



Kevin Stewart MSP  
Minister for Local Government, Housing and Planning  
Scottish Government

[By email.]

29 July 2020

Dear Kevin

### **Potential extension of emergency legislation's provisions on notice periods**

I hope you are well as these challenging times continue.

The Forum understands that you are considering extending the period in which longer notice periods must be applied in social sector arrears and anti social behaviour cases. You will know that extending the provisions of the emergency legislation beyond 30 September 2020 was one of the recommendations of the Homelessness and Rough Sleeping Action Group.

GWSF shares the desire for evictions from social housing to be avoided wherever possible, but I am writing to you to set out GWSF's strong opposition to any such extension of the emergency provisions on notice periods.

The Forum has been seeking case study evidence from members on the position with current arrears and anti social cases. We believe there is clear evidence that a prohibition on evictions leads a significant number of tenants to *choose* not to pay rent during Covid. The measures have the unintended consequence of protecting tenants who do not engage with their landlord, feel they do not need to pay rent and know they cannot be sanctioned by their landlord.

In many cases, our members tell us that tenants deciding not to pay rent were already in significant arrears before Covid hit.

The appendix to this letter provides many examples of arrears and anti social cases being dealt with by our member associations, but below is just one of these:

- *Tenant had not paid any rent since December 2019.*
- *Housing officer managed to make contact initially and established that tenant worked full time. Promises were made to make payments, but engagement dropped off and further attempts to contact the tenant were fruitless.*
- *Arrears procedure followed; Notice due to be issued end of March. During lockdown, no contact was established despite the many attempts made.*

- *Additional letters were issued and arrears procedure effectively restarted. As at July, now back at issuing Notice. Arrears balance is £3,340. Monthly rent is £340. If this doesn't reach court until Spring 2021 the balance will be well in excess of £6,000 if no payments are made.*

In some cases arrears are expected to reach £7,000-£8,000 before any resolution, and, with the usual delays associated with the court system (even in normal times), we expect to see some cases reach £10,000 arrears next year.

We want to emphasise that our members have consistently told us that they would never seek to evict someone who is engaging with them and who is open about the difficulties they are having paying their rent. Some of these tenants may never be able to pay all their arrears, but if someone is doing all they can to mitigate the damage, the last thing an association wants to do is take eviction action.

There has been a lot of talk about not penalising tenants for 'Covid-related arrears', and our members are completely supportive of that approach. But many of the case studies we have involve working tenants who have continued to be paid during Covid but who have told us they are not paying rent 'because they don't have to'.

However careful the messaging, the pursuit of a 'no evictions' approach just gives a signal to those bent on exploiting the system at the cost of their fellow tenants. It does not protect tenants who are engaging with their landlord as these tenants would not be subject to eviction action anyway.

We note that one of HARSAG's recommendations was for people in arrears to get independent financial advice before any recovery action could be progressed. This shows little understanding of the realities of these cases: someone who is not engaging and ignores all efforts to contact them is hardly likely to take up the offer of financial advice.

We believe there is no justification for extending these provisions, and that there is no evidence notices are raised without following all the correct procedures. The statutory pre-action requirements are robust and were designed to ensure that every possible step has been taken to avoid the eviction action none of us want to see.

We would also want to assert that even if the requirement for longer notice periods is indeed extended for arrears cases, there should be no similar extension for cases of serious anti social behaviour, as this simply adds months to the misery of neighbours living day to day with fear, threats and intimidation such as is described in the case studies we have provided.

Many thanks and with best wishes,



Helen Moore, Chair, GWSF

## **Appendix 1 – Anti social behaviour case study examples**

### **Example 1**

We have a tenant who has been threatening and following female neighbours, in addition to causing noise nuisance of a sectarian nature. An ASBO is being progressed in conjunction with the local authority, and he is currently in jail awaiting trial but this has only been for the last 6 weeks. His trial is scheduled to take place next week. The asb has been going on since January, and he has criminal charges relating to two separate female residents. One resident plans to move out when he returns next week (as we fully expect that he will plead guilty, and will be released based on the 6 weeks time served).

This tenant has been in jail twice this year, both short sentences and both released for time served with no support or supervision. He has another trial relating to a neighbour in September, which was postponed in March. As well as the asbo, we plan to seek recovery on asb, internal condition and criminal convictions. This individual specifically targets females, but has also been abusive towards male residents who have tried to defend the females.

I have owners who are trying to sell their homes, I have others who will stay in overcrowded conditions with family rather than be at their own homes when this individual is released. He targets the women at night, so their physical and mental health has been affected by his behaviour. Criminal justice advised they will not visit this person at home, and we are assuming that he will be released again with no support or supervision. He has no mobile phone as he keeps losing it. His family disowned him several years ago.

Thankfully we have Police Scotland and one part of the local authority supporting us, but for a further delay in being able to address will lead to us losing valued tenants and owners.

### **Example 2**

An owner next door to our tenant is terrified to go out as the tenant is bringing lots of anti-social visitors to the house during lock down. A lot of drink and drug activity, owner is being harassed, and continually sending videos of activity in the close (from through her peep hole). Police called on numerous occasions. We have been unable to visit to discuss with our tenant and the tenant does not respond to phone calls. We have taken appropriate action including issuing an Unacceptable Behaviour Notice and installing CCTV, and have consulted with solicitors who initially advised that we were unable to progress due to the courts being closed. Now looking at possible ASBO and currently await Police disclosure to discuss further with solicitors. This could have been progressed quicker if restrictions were not in place, and as a result this is having a huge Impact on neighbours.

### **Example 3**

We have one serious ASB case that is causing concern and any extension to the time that we could raise a court action would cause significant issues for the neighbours.

It's a case where the household is a lady with an adult son (late twenties). The issue is her son's behaviour. The tenancy only began in May 2019 but complaints were received early in the tenancy. We converted the tenancy to a Short Scottish Secure Tenancy on 22 April 2020 but unfortunately his behaviour is still affecting neighbours and we continue to receive complaints. Our next step is to raise a Notice of Proceedings.

The situation has deteriorated lately because the tenant is in hospital so her son is living at the property on his own and has constant visitors to the property. The Police and the Wardens are regularly called but often the noise has stopped by the time they attend.

#### **Example 4**

This case relates to concern from neighbours that the individual is hoarding flammable materials, has a petrol lawnmower and petrol stored within his property (we carry out all grounds maintenance so there is no reason for this) and also that he is acting in a threatening and menacing manner towards female residents. We have sent an ASB referral which has not been auctioned (we partner with the LA on this), but they have assured us that they will look at this once they return to the office. He has not seen his GP in several years. Scottish Fire and Rescue have attended and believe the householder is at risk, but the householder will not engage. We have written to, visited and issued warnings but to no avail. He lives in the ground floor of a block of flats, and often has wood and other material blocking the fire escape which is right outside his front door.

#### **Example 5**

Current ASB cases which can't be progressed, and the impact this is having on neighbours etc.

- We have one particular tenant where we were awarded decree prior to lockdown but we were unable to implement the decree prior to lockdown. This tenant has not paid rent and is causing nuisance to neighbours and damage to the property. A number of tenants in the surrounding area have made it clear they will be finding alternative accommodation as we can't do much until this restriction is relaxed. Albeit I'm assured already awarded decrees will be issued very soon. We get regular complaints from tenants which is having a significant impact on our staff, police and local authority staff (wardens and ASB support team) resources at a time when all tenants need extra support.
- We have a few cases that were to go to proof for drug dealing pre-lockdown and there is no indication about when these will come back to court at this stage.
- We have had significant issues with tenants causing issues as their support has been withdrawn or changed during lockdown; these cases again have taken an inordinate amount of staff time and the surrounding residents, albeit are doing what we ask, are getting increasingly frustrated at the perceived lack of action from us but as you are aware, there isn't much we can do outwith court action and when we take account of notice period and actually booking a case into a proof at court you could be looking at well over 6-9 months due to the backlog.
- Generally, we have seen a large increase in ASB cases reported and this is stretching staff resources as we have difficulty in speaking to the offenders

- due to lockdown rules or the perpetrator claiming they are self-isolating which means we can't put staff at risk, the court route being blocked is not helping matters at all.
- We have a few allegations of drug dealing amongst these cases and without the ability to get court action for circa 9 months this is having a significant impact on local residents' experience within their current home to the extent again, that a number have indicated their wish to move, some have gone into the private sector already.

## **Appendix 2 - Arrears case study examples**

### **Example 1**

Tenancy started February 2004 and tenant currently lives alone.

Account was generally well managed from date of entry due to tenant being on HB so only really technical arrears and low level arrears for periods of non-entitlement but since 2015 when periods of work began the arrears have increased gradually with erratic payments throughout.

Tenant has record of non-engagement with staff and prior to Covid was due to be issued with NOP. Tenant had balance of £2670 as of 1<sup>st</sup> March 2020.

Numerous attempts by staff to engage with tenant throughout lockdown have been ignored and possibility that property had been abandoned was considered but Caretaking staff advised they had seen the tenant in evenings.

Tenant answered one call advising he doesn't need benefit assistance and terminated call when attempts made to discuss rent liability.

Current balance up to end July 2020 will be £3,852 and likelihood if no arrears/eviction action taken then balance by March 2021 would be £6,500 and we would only then be able to commence court action. Arrears could increase by £3-5k by the court process is complete.

### **Example 2**

Tenancy has been running since 1996 and tenant lives alone. Account has been in arrears since 2015 and tenant has paid erratically since then, reducing the balance each time it reaches the threshold for legal action.

Tenant has history of non-engagement and when they do call they offer payments which don't materialise. Tenant had balance of £2.5k as of 1<sup>st</sup> March 2020.

Tenant cut off contact from February until June and stated they didn't need or want benefits but has only paid £50 to cover last few months.

Tenant has a live NOP at present as this was issued before Covid but unable to action this further due to current situation.

Contact made with tenant in June and tenant stated has been working so didn't need benefits but chose not to pay rent and will see what he can do going forward, paid £50 since. Current balance £3,780 and if no arrears/eviction action then

balance by March 2021 will stand at £6.4k. Again arrears could then increase by £3-5k during court process.

### **Example 3**

NOP expired 28/04, housing officer unable to pass to court due to lockdown, NOP has been renewed 15/07, and will not go live until Feb 21 – No payments since Feb, no UC since May, arrears currently £2528, if non payment continues tenant's balance will be £5470 when NOP live. *If case does not reach court until May/June next year balance will be £7151.*

### **Example 4**

NOP expired June 2020, unable to book court action due to lockdown, new NOP being served July 2020 – tenant erratic payer only paid twice this year, arrears currently £3960, if non payment continues tenant's balance will be £6961 when NOP goes live in Feb 21. *If case does not reach court until May/June next year balance will be £8675.*

### **Example 5**

NOP was due to be served during lockdown, will be issued July 2020 with 6 month live date – tenant has made one payment this year and no benefit – arrears currently £3635, if non payment continues tenant's balance will be £6307 when NOP goes live in Feb 21. *If case does not reach court until May/June next year balance will be £7777.*

### **Example 6**

NOP was due to be served during lockdown, will be issued next week with 6 month live date – tenant erratic payer and no payments since march, no benefit and no contact. Arrears currently £2663, if non payment continues tenant's balance will be £5664 when NOP goes live in Feb 21. *If case does not reach court until May/June next year balance will be £7378.*

### **Example 7**

Tenant moved in to property in August 2019. Tenant was working at the time. No rent payments made. Many attempts at contact but little engagement. Arrears procedure followed and eventually NOP served. Case was to call at court on 15<sup>th</sup> April 2020. Arrears balance is £4408. Monthly rent is £404. Adding on another 8 months of this rent would take balance to £7645. In process of trying to establish if UC has been successfully claimed.

### **Example 8**

Case been in court for several months and called again 6/3/20 when balance was just under £2000, decree sought however tenant was given last chance by sheriff to make payment and demonstrate her low income for last 6 months to avoid decree being granted at next calling on 3/4/20.

Tenant didn't make payment or provide any information as requested by the court.

Case was then sisted by court due to covid. Tenant made one month payment since. Balance now over £3300. If no further payment then the arrears will be £7761 to May 21.

This person was working and as far as we are aware still is. The housing officer has spoken to the tenant this month and got texts in June saying they would pay but, as has been the case previously, no payment made.

### **Example 9**

We have one particular case which had been due to be in court 1<sup>st</sup> April for non-payment of rent.

Arrears at April (when action due to call) £1907. Arrears at 1/7/20 £2817. Arrears projected at May 2021 £6402. This is against our total monthly income of £72k.

The two single male occupants work full time. They know there is nothing we can do. We do not have a hope of getting this money back and the flat could be used to house a family in need.

### **Example 10**

#### **Case 1**

Balance at 31/03/2020 - £816.41

Balance at 23/07/2020 - £2176.53

If tenant fails to pay estimated arrear by May 2021 - £5576.83

#### **Case 2**

Balance at 31/03/20 20- £559.86

Balance at 23/7/2020 - £2174.04

If tenant fails to pay estimated arrear by May 2021 – £6209.42

#### **Case 3**

Balance at 31/03/2020 - £227.53 CREDIT

Balance at 23/07/2020 - £1168.75

If tenant fails to pay estimated arrear by May 2021 - £5068.95

#### **Case 4**

Balance at 31/03/2020 - £488.19

Balance at 23/07/2020 - £1016.80

If tenant fails to pay estimated arrear by May 2021 - £4448.70

#### **Case 5**

Arrear Balance prior to Covid Lockdown = £1,480.16

Arrear Balance as at 23 July 2020 = £2,556.46

Estimated arrear balance for May 2021 = £2,682.29

If MP & RA payments stop, arrear balance for May 2021 = £5989.36

#### **Case 6**

Arrear Balance prior to Covid Lockdown = £1,499.38

Arrear Balance as at 23 July 2020 = £1,643.22

Estimated arrear balance for May 2021 = £5,456.02

## Example 11

Current arrears cases involving high levels of arrears, and what these arrears could be if, for example, they did not reach court until May/June next year

- We have a proven track record in successful arrears management and usually has very few cases over the £1k mark. If we consider just the additional 5-month notice period required, this would mean that someone appears at court with around £2k of arrears (not taking account of the arrears accrued prior to any notice being served) at the first calling. This means the arrear is at the unmanageable stage already and will usually result in eviction or at best a small amount coming off the arrears because it will have gone past the point that the tenant can come up with a sustainable, practicable repayment arrangement. We have 16 cases of non-technical arrears over £1k as opposed to a couple normally, these will not be resolved by UC/HB issues fully and only a couple were already at court.
- Our non-technical arrears figure is double that of the same time last year – 1.26% last year / 2.50% this year - which will ultimately mean that if this trend continues there will be more evictions and tenants will have to pay for this to cover additional losses (if the notice period is to continue at 6 months) via higher than anticipated rent increases.
- We don't take court action lightly, it costs a lot of money and the PAR's are in place to ensure that court action is not brought prematurely to protect tenants; I would expect a Sheriff to dismiss any cases (through the reasonableness test) that were at court for a Proof Hearing that were resolvable or brought prematurely rather than delay the process at the start.
- Again huge staff resources are being utilised, mostly from home which can be difficult, to help tenants with any financial issues and those who are engaging will benefit from this support however, those who are not engaging are the issue and if we can't get to court for over 12 months (which is the likely scenario) we are looking at unprecedented levels of arrears for our association going into next year. Forecasts for non-technical are looking at 3.5% + based on the 6-month notice period being in place until now, this will no doubt be even higher if this continues and again this will have an impact on repairs, other services or rent increase levels going forward to recoup the losses.
- Most of our cases with the highest arrears are those who aren't engaging, the ones who are we are dealing with are getting issues resolved slowly, there are very few UC/HB issues and we have a small number of self-employed tenants with no income; it's really about non-engagement or those waiting on UC payments coming through; I don't have a large number of cases that I'm expecting a resolution in the near future. So delaying the court action is a major issue in these cases until we can get tenants to engage with us. Even then, there's still no guarantee of payment.