

Factoring Arrears & Debt Recovery Policy

Policy Areas: Finance and Housing Management

Date Approved (for Consultation):

We can produce this document in different formats such as in larger print or audio-format; we can also translate the document into various languages as appropriate.

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Draft for Consultation

1: Introduction

- 1.1 Paragon Housing Association is a Registered Social Landlord responsible for implementing this Factoring Arrears and Debt Recovery Policy.
- 1.2 The Association in line with the Property Factors (Scotland) Act 2011, has registered as a Property Factor and our Registration Number is PF000282.
- 1.3 This policy sets out to ensure that owners receive a consistent and equitable approach to factoring arrears and debt recovery.
- 1.4 The Policy has four key elements, which seek to reduce factoring arrears and other owners' debt.
 - Arrears prevention
 - Arrears Management
 - Legal Action
 - Debt Recovery
- 1.5 Responsibility for the implementation of this policy lies with _____ staff for:
 - Preventative Action
 - Effective management of all factoring debt
 - Processing Notice of Potential Liability for Costs
 - Processing Court action for recovery of debts plus expenses.

2.0 Background

- 2.1 The prevention and effective maximisation of factoring arrears and other debt is crucial to maximising resources available to the Association to improve and maintain its stock
- 2.2 Factoring arrears arise when owners do not pay their bills by the due date.
- 2.3 There are also a number of other debts associated with factoring including:
 - Service Charges
 - Insurance
 - Open Space Maintenance Charges
 - Court Expenses
 - Rechargeable repairs
 - Rechargeable Estate Maintenance, and
 - Payment for additional services
- 2.4 It is important the Association has a consistent and corporate approach to factoring payment and debt collection ensuring that this is a high priority with our customers and within the organisation.

3.0 Principals, Aims and Objectives

- 3.1 The Association follows relevant legislation and good practice principals in managing factoring arrears and other debts, aiming to reduce the overall level of debts owed.
- 3.2 We seek to ensure that recover factoring arrears and outstanding debts from current and former owners.
- 3.3 We expect all customers to fulfil their legal obligations to pay factoring and other outstanding debts. Where these obligations are not met, we have a firm but sympathetic approach. Owners may be facing multiple debts, complex personal circumstances and financial difficulties. We will, as far as we can, ensure we are aware of individuals' circumstances and take account of our customers overall debts when assessing what actions to take.
- 3.4 We put an emphasis on a pro-active, preventative approach rather than being focused mainly on reactive enforcement measures. We use personal early contact to discuss arrears and debts and use letters to confirm arrangements and actions.
- 3.5 We maximise the use of all available alternative remedies and use legal proceedings ones all other reasonable steps have been taken.
- 3.6 The Association will ensure that all staff receive appropriate training in relation to this policy.
- 3.7 We will work in partnership with other agencies where appropriate. Managing arrears effectively involves good liaison and joint working with other support agencies such as money advice agencies.
- 3.8 The aims of the Factoring Arrears and Debt Recovery Policy are to:
 - Promote a culture of payment
 - Provide information and support at all stages
 - Provide a range of cost effective collection methods that take account of owners' preferences and their ability to access services
 - Give accurate and clear information on factoring accounts and other debts to staff and owners
 - Ensure that all our communications are clear and encourage contact.
 - Make contact with every customer as soon as arrears or other debts arise, or payments are missed, using a variety of methods to suit customer needs
 - Take a staged approach in which action is targeted and recorded
 - Negotiate realistic, affordable and sustainable payment arrangements to clear factoring arrears and other debts
 - Utilise the QL Arrears module to assist staff to manage arrears.

4.0 Equalities

- 4.1 The Association is committed to providing fair and equal treatment for all its stakeholders, including owners and will not discriminate against any on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) and sexual orientation.
- 4.2 We will provide advice, information and support and refer people to other agencies where this is appropriate.
- 4.3 We will arrange language and sign language interpreters where customers need this. We will also provide letters and other documents on tape, community languages, large print, Braille or other formats if requested.
- 4.4 *An equalities impact assessment will be undertaken on the draft policy*

5.0 Legal and Regulatory Framework

- 5.1 This Policy incorporates relevant statutory and regulatory requirements.
- 5.2 Legislation relevant to this Policy is the Property Factors (Scotland) Act 2011, including the Code of Conduct for registered property factors (the revised Code of Conduct came into effect on 16th August 2021).

6.0 Arrears Management

- 6.1 The Association uses the Aareon QL Housing Management system which holds accounts and associated records for owners. All payments to factoring accounts or changes in ownership are reflected in account balances.
- 6.2 The QL Arrears Module is designed to assist staff to manage arrears. It, therefore, provides information to facilitate monitoring and early action. Its key features can be summarised as follows:
- maintains a payments history for each owner;
 - generates letters;
 - is easily updated with stage of action;
 - provides monitoring prints and reports;
 - provides operational, management, and performance data;
 - all contact information relating to each account can be recorded.
- 6.3 ___ staff are responsible for factoring arrears management and arrears recovery. Whilst an integrated arrears management system can help staff meet those responsibilities, it cannot replace the early and continuous contact with owners that a successful arrears recovery process demands.

6.4 Prompt action when arrears are small is essential. This will prevent arrears escalating and reinforce to the owner that factoring arrears will be dealt with as a matter of priority. Our emphasis will be on close personal contact in relation to factoring payment and debt. The purpose of this early personal contact is to establish reasons for nonpayment and reach agreement on how this will be resolved. The aim is to agree an appropriate and affordable repayment arrangement, which takes into account individual circumstances and other debts.

6.5 We will use a range of methods of personal contact to suit customer needs, including:

- interviews at the Association office;
- home visits;
- telephone contact by our staff;
- email.

6.6 We will also maintain personal contact whilst an owner remains in arrears, to encourage regular payments and ensure that their circumstances have not changed

6.7 Written communications will be used to record formal steps in the process and confirm actions and repayment agreements. It is important that owners are fully aware of the legal implications of failing to pay their bills or to respond to our efforts to pursue arrears. Any contact with any owner in arrears, in whatever form, will be recorded on the QL Housing Management System.

6.8 It is critically important that customers understand the possible serious implications of failing to pay factoring and other debts.

6.9 We will arrange for statements to be sent out to owners regularly – at a minimum annually - to ensure that owners understand that we monitor accounts and are aware of the status of their account.

6.10 Our focus at the early stages of arrears recovery is as follows:

- establish contact and build up an effective relationship with the owner;
- establish the reasons for non-payment;
- make a formal arrangement to pay signed by the owner and a copy issued to them;
- advise owners of consequences of failing to adhere to this arrangement;
- confirm the strict monitoring arrangement that will be put in place to confirm adherence.

6.11 We will adopt a firm but sensitive approach to arrears recovery. Communication with owners as soon as arrears arise may reveal other issues

such as multiple debts, illness, harassment or relationship breakdown. Where owners are vulnerable, specialist support may be required. Where possible the Association will provide information on where and how to access such support.

7. Charge Setting and Collection

- 7.1 The Association will ensure that all charges have been set and apportioned in line with the Deeds of Conditions and have been delivered to the required specifications/standard.
- 7.2 Charges will be reviewed annually to ensure that any changes in service levels and costs are accounted for.
- 7.3 The Association will ensure that owners pay their full share of costs for common works and the services that they enjoy to prevent tenants' rents being used to subsidise owners.
- 7.4 The Association will issue twice yearly invoices in arrears for common charges (giving 28 days to pay) and annual invoices in advance for Building Insurance cover. The Association will, however, provide a variety of payment options to include weekly, 4 weekly or monthly payments in order to assist owners with budgeting if required.
- 7.5 The Association offers a variety of payment methods which include:
 - payment by telephone using a credit/debit card;
 - payment in person at the Association's Offices by cheque, credit/debit card or in exceptional circumstances, cash;
 - by bank Standing Order
 - in some circumstances where an owner is unable to pay using one of the above methods an Allpay card may be provided, however in these instances an admin charge of £-- will be added to the debt to cover the cost of this method of collection.
- 7.6 At present the Association has 85 fully factored owners with a £55 management charge. This charge is due to be reviewed.
- 7.7 None factored owners will be charged a x% admin fee on all invoices issued.
- 7.8 Where a final notice is issued to an owner indicating that debt recovery actions are escalated a £15 charge will be applied. This will be in addition to the charges referred to in section 8 below.

8. Legal Action

- 8.1 Should attempts to make contact be ignored or the owner fails to make or adhere to an arrangement, we will issue a final notice.

8.2 Prior to referring the debt to our solicitor, our staff must complete the following checklist confirming that:

- a final notice has been issued;
- where possible, contact with the owner has been made and recorded;
- agreed actions have not been implemented and payments have not improved.

8.3 When no contact or payment has been received after the final notice, then the details will be passed to the Solicitors to initially send out a seven day letter for payment.

8.4 If no payment is received after the seven day solicitor's letter, then an NPL (Notice of Potential Liability) may be served. This Notice would prevent the owner from selling the property without the debt being cleared by either the selling owner or the new buyer. It is required to be served through Registers of Scotland. The cost of registering the notice is £60 per flat and needs to be lodged at least fourteen days before the sale takes place. The notice lasts for three years but can be renewed thereafter. The fee for lodging the NPL will be added to the debt.

8.5 The Finance Manager will be asked to approve any court action that may be required in pursuing a debt. No reasonable offer of repayment will be refused prior to the first calling of the case. Continuations or sists will be acceptable where a significant offer of payment has been made in court.

Instalment Plans are acceptable at any stage of recovery action up to and including the first calling in court and should reflect the owner's ability to pay. However, the Association cannot agree to any offer that would see arrears take more than 12 months to clear.

Effective arrangements will be in place to ensure that staff are involved in decisions, including cases which have previously been in court

8.5 The Association can seek Decree for Payment and will use all means of available diligence, thereafter, including arrestment of wages or bank accounts.

9. Debt Recovery

9.1 Debts encompass all monies owed to the Association by current or former owners, with the exception of current factoring charges.

9.2 The basis of this Policy is that all debts due to the Association by an individual are taken into account before actions are initiated for recovery. Recovery should take place on a priority basis rather than have several recovery

processes in operation at the same time. All factoring debt is top priority for collection. We will seek to recover debts in the following order:

- 1) current factoring arrears (including service and insurance charges);
- 2) court costs (to clear court orders);
- 3) former owner debts;
- 4) repairs costs outstanding;
- 5) other debts.

- 9.3 Taking prompt action when a debt first arises is essential to prevent debts becoming a long-term liability. The sooner the debtor is contacted, and recovery starts, usually by arrangement, the higher the probability of recovering the total debt.
- 9.4 We will seek to achieve full cost recovery of the debt demonstrating value for money in doing so and will explore alternative routes which may include, for example, raising actions for Small Claims
- 9.5 Before raising, for example, actions for Small Claims, the Association will consider passing cases to Sheriff's Officers for further collection. In such as a 10% admin fee will be applied to the debt to reflect the commission payable to Sheriff's Officers if they successfully collect the debt.
- 9.5 A debt can only be pursued through the Courts if it is less than five years old. After five years, a debt becomes prescribed and is no longer recoverable, provided that the debtor has made no payments towards the debt during that period, thereby interrupting the period of prescription and unless court action has been raised in respect of the debt. If all efforts to trace the [Former] debtor have failed, consideration should be given to writing off the debt. For current debtors even if a debt is considered to be prescribed the debt can be recovered at the point of sale. For this reason current debt would only be written off in exceptional circumstances and would require approval of Management Committee.
- 9.6 Before an action can be taken against a debtor, it is essential that all relevant information is extracted from files and systems and fully collated to underpin the action. The following principles apply:
- following the issuing of the invoice, if at any time thereafter an arrangement that is acceptable to us can be agreed, then further action on the debt should be suspended unless the arrangement is broken. An acceptable arrangement is one that clears the debt within a 12 month period;

- every effort should be made to agree an arrangement that is both practical and sustainable;]
- debtors who make an arrangement to pay should be given a letter confirming all arrangements in place;
- clear advice on the consequences of not adhering to the arrangement should be given to the debtor, including the importance of maintaining regular contact with the Association so that any changes in circumstances can be taken into account;
- all arrangements must be monitored and action taken immediately on any breach;
- if an arrangement is broken, the outstanding amount should be recovered by taking appropriate action. This may in certain circumstances involve a further visit, interview or letter before proceeding to the issuing of a final reminder;
- if an arrangement is made at final reminder stage, then broken, then the outstanding amount should be recovered by taking appropriate action.

9.7 In some instances the relatively low level of debt, for example open space maintenance charges for some estates mean that taking legal action would not necessarily be a reasonable step. In these cases owners should be regularly reminded that a NPL will be applied for if the level of arrears is allowed to reach a level in excess of £250

9.8 Procedures will be developed to support implementation of this policy with arrears cases being grouped as follows:

a) Arrears Cases where sum due is less than £50

b) Arrears Cases where sum due is greater than £50 but less than £250 and arrangement is in place

c) Arrears Cases where sum due is greater than £50 but less than £250 and no arrangement is in place.

d) Serious / persistent arrears in excess of £250

10. Performance Monitoring

10.1 The Association will put in place a system which monitors and measures performance in relation to factoring arrears and debt recovery.

10.2 This will involve regular reports being made available to the Association's Management Committee.

11: Policy Review

11.1 The Association will review this Policy every three years. More regular reviews will be considered, where, for example, there is a need to respond to new legislation and guidance.

Draft for Consultation