



<b>CLOCH HOUSING ASSOCIATION LTD</b>	
<b>Policy Name</b>	<b>Legal Action and Eviction Policy</b>
Policy Category	HM
Policy Number	027
Date Adopted	01/05/2013
This Review	01/10/2019
Next Review	01/10/2022
Equalities Impact Assessment Required	Yes
Links to other Policies	<ul style="list-style-type: none"> <li>• Rent Arrears Policy <b>026</b>,</li> <li>• Anti-Social Behaviour Policy <b>036</b></li> <li>• Allocations Policy <b>028</b></li> <li>• Estate Management Policy <b>039</b></li> <li>• Void Management Policy <b>042</b></li> </ul>
Consultation	Internal only
Need for procedure	No

## **1 AIMS & OBJECTIVES**

- 1.1 It is the aim of Cloch Housing Association to prevent taking any tenant to court or indeed evicting them. All support and preventative measures will be taken to avoid this course of action, however, in cases where all other options have been exhausted, staff will adopt this procedure to ensure professionalism and fairness is utilised at all times.
- 1.2 The objective of this Policy is to clarify the Associations position and to give staff guidance when referring any case for legal action, including all relevant stages throughout the legal process culminating in eviction.
- 1.3 Where this policy document refers to rent payments and rent charges it should be considered that this includes Occupancy Charges & Service Charges where these are applicable.
- 1.4 The specific objectives of the Legal Action and Eviction Policy are:
  - to prevent homelessness occurring by exhausting all other management remedies, where appropriate;
  - to provide early intervention in an attempt to prevent eviction occurring;
  - to define the authorisation process for an eviction enforcement;
  - to deal with evictions in a consistent way;
  - to protect the wellbeing and interests of qualifying occupiers and other residents in the community; and
  - where appropriate, to take action to protect the assets and income of the Association.

## **2 RISK MANAGEMENT**

- 2.1 By having a written detailed Legal Action and Eviction Policy & Procedure the Association is able to ensure that a uniform and professional approach is adopted throughout the organisation and the service delivered is compliant with law, best practice and internal policy.
- 2.2 The risk of not having this Policy in place is an absence of the above, the Association being open to bias, unfairness and inequality and a poor reputation.

## **3 LEGAL BACKGROUND & COMPLIANCE**

- 3.1 This policy will comply with all relevant legislation and best practice guidance including:
  - The Housing (Scotland) Act 2001, 2010 & 2014;
  - Statutory Instrument 2012 No 127 Pre Action Requirements Order 2012;
  - Bankruptcy and Diligence etc. (Scotland) Act 2007;

- Children Scotland Act 1995 & Children’s Hearings (Scotland) Act 2011;
- Debtor’s (Scotland) Act 1987;
- Equality Act 2010;
- Homelessness etc. (Scotland) Act 2003;
- Human Rights Act 1998;
- Scottish Secure Tenancy Agreement, Short Scottish Secure Tenancy Agreement and Occupancy Agreement;
- The Data Protection Act 2018 & General Data Protection Regulation (GDPR)
- ;
- The Scottish Social Housing Charter; and
- Welfare Reform Act 2012;

#### **4 RESPONSIBILITY**

- 4.1 The Senior Housing Officer has responsibility for key aspects of the day to day service delivery with delegation of specific tasks to appropriate staff. The Housing Services Manager has responsibility for overseeing the implementation of the Legal Action and Eviction Policy and will report regularly to the Director on key performance indicators.

#### **5 PREVENTATIVE ACTION**

- 5.1 The Association will ensure that all reasonable steps will be taken to remove the need for court action to recover possession of a property. This will include early, regular and sustained intervention when appropriate, to ensure that every effort is made to avoid legal action and eviction.
- 5.2 In all situations where the Association feels that it is reasonable to recover possession of a property, we will ensure that reasonable preventative measures have been taken to avoid eviction. These measures include offering comprehensive advice and information about sourcing welfare benefit advice, assistance with applying for, and renewing, claims for Housing Benefit & Universal Credit, insisting on the completion of a benefit application or the payment of rent in advance when a tenant signs their tenancy, and visits made to all new tenants within the first six weeks to assess how well they are settling in, with follow up visits continuing for as long as help is needed. Refer to HM026 Arrears Policy and HM036 Anti-Social Behaviour Policy for more information.
- 5.3 The Association is committed to using all the legal remedies that are available to it which are considered to be effective and reasonable. In each case, action will be determined based on the individual household’s circumstances and evictions will only be carried out as a last resort.

## 6 LEGAL ACTION

- 6.1 The decision to grant a decree for eviction can only be made by a Sheriff, not the Association. The grounds for eviction are contained within the Housing (Scotland) Act 2001, Schedule 2, Part 1 as amended by the Housing (Scotland) Act 2010, Part 16, Sections 153 and 155(2) -(7) and Part 2, Section 14 of the Housing Scotland Act 2014
- 6.2 In the majority of cases eviction will only be granted when the Sheriff is satisfied it is reasonable\* to do so and that the Association has adhered to the prescribed legal process including demonstrating to the court reasonable alternatives to repossession have been considered, and complying with the pre-action requirements (when required), and serving a valid statutory notice of proceedings on the tenant and all qualifying occupiers\*\*. In cases involving a conviction for antisocial behaviour the reasonableness test does not apply and subject to compliance with the relevant procedures an order for eviction may be mandatory.

*\*In satisfying itself that it is reasonable to make the order for repossession, the court must have regard to:*

- *the nature, frequency and duration of the conduct;*
- *the extent to which the conduct was the responsibility of persons other than the tenant. This can include for example,*
  - *where delays in the payment of housing benefit have led to rent arrears and are primarily the responsibility of the local authority;*
- *the effect the conduct has had on neighbours and people other than the tenant; and*
- *any alternative action taken by the landlord, before seeking possession, to bring about an end to the conduct of the person in question.*

*\*\* A qualifying occupier is defined as anyone who is: a member of the tenant's family aged 16 or over living with the tenant as his/her principal home; any subtenant, lodger or assignee (someone to whom the tenancy has been transferred with the consent of the Association).*

*\*\*\* a member of the family is defined by the Housing (Scotland) Act 2001, Section 108.*

- 6.3 In the case of rent arrears, the Notice of Proceedings (NOP) cannot be served until the Association has complied with the pre-action requirements set out in Section 155 of the Housing (Scotland) Act 2010.

## 7 TENANT'S RESPONSIBILITIES

- 7.1 The term 'tenant' refers to sole and any joint tenants.

- 7.2 If two or more people have signed a tenancy agreement they are jointly and severally liable for ensuring that the tenancy conditions are adhered to. This includes ensuring that the actions of those living in, or visiting, their tenancy are acceptable (as detailed in the tenancy agreement).
- 7.3 Tenants have an obligation under the terms and conditions of their tenancy agreement to pay rent due every month, in advance, on or before the first day of each rental period. Failure to do this may lead, after other management options have been exhausted, to eviction action being taken by the Association.
- 7.4 Tenants have a responsibility to ensure that they actively manage their tenancy to prevent the need for repossession proceedings being raised. This includes, but is not limited to, ensuring that the house is not used for dealing in controlled drugs, dealing in stolen goods and illegal betting and gambling.
- 7.5 Tenants have a responsibility to ensure that they, and the people living with them, or visiting them, have respect for others. This includes, but is not limited to, ensuring that excessive noise is not created, pets are kept under control, vandalism and damage is not caused, rubbish is not left in unauthorised places and no harassment or assault is caused to any person in the house or neighbourhood, for whatever reason.

## **8 ASSOCIATION'S RESPONSIBILITIES**

- 8.1 The Association has a duty to protect its interests. Enforcing the terms of the Scottish Secure Tenancy, Short Scottish Secure Tenancy, or any other tenancy or occupancy agreement provided by the Association will assist this.
- 8.2 The Association has a duty to all its tenants and the wider community to ensure that they are able to live in an environment that is attractive, well maintained, safe and secure. This includes taking appropriate action against those living in, or visiting, Association tenancies when the behaviour of the person threatens to disrupt the neighbourhood and put the safety and security of other tenants and residents at risk.
- 8.3 At the start of a tenancy, the Association will ensure that tenants are informed of all the responsibilities and activities associated with maintaining a tenancy. Tenants will be encouraged to take appropriate action to prevent placing their tenancy at risk.
- 8.4 Tenants will be advised of the consequences of failing to adhere to the tenancy agreement. This will include any action that may be taken by the Association to remedy a situation.
- 8.5 Where appropriate, tenants will be offered support and assistance to ensure their tenancy is managed successfully.

- 8.6 Where enforcement action is taken, this will be proportionate to the breach of tenancy conditions, clearly state what action the tenant must do to resolve the issue and what the Association will do if the breaches of tenancy continue.
- 8.7 The Housing (Scotland) Act 2010 Section 153 provides that a tenant's tenancy in a rent arrears eviction case will not come to an end, even after the Sheriff Court has granted a decree for ejection, until such time as the Association has actually recovered possession.
- 8.8 The Association will evict the tenant(s) as soon as possible after the date specified on the decree for ejection. However, if a decree for ejection is granted for rent arrears, and full payment of the rent arrears and legal expenses is made prior to the eviction, the eviction may be cancelled. This is at the discretion of the Housing Services Manager.
- 8.9 Tenants and any qualifying occupiers who are due to be evicted will be fully advised of the homelessness responsibilities the local authority has towards them and be advised to seek assistance from the Council.

## **9 REFERRAL TO SOLICITOR FOR COURT ACTION**

- 9.1 The Housing Services Manager is ultimately responsible for all court referrals and all cases must be authorised by him prior to any referral being made.

## **10 EVICTION APPROVAL**

- 10.1 When the court grants a Decree for Eviction, the Association has limited time to enforce the order (up to six months currently) therefore a decision must be made over whether to evict the tenant, proceed without implementing the decree or hold the decree for a period of up to 6 months from the date of the decree being awarded. In exceptional circumstances, such as where the tenant has paid a substantial amount to the arrears during the period between the decree being awarded at court and the Association receiving the decree from the court the Association may hold the decree for a period of up to 6 months in accordance with current legislation to monitor the tenants account.
- 10.2 Where a Sheriff grants a Decree for ejection, the date after which the Association can recover the property will be specified on the order. A charge must be served upon a tenant before an eviction can take place. The charge must provide the tenant with a period of at least 14 days' in which to remove from the property prior to the eviction being carried out. A Sheriff Officer will only be able to carry out an eviction upon expiry of the 14-day period.
- 10.3 A Decree for ejection will be acted upon as soon as is practicable but within six months of being granted (the date specified on the order) following approval by the Housing Services Manager, unless there is

evidence to justify another course of action. Any material change in the tenant's circumstances or delay in implementing an eviction must be notified to and approved by the Housing and Property Services Sub-Committee. Tenants/qualifying occupiers will be kept fully informed during this process.

## **11 EVICTION PROCEDURE**

- 11.1 An eviction cannot be carried out until a Sheriff Court has granted an Order for possession and an eviction authorisation has been signed by the Housing Services Manager.
- 11.2 Sheriff Officers will send a letter to tenants to advise them of their date of eviction. The letter provides the tenant with a minimum of 2 weeks' notice prior to eviction unless there is evidence to justify another course of action, for example, the property has been abandoned, left unsecured, and is at risk of vandalism. Reduction of this period of notice will be on the authorisation of the Housing Services Manager.
- 11.3 Before eviction, housing staff will provide advice and practical assistance to the tenant and qualifying occupiers in preparation for their eviction.
- 11.4 Sheriff Officers are authorised to carry out an eviction, not Association employees. However, a staff member and a tradesman will be present to ensure the eviction is successfully completed.
- 11.5 Evictions will be carried out following legal guidelines and in accordance with good practice.
- 11.6 Locks will be changed after each eviction and a detailed void inspection of the property, garden and any outbuildings made. This will be in accordance with the Association's Void Management Policy HM042.
- 11.7 All tenants evicted will be recharged for the expenses incurred by the Association during and after the eviction. This will include legal expenses, Sheriff Officers' fees and the cost of any rechargeable repairs.

## **12 SHARING OWNERS**

- 12.1 The approach to legal action for Sharing Owners will largely be similar to that for tenants. Any legal action will be based on the terms of the Occupancy Arrangement which allows for The Association in conjunction with the mortgage lender to recover possession and force a sale of the property or on a Simple Procedure action to recover the debt only.
- 12.2 Where a sharing owner has indicated a sale/transfer of ownership to staff or the Association is successful in a conjoined recovery process the Association's solicitors should be advised immediately of any

outstanding occupancy charge or other fees in order that these arrears are held from the proceeds of any sale/recovery.

### **13 POLICY REPORTING**

- 13.1 Housing Officers will register all legal action cases and their progress on the Association's housing management software system.
- 13.2 The Association will monitor performance on evictions using the following performance indicators:
- the total number of tenants evicted;
  - the reason for the eviction, for example rent arrears, antisocial behaviour.
- 13.3 The above performance indicators will be reported to the Housing and Property Services Sub-Committee at each meeting.

### **14 CO-OPERATION WITH OTHER AGENCIES**

- 14.1 Cloch will co-operate with external agencies that may assist the tenant in managing their tenancy, particularly their rent arrears. Mandates where required will be completed.
- 14.2 If the Association raises proceedings against a tenant at the Sheriff Court we also serve a notice on the local authority, this is called a section 11 notice. It informs the council that the Association intends to evict the tenant from the property when the council receives the notice they may get in touch the tenant to offer advice and assistance.

### **15 CONFIDENTIALITY**

- 15.1 The Association stresses that the tenant's privacy must be safeguarded. As detailed earlier, the Association has various legal responsibilities, which must be adhered to in this respect.
- 15.2 All information regarding legal action is to remain confidential to the staff and tenant unless the tenant appoints a 3rd party to negotiate with the Association on their behalf. A signed mandate must be provided before staff will enter into discussions regarding an individual case. This mandate must conform to the conditions of the Data Protection Act 2018.
- 15.3 Reporting of cases to the Board will be by tenant number code only. No tenant's name or address is to be revealed at any time.

### **16 BOARD MEMBERS AND COURT ACTION**

- 16.1 Anonymity will be preserved at all times from Board Members in terms of considering individual cases. As Board Members may also be tenants

of The Association, those tenants should not be subject to court action by the Association. Any Board Member who may be subject to court action by the Association will be referred to the Board to discuss termination of the individuals' board membership or to invite a resignation in accordance with Section 44.5 of the Association's rules.

## **17 APPEALS AND COMPLAINTS**

- 17.1 Appeals or complaints against our operation of this policy will be processed through the Association's complaints handling procedure, which is available at the Associations office or on our website.

## **18 EQUALITIES COMMITMENT**

- 18.1 Cloch Housing Association is committed to tackling discrimination on the grounds of sex or marital status, racial grounds, or grounds of disability, age, sexual orientation, language, social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.
- 18.2 Cloch seeks to embrace diversity, promote equal opportunities for all and eliminate any unlawful discrimination in all areas of our work.

## **19 POLICY AVAILABILITY**

- 19.1 This document can also be provided in large print, braille, audio or other non-written format and in a variety of languages, on request.

## **20. MONITORING AND REVIEW**

- 20.1 This policy will be reviewed every three years, unless amendment is prompted by a change in legislation, operational requirements or customer feedback.

## Cloch Equality Impact Assessment (EqIA)

### Legal Action and Eviction Policy

Author	Housing Services Manager
Assessor / reviewer/ implementer	All Cloch staff and Board Members
Start Date	9 <sup>th</sup> July 2019
End Date	tbc
Relevance	The objective of this Policy is to clarify the Associations position and to give staff guidance when referring any case for legal action, including all relevant stages throughout the legal process culminating in eviction.
Policy Aims	The aim of this policy is to prevent taking any tenant to court or indeed evicting them, where this is not possible this policy outlines the procedures used to ensure professionalism and fairness is utilised at all times.
Available Evidence	<p>At this time, we do not have complete data or other information to prove that any of our tenants are being disadvantaged by the Legal Action and Eviction Policy.</p> <p>The policy itself does not have an adverse impact so far as we can tell at this stage, without clear data – however some procedures and practices may have, as detailed below.</p>
Evidence Gaps	It would be useful to have complete ethnicity profile of our tenants to analyse if any particular group is more likely to be in arrears and if they have different outcomes when in arrears. We will continue to gather relevant information about tenants at the sign up interview, however, this will take a long time to build up and allow us to make any meaningful analysis.
Involvement and Consultation	We consulted with staff and appropriate third parties during the review process.
What is the actual / likely impact?	There is no indication in the data we hold that the policy affects groups differently. Further work may need to be undertaken to confirm this. However, restrictions in welfare reform and the implementation of Universal Credit may have a disproportionate impact on younger tenants, making the likelihood of legal action more probable, evidence will be gathered as this progresses.

Address the Impact	N/A
Monitoring and review	This policy is on a 3-year cycle.
Action Plan	N/A
Decision Making and Quality Control	Housing Services Manager, Director, Housing and Property Services Sub-Committee