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Convener  
Local Government and Communities Committee  
Scottish Parliament

[By email]

5 October 2020

Dear James

## **Arrears and extended notice provisions in the Covid legislation**

Thank you for your letter of 14 September. GWSF thanks the Committee for making contact on this issue, and welcomes the opportunity to provide further information on the detail of current arrears levels among our member associations, and in particular the impact of the extended notice provisions in the emergency Covid legislation.

After receiving your letter, we again asked members for additional feedback on the scale and nature of current arrears. The overall position is a mixed and relatively complex one, and so we have tried to describe it under a range of headings, using direct quotes from members (indented and in colour).

### **Summary of overall arrears levels**

It would perhaps be helpful to try firstly to provide a degree of broader perspective through some national data on the current arrears picture for social landlords, using the monthly returns social landlords have been making to the Scottish Housing Regulator:

- Social landlord arrears rose from an estimated 2019/20 year-end figure of £143m to £165m at the end of August 2020. This £22m increase is double the full year figure of £11m for 2018/19 (the exact 2019/20 year end figure should be available from SHR in the coming weeks)
- Housing association arrears as at August 2020 stand at 4.73% of rent due, compared with 8.22% for local authorities. At this stage the reason for this difference is not clear, though we know that housing associations have a strong track record of working as closely as possible, and as early as possible, with tenants facing difficulty paying their rent

## **Covid has caused genuine hardship and understandable difficulties paying rent**

Feedback from members makes it clear that, as we would have expected, a fair proportion of initial arrears, after lockdown, came about as a result of genuine hardship such as, most obviously, loss of work. All our member associations made enormous efforts to support people in this position, for example by helping them to make a Universal Credit claim.

In these cases, where both tenant and landlord are working together to mitigate the damage, the longer notice periods are irrelevant, as associations would not seek to serve a notice on someone co-operating in this way.

'We have found an increase in arrears due to many tenants having to apply for Universal Credit, this meant that the arrears increased for the period of time that the claims were in process, along with the DWP delays due to a high number of claims.'

### **Cases where decree was already in place before lockdown**

As lockdown began, a number of housing associations would have had a small number of cases where decree for recovery of the property had already been granted. In these cases, the association would either have been delaying eviction pending (for example) a possible repayment arrangement being agreed at the last minute, or chose not to enforce decree anyway, once lockdown had arrived.

We do not think the actual number of such cases is great, but the ongoing arrears in some individual instances can be very high: one member association quotes a case where it is owed £5,600, with no rent payments made for at least 18 months.

Even though decree can now be actioned after lockdown, associations will always aim to avoid this if repayment arrangements can be agreed: albeit in such cases it is often likely that only a relatively small proportion of a substantial debt will ever be repaid.

### **Cases where notices were in place before lockdown**

Most associations will have had normal (one-month) notices in place when lockdown came, and in almost all cases these notices will have expired as they could not be progressed:

'19 Notices expired during lockdown and could not be progressed, with a value of £26,487.'

'Arrears have increased significantly for these cases due to the delay in NOP becoming active or getting court dates; this is also the case for debts where the case was continued. We have 51 cases over £1,500 which is unheard of for us; they would be the £1-2k max when at court and expecting a proof date. Our highest arrear is over £5k, and we have not had a case at this level for 20+ years. These are unprecedented times and this money will take a number of years to recover, if we ever get it back. This will therefore impact on long-term rent levels to ensure we meet our business plans over the 30 year period.'

'Tenant single female aged 52 with 2 Non dependants aged 21 & 22 – Arrears in the main due to tenant not paying enough to meet rent charge of £411.11 – small amount of HB in payment but most of rent charge due to Non Dep charges for the adult non deps. NOP served on 27.2.2020 before lockdown.

Constant attempts to get tenant to engage prior to this, and assistance from welfare rights officer given requesting Discretionary Housing Payment, but tenant failed to respond to this. Arrears at NOP date had reached £3829.93. Unable to progress to court due to COVID 19 until end of August 2020. As of 28.9.2020 arrears have reached £5,509.73.'

### **Impact of the six-month notice period**

Some associations tell us that they delayed issuing notices during lockdown, trying wherever possible to work with tenants to help them mitigate the arrears.

'As it currently stands, we have not issued any Notices for non-payment of rent from April 2020. We have been doing our best to work with tenants throughout this difficult time in order to provide support with accessing government funding schemes, claiming benefits, agreeing suitable payment arrangements etc. We wanted to ensure that, if we do have to pursue a route of issuing Notices, we can be certain that we would satisfy the 'reasonableness test' at court in that we have done everything in our power to help our tenants sustain their tenancies.

In addition to this, we were optimistic in our view that the period of the 6 month notice would only last until October 2020. Therefore, if any Notices were issued after May 2020 we would have to wait longer to progress a case to court rather than wait until the modification of the law was no longer applicable and issue a Notice after October 2020 with the 28 day period. Now that the 6 month notice period has been extended until March 2021, we will be reviewing this procedure and will take action of issuing Notices when appropriate. Unfortunately, we do have tenants who are failing to engage, accept assistance and meet their rental obligations as they are of the opinion there will be no consequences.'

The decision on the part of some associations to delay issuing notices during lockdown has meant that for those cases involving continued non-engagement from the tenant, when six-month notices were finally issued in the late summer, arrears levels were already high, with at least another 6-12 months of non-payment likely:

'19 delayed NOPs issued in August/September – arrears total £54,632.85: this is nearly £3,000 per case.'

'12 new Notices served since April 2020 with a total value of £17,684.70 (notices only issued from 1/9/2020).'

'We have served 5 notices with the extended notice period. The current average arrear on these accounts is £1,946. Of the 5 notices, 3 tenants have responded and have entered arrangements and 2 have not. These notices served do not go live until January/February 2021.'

'We have issued 41 six month notices for arrears. The current breakdown of balances is as follows:

- £0 to £500 – 6 cases

- £501 to £1000 – 12 cases
- £1001 to £2000 – 10 cases
- £2001 to £4034 – 13 cases'

Feedback indicates that many tenants do, at some point, get in touch with their association after a notice has been served, even if, realistically, the full debt will never be recovered. Those who fail to engage altogether are generally a minority.

'We have served 4 new NOPs during lockdown, again with a letter detailing that if no contact is made the case is ready to go to solicitors when it can, all of these cases have now made contact and have been attending welfare rights appointments.'

### **Some cases are in the 'reluctant to pay' category**

We recognise it is over-simplistic to refer merely to 'can't pay' and 'won't pay' tenants, as there are inevitably a number of tenants who, technically, could have afforded to continue to pay their rent but may have been worried about their future income:

'During the pandemic we had a lot of tenants refusing to pay despite still having income from furlough. These tenants advised they were reluctant to pay as there were concerns over job security and continuity of the furlough scheme. Additionally there are some tenants who are covering the rent but advising they cannot afford to pay anything towards the arrears due to the affects of the pandemic, e.g. reduced hours and still on furlough.'

### **Evidence of 'won't pay' rather than 'can't pay'**

Members' estimates of the proportion of 'won't pay' tenants in arrears vary from no cases to around 50%. The average appears to be around 20%.

Evidence suggests, though, that whilst tenants who are having trouble paying their rent may be able to pay something, the minority in the 'won't pay' category can build up substantial arrears quickly through paying nothing at all (the average social rent in Scotland is around £4,000 pa).

'We believe approximately 45 cases, with a monetary amount of £47,266, can be attributed to people who could have paid but have chosen not to. [Our July arrears at £584,172 compare with end of March figure of £454,221 – increase of £129,951 so 'won't pay' equates to 36%.]

'We estimate 33 cases, with £52,507 outstanding.'

'Our arrears increased from end April to end August (monthly SHR reports) by £14,426. We estimate at the end of August approx £8,000 was due to tenants who could have paid their rent but chose not to. We continue to work with our tenants and our current position is now approx £4,000 as we have secured arrangements for the rest. There will however, without a doubt, be more to add to this at the end of September.'

'We estimate roughly 50% of the increase in our arrears is attributable to those who could pay but have chosen not to – this includes a number of tenants that have not engaged (or paid) since April.'

'This is a little more difficult to quantify as there are some tenants who are not engaging with us despite our staff's best efforts to make contact and agree a plan moving forward. Therefore, in some cases we can only speculate if a tenant 'won't pay' or if their circumstances have changed so that they are now in a position where the 'can't pay' and won't accept any help, advice or support. After interrogating our arrear figures and cases, we can estimate that we have seen an increase of £27,809.43 of arrears for those cases which we deem are 'wont pays'. This increase is the difference between what their collective arrears stood at as of 31/3/2020 and what they are currently. At 31/3/2020 the collective arrear balance for these cases was £21,433.69 and today they are £49,243.12. The collective arrear balance for these cases relates to 49.31% of our current overall arrear figures.'

## Conclusion

There is no scientific means of assessing what proportion of recent arrears may have been caused or exacerbated by the existence of notice periods being six months rather than one month. On balance, from the feedback we have received from members, we think a conservative estimate may be around 20%. Across the social landlord sector this would equate to £4.4m of the £22m new arrears in 2020/21.

We continue to maintain that in the social sector, the extended notice provisions do not protect tenants who are engaging with their landlord over their arrears issue, as our member associations would never seek to evict people who are trying to address the problem. Instead the extended notices send a message to a significant minority of tenants who see it as a justification for not paying rent: something that will only build up a big problem for themselves and their landlord going forward.

As always, the public messaging around legislative provisions is very important. Alongside the emergency legislation, we feel more could have been done at a national level to emphasise the importance of tenants paying their rent and making contact with their social landlord if they are facing difficulties.

The messaging has been diluted by the fact that the same measures apply to both private and social landlords, despite the fact that, on average, a social landlord's response to a tenant facing arrears will be significantly different from that of a private landlord. Indeed the legislation applying to social landlords is, understandably, much more demanding.

Please let me know if there is any further information the Committee would be interested in receiving.

Many thanks and with best wishes,



Helen Moore, Chair, GWSF