in Housing Services.

6.2 Current residents

6.2.1 All residents will receive a quarterly rent account statement to ensure that they are kept up to date with the balance on their account.

6.2.2 All residents are responsible for contacting their Rent Officer, should they be experiencing financial difficulties which means that they are unable to pay the rent due.

6.2.3 When a resident's rent account is showing arrears, they will also receive prompt notification of this from Housing Services. In line with the arrears recovery procedure this will be a combination of telephone calls, emails, text messages, letters and home visits as appropriate. See section 7 below. For residents with a LHC tenancy, we will take account of Housing Benefit payments being made four weekly in arrears.

6.2.4 All rent accounts are managed securely by the LHC and in compliance with the Data Protection Act 2018.

6.3 Advice and support

6.3.1 Housing Services will provide advice and assistance, and/or signpost residents to external agencies, whether they have rent arrears or otherwise where appropriate.

Advice may include but is not limited to income maximisation, benefit entitlement, debt management, and support to gain further training and maximise employment or volunteering opportunities.

6.3.2 The LHC recognise that many of our residents may need and benefit from assistance and support. We will engage with residents to identify vulnerabilities at the earliest opportunity and will assist in identifying and securing appropriate support in order for residents to manage their rent and sustain their tenancies.

6.3.2 Welfare reform & money advice

6.3.2.1 The LHC recognise that following the Government's welfare reform agenda, the welfare benefit system is very complicated. Housing Services at WBC will ensure that the resident is signposted as necessary to obtain impartial advice and assistance regarding all aspects of benefits, including:

- Undertaking benefits entitlement checks,
- Maximising residents' income through benefit take up,
- Assistance in completing any relevant forms, including on line,
- Advice and support for residents claiming Universal Credit.

6.3.2.1 The LHC is committed to providing the best help to its residents regarding money matters. Details of charities and helplines designed to support money matters are published on the website and these include the government's money advice service.

6.3.2.2 The LHC will support residents in the choices that they have when they are struggling to pay the additional rent as a result of benefit cuts due to under-occupancy.

7.0 Arrears recovery

7.1 Housing Services will monitor rent accounts regularly to ensure early intervention. Rent Officers will strive to make personal contact with residents throughout the arrears recovery process to ensure they are:

- fully aware of the implications of non-payment,
- fully aware of the actions which will be taken in response to non-payment,
- and to provide residents with maximum opportunities and encouragement to engage with us in order to reduce and ultimately clear the debt.

7.2 Rent Officers will ensure that they are accessible to residents and will offer and use appropriate methods of contact, including phone calls, e-mails, text messages (where messages do not compromise data protection), letters, home visits, and out-of-hours office appointments (where staff resources allow). Every effort will be made to ensure face-to-face communications with our residents throughout the arrears recovery process wherever practical.

7.3 The LHC will ensure that the rent arrears recovery procedure is followed in all cases and that the Civil Procedure rules relating to the Pre-action protocol for possession claims

by social landlords are complied with at all times.

7.4 Early intervention

- 7.4.1 The LHC is committed to minimising rent arrears by preventing these becoming a major, long-term problem wherever possible.
- 7.4.2 The LHC will inform residents as soon as we become aware of the arrears that have they accrued arrears and/or payments are missed. In addition, all arrears are notified as standard by the quarterly rent statement.
- 7.4.3 Wherever possible, personal contact with residents in arrears will be achieved and maintained throughout the process. Letters will always be sent directly to the resident (unless authority has been provided for letters to go to for example, a Deputy) and legal notices delivered by hand. (See 7.2).

7.5 Repayment arrangements

- 7.5.1 The LHC requires rent arrears to be repaid as quickly as possible, taking into account the resident's circumstances and financial situation. Agreements will be affordable and realistic and will reflect consideration of the resident's financial circumstances and the anticipated time within which the agreement will clear the arrears.
- 7.5.2 To this end a financial assessment will be undertaken where possible with the Tenancy Sustainment Officer or Rental Income team leader in order to ensure that the agreement can be adhered to by the resident without placing them in financial hardship. (See 6.3).
- 7.5.3 The LHC is committed to making contact with residents throughout the arrears recovery process and sustain contact at every stage, using the most appropriate methods according to circumstances.
- 7.5.4 Residents will be made fully aware of the consequences of not making, and subsequently complying, with a repayment agreement.

7.6 Vulnerable residents

- 7.6.1 All residents must pay their rent/service charge and the LHC recognises that some have difficulties maintaining their responsibility for reasons often beyond their control. The LHC refer to such residents as vulnerable.
- 7.6.2 Residents may be classed as vulnerable for a number reasons including
- physical disabilities, mental health issues, learning difficulties, being elderly,
 - chronically sick or substance misuse dependency. This can cause temporary or permanent financial management problems from these or a wide range of associated reasons.
- 7.6.3 The LHC will ensure that the needs of vulnerable residents are taken into account when taking action to recover rent arrears. This includes with the resident's consent, referring or signposting the resident to any welfare and support agencies, and liaising with appropriate external agencies and family to provide support with vulnerable residents' financial affairs.

7.7 Taking possession action

7.7.1 The LHC will take legal action to recover rent arrears where the resident is failing to take adequate steps to resolve the situation resulting in arrears that are significant or persistent.

7.7.2 The LHC will undertake this action to protect its position in the event of the resident continuing to default on payments for unacceptable lengths of time or failing to maintain regular repayments of a debt as per an agreement or failing to engage or address their arrears.

7.7.3 Initial legal action for assured and fixed term tenants involves the service of a Notice of Seeking Possession (NOSP). An application for a possession hearing cannot be made until after 2 full weeks have elapsed after service of the NOSP. This will only be done after the relevant officer has made every effort to contact the resident in line with the Pre-action Protocol.

A NOSP will be reserved should the previous notice have expired (after 12 months) and the debt is the equivalent of at least 4 weeks' arrears even if a repayment agreement is being complied with.

7.7.4 The LHC will extend a starter tenancy where there are arrears to give additional time for the resident to clear the arrears. A NOSP may also be served to manage arrears for a starter tenant having due regard to the level of arrears, the resident's circumstances and the tenancy start date.

In exceptional circumstances a Section 21 notice be used for the management of rent arrears for starter tenants.

Where a Section 21 notice is served this will be in line with the Pre-action Protocol for starter and assured shorthold tenancies in arrears. A Section 21 notice provides mandatory possession with a court order and gives 2 months' notice before the an application for an order for possession can be made. A starter tenant has the right to appeal against the decision to serve a Section 21 notice.

7.7.5 Where a resident has a licence agreement or is in use and occupation, a Notice to Quit will be served in line with the Pre-action Protocol. A Notice to Quit equates to mandatory possession from the court and gives 28 days' notice before an application can be made to the county court for a possession order.

7.7.6 The LHC will serve a NOSP but not commence possession proceedings against a resident while a claim for Universal Credit or Housing Benefit when the resident has provided the requested information and the claim is awaiting assessment.

7.7.7 The LHC policy is to use the following grounds for possession for rent arrears for

assured, assured shorthold (starter tenancies) ,fixed term tenants and shared owners:

- Mandatory grounds:

The LHC will consider the use of mandatory grounds for possession, such as a Ground 8 NOSP for assured tenancies and fixed term tenants, shared owners; or Section 21 Notice Requiring Possession for starter tenancies, in extenuating circumstances only.

Such circumstances include where:

- the resident fails to engage
- there is evidence that the resident builds up arrears and then clears the debt upon service of NOSP or at any stage of the possession proceedings,
- there is no realistic prospect of the resident clearing or reducing the arrears to a satisfactory level, or
- the property has been abandoned and arrears are accruing.

The LHC will offer appropriate support to the resident in all cases before considering the use of mandatory grounds. We will ensure that any use of mandatory grounds is approved by the Rental Income team leader, and full consideration will be given to the appropriateness and proportionality of mandatory possession.

Shared owners: When a NOSP needs to be served on a shared owner, this ground will be used only in exceptional circumstances.

- Discretionary grounds

- Ground 10: Rent which is lawfully due from the resident has not been paid by the time the possession proceedings are started and was owed at the time the NOSP was served. If a resident has been offering the landlord rent and the landlord refused to take it, the tenant will have a defence to the possession proceedings but must pay the amount owed in to court.
- Ground 11: The tenant has repeatedly failed to pay rent on time. There need not be rent arrears at the time possession proceedings are started.

NB Ground 12 is for breach of tenancy other than rent arrears and will therefore not be used.

7.7.8 A completed Proportionality Assessment Form will be signed by the Rental Income Team Leader or Manager prior to the serving any form of possession notice. The Proportionality Assessment Form is completed to ensure that the possession is a proportionate action and that any Human Rights defence raised by the defendant at any hearing is dismissed by the court.

7.7.9 Where a resident has failed to make or maintain arrangements to repay the debt owed and/or failed to claim Housing Benefit/Universal Credit or provide relevant documentation or evidence of income to support a claim then applying for a possession hearing is the next step.

- 7.7.10 Before any proceedings are initiated after the notice has expired, the Housing Panel (a meeting of different service area staff) will consider the case and make recommendations to proceed or put the matter on hold in view of vulnerabilities or safeguarding issues.
- 7.7.11 The LHC will encourage residents to attend court hearings and will recommend a 'Litigation Friend' be appointed to assist vulnerable residents when appropriate. Residents will be advised to seek independent legal advice. We will seek to recover court costs from residents, except in extenuating circumstances.
- 7.7.12 The LHC will request either a suspended or outright Possession Order from the Court, based on the circumstances of the case and the tenancy type. We will consider adjourning the case if the resident reduces their arrears significantly and reaches a suitable repayment agreement; we will restore the case if the repayment agreement is not then maintained.
- 7.7.13 If full payment of the arrears and legal cost is made by the resident, the LHC will usually write to the county court asking for the proceedings to be dismissed with an order for costs. However in certain situations, where the resident has a history of paying off the arrears prior to court hearings, the LHC reserves the right to continue with the legal proceedings on the basis of persistent non-payment of rent as it falls due.
- 7.7.14 The LHC will apply for a bailiff's warrant in order to evict residents where there is a continued breach of the order set by the Court and offers of support and assistance from the Tenancy Sustainment officers and referrals to external agencies have not been taken up. All proposed eviction proceedings are recommended by the Rental Income Team Leader and authorised by the Assistant Director Housing, Income and Assessment and by the Managing Director of the LHC or the Finance Business partner in s/he's absence.
- 7.7.15 The Housing Panel will assess the case and make recommendations to proceed or put the matter on hold in view of vulnerabilities or safeguarding issues.
- 7.7.16 No bailiff's warrant will be applied for without the authorisations outlined in 7.5.12, and 7.5.13 above.
- 7.7.17 As regards shared owners, forfeiture proceedings will be undertaken in cases where a NOSP has been served, default of paying the rent and service charges is continuing and the lender has confirmed that they will be not making any offer of settlement of the debt.

8.0 Other matters

8.1 Joint Tenants

8.1.1 Joint tenants are jointly and severally liable for any arrears that occur. This means that each joint tenant can be individually and separately responsible and pursued for rent arrears. For this reason assignments are not allowed where there are arrears.

8.1.2. The LHC will endeavour to contact joint tenants separately in the event of serious arrears occurring and prior to and during any possible or actual legal action. A separate Notice will be served for each tenant.

8.2 Death of Tenant

8.2.1 The full rent for a property remains payable following the death of a tenant until possession of the property is returned to the LHC (the keys are returned) where there is no successor to the tenancy. Any Housing Benefit/UC entitlement will cease at the end of the week after the date of death.

8.2.2 A notice to quit (NTQ) will be served on the personal representative of the deceased tenant and the Public Trustee to bring the tenancy to an end where there is no succession. Refer to the Succession policy.

8.2.3 Any party remaining in occupation after the NTQ has expired will be charged for use and occupation (mesne profits) until a possession order is effected or they are offered a starter tenancy. See the Succession policy and procedure. Where parties remain in occupation, The Rent Officer will be advised to ensure that the occupants are aware that they can apply for Housing Benefit or Universal Credit.

8.2.2 The LHC will seek to recover any outstanding rent from the deceased's estate where appropriate. Where there is no estate and/or no resources available to settle the account of the deceased, and the Executor confirms this in writing, the LHC will write off the monies owed. Refer to the Former Tenant Arrears policy.

8.2.3 Where there is a successor to the tenancy any arrears owed by the deceased will become a former tenant debt unless a possession order is in place. Successors are not liable for any arrears but will be asked to pay former tenant arrears if they are the executor of the deceased's will. Any successor will be liable of the rent from the Monday following the deceased tenant's date of death

8.3 Right to Acquire

All rent and other monies owed must be paid upon completion or the LHC will not agree to proceed.

8.4 Garages

A Notice to Quit (NTQ) will be served on garage licences where there are arrears of more than two weeks rent and where the resident has not paid the arrears after the letter warning that a NTQ will be served, has been sent. The garage will be repossessed on expiry of the notice if the debt is not cleared and any cost of the lock change and clearance of vehicles or property

within will be recharged to the licensee. Garage rent must be paid weekly advance on Mondays.

Should a garage tenant also be a tenant of the LHC where there are arrears on the tenancy of the home, the garage may be repossessed as it would be considered as unaffordable. In such circumstances, the resident will be written to giving four weeks to clear the property debt (or to make and keep to an appropriate arrangement), or the garage will be repossessed

8.5 Debt relief orders and bankruptcy

8.5.1 Debt relief orders (DRO) are a way for social rent customers to deal with their debts where they owe under £20,000 and do not have much spare income.

8.5.1.1 The existence of a DRO does not prevent the court from making a possession order against a tenant on the ground of rent arrears (or any other ground). This applies regardless of the tenant's security of tenure. However, where the arrears are listed in a DRO, the court cannot suspend (or postpone) the possession order on terms of the payment of those arrears.

8.5.1.2 On the other hand, the court can suspend an order for possession on the condition of payment of current rent and costs. When a DRO is made after the making of such a suspended/postponed possession order, the DRO will have the effect only to extinguish the judgment debt up to the making of the DRO, but not any subsequent arrears accrued during and after the moratorium period

8.5.2 Bankruptcy is an insolvency measure for individuals unable to pay their debts when they become due.

8.5.2.1 Where possession is sought on the grounds of non-payment of rent there are restrictions on the jurisdiction of the court to deal with the money side of the LHC's claim for possession.

8.5.2.2 If the arrears are provable in the bankruptcy (i.e. they **accrued before the bankruptcy order** was made), the court can make an order for possession, but cannot suspend it or postpone it on terms of payment of those arrears. The LHC will also be unable to obtain a money judgment for those arrears.

8.5.2.3. If the rent arrears are not provable in the bankruptcy (i.e. they **accrued after the bankruptcy order** was made), the court can suspend or postpone an order for possession on payment of current rent and rent arrears that are not provable in the bankruptcy.

9.0 Rent refunds

9.1. The LHC will regularly and proactively monitor credit balances on accounts and advise residents that they may request a refund where appropriate. We will consider all requests for refund of surplus credit on accounts.

9.2. All refunds will be awarded at our discretion; we will take into consideration the payment method, payment patterns, the time it takes for refunds to reach residents as in some circumstances it will be more economical for residents to stop paying the rent to use up the credit, and relevant circumstances in calculating any credit to refund in order to prevent the resident from falling into arrears in the near future. We may, in exceptional circumstances, agree to a refund which would cause the account to fall into cyclical arrears, such as where this would help alleviate financial hardship.

9.3 The LHC will offset recoverable debt from a credit balance before issuing a refund, such as a former tenant arrears, court costs, rechargeable repairs or Housing Benefit overpayments. Where there is no reasonable prospect of returning credit balances we will usually deal with these as a write-on to our financial accounts. We will not normally refund credits which have exceeded the statutory limitations of such monies of 6 years and have been written-on to our financial accounts.

10.0 Former tenant debts

Please refer to the LHC's Former tenant arrears policy.

11.0 Confidentiality

11.1 Under the GDPR 2018 and the Human Rights Act 1998, all personal and sensitive organisational information, however received, is treated as confidential. This includes:

- anything of a personal nature that is not a matter of public record about a resident, client, applicant, staff or board member
- sensitive organisational information.

11.2 The LHC's employees will ensure that they only involve other agencies and share information where there is a legal basis for processing the information.

12.0 Review

12.1 This policy will be reviewed on a three yearly basis or more frequently in response to changes in legislation, regulatory guidance, good practice or changes in other relevant LHC policy.

13.0 Performance

13.1 Performance in relation to the delivery of the services and activities set out in this policy will be monitored on an ongoing basis through our established reporting mechanisms to associated boards.

13.2 The following reports will be produced in relation to the delivery of this policy:

13.2.1 Monthly KPIs relating to:

- Total arrears as percentage and figure for the LHC

- Total arrears as percentages and figures for Loddon Homes and Berry Brook Homes respectively
- Arrears as a percentage and figure by tenure: social rent, starter tenancies, assured shorthold, licenses and shared owners.
- Number of evictions due to arrears by tenure.

Performance targets will be set annually in order to ensure that the LHC are in the upper quartile performance when benchmarked against similar social landlords.

Where targets are not being achieved there will be exception reporting for the Boards' information.

14 Appendices

None