

Former tenant arrears Policy



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 1987 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 of approval:	September 2020
Regulatory/ Governance:	The Regulator of Social Housing Tenancy standard	Date of next review:	September 2023
Related Policies:	Current arrears recovery policy Tenancy policy Allocations policy Succession policy Abandonment policy Tenancy Fraud policy Managing voids 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.
- 1.3 This policy aims to:
 - ensure that the LHC effectively manages the collection of former tenant arrears (FTA).
 - maximise income through the recovery of FTA by taking a clear, consistent and cost

effective approach.

- minimise the amount of arrears transferring to FTA by taking early action to prevent arrears accruing and enforcement action to manage arrears as necessary. Please refer to the Current arrears recovery policy and procedure.
- minimise the need to write off former tenant arrears.
- ensure that where staff resources allow, residents are made aware of their ongoing rent payment responsibilities and obligations even after tenancy termination.
- Ensure that FTA are written off when all reasonable steps to recover the debt have been undertaken.
- provide the criteria for writing off of FTA.
- identify if an applicant requesting social housing has former arrears from a previous tenancy with the LHC.

2. Scope

- 2.1 This policy relates to any former resident of the LHC with arrears.
- 2.2 This policy does not relate to arrears owed by current customers of the LHC. Please refer to the Current arrears recovery policy and procedure.

3. Roles and Responsibilities

- 3.1 The Housing Services team and in particular the Rental Income team, is responsible for the management of FTA.
- 3.2 The team will ensure that the Current arrears recovery policy is adhered to in order to minimise the potential level of FTA.
- 3.3 The Rental Income team leader will be responsible for the overall delivery of this policy.
- 3.4 The LHC Finance Director will be responsible for actioning any sign off requests and in line with the relevant Board's responsibilities and accountability.
- 3.5 The Housing Needs team will ascertain whether an applicant for social housing has former tenant arrears with any other social housing provider including WBC and the LHC. Any such applicants will be advised that this debt will need to be cleared before they would be considered for a tenancy with the LHC. Any agreement to deviate from the approach, would need approval from the Assistant Director for Housing, Income and Assessments and the LHC.

4. Definitions

- 4.1 Former Tenant Arrears (FTA): The arrears that have accrued on the rent account at the time the tenant leaves a property and the tenancy is terminated without paying the amount due.
- 4.2 Termination of tenancy: This will occur in the following circumstances:
 - after 28 days when the resident has given notice to quit,
 - when a sole tenant dies (even where there are succession rights),
 - when the property is abandoned and the LHC serves notice to quit,
 - when a resident is evicted,
 - when the tenant hands in the keys as a surrender in cases of subletting.
- 4.2.1 The LHC recognises that in cases when a notice to quit is not served, there is a higher risk of FTA arising, particularly in cases of eviction.

5. Legislation

5.1 The LHC must have due regard to the following legislation in applying this policy:

Landlord and Tenant Act 1987

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

6. Procedure

6.1 Former tenant arrears collection

6.3.1 The LHC recognises that each FTA case is different and the same collection methods may not be appropriate for all cases. The officer will consider on a case by case basis what would be the most cost effective collection method.

6.3.2 The former tenant will be contacted where appropriate records have been made and where staff resources allow, within one month of the tenancy end date where the debt is in excess of £50. This contact can be from an external collection agency providing the first letter to be sent has been checked and approved by the LHC.

6.3.3 The former tenant will be encouraged to set up a repayment plan that is affordable but also meets the LHC's requirement that the debt is repaid over the shortest possible time period.

6.3.4 Where appropriate and cost effective, a third party agent will be used to trace the former tenancy and/or recover the debt. If no arrangement has been put in place within 3 months then the case will be returned to the LHC and put forward for write-off.

6.3.5 Where a repayment plan is in place but payment have been missed, the LHC will contact the former tenant to request immediate payment. If they are unable to do and/or more than one payment has been missed, then court action may be considered.

6.3.6 Legal action will be taken where the LHC has taken reasonable action to collect the FTA but has been unsuccessful and it is considered that legal action would be successful. The former tenant will be advised that this action is being taken and the reasons. The usual legal remedies that will be sought will be an attachment of earnings order or a money judgement. The LHC or any employed agent will not use distraint¹ in any circumstances.

6.3.7 In cases of FTA of over £50 in respect of the deceased tenant, action will be limited to contacting the next of kin or executor to claim against the estate. If this action proves

¹ The seizure of personal goods

unsuccessful then the arrears will be written off. See 7.4.
Any qualifying successor is not liable for the arrears accrued by the deceased resident.

7. FTA write off

- 7.1 The LHC will write off FTA only after officers have taken all reasonable steps to recover the debt as detailed at 6.3.
- 7.2 Write offs will be dealt with promptly and at least quarterly, so that performance monitoring will give an up to date view of outstanding arrears and performance information.
- 7.3 Even when an FTA have been written off, the debtor remains liable to pay and recovery action will be resumed should there be good reason to do so.
- 7.4 The LHC will write off FTA in the following circumstances:
- Resident is deceased and has left no estate
 - Resident has gone away and unable to trace despite best efforts taken
 - Debt is under £50
 - Debt is uneconomic to pursue. In these circumstances, the case for write off should include an estimate of the cost to be incurred and the likelihood of success.
 - The debt is over 6 years old, no legal action has been taken and there has been no contact with the debtor within the 6 year period. (Statute barred).
 - The resident has vacated the property and the LHC is unaware of their forwarding address despite best efforts taken such as referral to an external collection agency
 - The resident has vacated the property due to any of the following circumstances: is in prison, sectioned under the Mental Health Act, is in a care/nursing home and cannot afford to pay, the tenant has left the UK.
- 7.5 A summary of the level of debt, actions and point of write off can be summarised as follows:

Circumstances of FTA	Debt £50 - £199.99	Debt £200 and above
Tenant dies or moved to residential care	Write off if there has been no response from executor/next of kin within 28 days of sending letter, or written confirmation received that there are insufficient funds in the estate to pay.	Write off if there has been no response from executor/next of kin within 56 days of sending letter(s), or written confirmation received that there are insufficient funds in the estate to pay.
Tenant has left property for any other reason See 4.2	Contact former tenant and/or Next of Kin if the LHC have their details. If contact is successful then start collection. Missed payments consider legal action. If there are no contact details or payment plan in	Contact former tenant and/or Next of Kin if the LHC have their details. If contact is successful then start collection. Missed payments consider legal action. If no contact details refer to external collection agency to trace and collect debt. If

	place after 3 months then write off debt.	unsuccessful after 3 months, agency returns case to the LHC. Write off debt.
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7.6 Write off schedule

Amount	Recommended by	Signed off by
Up to £1000	Rental Income Team leader	Finance Director
£1000- £5000	Rental Income manager	Finance Director
Over £5000	Finance Director	Loddon Homes/Berry Brook Board

8. Former tenant credits

- 8.1 Any credit on a former tenant account where the former tenancy asks for the refund, will be refunded within 4 weeks of the tenancy end date by BACS where possible. The former tenant will complete a form requesting the refund that includes their bank details. Where the former tenancy was a joint tenant, both parties must sign the form.
- 8.2 After 12 months of making regular attempts to return the credit to the former tenant or next of kin/executor, this amount will be written on by the LHC to ensure best use of income.
- 8.3 For credits over £500, the LHC will be pro-active in contacting the former tenant to notify them of the credit.
- 8.4 If the credit is requested by the former tenant or next of kin within 6 years, then repayment will be made. No refund payment will be made by the LHC where the end of the tenancy was over 6 years ago.

9. Equality & Diversity

- 9.1 The LHC recognises the needs of a diverse population and always acts within the scope of its own Equality and Diversity Policy, the Human Rights Act 1998, and Equalities Act 2010. The LHC works closely with its partners to ensure it has a clear understanding of its resident community. The LHC will record, analyse and monitor information on ethnicity, vulnerability and disability.

10.0. Confidentiality

10.1 Under the Data Protection Act 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.

10.2 The LHC employees will ensure that they only involve other agencies and share

information where there is a legal basis for processing the information.

11. Review

11.1 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 policies.

11. Performance

11.1 Our 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 our associated boards.

12.0 Appendices

None