

## 1.0 INTRODUCTION

- 1.1 Scottish Borders Housing Association (SBHA) is a Registered Social Landlord with the primary aim of providing affordable social rented housing for those in the greatest housing need throughout Scottish Borders (excluding Berwickshire). Rent is SBHA's primary source of income and crucial to SBHA's financial wellbeing and its ability to deliver on a range of Strategic and Business Plan commitments. The collection of rent is fundamental to SBHA being able to provide good quality housing maintenance and management services.
- 1.2 SBHA recognises that its Tenants will include some vulnerable people due to, for example, their age, income, mental health and/or physical condition. Where SBHA identifies risk factors that may impact on a Tenant's ability to pay their rent and arrears, SBHA will provide effective and targeted assistance, advice and support to assist in the maximisation of a Tenant's income, allowing them to meet their obligation under the Tenancy Agreement, specifically the payment of rent.
- 1.3 SBHA will treat all Tenants who are in arrears fairly, sympathetically, and in a consistent way, whilst at the same time ensuring that SBHA maximises rent collection. SBHA Teams involved in the collection of rent will work in compliance with procedures which reflect current legislation and good practice.
- 1.4 SBHA defines rent arrears as income which is lawfully due in terms of the Tenancy Agreement, but which the Tenant has not paid. This Policy sets out principles and general guidance for SBHA Teams, Tenants and applicants to ensure that rent is paid in advance and is a priority.
- 1.5 This Policy sets out principles and general guidance for SBHA Teams, Tenants and applicants to ensure that rent arrears are minimised by adhering to a range of measures which include prevention, early intervention, and timely action in dealing with rent arrears cases.
- 1.6 This Policy should be read in conjunction with SBHA's Allocations Policy, Eviction Policy, Tenancy Sustainment Policy and Equalities, Diversity & Inclusion Policy.

## 2.0 LEGISLATION AND BEST PRACTICE

- 2.1 When maximising income, SBHA will comply with the law and the principles contained within performance standards and guidance notes issued by the Scottish Housing Regulator.
- 2.2 This Policy seeks to achieve the following regulatory requirement contained in the Scottish Social Housing Charter:

<b>Charter Outcome</b>	
<b>1: Equalities</b>	<i>"Social landlords perform all aspects of their housing services so that every tenant and other customer have their individual needs recognised, are treated fairly and with respect, and receive fair access to housing and housing services."</i>

<b>11: Tenancy Sustainment</b>	<i>“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”.</i>
<b>13: Value for money</b>	<i>“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”.</i>

### 3.0 POLICY AIMS AND OBJECTIVES

- 3.1 Through this Policy, SBHA aims to instil a payment culture where the payment of rent is a priority for SBHA Teams and Tenants. SBHA will have a performance culture where the collection of rent and the prevention and pursuit of rent arrears is given high priority and resourced accordingly.
- 3.2 The rent accounting system will be accurate and up to date and a variety of payment methods will be available to Tenants. SBHA will continue to monitor and regularly review the available methods of payment in consultation with Tenants.
- 3.3 SBHA will provide a framework that encourages Tenants to show a commitment to fulfilling their responsibilities to pay their rent and to assist Tenants to keep control of their rent accounts and prevent arrears accruing. In doing so, SBHA aims to identify risk factors that may impact on a Tenants ability to pay rent and arrears and offer support to Tenants in sustaining their tenancies, avoiding the threat of eviction and homelessness, in addition to ensuring that the financial position of the Association is protected by maximising its income.
- 3.4 SBHA will adopt a firm but fair approach to the recovery of rent and will prioritise personal contact in maximising income and reducing rent arrears. SBHA recognises being in rent arrears is stressful and seeks to deal with these matters in a non-threatening and sensitive manner whilst communicating the seriousness of the situation.
- 3.5 SBHA recognises the importance of rental income, and therefore prevention and pursuit of rent is identified as a priority task within SBHA’s Neighbourhood Services activities.
- 3.6 Rent arrears will be identified and tackled at an early stage to prevent arrears escalating, minimising the impact to rent collection.
- 3.7 Rent arrears recovery will be based on a staged escalation process, up to and including repossession for non-payment of rent. SBHA’s income maximisation is part of a continuous process with the following three distinctive stages:
- arrears prevention;
  - early identification and intervention; and
  - enforcement
- 3.8 Operational procedures are in place that reflect this Policy to provide guidelines to support SBHA Teams in delivering the aims of the Policy effectively.
- 3.9 Repayment arrangements for rent arrears will be based on a Tenant’s income and expenditure so to ensure any such arrangement is reasonable, realistic and affordable. An agreed repayment arrangement will be reviewed annually or if the Tenant’s circumstances change, to ensure the arrangement continues to reflect the Tenant’s financial position. All repayment arrangements will be confirmed in writing to the Tenant.

- 3.10 SBHA will provide advice on claiming benefits where possible and will refer Tenants to specialist organisations for benefits advice and/or debt management advice if required. SBHA will take all reasonable steps to promote entitlement to, and the uptake of, benefits and ensure that advice on claiming welfare benefits can be easily accessed by Tenants.
- 3.11 SBHA will develop good working relationships and liaise with relevant organisations such as Scottish Borders Council's Social Work Department, Homelessness Team, Revenue & Benefits Team, local Citizens Advice Bureaux and Debt Management and Money Advisors to try to ensure appropriate advice and assistance is available to Tenants.
- 3.12 Where it is identified that a Tenant has a vulnerability or may have specific needs and requirements that impact on their ability to pay rent and arrears, SBHA will take all necessary steps to provide the appropriate assistance, advice and support, including a referral to an appropriate support agency.
- 3.13 All possible action will be taken to reduce arrears to help prevent an arrears problem resulting in homelessness.
- 3.14 Legal Action to evict will only be implemented as a last resort when all other methods and intervention have failed.

#### **4.0 TENANT RESPONSIBILITIES**

- 4.1 The term 'Tenant' refers to sole or joint Tenants.
- 4.2 If two or more people have signed the Scottish Secure Tenancy Agreement or Occupancy Agreement for Homeless Accommodation, they are jointly and severally liable for the payment of rent. This means that each person is fully responsible for the payment of any arrears of rent.
- 4.3 Tenants have an obligation under the terms and conditions of their Tenancy Agreement to pay rent due every week, in advance, on or before the first day of each rental period.
- 4.4 Tenants have a responsibility to inform SBHA of any changes that may affect their ability to pay rent and to notify Scottish Borders Council of any changes as this may affect their entitlement to Housing Benefit.
- 4.5 SBHA considers rent to be a Tenant's most important financial commitment and expects Tenants to prioritise rent payments above other expenses.

#### **5.0 PREVENTION ACTIONS**

- 5.1 SBHA aims to prevent rent arrears arising (from the earliest opportunity) and the undernoted methods will be utilised.
- 5.2 Rent Payment Methods
- a) SBHA offers a variety of payment methods including Direct payment from the Tenants benefit entitlement, Direct Debit, Bank Standing Orders, payments at shops and Post Offices, internet payments, over the phone payments, cash payments at SBHA office, and other facilities available within the local communities where appropriate.
  - b) SBHA will publicise payment options and will promote its preferred payment method of Direct Debit to Tenants.

- c) The list of payment options may change to reflect Tenant feedback and new technological developments. Any payment options provided will be cost effective for SBHA to operate and convenient and easy for Tenants to use.
- d) SBHA will automatically order a swipe card for issue to all new Tenants. This means that should a Tenant's circumstances change, or they wish to change payment methods they can use their swipe card without delay.

### 5.3 Promoting a Payment Culture

- a) SBHA will seek to maximise rental income by enabling and promoting a payment culture to Tenants. This will involve highlighting the connection between rent payments and SBHA's ability to deliver high quality services as well as the publicising the potentially serious consequences of accumulating arrears.
- b) Before the tenancy begins, all new Tenants will be advised of the importance of paying rent, the amount due in advance and the payment methods available.
- c) At tenancy sign up, all new Tenants will pay rent in advance in line with their payment cycle. If the Tenant is assessed as eligible for assistance from Housing Benefit, a receipt from the Scottish Borders Council is required at or prior to the tenancy sign up confirming that they have received an application from the Tenant. Where the Tenant is applying for Universal Credit, they will do so online prior to the sign up and when the tenancy is created, SBHA will verify the rent and service charges via the DWP's Landlord Portal.
- d) Rent payment will be promoted in articles in the Tenant's newsletter, on SBHA's website and social media platforms, and the production of information leaflets and posters. This will cover such topics as the necessity to make regular rent payments, the services offered by SBHA and the provision of debt advice services, including drop-in surgeries facilities based within local communities where appropriate.
- e) SBHA will regularly publicise its actions to recover rent arrears. This will include periodic media campaigns e.g. advertising, news releases, etc.
- f) Tenants in arrears will be advised of their account balance twice a year through rent statements (at the end of September and end of March), with arrears correspondence and, on request. Correspondence sent to Tenants will emphasise the importance of keeping up to date with rent payments and that failure to do so may result in home loss. Publicity will advise Tenants on where to get advice, either from SBHA or independently, where necessary.
- g) All repayment arrangements will be based on a Tenants income and expenditure to ensure they are affordable and sustainable. SBHA will allow a period of 7 days for the Tenant's consideration. All repayment arrangements will be confirmed by SBHA to the Tenant in writing. This will ensure compliance with Pre Action Requirements.
- h) SBHA will consult with Tenants on changes to rent and other tenancy related charges. Four weeks prior to a change to rent or other charges, written notification will be issued to Tenants.
- i) SBHA will provide information in plain English and as required, ensure that Tenants can access a responsive interpretation and translation service as well as have information in other formats such as large print. Communication will be clear, customer friendly and encourage Tenants to contact SBHA or other agencies when needed.

### 5.4 Securing access to benefits for Tenants

- a) As well as seeking to enable and promote a payment culture, SBHA will also help Tenants to maximise their income by assisting them to access benefits.
- b) SBHA recognises that a significant percentage of Tenants are either on low income or claiming benefits. Some of these Tenants may not be receiving their full benefit entitlement. SBHA will seek to secure greater Tenant access to welfare benefits in the following ways:
- Obtain a signed authorisation mandate from the Tenant at sign up to ensure that SBHA is able to assist with any benefit matters as they arise during the tenancy;
  - Advise Tenants of the documents needed when applying for benefit assistance with rent payment;
  - Inform Tenants of their requirement to keeping their benefit claim updated with changes to their circumstances;
  - Provide information to Tenants to help with benefit appeals and re-assessments and/or referring them to an appropriate agency for this support;
  - Providing general benefits information and advice; and
  - Carry out promotional activities promoting the Welfare Benefit and Financial Support services available to all Tenants via radio and social media campaigns, provision of online advice information, and by facilitating Tenant Roadshows and surgery drop ins and attending community based events.
- c) SBHA will continue to maintain effective ongoing liaison with the relevant departments within Scottish Borders Council and the Department of Work and Pensions (DWP). Where possible, communication will be carried out electronically which promotes transactional efficiency when posting payments to SBHA and also mitigates against double entry processing errors occurring. SBHA will also share information with Scottish Borders Council and DWP to prevent benefit fraud and assist in their recovery of benefit that has been fraudulently claimed.
- d) SBHA will stress to the Tenant their obligation to advise Scottish Borders Council or DWP of any changes to the number and circumstances of members in their household as this has implications for their benefit claim.
- e) Overpayments of Housing costs can be recovered from the claimant or the person to whom the overpayment was made. In such cases where they concern an SBHA Tenant, the *"person to whom the overpayment was made"* refers to SBHA. It will be at Scottish Borders Council or DWP's discretion to determine who it will seek to recover the overpayment from. If the overpayment is recovered from SBHA, SBHA will then seek recovery from the Tenant.
- f) SBHA's Welfare Benefits Officer and SBHA's Financial Support Worker will support SBHA Teams with training on welfare benefit issues and take on individual customer cases when required to help maximise an individual's income. SBHA's Welfare Benefits Officer will be the main point of contact with Scottish Borders Council and DWP on benefit issues and will seek ways to improve transfer of information between SBHA, Scottish Borders Council and the DWP.
- g) SBHA will maintain good relations with local welfare advice providers and promote this service in written and verbal communication.

## 5.5 Pre-Tenancy Services

- a) Prior to allocation, applications will be assessed in line with SBHA's current Allocations Policy. Current/Former landlords will be approached by SBHA for tenancy references as part of the allocation process. Where an applicant has outstanding arrears of more than one twelfth of the annual rent and has not adhered to an agreed repayment plan to pay these arrears, in accordance with the Allocations Policy, SBHA will suspend their application from bidding.
- b) Prior to suspending an Applicant, SBHA will make contact (by means of telephone call, text, email or letter) to advise them of the arrears and the resulting suspension of their application. Where this is for rent due to SBHA, payment in full will be requested or a repayment plan arranged. This approach provides for the promotion of a payment culture.
- c) All potential new Tenants and transferring Tenants will receive a home appointment from SBHA prior to allocation of a property. Specific to the collection of rent and prevention of rent arrears, at these pre-allocation appointments, SBHA will:
  - Assess an applicant under SBHA's Wellbeing Framework to determine the applicants personal and financial circumstances. This will include an income and expenditure calculation. This assessment will allow SBHA to identify any risk factors that may impact on the applicant's ability to pay rent. Where appropriate, a referral will be made to SBHA's Welfare Benefit Officer or Financial Support Worker for support. Consent will also be sought to refer to a specialist support agency if required.
  - Provide the applicant with information and advice on methods of rent payment and discuss the importance of maintaining a clear rent account.
  - Inform the applicant of rent amount and that rent is payable weekly in advance from tenancy sign up (if the payment cycle agreed is different from weekly, then this will be in advance also), advising the applicant that they are required to pay rent at tenancy sign up or provide confirmation from Scottish Borders Council or DWP of receipt of a benefit application for rent payments;
  - Discuss with the applicant the responsibilities of the tenancy agreement including payment of rent and other associated costs related to taking on and sustaining a tenancy;
- e) SBHA will conduct a comprehensive tenancy sign up process with a strong focus on paying rent promptly. During the sign-up process SBHA will clearly explain and provide the following information to the new Tenant:
  - how much the rent and any other charges are and, where applicable, any charges which are not eligible for assistance from Scottish Borders Council or DWP;
  - how often the rent is due, reiterating the payment cycle;
  - how and where rent can be paid;
  - what the Tenant's responsibilities are, including the obligation to pay rent on the due date and that failure to pay rent when lawfully due could have serious implications, including the potential loss of their home;
  - who the Tenant should contact if they have any difficulties with paying their rent;
  - the provision of advice and assistance in claiming welfare benefits including, support to complete benefit application forms, where appropriate;
  - guidance on obtaining independent advice and support;
  - what a Tenant should do if their circumstances change;

- an explanation of SBHA's Rent Collection policy and procedures should the Tenant fall into arrears;
  - SBHA's responsibilities as a landlord; and
  - details of SBHA's Customer Care Standards and Complaints Handling Policy.
- f) New Tenants will be required to make payment of one week's rent in advance at tenancy sign-up, or a payment in accordance with their payment cycle e.g., fortnightly or monthly. This is in accordance with the Tenancy Agreement, and Tenants will be encouraged to pay future rent by Direct Debit. If the Tenant is assessed as eligible for assistance from Housing Benefit, a receipt from Scottish Borders Council is required at or prior to the tenancy sign up confirming that they have received an application from the Tenant. Where the Tenant is applying for Universal Credit, they will do so online prior to the sign up and when the tenancy is created, SBHA will verify the rent and service charges via the DWP's Landlord Portal.
- g) SBHA will ensure that Tenants are aware of organisations and sources that can provide specialist debt management advice and independent financial advice, such as the National Debt Line, Shelter and the Citizens' Advice Bureaux.
- h) SBHA will arrange an appointment with all new Tenants at their home within 4–6 weeks of the tenancy start date. This appointment will be carried out in person or in a video call and will consider rental payments and any arrears with the Tenant at that time. This will assist with early intervention and resolving any issues such as benefit delays or payment methods. A rent statement will also be provided at this appointment.

## **6.0 EARLY IDENTIFICATION AND INTERVENTION ACTIONS**

6.1 SBHA recognises that it is important to act quickly in the event of a Tenant's rent account going into arrears, to prevent the Tenant building up more debt and will take action to recover the money owed as soon as possible.

6.2 Detailed procedures for rent control and arrears action ensure that each case is regularly monitored, and the necessary checks made at each stage of the control and recovery action. These procedures will detail timescales for the monitoring of rent accounts, the issuing of letters and the initiation of Tenant contact.

6.3 SBHA's Neighbourhood Teams will monitor on a weekly basis all accounts which fall into arrears.

### **6.4 Personal Contact**

- a) SBHA will actively contact Tenants who are in arrears to attempt to prevent the arrears from increasing. When arrears are first detected, SBHA will issue reminder letters by post and/or email with a rent statement attached to this correspondence. Further attempts contact will be made by telephone and text. The Tenant will be reminded of their tenancy conditions and their responsibility to make regular rent payments in advance. They will also be informed of the amount outstanding and of the potential implications of non-payment.
- b) When a Tenant fails to respond to this contact, they will be invited to meet with SBHA either at an SBHA Office, at the Tenant's home, in a video call, or at a location convenient to the Tenant.
- c) This personal contact will concentrate on establishing the Tenant's circumstances and look for positive ways forward. This will include discussion on how the arrears arose, any other debts, and welfare benefit issues, household circumstances, support issues, payment methods, identification of other agencies involved, income and expenditure details, employment details, etc.

- d) SBHA Teams will be sensitive to a Tenant's individual circumstances to determine the most appropriate method of contact and the approach towards the recovery of arrears. SBHA Teams will take a holistic approach to rent arrears and help identify any sources of income to help a Tenant deal with their debt, as well as a Tenant's outgoings. Difficulty in paying the rent may reflect wider problems which require support and a more flexible approach in settling the outstanding arrears.

Factors that SBHA will consider include:

- reason for the arrears;
- Tenant's financial circumstances (this will be done using an income and expenditure form); and/or
- any apparent vulnerability of the Tenant;

#### 6.5 Face to Face meeting

- a) When a Tenant fails to respond to regular contact, they will be invited to meet with SBHA either at an SBHA office, in a video call, in the Tenants home or at a location convenient to the Tenant e.g., a support agencies office.
- b) At this appointment SBHA will assess the Tenant in line with SBHA's Wellbeing Framework to determine their personal and financial circumstances. This will include checking the Tenants contact details, their preferred contact method and completing an income and expenditure assessment. This assessment will allow SBHA to identify any risk factors that may be impacting on the Tenant's ability to pay their rent and arrears.
- c) SBHA will set out what support is available to the Tenant and a referral will be made to SBHA's Welfare Benefit Officer or SBHA's Financial Support Worker to provide more comprehensive support to assist in the maximisation of the Tenant's income. Information will also be provided to the Tenant on independent support agencies such as Citizens Advice Bureaux, Scottish Borders Council and other voluntary organisations in the Scottish Borders providing welfare benefits and debt management advice.
- d) The importance of the Tenant keeping in touch with SBHA to discuss ongoing rent and arrears will be promoted at the meeting.
- e) Although the purpose of the meeting is to assess the Tenant in line with SBHA's Wellbeing Framework, the SBHA Team will highlight to the Tenant their obligation to pay rent under the Tenancy Agreement and the consequences of not doing so – SBHA raising legal action and that the Tenant is liable for all associated court costs. This is a requirement contained within the Pre Action Requirements under the Housing (Scotland) Act 2010.

6.6 Record Keeping - A comprehensive record of all payments, communications and action taken in relation to a Tenant's arrears, including copies of letters and legal notices, correspondence with other agencies, details of telephone and video calls and copies of emails sent and received will be maintained by SBHA in the Tenant's electronic file.

6.7 Partnership Working with Other Agencies – SBHA will continue to actively promote joint working with Scottish Borders Council, including the Homelessness Team, Social Work Department and Revenue and Benefits Team, and other external agencies in order to prevent homelessness as a result of eviction. This includes SBHA, working in partnership with Scottish Borders Council, to assist in the development of a general protocol for dealing with arrears to reduce rent arrears and to prevent homelessness.

6.8 Withdrawal from Improvement Programme - Tenants in arrears will be encouraged to maintain a repayment arrangement or clear their arrears in full to prevent their homes from being withdrawn from the Improvements Programme for new kitchens and bathrooms. A Tenant must make and keep to a payment arrangement for six months before the contract is implemented and the decision to remove a property from the Improvements programme due to a failure to maintain a repayment arrangement will be considered jointly by SBHA's Head of Neighbourhoods & Solutions and SBHA's Asset Lead.

6.9 Voluntary Repayment Arrangements

- a) SBHA will expect low level debts (of one month's rent or less) to be cleared in a single payment and will only agree to instalments where the Tenant can demonstrate their inability to pay in a single payment following the completion of an income and expenditure assessment.
- b) For higher level debts SBHA will accept repayment by instalment and will make payment arrangements that take into account the Tenant's personal circumstances and the time in which the debt will be paid in full. These payment arrangements will be both manageable for the Tenants and acceptable to SBHA. Repayment periods will not normally exceed 12 months, and this length of time will only be agreed in exceptional circumstances.
- c) The arrangement will include the payment of future rent as well as payment of the arrears and SBHA will provide the Tenant with the repayment arrangement in writing.
- d) Once the Tenant has made an agreement to repay arrears, the rent account will be continually monitored. All repayment arrangements will be monitored on a regular basis to ensure compliance and affordability. Repayment arrangements will be reviewed on an annual basis.
- e) In some circumstances, the repayment arrangement may be reviewed. Prior to entering into a further repayment arrangement, approval must be sought by SBHA Teams from the Head of Neighbourhoods & Solutions who will assess the proposal including reasons for the request and determine whether it is appropriate and acceptable to SBHA. In instances where the Head of Neighbourhoods & Solutions refuses this repayment proposal, a full explanation of reasons for refusing will be provided to the Tenant. This is to prevent rent arrears rising as a result of inappropriate repayment arrangements being made, recurring failure/non-commitment to adhere to agreed arrangements and it will enable other more appropriate recovery methods to be considered.
- f) If the Tenant fails to keep to an agreed repayment arrangement, SBHA will pursue the Tenant for the missing payment. This may take the form of letters, emails, telephone calls, home visits – in person and/or a video call. Where a Tenant fails to pay the missing payment within a reasonable timeframe or persistently breaches the repayment arrangement, SBHA will consider other means of recovery of the arrears.

6.10 Direct Payment of Housing Benefit/Costs - SBHA will request that Scottish Borders Council/DWP pays the Tenant's benefit for rent payment direct to SBHA where the Tenant owes more than eight weeks rent. The Tenant will be advised of the request but, in line with legislation, their permission is not required.

6.11 Arrears Direct - Where the Tenant is in receipt of Universal Credit and is one month or more in arrears, SBHA will apply to the DWP for rent and arrears payments to be paid directly to SBHA via the DWP's Managed Payment and Rent Arrears Deduction framework. Where a Tenant is in receipt of Housing Benefit and in arrears of 8 weeks or more, SBHA will apply for direct deductions from the Tenants benefit entitlement.

Alternatively, with the Tenant's consent, deductions can start when at least four weeks arrears outstanding.

- 6.12 Wage or Earnings Arrestment - Should SBHA be awarded a decree for payment, and a Tenant is employed but not making payment, the Association may instruct Sheriff Officers to lodge an earnings arrestment with the Tenant's employer. The Sheriff Officer's fee for lodging the arrestment will be recoverable from the Tenant.
- 6.13 Simple Procedure - Where the arrear is below £5,000 and is not increasing but has been outstanding for some time, SBHA may consider applying to the Courts for an order of payment (decree). This application will normally include a claim for expenses.
- 6.14 Debt Collection Agency - SBHA may use external debt collection agencies in cases where there is evidence that Tenants will not pay, or where there are missed payment arrangements, to see if moving the case to legal action can be avoided.

## **7.0 ENFORCEMENT ACTIONS**

7.1 SBHA will, as a last resort, take legal action against Tenants who refuse to pay their rent and rent arrears. Examples of circumstances where SBHA would pursue an action for recovery of possession are:

- persistent non-payment of rent and rent arrears;
- persistent refusal to contact SBHA in connection with increasing or stagnant arrears;
- failure to keep to payment pledges and repayment arrangements and arrears are not reducing.

7.2 In cases where repossession of a property is sought on grounds of rent arrears, SBHA will ensure that it meets the Pre Action Requirements set within the Housing (Scotland) Act 2010 before serving a Notice of Proceedings (referred to as an NOP) on the Tenant(s) and any qualifying occupiers. In accordance with legislation, the Pre Action Requirements do not apply in cases where SBHA has served a notice on a Tenant or qualifying occupiers before 1<sup>st</sup> August 2012 and which is in force on the date that court action is raised.

7.3 Before serving an NOP, SBHA will make reasonable enquiries to establish, so far as is reasonably practical, details of Tenants' household composition including any qualifying occupiers (see 7.5b below for definition).

7.4 Prior to the serving of an NOP, the case will be presented to the Head of Neighbourhoods & Solutions for consideration and approval to proceed. The Head of Neighbourhoods & Solutions will review the case and ensure that all Pre Action Requirements have been met and are evidenced. Authorisation to serve the NOP will not be provided if an application for Universal Credit or Housing Benefit for the Tenant has been made but not yet determined and is likely to result in benefit being paid to clear the outstanding rent and other outstanding financial obligation of the tenancy, or reduce the arrears to a level acceptable to SBHA or the Tenant is maintaining an agreed repayment arrangement or is taking other steps which (in SBHA's opinion) are likely to result in the payment of the outstanding rent within a reasonable time.

### **7.5 Notice of Proceedings**

- a) SBHA's Head of Neighbourhoods & Solutions and Head of Support Services will have authority to instruct and/sign a Notice of Proceedings (referred to as an NOP).
- b) SBHA is required to serve on the Tenant(s) and any qualifying occupier an NOP. A qualifying occupier is a person who occupies the property as their only or principal home and is:
- a member of the Tenant's family aged at least 16 years old; or

- a person to whom the Tenant has, with SBHA's consent, assigned, sublet or otherwise given up possession of the house to; or
  - a person who is a lodger and SBHA has given consent.
- c) Each Tenant and qualifying person will receive a separate NOP. In serving the NOP, SBHA is advising the Tenant and any qualifying occupier(s) that it intends to raise an action at the Sheriff Court against the Tenant. A notice period of at least four weeks follows the serving of the NOP.
- d) During the notification period before an NOP becomes effective, SBHA will still aim to reach an agreement with the Tenant on repayment. If a payment arrangement is made during this period Court action may be avoided. All repayment arrangement will be confirmed in writing.

## 7.6 Court Action

- a) Authorisation to raise proceedings for possession will be sought by members of SBHA's Neighbourhood Services Team from SBHA's Head of Neighbourhoods & Solutions or Head of Support Services, and instructions to SBHA's solicitor provided to pursue Court action for a payment decree or ejection decree. In all cases, SBHA will seek recovery of expenses. Expenses may be awarded where the arrears have been repaid.
- b) Prior to authorising Court action, a thorough review of the case will be carried out by SBHA's Head of Neighbourhoods & Solutions and Head of Support Services to make sure all realistic options have been tried and that the decision to proceed is being based on sound information.
- c) SBHA will notify Scottish Borders Council's Homelessness Team using the prescribed form as soon as proceedings for possession are raised, in accordance with Section 11 of the Homelessness etc., (Scotland) Act 2003.
- d) Prior to the Court date, SBHA will continue to try to contact the Tenant to offer support and negotiate repayment of the arrears. The following Court outcomes may apply:
- If a reasonable offer is made by the Tenant to repay the arrears at this stage, SBHA will consider sisting the court action to give time to monitor payments. Legal expenses will normally be charged to the Tenant. A sisted case will be monitored to ensure the Tenant adheres to the repayment arrangement agreed in Court and the Tenant will be advised that a default arrangement will result in the case being recalled back into Court. When the arrears are paid in full SBHA will seek to dismiss the action in Court.
  - If it is identified after the Court action is raised that a Tenant has a vulnerability that is preventing the payment of rent and their ability to seek advice and support, SBHA will consider each Court action on its own merit. Given the severity of the vulnerability, and where appropriate engagement is in place to resolve the arrears, SBHA may consider dismissing the action in Court.
  - If further efforts are not successful in resolving the arrears, SBHA will request that the Sheriff grants a Decree of ejection to evict the Tenant and anyone living with them.
  - Where the Court orders the repayment of arrears, it may order an open decree for repayment, which SBHA can enforce for full payment of the debt, or it may make an instalment decree requiring the Tenant to clear the arrears at an agreed rate.

## 7.7 Eviction

- a) In accordance with SBHA's Eviction Policy, on receipt of the decree for ejection, SBHA will terminate the tenancy from the effective date of the decree (except in cases on grounds for rent arrears where the tenancy continues until the date of possession) and SBHA's Head of Neighbourhoods & Solutions or Head of Support Services will, within 1 month of receipt of the decree, prepare a detailed case report for consideration by SBHA's Director of Customer Services. A formal request for approval to evict will then be sought from SBHA's Chief Operating Officer.
- b) Once permission to evict has been obtained, Sheriff's Officers will be instructed by SBHA to carry out the eviction and Scottish Borders Council's Homelessness Service will be notified of the impending eviction.
- c) Prior to the eviction date, a member of SBHA's Neighbourhood Services Team will visit the property to discuss with the occupiers the eviction process and provide them with sources of advice and practical assistance, including details on sourcing temporary accommodation and arrangements the occupiers themselves must make in preparation of the eviction. At this visit, the occupiers will also be made aware, where appropriate, of any prevention action they could take to prevent the eviction. Support workers and Scottish Borders Council's Homelessness Officers may also attend this visit.
- d) Where a Tenant offers to make a substantial payment towards their arrears – no less than 80% of the total arrears due – or to clear the arrears in full with court costs, SBHA's Head of Neighbourhoods & Solutions will present the proposal to SBHA's Director of Customer Services and SBHA's Chief Operating Officer for consideration. If acceptable, the Chief Operating Officer will use discretion to accept the payment and/or repayment proposal and authorise the cancellation of eviction.

## 8.0 **FORMER TENANT ARREARS**

- 8.1 SBHA will pursue former Tenant arrears as efficiently and cost effectively as possible.
- 8.2 All Tenants, when terminating their tenancy, are encouraged to pay any outstanding arrears of rent and will be advised of the implications involved if rent arrears are not paid in full.
- 8.3 Former Tenants in arrears will be encouraged to agree a repayment plan that is affordable and sustainable.
- 8.4 Detailed procedures for arrears recovery ensure that each case will be regularly monitored, and appropriate action taken.
- 8.5 Where attempts to recover arrears by letter, telephone and email have failed, or the former Tenant's whereabouts are unknown, the debt will be referred to the Debt Collection Agency used by the SBHA.
- 8.6 Legal action to recover the arrears will be taken in cases where, an assessment of the former Tenant's financial circumstances, indicate that such action would be appropriate.
- 8.7 Where the arrears are in respect of a deceased Tenant action will be limited to contacting the next of kin or executor to claim against the estate.
- 8.8 Where a debt is uneconomic to pursue or there is no prospect of recovery, the debt will be written off in accordance with SBHA's policy on irrecoverable debt.
- 8.9 SBHA will take the following action to recover former Tenant rent arrears:

- (a) Refer the debt to debt collection agencies; and
- (b) Arrestment of wages where the former Tenant is in employment.

## **9.0 WRITE OFFS AND SEQUESTRATIONS**

- 9.1 SBHA will only consider writing off current Tenant arrears in exceptional circumstances. For example, a very small static balance that have been disputed by the Tenant and SBHA is unable to show how the balance arose. SBHA's Director of Customer Services has authority to write off debts up to £100 and all other requests must go to Board or Committee for approval.
- 9.2 In some circumstances, a Tenant debt to SBHA will be declared as part of a sequestration process. It is rare for these debts to be repaid once declared and approved as part of a sequestration. As a result, SBHA will consider writing off sequestrated balances once the Accountant in Bankruptcy has confirmed the details. SBHA's Neighbourhood Services Manager will be responsible for retaining records on these.
- 9.3 It is crucial that Tenants maintain their ongoing rent payments after a sequestration is in place. If they do not, then legal action will be considered against any new debt as normal.
- 9.4 A write-off does not mean that further attempts for recovery will not be made if circumstances allow.
- 9.5 Former Tenant debt is written off on the following basis:
- Debts individually less than £250 and all debts where the Tenant has been declared bankrupt may be written off on the authority of SBHA's Director of Customer Services.
  - Debts greater than £250 and up to £1,000 may be written off on the authority of SBHA's Director of Customer Services and SBHA's Director of Finance.

## **10.0 UNCLAIMED CREDIT BALANCES**

- 10.1 SBHA aims to manage its rent accounts efficiently and effectively. Part of this requires that, at the end of every financial year, SBHA will run a report on credit balances for Current Tenants. Reports on Former Tenant credit balances will be run monthly.
- 10.2 In accordance with Scottish law, the relevant amount of a genuine credit balance is a debt which the Association owes to the Tenant. Accordingly, the Tenant retains the right to demand repayment until the relevant prescriptive period expires, after which the Tenant would be time barred from enforcing their right to payment. In Scotland, the prescriptive period is 5 years. The start date for the prescriptive period is the date on which the credit arose. Once the prescriptive period has expired the Association can utilise the money for another purpose, provided that it has been kept in some sort of suspense account.
- 10.3 SBHA's Neighbourhood Services Team will review credit balances throughout the year and where a credit balance is identified, will notify the Tenant and discuss the circumstances of the rent account balance. Checks will be undertaken prior to refunding any credit to ensure the balance is correct including ensuring any benefit overpayments have been paid and any outstanding sundry debtor's invoices. In line with SBHA's Anti Money Laundering Policy, due diligence will be carried out to identify and assess any risk of money laundering.
- 10.4 SBHA will process and refund all request within 20 working days. If the Tenant is terminating their tenancy or a transfer is planned, SBHA will await inspection of the property before refunding any credit balance to the Tenant.

- 10.5 For Former Tenants where there is a forwarding address, SBHA will check there are no sundry debts owed before contacting the Former Tenant with the aim of repaying these credit balances. If credit balances are for Former Tenants for whom SBHA holds no forwarding address, SBHA will check every case against the Association's sundry debtor's ledger.
- 10.6 In cases where no debt is owed to SBHA, the Association will place the credit balance in an interest earning suspense account. After the 5-year prescriptive period has elapsed, SBHA will, with SBHA Board of Management approval, release money for the benefit of other Tenants and communities.

## **11.0 MONITORING AND REVIEW**

- 11.1 SBHA's Board of Management will agree Key Performance Indicators in relation to rent collection and will receive regular reports on performance measured against these.
- 11.2 SBHA's Customer Board will also receive reports on Key Performance Indicators relating to rent collection and monitor the implementation of this policy to ensure that it is properly operated.
- 11.3 SBHA wants to continue to develop a strong performance culture and target orientated Teams. SBHA will agree and set individual targets for Team members working in the control and management of rent arrears and will review performance against these. SBHA's Head of Neighbourhoods & Solutions will primarily be responsible for target setting in consultation with SBHA's Director of Customer Services.
- 11.4 SBHA will participate in benchmarking with other Housing Associations in relation to the control and management of rent arrears.
- 11.5 This Policy will be reviewed every three years or earlier if there are legislative, performance or other changes which necessitate this.

## **12.0 PERFORMANCE TARGETS**

- 12.1 As part of its budget setting and promotion of a performance culture within the Neighbourhood Teams, SBHA's Board of Management will annually approve targets for the following:
- bad debts as percentage of total rental income
  - gross and nett arrears as percentage of total rental income
- 12.2 Performance against these targets is reported to SBHA's Board of Management and the Customer Board, along with exception reports on any areas of non-compliance, on a quarterly basis, within the Key Performance Indicators.