

Policy Name	Recovery of Property (non-arrears) Policy
Policy Category	Housing Management
Policy Number	
Officer Responsible	Head of Housing and Corporate Services
Application	Housing Management
Date to the Board of Management	August 2019
Date to Your Voice Partnership	
Next Review Date	August 2024

1. Introduction and Background

- 1.1 Lochaber Housing Association Limited is a registered social landlord committed to providing good-quality housing and related services, specifically the management and maintenance of its stock. As a social landlord the Association owns and manages both social housing and shared ownership.
- 1.2 This policy refers to scenarios where the Association is seeking to take legal action for the recovery of a property out with the Rent Arrears Policy and defines the areas that permission to evict may be made to the Board of Management to pursue lawful recovery.
- 1.3 This policy should be used in conjunction with the Association's procedures which explains, more systematically, the process to be adhered to in relation to the management and recovery of property.

2. Aims

2.1 The aims of the Association's policy on Recovery of Property are:

- to ensure that the Association takes all reasonable steps to ensure that homelessness is prevented, and recovery action is taken as a last resort
- to ensure that the Association can enforce the conditions of any Scottish Secure, Short Scottish secure tenancy and occupancy agreement.
- to ensure that the Association can effectively manage breaches of tenancy and occupancy agreement that require the ultimate sanction of recovery action.
- to ensure that all tenants/sharing owners are treated fairly and equally in terms of their obligations and those of the Association's under the tenancy/occupancy agreements, and in terms of the service they receive from us.
- to minimise the Associations risks in the event of any breaches of agreement.
- To ensure that alternative actions are identified where possible to recovery action

3. Legislation, Regulation and Guidance

3.1 The legislative requirements include the following:

Housing (Scotland) Act 2001 – the policy complies with the provisions of this Act, including the guidance in relation to the Scottish Secure Tenancy and Short Scottish Secure Tenancy and recovery of possession of a tenancy when a tenant has breached the conditions of their agreement and legal action is taken on the grounds available

Homelessness etc (Scotland) Act 2003 – the Association will comply with the terms of section 11 of the abovementioned Act by giving The Local Authority early notice of households at risk of homelessness due to eviction. In compliance with the legislation, notice will be given when issuing formal notice of proceedings.

Housing (Scotland) Act 2010 – the policy has been designed to take account of the arrears and eviction related provisions introduced through the 2010 Act. These include the provision of clear information to tenants on their tenancy and arrears situation, direct provision of advice and assistance, provision of information about other sources of advice and assistance, agreeing reasonable repayment plans, and revised arrangements for when a Notice of Proceedings can be served.

Housing (Scotland) Act 2014 – the policy is designed to ensure that prior to recovery action for anti-social behaviour, that consideration is given to changing the secure tenancy to a short Scottish secure agreement. However in the most severe of cases of illegal acts and anti-social behaviour the legislation does offer the Association a more streamlined route for recovery action. This legislation makes further changes to the requirements for tenants to notify the landlord of any changes to the household and the period of time that the Association can consider eligibility for assignation, succession and inclusion for joint tenancy.

The policy is also guided by the following legislation:

Equality Act 2010 – the Association within the operation of its Rent Arrears Policy will comply with the Equality Act which protects persons from being discriminated against.

Children and Young People (Scotland) Act 2014 – which sets out a legal framework within which services are meant to work together to support children, young people and families.

3.2 The Scottish Government, through the Scottish Social Housing Charter, sets the outcomes it expects Housing Associations to achieve for its residents. In terms of how Associations should develop their approaches to the management of tenancies and threat of repossession, the Charter states:

- Tenants get the information they need on how to obtain support to remain in their home; and ensure suitable support is available, including services provided directly by the landlord and by other organisations. (Outcome 11)
- People at risk of losing their homes get advice on preventing homelessness. (Outcome 9)

4. New Tenancies and Shared Ownership

- 4.1 Getting things right at the start of the tenancy or shared ownership can be paramount in avoiding tenancy breaches both at the onset of the tenancy and in the future, and aid tenancy sustainment.
- 4.2 All new tenants or sharing owners should receive information on areas of the tenancy or occupancy agreement that could result in recovery action being taken in the event of any agreement being breached or broken.
- 4.3 All new tenants should be made aware of the relevant key conditions of occupancy; such as occupying the property as their main and principle home, respect of others, condition of property and local arrangements for common areas
- 4.5 All new tenants will be issued with a *Tenants' Handbook*, detailing their rights and responsibilities, and this handbook will be kept up-to-date.
- 4.6 All new tenants should be visited as a 'settling-in' visit within 4-6 weeks of the commencement of their tenancy. This enables early identification of any problems, and gives the tenant an opportunity to raise any issues they may wish to be clarified. Further visits may be required as defined by any risk assessment carried out.

5. Preventative Action

- 5.1 Early and appropriate intervention and action is the keystone to preventing any escalation of breaches of tenancy or occupancy agreement to the point that recovery action is being considered.
- 5.2 The Association will offer all tenants and shared owners the opportunity to resolve issues; these include: home visits, office visits, consideration for mediation, suitable timescales to resolve matters, referral to suitable agencies for support and assistance, referral to Highland Council to prevent homelessness.
- 5.3 The Association will ensure that referrals are made to the Housing Assistant – Tenancy Sustainment at the earliest convenience and where appropriate to help tenants resolve any tenancy breach.

6. Grounds and purpose for seeking recovery of possession of property owned or managed by the Association or forcing division of sale for shared ownership

- 6.1 Unlike rent arrears, there is no set pre court requirements for the recovery of a tenancy, however any action must be within the grounds permitted in the Housing (Scotland) Act 2001 (as amended by the Housing (Scotland) Act 2014) Schedule 2 Scottish Secure Tenancy: Grounds for Recovery of Possession of House is referred to in Appendix 1.
- 6.2 There are conditions referred to within the occupancy agreement for shared owners that if breached can result in the Association taking action to force the division of sale. This is effectively a form of repossession and referred to in appendix 1.

- 6.3 Appendix 1 Grounds and purpose for seeking recovery of possession of property owned or managed by the Association or forcing division of sale for shared ownership will be maintained to ensure it is legally competent and up to date.

7. Recovering Possession

- 7.1 Where the Association has, despite its endeavours, no contact with the tenant/sharing owner, or where a resolution has not been possible and when the Association reaches the point of considering repossession. A permission to evict paper will be submitted to the Board of Management in all cases where the Association is seeking repossession or forced division of sale.

The only exemptions to this are where the Association has taken abandonment action, or where it has reduced a secure tenancy to a short Scottish secure tenancy for anti-social behaviour or similar.

The referral to the Board of Management will be made after the Association has discussed the case with our solicitors. Such discussions will have been held at various stages of any interventions to ensure any action being taken is legally competent. This will be referred to in any permission to evict. It is important that the Association and its Board of Management agree appropriate action to be taken based on cognisance of the legal advice from our solicitors.

- 7.2 Dependent on the action being taken, the Association may already have issued a Notice of Proceedings to a tenant under the grounds referred to in the policy, when this notice is actionable, and the Association is seeking to act upon the notice served, a permission to evict will be required from the Board of Management. Where the action is being taken against a sharing owner, permission will be required prior to any legal notices being issued.
- 7.3 Once permission to evict is granted, the Association will liaise with our solicitors to obtain repossession of our property.

8.0 Tenants with Vulnerability Issues

- 8.1 It is common practice for staff to become aware of the circumstances of potentially vulnerable tenants and their dependants when dealing with breaches of tenancy, and to investigate such matters not only in terms of signposting tenants to sources of help (e.g. internal support or the CAB, etc.), but also in terms of liaising, often extensively, with other professionals involved in the support and care of those individuals.
- 8.2 Any case where it is felt that potential vulnerabilities exist will be assessed through the vulnerability checklist which will have informed all action taken up to the point of legal action and ejection. The vulnerability checklist and any subsequent actions will be notified to the board when requesting permission to evict and must include the reasonable actions taken by officers. Including contact with relevant professional(s). Concerns will be presented to the Board in the *Vulnerabilities / issues* section of the Permission to Evict report.

- 8.3 In cases where a fuller investigation is deemed to be needed, either before seeking Permission to Evict, or earlier on in the tenancy if complex problems become apparent through the vulnerability checklist, the Housing Services Co-ordinator, together with the relevant Housing Officer, should carry out a fuller assessment of the situation. Any extra information thus gathered will again be presented in the *Vulnerabilities / issues* section of the Permission to Evict report.
- 8.4 The Housing Services Co-ordinator should keep abreast of developments regarding the progress and implementation of Part 4 (and other relevant Parts) of the Children and Young People (Scotland) Act 2014, with a view to further engaging with and implementing the provisions of the Act as it comes more fully into force. Any material changes in practice of significance should be reported to the Board.
- 8.5 Where there are concerns about harm, abuse, or neglect of a child or young person, these must be shared with the relevant agencies so that they can decide whether harm is, or is likely to be, significant. The principal guidance for this is contained in the *National Guidance for Child Protection in Scotland 2014*, and key legislation is contained in the *Children (Scotland) Act 1995*, and, as more provisions come into force, the *Children and Young People (Scotland) Act 2014*.
- 8.6 Where staff consider a child or young person may be at risk of significant harm they, with the knowledge of their line manager, should contact the Children and Families Service at NHS Highland and / or the Police, and refer the case to them. Such serious concerns should be shared with either (or both) of these two bodies without delay, and consent to do so from parents is not needed.

Appendix 1 Grounds and purpose for seeking recovery of possession of property owned by the Association or forcing division of sale for shared ownership

Unlike rent arrears, there is no set pre court requirements for the recovery of a tenancy, however any action must be within the grounds permitted in the Housing (Scotland) Act 2001 (as amended by the Housing (Scotland) Act 2014) Schedule 2 Scottish Secure Tenancy: Grounds for Recovery of Possession of House contained below –

Ground 1 – 7

We will use one of these grounds as a reason if we want to evict a tenant because of something they have done, or not done. For example, they may be accused of behaving in an antisocial way or you could have failed to pay rent. These are called conduct grounds because we must prove to the sheriff that the tenants conduct merits eviction. The sheriff will hear all the details of the case and decide if it is reasonable to evict or not.

Non rent arrears actions include;

Ground 2. Using the house for immoral or illegal purposes or other criminal offences

Ground 2 can only be used if the tenant, someone that lives with the tenant or visiting has received a conviction for an offence that was committed in your home or in the area near their home. For example, dealing drugs in the area, or allowing their house to be used for prostitution.

The ground for eviction which landlords must use when they want to take eviction action using the new streamlined process contained in the Housing (Scotland) Act 2014, is this ground of the 2001 Act.

This requires the tenant, joint tenant or someone living in or visiting the property to be convicted of either using or allowing the house to be used for immoral or illegal purposes or convicted of an offence punishable by imprisonment in, or in the locality of, the house.

It is not the ground itself which has changed but rather the process for obtaining the eviction order based on this ground in certain cases.

In order to make use of the new process, landlords will still have to be able to show that this existing ground has been satisfied and therefore will have to have factual information regarding the actual conviction.

Ground 3. Deterioration of the property or common parts

If the tenant or someone living with the tenant has caused the property to get into a bad state, either by damaging or neglecting it, this can be a

ground for eviction. This includes deterioration in the condition of areas shared with neighbours, such as the stairwell or garden.

Ground 4. Deterioration of furniture

Damaging the furniture or fittings of the property is a ground for eviction. This includes furniture in a common area such as a garden.

Ground 5. You are absent from the property

We can use this ground if we think that the tenant has not lived in their home for six months or they are staying somewhere else so often that it has become their main home.

If a tenant has a good reason for being away from the property (for example, they have been working away, caring for a family member or in hospital) they should make us aware of this. Genuine absence cannot be used as a reason for eviction. However, the tenant may need to prove why they were away from home, for example by providing a letter from their employer if they work away, or a from their doctor if they have been in hospital.

Ground 6. You made a false statement to obtain the property

If a tenant knowingly lies when they applied for housing, this can be used as a ground for eviction. For example, if they had rent arrears at a previous tenancy, but said on their housing application form that they didn't have any arrears, they would have knowingly lied.

Ground 7. Antisocial behaviour or conduct amounting to harassment

This ground can be used if the tenant, or someone living with or visiting the tenant, has caused alarm, distress, nuisance or annoyance to the people around them by being noisy, violent, threatening, destructive, verbally abusive or failing to control pets.

The behaviour above need not have happened in their home, but could have happened in their neighbourhood.

If this ground is used against them, we must demonstrate that it would not be reasonable to re-house them somewhere else. For example, if the antisocial behaviour has been directed towards one neighbour, we would have to show that the behaviour would probably happen no matter where they were housed, and that it was not caused by a dispute with that particular neighbour.

In relation to Ground 2 & 7 Following the enactment of the Housing (Scotland) Act 2014, the process removes the requirement to prove it is reasonable to

grant the eviction order, we will need to carefully consider when to use the new process.

LHA will also have to be sure that the requirements of the ground are satisfied. As part of this consideration, we will need to have factual information on the actual conviction. There is still the usual requirement which applies with ground 2, that the conviction relates to the property itself or behaviour that is within the locality of the property.

There is no legal definition of locality given in the legislation, so this will always depend on the circumstances of a case. We are already well used to making judgements on this for the existing antisocial behaviour grounds so should continue to make decisions based on the circumstances of the individual case. Clearly, if the behaviour takes place in an entirely different area, such as another town, then it would not be appropriate to seek eviction on the basis of any conviction resulting from the behaviour – it has to be in some way connected to the property to be able to satisfy the locality test.

LHA should be satisfied that there is a clear requirement for the tenant to be removed from the property in order to prevent further negative impact on neighbours or others in the local community and it should not be automatic to consider eviction when a tenant is convicted of an offence which satisfies ground 2.

In addition to the actual grounds being satisfied, as eviction will effectively be mandatory using the new process, landlords will have to consider if eviction is necessary and proportionate. The issue of proportionality has been raised in Court in relation to the mandatory eviction process for short SSTs and is something that should always be considered when using this process.

This is not a specific requirement of the existing or new legislation but rather comes from Human Rights arguments which have been raised in relation to mandatory eviction in short SSTs. It should be noted that whilst this is relatively new in terms of the Courts taking specific consideration of proportionality, it is something which social landlords have always taken into consideration in any eviction case.

The argument put forward is that even when there is a mandatory ground for eviction because the tenant has a human right to a private and family life and also an adequate standard of living, social landlords must be able to justify their decision to evict as being proportionate.

This will involve balancing the rights of the tenant against those of neighbours and the wider community – this will also take account of the wider social policy obligations on social landlords to provide housing and the need in some

instances to recover possession in order to protect the interests of the wider community.

When LHA decide to make use of the new streamlined eviction process, we should be ready to justify our decision to seek automatic eviction and be comfortable that we can show it is indeed proportionate in the circumstances.

As the issue of proportionality is relatively new, landlords may find it useful to read *Human Rights at Home: Guidance for Social Housing Providers*, published by the Equality and Human Rights Commission, which covers this issue in particular detail at chapter 6 and lists the following as points to consider in assessing whether a decision to evict is proportionate:

- Will the decision achieve the landlord's objective?
- Are there other ways of achieving the objective which would be less harmful to the tenant's rights?
- Is the interference with the tenant's rights kept to a minimum?
- What rights will the tenant be left with if the eviction goes ahead?

We will need to look in detail at any conviction against a tenant or the others covered by the ground, in order to make sure the ground is satisfied.

The Scottish Government guidance sets out various factors which the landlord should consider, including the nature and seriousness of the offence – this would include whether it is a one-off conviction or part of an on-going series of convictions. If it is a one-off conviction was it based on one incident or an on-going series of incidents?

LHA should also look at who has been convicted and their connection to the property.

It should be easy to obtain information on any conviction affecting tenants but it may not always be easy to know if it relates to someone staying at the property if the landlord does not have up to date household information. This can be even trickier if the conviction relates to someone visiting the property and LHA will have to have good information on incidents taking place around their properties to see if these lead to convictions which can be used for the new process.

LHA will also have to check whether or not a particular conviction can be punished by imprisonment. This may be confirmed on the extract conviction itself or landlords may have to clarify this with the Courts or their lawyers.

Only convictions which can be punished by imprisonment can be used for streamlined eviction. The person doesn't need to have been given a prison sentence when they were convicted of the offence, it just has to be a possibility. The guidance sets out some examples of serious criminal offences punishable by imprisonment, which include:

- Breach of an ASBO

- Threatening & abusive behaviour
- Breach of the peace
- Offences related to the use of offensive weapons
- Serious drug related offences

LHA should also look at whether the convicted person is taking any steps to address their behaviour before deciding to evict and, in particular, whether or not there has been a positive change in their behaviour. This is something that landlords should be used to considering in relation to considering an eviction based on the existing grounds for antisocial behaviour.

We should always determine if there has been a change in the person's behaviour since conviction, to see whether the behaviour has stopped. For example, has the person engaged in training or employment, participated in a rehabilitation programme or engaged with support services to change their behaviour?

Grounds 8-15

If these grounds are to be stated on any notice of proceedings or summons, it means that:

- LHA wants to evict a tenant from the home that they are in, but
- we will have to offer another house or flat that is suitable for our tenants needs.

These are called management grounds because your landlord is managing the housing stock by moving you from one property to another.

The sheriff will not grant an order telling tenants to leave the property they are in unless they are satisfied that the new accommodation is suitable.

Suitable accommodation should be:

- as convenient for work or place of study and children's school as their previous accommodation
- big enough for their whole household
- furnished to the same standard as their previous accommodation
- suitable for any special needs the tenant or their family may have.

Ground 8. Nuisance, annoyance or conduct amounting to harassment

If LHA can prove that a tenants behaviour or the behaviour of someone living with them has caused problems in our local area, we can apply to the court to have them evicted on the basis that they will be given new accommodation in another area. Antisocial behaviour includes noise, violence and verbal abuse

Ground 9. The house is overcrowded

If a house is overcrowded, a tenant can be evicted and offered a new house, which is big enough for their household. Overcrowding doesn't include temporary arrangements such as having friends or family to visit.

Ground 10. Demolition of, or substantial work on, the property

This ground will be used if work needs to be done to a property or it is to be demolished. If work is needed, we must show that it could not be done while the tenant and their family are still living there and that the work will be carried out shortly after they move out. If the tenant is to be allowed to move back in when the work is finished, the sheriff should make a separate order stating this.

Ground 11. The property is designed or adapted for people with special needs

Tenant can be asked to leave a home which has been designed or adapted for a person with special needs if no-one in the household requires special modifications. A tenant can only be evicted if the landlord is going to let the property to someone who does have special needs and we are going to offer alternative accommodation.

Ground 12. The property is part of a group designed or located near facilities for people with special needs

If a home is part of a group of flats or houses which have been specially designed, or built near facilities, for people with special needs, a tenant can be evicted if no-one in the household has special needs and we can offer alternative accommodation.

Ground 13. The landlord has leased the property

This ground can be used if we rented the home from someone else and the agreement between LHA and the person we are renting from has ended or is going to end within six months. We must offer alternative accommodation.

Ground 14. The landlord is an islands council and the property is for an education worker

This ground applies only to tenants renting from the Orkney Islands, Shetland Islands or Western Isles Councils.

Ground 15. The landlord wants to transfer the property

LHA may wish to transfer the property to the tenants(ex) husband, (ex) wife, (ex) civil partner or opposite sex or same sex cohabitee, if they no longer

want to live together. The cohabitee must have lived with the tenant in the property for at least six months, although this restriction does not apply to spouses or civil partners. LHA must offer you suitable alternative accommodation.

Sharing Owners (default)

Defaulting on terms of the occupancy agreement;

In the event of the occurrence of any of the following events, namely if: -

The Occupancy Payment or any part thereof shall at any time be in arrears and unpaid for a period of twenty one days after the same shall have become due (whether any formal or legal demand therefor shall have been made or not); or

The Sharing Owner shall at any time fail or neglect to perform or observe any of the terms, conditions or provisions contained in this Agreement on the part of the Sharing Owner to be performed or observed; or

The Sharing Owner shall at any time fail or neglect to perform or observe any of the terms, conditions or provisions to be performed or observed by the Sharing Owner in terms of any standard security that may be granted over the Property or the Sharing Owner's Share; or

The Sharing Owner shall become apparently insolvent or enter into any arrangement or composition for the benefit of his creditors or permit any diligence to be executed on his goods then the Association will be entitled at any time thereafter but on not less than 28 days prior written notice to terminate the Occupancy whereupon all rights of the Sharing Owner to exclusive occupation of the Property shall cease forthwith. Notwithstanding the foregoing should the Sharing Owner continue to occupy the Property after termination of the Occupancy in terms of clauses 9.1, 9.2 and 9.5 hereof then the Sharing Owner will be liable to pay by way of penalty to the Association a sum equivalent to the Occupancy Payment which was payable immediately prior to the date of default or termination until the Sharing Owner removes from the Property. Similarly in the event of the termination of the Occupancy in terms of clause 9.3 hereof then the executors of the Sharing Owner will be liable to pay to the Association a sum equivalent to the Occupancy Payment which was payable immediately prior to the date of death until the sale of the Sharing Owner's Share or the joint sale of the Property as detailed in clause 10.1 hereof.