

Report of Director, Environment and Neighbourhoods

Report to Executive Board

Date: 24 April 2013

Subject: Proposed changes to the Rent Arrears Recovery Procedures

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. This report sets out the proposed changes to Leeds City Council's Rent Arrears Procedure in preparation for the welfare changes that are due to take effect from 1 April 2013. The proposals seek to strike an appropriate balance between helping people who are struggling to pay additional sums of money to the Council from a very low income and ensuring that rent is recovered to be used for the benefit of all tenants.
2. The introduction of Housing Revenue Account (HRA) self-financing in April 2012 has allowed the Council to plan long term capital investment to improve the stock and build new homes. The rental income stream is essentially the only source of funding for the delivery of council housing investment priorities. As a result, any reduction in rental income will affect the sustainability of these plans and will have a major impact on the Council's ability to maintain and invest in its stock and build new affordable homes. The Council will have to collect £4m of income which will not be covered by housing benefit due to changes to entitlements.
3. In April 2013 the Social Sector Size Criteria (SSSC) rules come into force which reduce Housing Benefit (HB) entitlement for working age tenants deemed to have more bedrooms than they need. Pension age tenants are not affected by this change. Tenants under-occupying by 1-bedroom will have their HB worked out using a rent that is reduced by 14% for HB purposes only. Tenants under-occupying by 2-bedrooms or more will have their HB worked out using a rent that is reduced by 25% for HB purposes only.

4. From July 2013, many social housing tenants who are getting more than £500 a week in benefit payments will have their Housing Benefit reduced until overall benefit payments are under the £500 cap.

Recommendations

1. To note the expected impact of the welfare benefit changes coming into effect from April 2013.
2. To approve the proposed changes to the Rent Arrears Recovery Procedure.

1 Purpose of this report

- 1.1 The report provides information on the proposed changes to the Rent Arrears Recovery Procedure and the anticipated impact of the Housing Benefit changes coming into effect from April 2013.
- 1.2 The report outlines the measures developed to ensure that tenants affected by the welfare changes are appropriately informed of how the changes will affect them and are made aware of the options open to them. The changes do not impede the Council's ability to take decisive recovery action where tenants will not engage and fail to make any payments towards the arrears.

2 Background information

- 2.1 In 2006, the Ministry of Justice introduced a Pre-Action Protocol for Possession Claims based on Rent Arrears. The Council is required to comply with this Protocol as well as the general Civil Procedures Rules when recovering rent arrears. The Protocol recognises that it is in the interests of landlord and tenants to ensure that rent is paid promptly. It encourages early intervention and pre-action contact between landlords and tenants and aims to ensure that difficulties are resolved wherever possible without court proceedings. Leeds City Council's Rent Arrears Recovery Procedures were developed to comply with these requirements. The proposed changes also comply with these provisions.
- 2.3 The Social Sector Size Criteria will come into force on 1 April 2013. Analysis indicates that 6,748 Council tenants will be affected by the changes. The size criteria is set out in the table below:

Size Criteria – Tenants will be allowed:

- 1 bedroom for a single customer or a couple;
- 1 bedroom for a child; or
- 1 bedroom for 2 children under 10 of opposite genders; or
- 1 bedroom for 2 children of the same gender up to the age of 16;
- 1 bedroom for other single people or couples aged 16 or over.

A bedroom for a non resident carer will also be allowed.

- 2.4 Tenants under-occupying by 1-bedroom will have their HB reduced by 14% (approximately £10 per week) and those under-occupying by 2-bedrooms or more will have their HB reduced by 25% (roughly £19 per week). Pension age

tenants are not affected by this change. The loss of Housing Benefit for council tenants alone is estimated to be almost £4m per year.

- 2.5** July 2013 also sees the introduction of the national Benefit Cap which limits benefit payments to no more than £500 per week for working age families and £350 per week for single claimants. It is estimated that 120 council tenants are affected by the housing benefit cap and the average loss in HB is believed to be £57 per week. This equates to a loss of more than £350K in HB.
- 2.6** Since July 2012, the Arms Length Management Organisations (ALMOs) and Belle Isle Tenant Management Organisation (BITMO) have been contacting and visiting all affected tenants to explain the changes and the options available to them. The main focus of these visits is to ensure tenants have access to information, understand how the changes will affect them and receive sound advice and on-going support to make decisions about their future.
- 2.7** In March 2013, the Department for Work and Pensions issued a Ministerial Statement outlining an amendment to the regulations. As a result of this amendment, two specific groups will be protected from the social sector size criteria reforms; foster carers and Armed Forces personnel. Approved foster carers will be allowed an additional bedroom if they have fostered a child, or become an approved foster carer in the last 12 months. Also, adult children who are in the Armed Forces but who continue to live with parents will be treated as continuing to live at home, even when deployed on operations.
- 2.8** An option for some tenants will be a Discretionary Housing Payment (DHP). The DHP fund for 2013-14 is £1.9m. £800K of this is to support social housing tenants affected by the SSSC and all tenants, including those in the private rented sector, affected by the benefit cap. The fund is a fraction of the total rent shortfall resulting from the benefit changes. Under the Council's DHP Policy, specific groups of tenants will be prioritised for payments including disabled tenants living in significantly adapted properties. Other applications will be considered on a case by case basis for exceptional circumstances where a DHP award is appropriate. This will include applications from parents who need an extra bedroom to support child access arrangements, tenants approaching the state pension age, where work is not a realistic option, and families expecting a first child where a housing allocation has been made on this basis. Applications and awards of DHP, as well as the reason for awards, will be closely monitored by Leeds Revenues and Benefits Service to ensure that the policy remains effective and affordable.
- 2.9** To date, 90% of affected tenants have been contacted. The majority of households (40%) have expressed a preference to, if possible, stay in their existing home and meet the shortfall. The Council will endeavour to maximise the number of affected tenants who can stay in their existing home and cover the shortfall in rental charge. The ALMOs and BITMO are working with these households to:
- ensure they are claiming all eligible benefits;
 - review and prioritise expenditure;
 - provide budget and debt advice including referrals to specialist debt support agencies;

- assist with establishing bank accounts and setting up direct debits; and
- identify potential eligibility for Discretionary Housing Payments and where appropriate making a supported referral; and
- identify any specialist support needs and making referrals to Independent Living Teams.

- 2.10** It is clear that finding suitable alternative accommodation will be the most viable option for many tenants. Based on visits to date, approximately 20% of tenants affected by SSSC (approximately 1,200) are considering a transfer to smaller accommodation. The vast majority of these are seeking a transfer to another council property rather than the private sector. The Council is committed to facilitating such moves in a sensitive, supportive and effective way.
- 2.11** The Council will seek to maximise moves through the mutual exchange process whereby properties are swapped by a tenant who is overcrowded and another who is under-occupying. Mutual exchanges offer a quick and simple way to resolve overcrowding and under-occupation and allow for moves to take place between Council and housing association tenants. The ALMOs and BITMO are currently promoting mutual exchange with all tenants affected by under-occupation as well as households known to be overcrowded. Swap shop events are planned for spring 2013 to provide a forum for tenants to meet up and find accommodation that meets their needs.
- 2.12** All tenants who express a desire to move will be contacted to ensure they understand the Choice Based Letting system. They will be provided with assistance to register a housing application and will be supported in bidding for properties to maximise their chances of securing suitable alternative accommodation. The biggest challenge the Council faces in this respect is the shortage of available homes for affected tenants to move to. Over 4,500 of the tenants affected by under-occupation have a 1 bedroom housing need. In comparison, the Council has let 1,501 non-sheltered 1 bedroom properties in the last three years. Based on these statistics, it would take nine years to re-house all tenants affected by SSSC with a 1 bedroom housing need, notwithstanding the need to re-house other applicants.
- 2.13** As a result of these welfare changes, the Council anticipates that many affected tenants will struggle to meet the shortfall resulting in increased rent arrears. The data collected from the visits indicates that in the region of 75% of affected tenants will struggle to meet some or all of their rental obligation. The Council has approved additional resources to allow for 19 additional staff across the three ALMOs and BITMO for 2013-14. These staff will provide intensive support to tenants to explore alternative housing options and at the same time maximise their income and increase their ability to pay their rent and sustain their tenancy.
- 2.14** Given the number of tenants affected by the changes, the Council also anticipates an increase in the number of households on the housing register. Any increase in the number of transfers through choice based lettings will result in increased void costs and rent loss during the void period.
- 2.15** As the implementation date approaches, there has been increased media attention on the subject of arrears resulting from the welfare changes. There is

also a national campaign lobbying local authorities against recovering arrears for tenants affected by these changes. Arrears recovery action through the courts could ultimately result in eviction for tenants that won't pay. The proposed measures do not impede the Council's ability to take decisive recovery action where tenants will not engage and fail to make any payments towards the arrears.

3 Main issues

3.1 Pre-Action Protocol for Possession Claims based on Rent Arrears

3.2 The Pre-Action Protocol for Possession Claims based on Rent Arrears (hereinafter the Protocol) came into force in October 2006. The Protocol aims to ensure court action is a last resort by encouraging early intervention and pre-action dialogue between landlords and tenants. It also expects the landlord to take all reasonable steps to ensure that all information is appropriately communicated in ways that the tenant can understand.

3.3 The Protocol provides that the landlord should contact the tenant as soon as possible after arrears start to accrue to discuss the cause, ascertain the tenant's financial circumstances, determine whether there is any entitlement to benefits and encourage repayment of the arrears. The landlord should also liaise with the tenant and housing benefit departments to resolve any benefit issues and is expected to agree affordable sums for the tenant to pay towards the debt based on income and expenditure details if provided. Landlords are also required to advise tenants to seek assistance or independent advice from the Citizens Advice Bureau or debt advice agencies.

3.4 Importantly, failure by a landlord to comply with the Protocol allows the court to impose various sanctions, including making an adverse costs order, adjourning the case or even dismissing the claim entirely. It is vital therefore that the Protocol is complied with in every respect and that its terms are embedded within rent arrears recovery procedures.

3.5 Existing Rent Arrears Recovery Procedures

3.6 Leeds City Council's Rent Arrears Recovery Procedures have been developed to ensure all recovery action complies with the Protocol. The rent arrears process was last reviewed in 2011 to deliver a more streamlined approach and to improve its effectiveness yet still conform to the provisions in the Protocol.

3.7 The IT systems support the recovery process by automatically generating recommendations at identified stages. The process has built into it a degree of flexibility in that recovery action can be reviewed and suspended at any stage if appropriate. By way of example, if a tenant enters into an arrangement to repay the debt, no enforcement action will be taken for so long as payments are received in line with the arrangement.

3.8 The process provides for early intervention with an initial arrears letter following 2 weeks unpaid net weekly charge. This initial contact includes the supply of a debt information pack to all tenants providing important information and advice on money matters, including:

- Top tips for dealing with debt;
- Information about benefit advice and entitlement;
- Advice on dealing with rent arrears;
- Debt and support agencies offering free, independent and confidential advice;
- Summary of services offered by Leeds City Credit Union; and
- Organisations providing support with fuel poverty.

3.9 A second arrears letter is sent following 4 weeks unpaid rent. This correspondence is followed up with a visit. If the tenant fails to engage at this point and no payments are made to the account, the Housing Manager will review the case and if appropriate, serve a 'Notice of Intent to Seek Possession' (NISP). The NISP is formal notification of the Council's intention to commence possession proceedings at the County Court on expiry of 28 days' notice. During the NISP period, every effort will be made to contact the tenant and make an arrangement to repay the debt. On expiry of the NISP, a further letter is sent to the tenant to advise that once the NISP expires, the case will be processed for a court hearing.

3.10 If a tenant does not engage and fails to make any payments or an arrangement to repay the debt, a final letter is sent advising that the case will be referred to the Paralegal Team to commence possession proceedings at the County Court. Once the case is processed, there is usually a period of 6-8 weeks before the court hearing takes place.

3.11 Tenants affected by SSSC

3.12 In light of the welfare changes coming into effect from April 2013, officers have reviewed the existing Rent Arrears Recovery Procedures to ensure there is sufficient opportunity to advise and support tenants affected by changes without impeding the Council's ability to take decisive recovery action where tenants will not engage and fail to make any payments towards the arrears. Many tenants affected by the under-occupancy rules will also be affected by the changes in Council Tax Support. The recovery process for Council tax, which is set out in the Council Tax enforcement regulations, means that we cannot operate a single process for dealing with both council tax and rent arrears. However, it should be noted that the Council tax position will be taken into account in the actions and advice provided by the Specialist Welfare Reform Officer. Similarly, officers making payment arrangements for Council Tax arrears will also take into account the additional housing costs as a result of under-occupancy changes when making these arrangements. The impact of these welfare changes will be closely monitored to ensure that the recovery processes remain effective.

3.13 Officers have recommended a number of additional measures to ensure tenants affected by the welfare changes have access to all the appropriate information and advice to understand how the changes will affect them as well as the support they need to make decisions about their future. The proposed changes are outlined below:

- Debt Information Pack - It is proposed that this will include additional information including copies of the Council's 'Welfare Reform Under Occupation FAQs' and 'Overcoming financial difficulty' booklet. It will also

include an information leaflet on mutual exchange and alternatives to loan sharks.

- Referral to Specialist Welfare Reform Officer – If, at the outset of any arrears recovery action a tenant is identified as being affected by under-occupation, a referral will be made to the specialist Welfare Reform Officers within the ALMOs. Recovery action will be suspended to allow officers to provide the tenant with advice and support based on their individual circumstances. This will include:
 - Ensuring all eligible benefits are being claimed;
 - Ascertaining income details and prioritising expenditure;
 - Identifying eligibility for DHP and supporting referral;
 - Supporting tenants to register a housing application;
 - Promoting mutual exchange;
 - Supporting tenants to set up a bank account or direct debit;
 - Budgeting and debt advice; and
 - Referring vulnerable tenants for specialist support through the Independent Living Teams, Adult Social Care or Children’s Services.

It is key at this stage to ascertain details of all occupants in the property including their date of birth to determine whether any family member is due to attain a significant birthday. For example, a family in a three bedroom property with two children, (a 9 year old boy and a 6 year old girl) would be under-occupying until the boy reaches his tenth birthday. As such, the household would be under-occupying for a relatively short period of time. In these circumstances, it would be appropriate to support the family to stay and make payments towards the shortfall.

- Guidance on serving Notice of Intent to Seek Possession (NISP): - Officers have developed guidance on when it would not be appropriate to serve a NISP:
 - If the Protocol or Rent Arrears Recovery Procedures have not been complied with;
 - If arrears are reducing through regular payments; and
 - Where a housing benefit claim is being assessed and the tenant has provided all supporting evidence and had paid other sums due.

3.14 All arrears cases that result in a court hearing require a detailed witness statement outlining the recovery action that took place. The witness statement is to assist the judge in determining whether to grant possession. For cases affected by the Social Sector Size Criteria, this will include a full summary of all the information, advice and support provided to the tenant.

3.15 In recognition of the importance of this work, the ALMOs and BITMO have been granted additional resources for the financial year 2013-14. An additional 19 posts have been funded across the four organisations to provide targeted support for

customers affected by the changes with a view to minimising the impact on performance and rent collection rates.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 Consultation has taken place with officers in the ALMOs and BITMO in developing the proposed changes to the Rent Arrears Recovery Procedure. The proposals are also supported by the Welfare Reform Operational Group, a cross Council group developed to ensure the key strategic objectives outlined in the Welfare Reform Strategy are achieved. The group has an operational focus with representation from Environment and Neighbourhoods, representation from the ALMOs and BITMO, Leeds Revenues and Benefits Service, Finance and Corporate Communications as well as Leeds Tenants Federation. Given that the additional measures outlined do not amount to a change in policy, there are no plans to conduct a consultation exercise with the general public.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 The proposed changes are intended to ensure appropriate information, advice and support is provided to tenants affected by the welfare changes prior to any enforcement action for rent arrears.

4.2.2 The Council has undertaken an Equality, Diversity, Cohesion and Integration Screening Assessment which is attached.

4.3 Council policies and City Priorities

4.3.1 The proposed changes do not impact upon and are compatible with the Council's Corporate Debt Policy.

4.3.2 The proposed changes to the procedures seek to achieve a balance between minimising the impact of the welfare changes on affected tenants and maximising rent collection and thereby maintaining the sustainability of the HRA Business Plan. The changes contribute to the corporate objectives outlined in the Vision for Leeds 2011-30; specifically:

- Leeds will be fair, open and welcoming - allowing people to access support when they need it;
- Leeds' economy will be prosperous and sustainable - sufficient supply of housing including affordable housing that meets the needs of the community; and
- All Leeds' communities will be successful – people have the opportunity to get out of poverty, all homes are of a decent standard and people can afford to stay warm.

4.4 Resources and value for money

- 4.4.1 It is estimated that the loss of Housing Benefit to the Council for 2013-14 in relation to the Social Sector Size Criteria will be almost £4m. In terms of the Benefit Cap, a further £350K will be lost.
- 4.4.2 The HRA budget acknowledges that the welfare changes will have a significant impact on both financial and staff resources. A budget provision of £500K has been made to fund additional staff required to provide advice and support to tenants affected by the changes to minimise the impact on rent collection and the sustainability of the HRA.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 Any changes to the Rent Arrears Recovery Procedure must comply with the Pre-Action Protocol for Possession Claims based on Rent Arrears and the Civil Procedure Rules.

4.6 Risk Management

- 4.6.1 Failure to maximise rent collection will affect the sustainability of the HRA Business Plan and the Council's ability to maintain and invest in its stock and build new affordable homes.
- 4.6.2 The proposed changes seek to ensure appropriate information, advice and support is provided to those affected by the welfare changes thereby minimising the impact on individual tenants and housing demand across the city.

5 Conclusions

- 5.1 The impact of the Government's welfare changes will mean that many tenants will struggle to pay their rent.
- 5.2 The proposed changes to the Rent Arrears Recovery Procedure seek to strike an appropriate balance between helping people who are struggling to pay additional sums of money to the Council from a very low income and ensuring that rent is recovered to be used for the benefit of all tenants.

6 Recommendations

- 6.1 To note the expected impact of the welfare benefit changes coming into effect from April 2013.
- 6.2 To approve the proposed changes to the Rent Arrears Recovery Procedure.

7 Background documents¹

- 7.1 None

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.