



Dunbritton Housing Association Limited

Name of Policy	Legal Action & Eviction
Responsible Officer	Head of Housing Services
Date approved by Board	22 June 2022
Date of next Review	June 2025
Section	Housing Services
Reference	HS14

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Appendices N/A

1. INTRODUCTION

- 1.1 Dunbritton Housing Association is a registered social landlord established in 1992 to provide housing for social rent and services to owners through factoring.
- 1.2 We are governed by our Board, which is supported by a number of Committees. Our governance arrangements set out clearly the roles and responsibilities of our Board and Committee members and our members of staff.
- 1.3 Operational services are delivered through our office based at 1 Hatters Lane, Dumbarton G82 1AW.
- 1.4 As a landlord, Dunbritton Housing Association aims to promote the health and wellbeing of our customers by providing quality homes, located in estates that are safe, environmentally clean, and well managed.

2. AIMS & OBJECTIVES

- 2.1 Dunbritton Housing Association will make every attempt to avoid using eviction as a course of action to resolve tenancy issues. 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 exercise their responsibility and use the legal powers at the Associations disposal.
- 2.2 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.

3. RISK MANAGEMENT

- 3.1 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.
- 3.2 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.

4. LEGAL BACKGROUND & COMPLIANCE

The current legal context for the recovery of possession is contained within the Housing (Scotland) Act 2001, amended by the Housing (Scotland) Acts of 2010 & 2014, and grounds detailed within the Scottish Secure Tenancy Agreement. However, in implementing our approach the Association is also mindful of our rights and responsibilities contained within the following legislation: -

- Data Protection Act 2018 (the UK's implementation of the GDPR regulation) – responsibilities for gathering and sharing information (staff should refer to appropriate Policy and subsequent guidance)
- Equalities Act 2010 (legally protects people from discrimination in the workplace and in wider society) – ensure general accessibility of service provision, options for payment methods etc
- Children Scotland Act 1995 – Consider implications and options prior to taking recovery action
- Debtors Scotland Act 1987 (legislation in relation to diligence action that can be taken following a decree being granted) – Enables the Association to seek earnings arrestment from a debtor
- Human Rights Act 1998 – responsibilities in terms of safeguarding human rights etc.
- Homelessness etc. (Scotland) Act 2003 (makes further provision regarding homelessness)
- The Scottish Secure Tenancies (Proceedings for Possession) (Pre-Action Requirements Order 2012).
- Streamlined evictions under certain circumstances using the legislation introduced by the Housing (Scotland) Act 2014, (see the Use of Short SST & Streamlined Evictions Procedure)
- Housing (Scotland) Act 2001 and 2010: repossession guidance for social landlords – Scottish Government publication
- Streamlined eviction process – criminal or antisocial behaviour: statutory guidance for social landlords
- Coronavirus (Scotland) Act 2020 (allows the Scottish Parliament to make provisions during the Covid-19 pandemic)

4.2 This Policy and Dunbritton's general approach to dealing with legal action and eviction is based on good practice such as SFHA's Rent Setting Guidance, the Scottish Government's Eviction of Tenants in the Social Rented Sector: Protection of Tenants with Rent Arrears 2010, and the Scottish Housing Charter 2012, Revised in April 2017, outcomes 6, 11 & 13.

5. LINKS TO OTHER POLICIES

5.1 This Policy should be read in conjunction with the following policies;

- | | | |
|--------------------------------|---|------|
| • Rent Arrears Policy | - | HM03 |
| • Allocations Policy | - | HM04 |
| • Abandonment Policy | - | HM10 |
| • Void Management Policy | - | HM14 |
| • Homelessness Policy | - | HM18 |
| • Anti-Social Behaviour Policy | - | HM11 |

6. REFERRAL TO SOLICITOR FOR COURT ACTION

- 6.1 The Head of Housing Services is ultimately responsible for all court referrals and they, prior to any referral being made, must approve all cases. The Committee will only become involved in cases once they have reached the final stage i.e. award of Decree for ejection.

7. POSSIBLE OUTCOMES AT COURT

- 7.1 There are a number of different outcomes when a case is heard in court which are listed with brief descriptions;
- **Dismissed** – This is when the case has reached a conclusion and does not require any further court intervention e.g. the tenant has cleared their arrears to a satisfactory level to the Association, the behaviour of an anti-social tenant has improved, or the tenant has terminated their tenancy prior to a court hearing, (if this is the case the Association will request Decree for payment of arrears and judicial expenses and have these placed on the tenants record). An action may also be dismissed if the court finds that there are competency issues with establishing the relevant grounds.
 - **Continued** – This is when the case is continued for a stated period, normally up to 12 weeks for a particular reason, e.g., to monitor payments, or an application for benefits to be made, or to monitor a behavioural change. The court may only afford one or two opportunities to continue depending on the circumstances.
 - **Sisted** – This is when the case is suspended temporarily. This type of action is used, for example, when the Housing Officer is satisfied that the tenant is adhering to their arrangement, but given the level of the arrears, it will still take some time to clear the arrear in full, or anti-social behaviour has temporarily stopped. Sisted cases will be reviewed by the relevant Housing Officer and the Housing Manager on a 6 monthly basis. Many courts will prefer to sist as opposed to allowing a continuation to monitor payments. Courts are now starting to implement sist review hearings to take place after a set period – this is to stop the court from becoming burdened with an excessive amount of sisted cases.
 - **Diet of Proof** – This is a full evidential hearing that is assigned where, e.g., the tenant is in dispute as to whether a statutory ground for recovery of possession is established, or that the action is not competence because pre-action requirements have not been met. Or when it is admitted that the ground is established (i.e. rent arrears) but that the action is defended on the basis that the additional requirement of reasonableness has not been established. At the proof hearing, each party (the Association and the tenant) will argue the facts on which they are insisting upon and will ask the court to find them more compelling, persuasive, convincing and weightier than the other side. Witness attendance is usually required at a proof, normally the Housing Officer

or Housing Manager, and other evidence will be used, e.g. reports, rent statements, ASB complaints. The sheriff will then decide on the matter.

- **Decree Awarded** – This is explained fully in the next section.

8. WHAT TO DO IF DECREE OBTAINED

- 8.1 When the court awards the Association a Decree for Ejection on the ground of rent arrears this **does not** end the tenancy. In the event of arrears actions, the tenancy ends with the execution of the eviction. The Sheriff will stipulate a period in which the decree can be enforced. This will normally be 28 days from the award of decree. The Ejection crave of the decree can thereafter be enforced up to a maximum of up to 6 months thereafter. The Association has to decide whether to end the tenancy or not within the stipulated period, taking into consideration the tenant's willingness to resolve the situation. Consideration should be given to the time needed for Sheriff Officers to serve the Charge for Removal, etc., when calculating the last date for enforcing the Ejection crave of the Decree. Where Decree for Ejection is granted on other ground, the tenancy ends from the effective date of the decree.
- 8.1.1. There are two courses of action the tenant's solicitor may take to override the initial award of decree. The first is to lodge a '**Minute of Recall**'. A new hearing date is fixed, and the tenant then has the opportunity to present their case to the Sheriff who will thereafter decide on whether the decree should be recalled. The second is when the tenant's solicitor applies to the Court of Session for an action of '**Suspension and Reduction**'. If awarded, this higher-level court can overrule the decision of the Sheriff.
- 8.2 When a Decree of Ejection is awarded, it cannot be enforced until 28 days after the dated it was granted. This will be at the discretion of the awarding Sheriff.
- 8.3 The Housing Officer and Head of Housing Services will complete an Eviction Report with their recommendations which will be presented to the Board to make a final decision. All names, addresses and any other identifying aspects in this report should be omitted to ensure the tenant remains anonymous to the Board at all times. The Head of Housing Services will note Boards decision and ask Chair to sign the Eviction Report. The Board have 2 options when considering the Eviction Report;
- 8.3.1 Agree to the recommendation of allowing the tenant to remain in the tenancy providing all debts owed to the Association are cleared in full.
- 8.3.2 Agree to the recommendation of Evicting the tenant.
- 8.4 If the Board decide not to agree with the Head of Housing Services's recommendation, he shall note their decision on the Board Minute and carry out their instructions forthwith. For example, if the recommendation is for an eviction and the Board disagree, the Head of Housing Services will note their decision and notify the tenant that they can remain in their tenancy and vice versa.

9. EVICTION PROCEDURE

- 9.1 Once the Eviction Report has been approved and signed by the Board, the Head of Housing Services will pass all related paperwork to the relevant Housing Officer with a view to programming the Eviction with the relevant agencies and within the appropriate timescales.
- 9.2 The Legal Action and Eviction Procedure explains this process in much more detail and should be implemented in conjunction with this Policy.

10. ALLOWING THE TENANT TO REMAIN IN THEIR TENANCY

- 10.1 If the Association has been granted Decree for Ejection by the Court, and for whatever reasons, are not proceeding with an actual Eviction, (This can be for a number of reasons, the most common however, is if the tenant has cleared their Arrears and Court Expenses in full), the Head of Housing Services will instruct the Housing Officer to give the tenant an office appointment to inform them they can remain in their tenancy and discuss the future conduct of their tenancy.
- 10.2 The Legal Action and Eviction Procedure explains this process in more detail and should be implemented in conjunction with this Policy.

11. POLICY REPORTING

- 11.1 Housing Officers will register all legal action cases and their progress on the appropriate Legal Action Excel Register.
- 11.2 The Head of Housing Services will submit an Eviction Report with his recommendations for all Decrees obtained to the Board (the only exception to this is when we ask for a Decree for dismissal, but with a repayment of arrears and legal expenses).
- 11.3 As part of the Associations ARC return to the Scottish Housing Regulator the following information is provided;
- Number of NOP's issued
 - Number of Court Cases Initiated
 - Number of Decree's obtained
 - Number of Evictions and for what reason.
- 11.4 These details will be reported to the Board as part of the overall end of year performance report outlined in the ARC.

12. APPEALS

- 12.1 Any tenant who feels aggrieved by their treatment under this Policy can ask for a copy of the Association's Complaints Policy which is available at the Associations Office. You also have a right to complain to the Public Services Ombudsman. The Complaints Policy details the way in which you can complain and the timescales for responding.

13. EQUALITIES COMMITMENT

- 13.1 Dunbritton Housing Association Ltd 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.
- 13.2 Dunbritton seek to embrace diversity, promote equal opportunities for all and eliminate any unlawful discrimination in all areas of our work.