

## **Clydebank Housing Association Ltd**

**To: Management Committee**

**From: Head of Housing Services**

**Date: February 2020**

**Subject: Legal issues report**

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### **Purpose of Report**

The purpose of the report is to provide anonymous details of legal action being taken against tenants for breach of their tenancy agreement, e.g. rent arrears, antisocial behaviour at court action level or above. Authorisation for appropriate follow up action is also sought.

### **Potential impact on tenants and service users/Tenant Consultation requirements**

Tenants whose cases are listed may be subject to loss of their tenancy or have an obligation or conditions imposed on them in line with the law in order to address their situation. There is no adverse impact on any other tenants or service users as a result of the information and decisions in this report.

### **Value for Money**

#### **CHA considers Value for Money in all aspect of its business including: -**

- Managing our resources to provide quality services and homes to meet the needs of customers and the local community.
- Delivering the right service at the right time at the right cost.
- Planning for and delivering year on year improvements on our services based on customer priorities.
- Getting the most out of our assets and staff by operating efficiently and effectively.

### **Risk**

- All reporting is anonymous in order to protect the tenants concerned and ensure fairness in the decision making process.
- By not progressing legal actions, rent arrears or ASB levels may increase which could negatively impact rent charges and financial viability.

### **Legal/constitutional Implications (Reference to Model Rules)**

- Housing (Scotland) Act 2001 and all follow on legislation/act variations linked to the 2001 act.
- Up to date and relevant Data Protection legislation

### **Relevant CHA Objectives:**

- To provide quality, affordable housing that meets the changing needs of our customers and to ensure fair access to housing within our area.
- To manage the houses provided, in a professional and cost effective manner, for the benefit of our local community and the environment.
- To work in partnership with others, supporting our tenants and other customers, to maximise opportunities for physical and socio-economic regeneration in Clydebank.
- To promote social inclusion by applying principles of equality and diversity to everything we do.

### **Relevant Scottish Social Housing Charter outcomes:**

- Equalities - Social landlords perform all aspects of their housing services so that every tenant and other customer has their individual needs recognised, is treated fairly and with respect, and receives fair access to housing and housing services.
- Participation - Social landlords manage their businesses so that tenants and other customers find it easy to participate in and influence their landlord's decisions at a level they feel comfortable with.
- Estate management, anti-social behaviour, neighbour nuisance and tenancy disputes - Social landlords, working in partnership with other agencies, help to ensure as far as reasonably possible that:
  - *tenants and other customers live in well-maintained neighbourhoods where they feel safe.*
- Tenancy sustainment - Social landlords ensure that:
  - *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.*
- Value for money - Social landlords manage all aspects of their businesses so that:
  - *tenants, owners and other customers receive services that provide continually improving value for the rent and other charges they pay.*

### **Relevant SHR Regulatory Standards of Governance and Financial Management:**

- The governing body leads and directs the RSL to achieve good outcomes for its tenants and other service users.
- The RSL is open about and accountable for what it does. It understands and takes account of the needs and priorities of its tenants, service users and stakeholders. And its primary focus is the sustainable achievement of these priorities.
- The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.
- The RSL conducts its affairs with honesty and integrity.

### **Equalities**

No protected group is adversely affected by the proposals, recommendations or updates within this report. Our commitment to equal opportunities and fairness applies irrespective of factors such as race, sex, disability, age, gender reassignment, marriage & civil partnership, pregnancy & maternity, religion or belief and sexual orientation.

The following cases are due to call at court or require Committee decision for recovery of possession action or similar. All cases are reported anonymously.

Please note that cases 1,2 & 3 have been approved via email and are therefore for information only.

<b><u>Case 1 – court action for rent arrears</u></b>	
Tenancy start date:	██████████
Notice of proceedings live:	28/06/2019
Court action instructed:	26/11/2019
Court Date(s):	05/02/2020
Last Calling Date(s):	First calling
Outcome of Last Calling Date:	First calling
Current Arrears £	██████████
Monthly Rent Charge £	£282.46
Benefit entitlement/details	Universal Credit – payment yet to be received
Agreement in place/details	None in place
<p><u>Case detail:</u>            The tenant was in receipt of Universal Credit however we have not received any payments since September 2019. The tenant did not advise us that they were no longer entitled to Universal Credit and it was only when we stopped receiving payments that it was brought to our attention in November 2019. The tenant then failed to respond to our attempts to contact them and court action was instructed in November 2019, when arrears stood at ██████████.</p> <p>Despite further attempts (letters, phone messages, emails and house visits) to contact the tenant has failed to contact us. Universal Credit have informed us that the tenant has reapplied for benefit and has received their first payment which included any entitlement for the rent charge. We wrote to and emailed the tenant prior to them receiving their first payment of Universal Credit advising that it would include any entitlement for the rent charge and that they should make the payment to their rent account immediately. The tenant has chosen not to make any payments to the rent account. Although the tenant has a current application for Universal Credit and we have applied for direct payments to the rent charge and arrears, there is no guarantee of any entitlement.</p> <p>The tenant is well aware of how Universal Credit works as there was a previous claim. Failure to pay or make contact in these circumstances is unacceptable.</p>	
<p><u>Recommendation:</u>            In view of the above, it is recommended that we seek decree for recovery of the tenancy, the debt owed and all associated legal expenses.</p> <p>Should the tenant respond to our attempts to contact them and make a payment and payment agreement in advance of the court date, then a continuation of 1 month should be applied for to allow further payment monitoring.</p>	

**Case 2 – court action for rent arrears**

Tenancy start date:	██████████
Notice of proceedings live:	28/04/2019
Court action instructed:	30/08/2019 (continued court actions thereafter)
Court Date:	05/02/2020
Last Calling Date(s):	08/01/2020 & 30/10/2020
Outcome of Last Calling Date:	Case was continued to allow tenant to appear at court in person
Current Arrears £	██████████
Monthly Rent Charge £	£280.81
Benefit entitlement/details	Universal Credit – payment yet to be received
Agreement in place/details	Rent plus ██████████ towards rent arrears every month from ██████████

**Case detail:**

Since last calling to court, the tenant has become unemployed and applied for Universal Credit. The tenant has contacted us and put a payment agreement in place of ██████████ each month from 1 March 2020. This consists of £280.81 rent and ██████████ towards the arrears.

Since last calling to court on 08/01/2020, the rent arrears have been reduced by ██████████.

**Recommendation:**

In view of the above, a further continuation of 2 months is recommended to allow further payment monitoring. The Sheriff may however opt to sist the case, which would be out with our control.

**Case 3 – court action for rent arrears**

Tenancy start date:	██████████
Notice of proceedings live:	28/07/2019
Court action instructed:	16/10/2019
Court Date:	19/02/2020
Last Calling Date(s):	11/12/2019
Outcome of Last Calling Date:	Continued for two months to allow us to monitor payments
Current Arrears £	██████████
Monthly Rent Charge £	£324.83
Benefit entitlement/details	None
Agreement in place/details	██████████ per month which comprises of £324.83 rent and ██████████ towards the rent arrears.

**Case detail:**

Since last calling to court, the tenant has adhered to his payment agreement of ██████████ a month for the last three months. Arrears have reduced from ██████████ to ██████████.

**Recommendation:**

In view of the above, it is recommended that we request that the case be sisted for payment monitoring. This will allow us to recall the case to court should the tenant default on the payment agreement.

**Case 4 – court action for rent arrears**

Tenancy start date:	██████████
Notice of proceedings live:	28/07/2019
Court action instructed:	19/12/2019
Court Date:	04/03/2020
Last Calling Date(s):	First calling
Outcome of Last Calling Date:	First calling
Current Arrears £	██████████
Monthly Rent Charge £	£332.91
Benefit entitlement/details	Universal Credit
Agreement in place/details	██████████ a month consisting of £332.91 rent and ██████████ to the arrears

**Case detail:**

We stopped receiving housing benefit in July 2019, the tenant was to provide the council with information regarding their income to allow housing benefit to be reassessed. The tenant failed to provide this information and housing benefit was cancelled. The tenant has since applied for Universal Credit, who have confirmed that deductions have made in respect of £332.91 rent and ██████████ towards the rent arrears and will be paid directly to the rent account. We have still to receive this first payment which covers the period 7 January 2020 to 6 February 2020. If Universal Credit continue to make payments to the rent account at the same rate, the arrears will reduce to ██████████.

**Recommendation:**

In view of the above, it is recommended that we continue the case for one month to allow us to receive payments from Universal Credit.

**Case 5 – court action for rent arrears**

Tenancy start date:	██████████
Notice of proceedings live:	28/12/2018
Court action instructed:	Sist Recalled 24/01/2020
Court Date:	04/03/2020
Last Calling Date(s):	04/09/2020
Outcome of Last Calling Date:	Case sisted for payment monitoring
Current Arrears £	██████████
Monthly Rent Charge £	£302.52
Benefit entitlement/details	None
Agreement in place/details	£350.00 every four weeks from 05/03/2020.

**Case detail:**

When sisted court action was recalled on 24/01/2020, the rent arrears stood at ██████████ and no payments had been made since 29/11/2019. The tenant has a history of broken agreements, however they are now in permanent full time employment.

The tenant has since contacted the office, made a payment of ██████████ and put a payment agreement in place of ██████████ every four weeks from 05/03/2020.

**Recommendation:**

In view of the above, it is recommended that we request that the case be continued for a further two months to allow us to monitor payments.

**Case 6 – court action for rent arrears**

Tenancy start date:	██████████
Notice of proceedings live:	28/06/2019
Court action instructed:	16/10/2019
Court Date:	04/03/2020
Last Calling Date(s):	08/01/2020
Outcome of Last Calling Date:	Case was continued to allow the tenant to make payment of ██████████ in January 2020 and make an application for benefits
Current Arrears £	██████████
Monthly Rent Charge £	£328.91
Benefit entitlement/details	Universal Credit – first payment not received yet
Agreement in place/details	██████████ from 28/02/2020 comprises of rent plus ██████████ towards arrears

**Case detail:**

When case last called to court the arrears stood at ██████████. The tenant has made a payment of ██████████, as agreed in January 2020, however, their next payment is not due until the end of February 2020.

**Recommendation:**

If the tenant does make the payment of ██████████ at the end of February 2020, we will ask for the case to be continued for a further two months to allow us to monitor payments.

However, should the tenant fail to make sufficient payment to cover the monthly rent charge and reduce the rent arrears, Decree should be sought for the recovery of the tenancy, debt owed and any associated legal fees.



**Case 7 – court action for rent arrears**

Tenancy start date:	██████████
Notice of proceedings live:	28/04/2019
Court action instructed:	30/09/2019
Court Date:	04/03/2020
Last Calling Date(s):	05/02/2020, 08/01/2020, 30/10/2019
Outcome of Last Calling Date:	Continued to allow Universal Credit to be received and to monitor payments of rent plus ██████████
Current Arrears £	██████████
Monthly Rent Charge £	£280.81
Benefit entitlement/details	Universal Credit – first payment not received yet
Agreement in place/details	██████████ monthly from 01/03/2020.

**Case detail:**

Based on tenant being in receipt of Universal Credit, the tenant has agreed to make payments of ██████████ a month from 01/03/2020. The tenant ██████████ January 2020 and made an application for Universal Credit.

There is a history of broken payment agreements throughout the tenancy.

**Recommendation:**

If the tenant does make the payment of ██████████ on 01/03/2020, we will ask for the case to be continued for a further two months to allow us to monitor payments.

However, should the tenant fail to make the payment in full and on time, Decree should be sought for the recovery of the tenancy, debt owed and any associated legal fees.

**Case 8 – court action for rent arrears**

Tenancy start date:	██████████
Notice of proceedings live:	28/11/2017
Court action instructed:	15/12/2017
Court Date:	04/03/2020
Last Calling Date(s):	22/01/2020, 11/12/2019
Outcome of Last Calling Date:	Continued until 04/03/2020
Current Arrears £	██████████
Monthly Rent Charge £	£345.37
Benefit entitlement/details	Universal Credit
Agreement in place/details	██████████

**Case detail:**

The tenant has persistently been in arrears since the tenancy started, with court action first being instructed in 2017. The tenant is now in receipt of Universal Credit and we are receiving managed payments and arrears direct. If we continue to receive payments at the current rate the above arrears will reduce to ██████████.

We will continue to check on payments directly from Universal Credit to the tenant's rent account on a monthly basis. However, the tenant has been made aware that it is their responsibility to ensure that a minimum of ██████████ is paid to their rent account each month.

**Recommendation:**

If we continue to receive payments of ██████████ each month, we will ask for the case to be sisted for payment monitoring.

However, should the tenant fail to make the payment in full, whether it be directly or indirectly through Universal Credit, decree should be sought for the recovery of the tenancy, debt owed and any associated legal fees.