



Title: **Income Management - Scotland Procedure**

Business Function: **Housing Functions across Sanctuary in Scotland**

Author: **Policy and Equalities Manager**

Authorised by: **Director - Sanctuary Scotland**

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CONTENT

| | |
|--|-----------|
| General Information | 3 |
| 1. Objective of this procedure | 3 |
| 2. Roles and responsibilities | 3 |
| 3. References and sources | 4 |
| 4. What's new - What's different? | 4 |
| Detailed Procedure | 6 |
| Section A - Current tenant arrears | 6 |
| 1. Introduction | 6 |
| 2. Pre-tenancy, sign up, and settling in | 6 |
| 3. Methods of payment | 8 |
| 4. Contact with tenants | 8 |
| 5. The escalation process | 9 |
| 6. Roles and responsibilities | 10 |
| 7. Tenants with support needs | 10 |
| 8. Pre-action requirements | 10 |
| 9. Early intervention | 11 |
| 10. Arrangements | 11 |
| 11. Universal Credit | 13 |
| 12. Direct payments | 13 |
| 13. Contact with Housing Benefit departments/DWP | 13 |
| 14. Tenants in prison | 14 |
| 15. Notice of Proceedings for Possession | 14 |
| 16. Sequestration | 17 |
| 17. Alternatives to eviction | 17 |
| 18. Legal action post Notice | 18 |
| 19. Reasonableness | 19 |
| 20. Section 11 notification | 19 |
| 21. Outcome of court | 19 |
| 22. Eviction action | 21 |
| 23. Storage of property after eviction | 21 |
| Section B - Former tenant arrears | 22 |
| 1. Introduction | 22 |
| 2. Multiple debts | 22 |
| 3. Notice received | 22 |
| 4. Tenancy termination | 23 |
| 5. Balances to be written off | 23 |
| 6. Former tenants with current tenancies | 24 |
| 7. Recovery procedure | 24 |
| Section C - Garage arrears | 24 |
| 1. Garage arrears recovery process | 24 |
| Appendices | |
| Appendix 1 - Rent Setting Points Framework | |
| Appendix 2 - Arrears Escalation Process | |

General Information

1. Objective of this procedure

- 1.1 This procedure outlines how we will deliver an effective income management service. There is a direct correlation between how we collect monies due and the services that can be provided to our customers. Any income not collected reduces our ability to develop and sustain services and can result in increased collection costs.
- 1.2 This document provides high-level procedural guidance for staff and managers. It is not intended to provide a detailed step-by-step guide to case work. Additional guidance and detailed work instructions are provided to staff through [KnowledgePoint](#) and training.
- 1.3 Rental income represents the Group's main source of revenue and provides financial resources which support the Group to deliver its strategic plans. This procedure sets out how we will deliver an effective collection service which supports our customers to sustain their tenancies. This procedure aims to achieve a balance between supporting customers in difficulty while taking firm but fair action in respect of customers who do not pay their liabilities.
- 1.4 This procedure has been developed to:
 - ensure the efficient and effective collection of liabilities in line with all legislative requirements and having regard to best practice;
 - assist in targeting appropriate and timely professional advice, support and guidance to customers particularly in light of welfare reform;
 - assist staff and customers in preventing arrears and legal action, while ensuring that a firm and fair approach is consistently applied and adhered to; and
 - ensure staff and managers have access and regard to relevant information and advice when making decisions relating to income collection.

2. Roles and responsibilities

- 2.1 The Director - Sanctuary Scotland is responsible for ensuring adoption of, and adherence to, this policy and its associated procedures relevant to their operation.
- 2.2 The Housing Manager and Area Manager in each office is responsible for:
 - ensuring that this procedure and associated policy is implemented by their staff;
 - ensuring that officers are designated to deal with income management; and
 - monitoring the systems and practices at local levels in terms of dealing with income management, ensuring that there is a consistent, fair approach.

3. References and sources

3.1 The following legislation, references and sources are relevant to the development and delivery of this policy and associated procedure:

- [The Coronavirus \(Scotland\) Act 2020](#): initiated changes to the notice period for serving Notices of Repossession after 7 April 2020, extending it to six months.
- The [Housing \(Scotland\) Act 2001](#) sets out an obligation to provide tenants with a written document stating the terms of the tenancy, including the obligation to pay rent lawfully due, and requires social landlords to consult tenants and take account of their views when making decisions about proposed rent increases.
- The [Homelessness etc. \(Scotland\) Act 2003](#) sets out an obligation to provide local authorities with early notice of households at risk of homelessness due to eviction.
- The [Bankruptcy and Diligence Etc. \(Scotland\) Act 2007](#) sets out requirements in relation to storage of property belonging to evicted tenants.
- The [Housing \(Scotland\) Act 2010](#) introduced pre-action requirements that landlords must satisfy in all rent arrears cases before serving a notice on a tenant.
- The Scottish Government [Guidance for Social Landlords on Pre- Action Requirements and Seeking Repossession of Social Housing](#) gives guidance on complying with pre-action requirements.

4. What's new - What's different?

4.1 August 2020 - Section 16.7 of the procedure has been amended to clarify the write off process for trust deeds.

4.2 July 2020 - Amends made in relation to a review of eviction cases from the reporting year, 2019/2020:

- Section 5.2.3 has been updated to clarify additional action and engagement to be taken at every stage of account escalation.
- Section 9.3 has been amended to clarify welfare rights assistance must be offered before and after a Notice of Proceeding (NOP) and that all copies of correspondence relating to referrals should be saved.
- Section 12.3 is a new section to signpost to additional guidance on APAs.
- Section 15.6 is a new section to explain the Coronavirus (Scotland) 2020 Act impact on notice periods
- Section 18.2 has been changed to confirm that any decision to commence court action is now signed off by the Head of Housing with court reports prepared by the Housing or Area Manager.
- Section 18.5 has a new action; tenants must be referred to welfare rights officers before the pre-court checklist is completed.
- Section 18.6 has a new action; before a case is heard at court, the housing or Area Manager will interview or visit the tenant.

- Section 21.2 has been updated with a new action; the Area or Housing Manager must invite the tenant to a meeting if decree is granted in attempt to seek an arrangement. This section and section 22.1 have also been updated to reflect the approvals to enforce decree, which are made by the Director - Sanctuary Scotland.
 - **Appendix 2** - Arrears Escalation Process has been updated to reflect these new actions and approvals in the escalation process.
- 4.3 November 2019 - **Appendix 1** - Rent Setting Points Framework, added.
- 4.4 October 2019 - references to Collections Management processes have been added. Trust deed information has been added to say the date it becomes protected is the date that we will use for writing off debt. New text inserted to confirm the correct welfare rights referrals process. Signposting to guidance on re-serving NOPs has been added.
- 4.5 June 2019 - reference to arrangement letters XA3 (post NOP) and broken arrangement letter XB2 (post NOP) have been inserted to the procedure and flowchart. Further detail has been added to payments accepted to prevent evictions and the approach to storing any goods after a tenant has been evicted.
- 4.6 February 2019 - this procedure and associated policy is new, replacing the now obsolete Current Tenant Arrears - Scotland Policy and Procedure, and the Former Tenant Arrears - Scotland Policy and Procedure. It clarifies changes to the operating model and the role of the Central Income team in relation to income management in Scotland.

Detailed Procedure

Section A - Current tenant arrears

1. Introduction

- 1.1 It is Sanctuary's policy to demonstrate good financial management by taking a robust approach to rent arrears. Sanctuary's approach focuses on prevention and encouragement of a payment culture to ensure tenancies are sustained. In light of this Sanctuary expects all tenants to pay their rent and other charges or to ensure that payments are made on their behalf in accordance with their tenancy agreement. However, Sanctuary recognises that for a variety of reasons, tenants do sometimes fall into debt and arrears.
- 1.2 In all cases of rent arrears, we will act in a firm yet fair way to support tenants to explore options to pay their arrears, whilst providing wider advice and support to maximise income and manage other debts.
- 1.3 Having a robust, equitable and consistent rent arrears process is all the more important due to implications of welfare reform.

2. Pre-tenancy, sign up, and settling in

2.1 Local operations

- 2.1.1 The pre-tenancy and sign up stage is vitally important to ensure that tenants are able to pay the rent and sustain their tenancy. At pre-tenancy, sign up and subsequent follow up visits we aim to minimise the risk of tenants falling into arrears by ensuring they understand their responsibilities and are able to pay their rent. During the pre-tenancy, sign up and settling in we will:
 - gather information on income and where possible make an estimate on the tenant's entitlement to Housing Benefit (HB);
 - undertake an affordability assessment to estimate if prospective tenants will be able to afford their new home;
 - fully explain tenants' responsibilities in relation to paying their rent;
 - provide full information on the rent due;
 - provide income advice or refer on to specialist agency where appropriate;
 - discuss and arrange the most appropriate payment method for the tenant;
 - provide advice regarding obtaining a bank account or credit union account where appropriate;
 - address any support needs surrounding maintaining the rent account if appropriate;
 - inform the tenant they are required to pay the first weeks/months rent in advance (as outlined in the tenancy agreement) and all subsequent payments to be made in advance;
 - explain that where an applicant is expected to be on HB or Universal Credit (UC), we will require payment of at least £5 before the start of the tenancy, and at least £5 per week while the benefit application is being processed;

- explain that where an applicant is on benefit, we will strongly advise that they should make an arrangement which will be enough to ensure that they build up enough to cover four weeks' worth of HB in advance;
- explain that Sanctuary's expected method of receiving payment is direct debit; and
- ensure that the tenant understands that if they get into financial difficulties they must contact us to discuss the matter as soon as possible.

2.1.2 We cannot prevent someone from taking on a tenancy because of their income. However, if from the above work it is clear that the expenditure of the tenant exceeds their income, then Sanctuary will inform the tenant about our concerns if they take on the tenancy and refer them for income advice immediately.

2.1.3 From undertaking this detailed work with prospective tenants, staff should be able to build a picture of the likely risk of the tenant not keeping up with their rental payments. Staff should use this knowledge to inform their decision on if they need to undertake a personal settling in visit or if a phone call settling in visit will suffice. In most cases a settling in visit in person will be carried out at the tenant's home. An Area Housing Manager or Housing Manager should be consulted before carrying out a telephone settling in visit.

2.2 Account Management Process

2.2.1 If an offer is made and accepted, the customer must be invited to take part in the Account Management Process (AMP) before sign up. Housing Officers will refer the customer to Income Services who will complete the AMP via a telephone appointment. If the appointment is missed, the AMP call should be completed during the sign up.

2.2.2 During the AMP call, Income Services will seek to complete the following tasks:

- set up a Direct Debit mandate for future payments;
- collect the full advance payment outlined in the contract or tenancy;
- set up an affordable payment plan where full payment is not made;
- complete the AMP using guidance on [KnowledgePoint](#) and record any outcome within OneSanctuary; and
- provide additional support and advice on matters such as but not limited to accessing free banking, welfare benefits and household budgeting.

2.2.3 The Head of Income Services will provide guidance and training to staff concerning the operability of the AMP through [KnowledgePoint](#). This advice and guidance will ensure staff are aware of suitable steps and actions that may be taken with regard to the completed AMP assessment.

2.2.4 Where customer consent is provided to complete the AMP a standard processing notice letter must be sent. Where a customer declines to take part in the AMP assessment or is unable or unwilling to take part in the phone call, their account will be noted accordingly within OneSanctuary.

2.2.5 Where the AMP indicates that the customer has previously been evicted from a Sanctuary property for unpaid rent arrears the case must be referred to a Housing Manager (or equivalent) for further consideration. If it is decided that the tenancy must be denied the sign up must be terminated and the applicant must have the offer withdrawn.

3. Methods of payment

3.1 We have made the process of payment as user friendly as possible and will seek to look at new payment methods, in line with best practice, technological development and feedback from our tenants. Current methods of payment include the following:

- **Direct Debit** - the most cost-effective collection method in terms of administration and our preferred method of payment. This method should be promoted with all new and existing tenants.
- **Standing Orders** - similar cost benefits to Direct Debit but any changes to payments are made by the tenant.
- **Cash or cheque payments** - tenants can pay by cash or cheque.
- **Debit and credit cards** - to expand the choice and flexibility for tenants, we accept payment by credit and debit card. Tenants can pay by credit or debit card over the phone and in person at our offices.
- **Payment Cards** (AllPay) - allow tenants to pay at a range of outlets such as Post Offices and local shops. Tenants can also pay via the AllPay website, AllPay mobile phone app and direct calls to AllPay.

3.2 The cost of collection is higher for methods other than direct debit and standing order and there is a delay between income being collected and posted to an account. Standing orders can lead to delays and a build-up of arrears because changes are made by the tenant. For these reasons direct debit is the preferred method of payment. None of the above methods result in a transaction charge for tenants.

4. Contact with tenants

4.1 Before discussing a tenant's rent account, the identity of the tenant must be verified. Where the tenant is unfamiliar, staff must seek confirmation of any three pieces of personal information from the following list before discussing a rent account to ensure information is not disclosed incorrectly:

- Full address including postcode
- Telephone number including STD code or mobile number
- Full Name including middle initial
- Date of birth
- Tenancy start date
- Full names of other people listed on the tenancy
- National Insurance number
- How they pay the rent
- How much HB they get (if applicable)
- How much is the rent
- When did they move into the property.

5. The escalation process

5.1 Overview

5.1.1 Escalation is the process by which we monitor our rent collection and take any action necessary to address arrears. This process should normally begin when there are non-technical arrears of more than £10.

5.1.2 Guidance on the escalation process is shown in a flowchart at **Appendix 2**. The last authorised letter or action is used to determine the next action in the sequence.

5.2 Dunning

5.2.1 Dunning is the process for automated rent arrears letters which will happen throughout the arrears escalation process. Letters will normally be sent based on the value and age of debt and will be complimented with outbound telephone calls, visits and other relevant actions such as Welfare Rights referrals. There are up to five automated dunning letters: three before a notice is served and two afterwards. Dunning should only be blocked if there is an arrangement agreed and active (A - this should be automatic when an arrangement is created on SAP) or where a tenant is vulnerable (V), and this has been discussed and agreed with an Area Manager or person of at least equivalent seniority, this block can be added manually by Housing Officers.

5.2.2 Beyond dunning, at the stage that a tenant is being taken to court, accounts will be managed and monitored using the Scotland Possession Case in the Customer Interaction Centre (CIC) OneSanctuary. The Head of Housing will ensure there are suitable cases, guidance and training for staff to make sure that accounts can be managed appropriately.

5.2.3 It is important that accounts are assessed at every stage of escalation, and actions considered on a case by case basis, as every case is different. The actions suggested in **Appendix 2** should be viewed as suggestions only, and judgement is required for each step of each individual case. Additional action to the dunning and CIC case letters should be undertaken at every stage; multiple efforts must be made to engage with tenants using different methods of communication. This would include:

- some form of personal contact, for example telephone, text, email or visit to tenant's home;
- where we have consent, contacting a third party such as the tenant's advocate, family member, social work services, support worker, or external agency; and/or
- where we have consent, liaising directly with the local HB department or UC Department for Work and Pensions (DWP) branch.

5.2.4 Once contact has been made, staff must determine the reasons for the debt and always start by asking the tenant to pay their arrears in full. Any attempts at contact or successful contact or correspondence with the tenant throughout the arrears escalation process should be recorded as notes within the Collections Management system, and CIC case notes where this has been created.

6. Roles and responsibilities

- 6.1 The Central Income team will be the frontline point of contact and will carry out a range of tasks to support local operations. The Head of Housing - Scotland and Head of Income Services will be responsible for ensuring that there is clear guidance for staff on this operating model.
- 6.2 The Area Housing Manager and Housing Manager will be responsible for identifying who in local operations is responsible for carrying out the actions set out in this procedure. Arrangements will be reviewed regularly to ensure that resources are targeted effectively, and consideration given to the role of specialist and generic working on arrears management.
- 6.3 To ensure effective use of resources, Housing Officers will manage patch sizes which are appropriate to their contracted hours. In periods of leave or sickness absence, the Housing Manager and/or Senior Housing Officer will be responsible for ensuring that important cases are dealt with by another Officer. If a Housing Officer is not available for any reason, then another Officer will be available to answer a rent account query from a tenant.

7. Tenants with support needs

- 7.1 Staff should always take into consideration a tenant's particular support needs or vulnerability issues and consider if communication should be made in a more appropriate way, for example contacting social work services or the tenant's advocate (if prior permission has been gained).
- 7.2 Where the tenant does not have an advocate, but staff feel that they would benefit from one, staff should liaise with their designated Welfare Rights Officer or external agency to arrange for appropriate support/advocacy. Welfare rights referrals should be made through an interaction and follow up Welfare Advice CIC case. Letters can be sent to tenants to confirm referrals in writing and offer appointments. Where advocacy is felt appropriate then no formal legal actions should be entered into before this is obtained. If the tenant has refused advocacy, then an Area Housing Manager or Housing Manager should decide if formal legal action is then required.

8. Pre-action requirements

- 8.1 Our escalation procedure is underpinned by the Scottish Government's [Guidance for Social Landlords on Pre- Action Requirements and Seeking Repossession of Social Housing](#). This statutory guidance sets out all the steps that must be followed and evidenced before sending a Notice of Proceedings for Possession (from here on referred to as 'a notice'). The general principles of pre-action requirements are set out in the [Income Management - Scotland Policy](#),

and the sections below provide more specific guidance on how to ensure compliance with the requirements.

9. Early intervention

- 9.1 Arrangements for early intervention are set out in **Appendix 2**.
- 9.2 At any stage prior to sending a notice, a letter addressed directly from a solicitor may be an effective way to encourage the tenant to engage with us.
- 9.3 Welfare rights advice should be signposted or offered throughout the escalation process (before and after a NOP is served), through letters and also when personal contact is made. Where a tenant may benefit from the service and is not engaging, a letter addressed directly from the welfare rights officer or service provider may be more successful. Housing Officers should make welfare rights referrals on One Sanctuary through an interaction and a follow up Welfare Advice CIC case and appropriate letters. All copies of correspondence to evidence the referral or uptake of the referral should be kept as evidence for any decision making if escalation continues.

10. Arrangements

10.1 Making an appropriate arrangement

- 10.1.1 If the tenant cannot clear the arrears in full, we will negotiate an arrangement for the debt to be settled, after budgeting and/or giving appropriate welfare benefits advice.
- 10.1.2 The purpose of an arrangement is to maximise income for the organisation whilst being sensitive to the individual's personal finances. When making an arrangement staff must take into account the tenant's circumstances and ability to pay the debt.
- 10.1.3 An arrangement can be made with a tenant at any stage of the arrears escalation process. The starting point for any discussion on arrangements is an expectation that that any debt will be paid off within a maximum of 12 months, allowing for HB as follows:
- Tenants on HB on a weekly debit tenancy will be expected to reach an arrangement that ensures they will not be in arrears at any stage in the HB cycle.
 - Tenants on HB on monthly debit tenancies will be expected to reach an arrangement that ensures that they have paid in advance at least one month's HB entitlement.
- 10.1.4 In order to fully determine the tenant's circumstance and ability to pay, a Basic Budgeting Form and an income and expenditure assessment may be completed. This information should be used to establish how much the tenant may be able

to pay towards the arrears. Signposting the tenant to welfare benefits/debt advice is crucial at this stage to ensure that any arrangement is sustainable.

10.1.5 If it established that the tenant is in serious financial difficulties then staff must encourage, and where possible arrange for, the tenant to get support/advocacy. Tenants can be referred to debt counselling, the national debt line, a local Citizen's Advice Bureau, or any other similar organisation. A list of organisations able to provide support will be kept locally.

10.1.6 Arrangements will normally be scheduled to start at least a week after the arrangement is agreed, to allow for a cooling off period. However, any payments offered by the tenant before the arrangement start date will be accepted

10.2 Arrangement letters

10.2.1 Once an arrangement is agreed and created on OneSanctuary, the arrangement will be confirmed in writing. The following letters may be used for creating and managing arrangements:

- Arrangement proposal letter (XA1)
- Arrangement confirmation letter
- Arrangement broken letter
- If the tenant proposes a repayment agreement that is not acceptable, then we will send them an Agreement Rejected (XAR) letter which explains why this is not acceptable.

10.3 Recording arrangements

10.3.1 Where an arrangement is agreed either the Housing Officer or Central Income team should create the arrangement in OneSanctuary and check that the dunning is blocked with reason 'A'. An interaction should be recorded to confirm the details of the arrangement agreed (including payment amount, frequency, start date) and the [payment calculator on KnowledgePoint](#) should be used where necessary. Any case should have the status changed from 'in progress' to 'customer action' when an arrangement is live and unbroken. The status should be changed, and the case progressed if an arrangement breaks. This will help to ensure that accounts are not escalated unless there is a missed payment.

11. Universal Credit

11.1 The Head of Housing will ensure that appropriate training and guidance is made available to ensure an appropriate service is delivered to tenants in receipt of UC.

12. Direct payments

12.1 Direct payments under UC

12.1.1 Where a customer is in receipt of UC we may ask the DWP to pay housing costs to us directly through an alternative payment arrangement (APA).

12.1.2 It is possible to seek an APA where the customer has eight weeks or more arrears or there is a high risk of non-payment (for example by reason of past behaviour or vulnerability). Sanctuary has been granted Trusted Partner Status (TPS) and is able to seek APAs where it feels it will prevent arrears. When an APA is being considered the customer must be advised before the APA is put into place. Where an APA is required a referral must be made to a Welfare Rights Officer through a Welfare Advice CIC case and sending appropriate letters to the tenant to provide additional support services.

12.1.3 Tenants should also be advised of their rights under the Scottish flexibilities, which include the right tenants to request that all housing payments are made directly to Sanctuary.

12.2 Direct payments under Third Party Deductions

12.2.1 If an arrangement cannot be made or has been broken and the tenant is in receipt of a qualifying benefit, Third Party Deductions (also known as Arrears Direct) should be applied for to the DWP. This allows the minimum deduction to be taken from a tenant's benefit to cover the minimum arrears payment and should be used to avoid further legal action. If Third Party Deduction payments are received, this payment must be added as an arrangement on SAP. Some tenants may prefer this method of payment, particularly if making regular payments themselves proves difficult due to memory or mobility issues.

12.3 For further guidance on early intervention with new UC claimants, and applying for APAs, [see KnowledgePoint](#).

13. Contact with Housing Benefit departments/DWP

13.1 There is a requirement not to send a notice if an application for HB has been made but not yet determined and it is, in our opinion, likely to result in the benefit being paid at a level allowing tenants to pay, or reduce by an amount acceptable

to landlords, the outstanding rent and any other outstanding financial obligation of the tenancy.

- 13.2 If an application for HB has been made, staff should take all reasonable steps to progress the decision and find out or estimate what the likely outcome will be. This involves making contact and building relationships with HB departments and/or the DWP where possible.
- 13.3 Where staff have information on the details of the claim an estimate of the likely outcome of the claim should be made, and this should be used to inform escalation decision making.

14. Tenants in prison

- 14.1 Where a tenant in arrears is in prison, staff will try to contact the tenant or the tenant's advocate. Any action on arrears will take into account the length of time that HB or UC will continue to be paid, which is normally 13 weeks.
- 14.2 If the tenant is not engaging and arrears are increasing staff will consider taking action on Ground 5 of the [Housing \(Scotland\) Act 2001](#) that the tenant is not occupying the property as their principal home.

15. Notice of Proceedings for Possession

15.1 When a notice will be sent

15.1.1 Staff will consider serving a notice when the following criteria apply, and pre-action requirements have been met:

- it has not been possible to reach an arrangement to reduce the arrears;
- the tenant has missed payments on an existing arrangement;
- all attempts to recover the debt have failed, the arrears are static or increasing and/or the customer has refused any assistance in the form of income advice;
- there is no outstanding HB application, information has not been provided to HB by the tenant, and there is no reasonable expectation of eligibility for HB;
- the tenant is not making payments to maintain the rent not covered by HB; and/or
- Third Party Deductions have been applied for unsuccessfully, or if payments are not enough to cover the rent due.

15.1.2 As a general rule of thumb, a notice may be appropriate when the tenant has accrued arrears at a level of six to eight weeks' worth of rent due, as long as the criteria in the above paragraph and pre-action requirements have been met.

15.2 Prescribed format of the notice

15.2.1 When serving a notice for rent arrears, each section of the pre-action requirements must be completed. As much evidence as possible should be

included to support the pre-action requirements. Guidance on completing a notice is set out in the Sanctuary in Scotland Arrears Pre-Action Guidance (saved in internal Scotland shared drive Arrears folder).

15.2.2 When serving a notice, we must also serve a notice on any qualifying occupiers who reside with the tenant. A qualifying occupier is a person who occupies the house as their only or principal home and who is aged at least 16 years. Staff must make reasonable enquiries to find out the identities of the qualifying occupiers. In practice this means visiting the property and checking the house file and contract on OneSanctuary.

15.2.3 The notice must be served in the prescribed form. Before serving a notice, staff must carry out appropriate checks to identify if there are any other breaches of tenancy which are likely to result in legal action. It is important that all legal notices are coordinated and cite all appropriate grounds for possession. The Housing Manager or Area Housing Manager will check and sign the notice before it is served. The notice will be hand delivered by two members of staff.

15.2.4 When served, a copy of any notice should be retained with a 'Intimation of Service'. Staff must make sure that the 'Notice of Service' is signed by the person who served the notice and attached to the file copy of the notice. Where possible, notices should be served in person and witnessed by one other officer.

15.3 Effective date

15.3.1 When a notice is served, the notice must become valid before we can raise proceedings for possession. The date the notice becomes valid must be recorded correctly on the notice. The date the notice becomes valid is different for monthly and weekly tenancies.

15.4 Weekly tenancies

15.4.1 The date the notice becomes valid is the next ish date following 28 clear days. 'Clear days' means that the day the notice is received by the tenant and the date the notice becomes valid must both be excluded to provide clear days in between these points. The ish date is the natural end date of the tenancy, which is set out in the tenancy agreement to coincide with the day that the rent debit is applied, which is normally the next Monday.

15.4.2 If the notice is served on Friday 5 July, 28 clear days from that date is the 2 August. The date the notice becomes valid is the next ish date, which is on Monday 5 August.

| Mon | Tue | Wed | Thu | Fri | Sat | Sun |
|------------|-----|-----|------------|----------|-----|-----|
| Jul | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| 15 | 16 | 17 | 18 | 18 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | 31 | Aug | 2 | 3 | 4 |

| | | | | | | |
|---|---|--|---|--|--|--|
| | | | 1 | | | |
| 5 | 6 | | | | | |

15.5 Monthly tenancies

15.5.1 The date the notice becomes valid is the next ish date following 28 clear days. 'Clear days' means that the day the notice is received by the tenant and the date the notice becomes valid must both be excluded to provide clear days in-between these points. The ish date is the natural end date of the tenancy which is set out in the tenancy agreement to coincide with the day that the rent debit is applied.

15.5.2 The following example is based on a tenancy which runs from the 1 of the month. If the notice is served on Wednesday 31 January, 28 clear days from that date is the 28 February. The date the notice becomes valid is the next ish date, which is on Thursday 1 March.

| Mon | Tue | Wed | Thu | Fri | Sat | Sun |
|------------------|-----|-----------|-----------------|-----|-----|-----|
| Jan 29 | 30 | 31 | Feb 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | Mar 1 | 1 | 2 | 3 |

15.6 Due to the [Coronavirus \(Scotland\) Act 2020](#) the effective dates of Notices for Repossession served after 7th April 2020 must be extended. Any effective date calculated using the logic in 15.4 and 15.3 must have an additional 5 months added to the date. The notice should become valid 6 months after the date of service. This will remain in place until reviewed otherwise (anticipated 30th September 2020).

15.7 Expiry of the notice

15.7.1 The notice will be effective for six months. For example, if the notice becomes effective on 1 July, it will expire on 31 December. If the tenant falls back into arrears or fails to maintain an arrangement after the six-month period has elapsed, then a new notice may be considered. If necessary, we will consider serving a new notice before the six months has expired, to ensure there is no gap. However, a new notice will only be considered if the tenant has fallen back into arrears or failed to make an arrangement.

15.7.2 The pre-action requirements section of any new notice should as far as possible refer to recent actions taken, rather than actions pre-dating the original notice.

15.7.3 If a notice is due to expire and there are still arrears on the account with no arrangement (or a broken arrangement), the Housing Officer should follow the guidance and process on [KnowledgePoint](#) for re-serving a notice.

16. Sequestration

- 16.1 The term sequestration is used when referring to bankruptcy involving a court. Applications for sequestration can be made by the landlord, the tenant, or another creditor.
- 16.2 We will not pursue the tenant for any arrears included as part of the sequestration. An Accountant in Bankruptcy is appointed to administer the affairs of a tenant who has been sequestered. We will provide the Accountant in Bankruptcy with details of the arrears accrued prior to sequestration and liaise with them to try to recover these arrears.
- 16.3 The tenant must not be put under duress to make an arrangement to pay arrears accrued prior to sequestration. We will continue to take action on arrears built up after the date of sequestration.
- 16.4 When a tenant is sequestered, any legal action to pursue pre- sequestration debt must stop. However, decree for eviction and expenses can be sought where appropriate, and post sequestration debt can also be pursued.
- 16.5 If the tenant has a Trust Deed (a statutory debt relief procedure) the Area Manager or Housing Manager should seek advice from Legal Services on what action to take. The type of Trust Deed (whether it has been accepted or rejected by the tenant's creditors) has implications on whether or not it is possible to arrest the tenant's earnings or contact the tenant to make payments. Escalation action will also be determined by whether the rent arrears are 'new debts' (accumulated after the tenant has signed a Trust Deed) or if they are included within the Trust Deed.
- 16.6 The tenant is responsible for the rent, in full, on the relevant due date. Not in part, but all of it. This means the full rent is included along with any arrears at the date the trust deed/sequestration is effective and should not be amended to a daily amount unless specified by the Trustee.
- 16.7 The balance of the debt due will be written off at the end of the trust deed period (usually 48 months) and the starting point for the calculation will be the date the tenant entered into the trust deed (as declared on Form 2 which is the claim form sent to the creditor).

17. Alternatives to eviction

- 17.1 We will consider all alternatives to eviction, including small claims action, earnings arrestment, bank arrestment and sequestration. Alternatives to eviction may be more likely to be used in specific circumstances, such as if the tenant has lower level arrears (less than £1,000), the tenant is employed, or the tenant has built arrears caused partly or wholly by under-occupation.

17.2 Alternative legal action such as earnings arrestment and bank arrestment can be a good option as getting decree for payment will secure the debt, which leaves us in a stronger position.

18. Legal action post Notice

18.1 During the period until the notice becomes effective, we will continue to contact the tenant to try to come to an arrangement for the outstanding debt. If no arrangement is made, then we may raise proceedings for possession.

18.2 Any decision to commence legal action, and subsequent decisions on the course of action taken, will be signed off by the Head of Housing and the court action report is prepared by the housing or area manager.

18.3 Each office will maintain locally a checklist of information/documents required by the solicitor to raise proceedings. Before referring the case to the solicitor, the Housing Manager will sign off the decision using the Legal Action Approval Form.

18.4 Details of any other possible action, such as breach of tenancy agreement or sundry debt, will also be provided to the solicitor.

18.5 In addition to personal contact, the following letters will be sent to tenants and referrals made following the issue of a notice. Guidance on the use of these letters is set out in **Appendix 2**. All stages of the process should be recorded on OneSanctuary.

- XL4 is used to invite the tenant to an appointment after a notice has been served;
- XL4B is used to give the tenant 24 hours' notice that court papers are being prepared;
- XL5 is used to inform the tenant that the case has been submitted to court;
- A welfare rights officer referral must be completed before the pre-court checklist is completed and submitted to the Head of Housing for review.
- XL6 is used to provide the tenant with details of the court case including date and time, and to invite the tenant for a pre-court interview;
- XL7 is used to explain the outcome of the court hearing; and
- XL8 is used to highlight that an arrangement has been broken following a sisted/continued case.

18.6 Before the case is heard at court the Housing or Area manager will interview and/or visit the tenant and we will discuss with the solicitor what outcome we should seek from the case. If a tenant makes an arrangement with us after they have been enrolled in court, then we must inform the solicitor and provide details. The solicitor must then inform the court at the hearing.

19. Reasonableness

19.1 The key consideration that the court will make is if it is reasonable to evict. Therefore, this will be the important consideration for us deciding whether to raise proceedings. Factors to consider in determining whether it is reasonable to pursue possession include:

- the amount of arrears;
- the likelihood of the tenant being able to repay arrears and meet future rent payments;
- the length of time the person had been a tenant and their record as a tenant before arrears arose
- the reasons for the arrears arising, for example, sudden loss of employment, problems with HB; and
- Sanctuary's management of the arrears, and the terms and outcome of any previous repayment arrangements.

20. Section 11 notification

20.1 If staff raise proceedings for possession, in order to comply with Section 11 of the [Homelessness etc. \(Scotland\) Act 2003](#), the local authority must be sent a Section 11 notification, no later than four weeks before the eviction date is set.

20.2 To ensure compliance with this requirement we will normally send a Section 11 notification to the relevant local authority when the court papers are first submitted. Each office may agree locally for the solicitor to send the Section 11 notification.

21. Outcome of court

21.1 Possible outcomes

21.1.1 Court hearing relating to repossession for rent arrears can result in any of the following outcomes:

- **Decree granted** - decree can be granted for possession of the property, payment of the debt, and expenses.
- **Case sisted** - the case is continued indefinitely to monitor payments. If arrangements are not kept to then we can raise an incidental application to have the case heard again. Cases are commonly sisted at our request if the tenant has made some efforts to engage with us.
- **Case continued** - the case is continued until a later date to monitor payments. Cases are commonly continued either at our request or at the tenant's request
- **Case dismissed** - the case may be dismissed with or without expenses.

21.2 Decree granted

21.2.1 When decree has been granted, staff will contact the tenant and invite them for an interview with the Housing Manager or Area Manager in one last attempt to make an arrangement. Should the tenant fail to respond, the housing / area manager will visit to discuss the tenant's circumstances prior to the eviction. If no satisfactory arrangement is reached, the Housing Manager or Area Manager will seek approval from the Director – Sanctuary Scotland to carry out repossession, using the standard repossession approval template.

21.2.2 Whether eviction is sought will depend on the circumstances of the tenant. As a general guide we would expect at least three quarters of the outstanding balance to be repaid, and an arrangement made to pay the rest within 10 weeks. If this is the third decree granted by the sheriff, eviction may be sought even where a late payment or arrangement is made.

21.2.3 The decree will normally contain two dates, six months apart, within which the eviction must be carried out. Cases where decree has been granted will be monitored regularly. When the six-month period during which an eviction can be carried out has elapsed, staff will review the case and take appropriate action depending on the circumstances.

21.3 Case sisted

21.3.1 When the case has been sisted staff will write to the tenant to confirm any arrangement in place and continue to monitor payments. If an arrangement is broken, staff will contact the tenant to find out if there has been a change in circumstances, offer appropriate advice, and explain that if appropriate payments are not paid then we may ask for the case to be heard again and seek decree for possession.

21.3.2 Sisted cases will be monitored regularly, and an incidental application raised to seek decree if an arrangement is not kept, or dismissal if the debt is cleared. Once a case has been sisted for 12 months, staff may seek dismissal if an arrangement has been kept to, depending on circumstances including the level of debt, previous payment history and the terms of the arrangement.

21.4 Case continued

21.4.1 When the case has been continued staff will write to the tenant to confirm any arrangement in place and continue to monitor payments. If an arrangement is broken, the tenant must be contacted to find out if there has been a change in circumstances, offer appropriate advice, and explain that if appropriate payments are not paid then staff may seek decree for possession when the case is next heard.

21.5 Case dismissed

21.5.1 When a case is dismissed staff will write to the tenant to explain the outcome of the case. Where dismissal with expenses is granted staff will raise a sundry debt for the court expense and contact the tenant to make an appropriate arrangement for this debt.

21.6 Minute for recall

21.6.1 If decree has been granted, the tenant can raise a minute for recall and request that the court re-open the court proceedings. Minute for recall can only be used if the court did not follow the correct procedures, or the court did not use the law properly to make their decision. If approved any further escalation action planned will stop. A new date and time will be granted, at which point we will prepare for court in line with Section 16 above. A tenant can only use a minute for recall once.

21.6.2 A tenant will commonly raise a minute for recall if they did not attend the initial hearing. When minute for recall is raised, we will not normally object to this, as the legal costs of doing so are likely to outweigh the benefits.

22. Eviction action

22.1 An eviction report must be presented to Director - Sanctuary Scotland for any decision to enforce decree and must only be done after a Housing or Area Manager has interviewed the tenant. The Director – Sanctuary Scotland has delegated authority to approve the enforcement of the decree.

22.2 When it has been agreed that an eviction action should be carried out, staff will ask the Solicitor to instruct the Sheriff Officer and send a notification to the tenant advising them of the date of the repossession. This notice must be received at least 14 days before the repossession date.

22.3 When a date for eviction has been agreed, staff will write to the tenant informing them that they must vacate the property on that day and advising that they should remove all belongings from the property on or before that day. Staff must also contact the relevant local authority to provide them with details. Tenants will be encouraged at all stages of the arrears recovery process to seek advice and guidance from other agencies and to pay off debt whenever possible to avoid eviction.

22.4 Two members of staff must be present at the eviction and a job order for the locks to be changed at the date and time of the eviction must be requested in advance. Staff must arrange for a police officer to attend if it is felt that this is necessary.

22.5 When the eviction has taken place, the tenancy will be ended. If there are any court expenses staff will then raise a sundry debt and begin procedures to pursue former tenant arrears and sundry debts.

23. Storage of property after eviction

23.1 Decisions on whether any items left in the property should be stored will be made based on the terms of the decree, and/or any instructions provided by the Sheriff and Sheriff Officer. If there is no mention of preserving property in the decree, and no instructions from the Sheriff or Sheriff Officer, then staff should remove and dispose of any items left in the property immediately.

- 23.2 If the Sheriff has determined that any items should be preserved, then we can apply a charge for doing this only if the Sheriff has stated that staff can apply a charge, and if this was stated in the 14-day notice prior to eviction. Any exceptions to storing the former tenant's property are stated in the [Income Management - Scotland Policy - section 3.6.1](#).
- 23.3 Before items are removed from the property, staff should take a photo of each room. If items are to be disposed of, staff must ensure that the Sheriff Officer has taken an inventory of all items. Where items are disposed of immediately, or after one month of storage, staff should also take and retain photographs of all these items.
- 23.4 Where items are stored, agreement should be reached with the Area Housing Manager or Housing Manager on the length of time items will be stored and how often checks will be carried out (where property is stored in a Sanctuary asset). Where evicted tenants have presented as homeless and the local authority has a duty to store property, staff should advise the former tenant and local authority that we need the property to be removed.

Section B - Former tenant arrears

1. Introduction

- 1.1 It is our policy to demonstrate good financial management by taking a robust approach to former tenant rent arrears. Our approach with tenants focuses on prevention and encouragement of a payment culture to ensure tenancies are sustained, and to minimise any arrears when tenants do leave. In all cases where tenants leave former tenant arrears, we will act in a firm yet fair way.

2. Multiple debts

- 2.1 Former tenants with arrears may also have court expenses, rechargeable repairs or other debts owed to us. Where possible (depending on team structures and IT), escalation action should be taken for all of the above non-current tenant debts together.
- 2.2 Any legal action taken should also normally pursue all outstanding debts owed to us.
- 2.3 Where payment is received for a former tenant with multiple debts, the payment should go towards the oldest debt unless the former tenant specifies otherwise.

3. Notice received

- 3.1 Action on former tenant rent arrears begins as soon as notice is received from the tenant. The tenant should be given the standard termination letter and asked to complete the standard termination notice which includes a section asking for the forwarding address.

- 3.2 When notice is received, staff will arrange a pre-termination inspection. Staff will ensure that the tenant is clear about the amount of rent due up until the termination date and reinforce that this should be paid prior to leaving. Where the tenant indicates that they will not pay the arrears in full, staff will make an arrangement where possible, and confirm this in writing. If no arrangement is agreed staff will send a letter setting out the outstanding balance and our approach to recovery/implications e.g. references etc.
- 3.3 If an arrangement cannot be made and the tenant is in receipt of a qualifying benefit, staff should apply to the DWP for Third Party Deductions.
- 3.4 All relevant details from the termination notice, including forwarding address, should be recorded on OneSanctuary.

4. Tenancy termination

4.1 Housing Benefit

- 4.1.1 When the termination is received staff should notify the local authority that a tenancy has come to an end and request information surrounding under and overpayments, so we know what to expect.
- 4.1.2 Where possible, this is to be done by email to the relevant local authority and these emails retained as evidence that staff have complied with the obligation in the future if needed in the case of an incorrect claim against us for an overpayment.
- 4.1.3 It is important that any final HB payment received is checked for accuracy.
- 4.1.4 Where there is a technical arrear only outstanding, we will not pursue the former tenant while the final payment of HB is still to be processed.
- 4.1.5 Where there is an indication that a HB application or backdate is likely to pay off the arrear, staff should request at least £5 per week while this is being processed.

5. Balances to be written off

- 5.1 The [Income Management - Scotland Policy](#) states that Sanctuary will normally seek to recover former tenant arrears, unless the cost of recovery is likely to exceed the amount involved. The following should be used as a general guide in making this judgement:

| | |
|---|---------------------------------------|
| All Balances Less than £10 | Propose for Write Off |
| Balances Over £10 - With Contact Information | Commence recovery action |
| Balances between £10.01 and £50 - No Contact Information | Propose for Recoverable Write Off |
| Balances Over £50 - No Contact Information | Commence recovery action (Section 7). |

6. Former tenants with current tenancies

- 6.1 Although it should not happen often there will be instances when a tenant moves within the organisation whilst in rent arrears. That will mean that they have responsibilities to the new and old rent account.
- 6.2 Wherever possible a repayment arrangement will be made for the rent arrears that are to become former before the move takes place, and a mandate with an undertaking to pay signed.
- 6.3 If this breaks, then recovery action must commence. Reference must be made to the current rent account when making an arrangement as we must not put the current tenancy at risk by making an unrealistic repayment arrangement.

7. Recovery procedure

- 7.1 The Central Income team will be responsible for recovery of former tenant debt. The Head of Housing will be responsible for ensuring that an effective process is delivered, covering the following areas:
 - former tenant arrears recovery;
 - legal action;
 - HB overpayment recovery;
 - write off;
 - write on; and
 - credit management.

Section C - Garage arrears

1. Garage arrears recovery process

- 1.1 Where a garage account has fallen into arrears an escalation process involving two dunning letters will normally be followed.
- 1.2 When attempts to remedy the account through early escalation have been unsuccessful, a Garage Notice to Quit (GNTQ) may be served. Any associated residential rent account should also be checked, and prompt action taken if this should also be in arrears. The notice should only be served where the debt owed is more than a month with monthly licences and more than two weeks with weekly licences or where a balance has been unpaid for more than four weeks. At least two arrears letters must have previously been issued within the last six months before a GNTQ can be served. GNTQs may be served where the account has been persistently in arrears or there is a breach in use and the issuing of a GNTQ has been discussed and agreed with housing operations.

- 1.3 Central Income team staff will issue a copy of the GNTQ to the customer and send a copy to the local Housing Services team who will attach a copy of the notice to the garage. An Area Housing Manager or Housing Manager may withdraw a GNTQ where the debt is cleared, or an arrangement made, and they are satisfied there are no other reasons for enforcing the GNTQ. An Area Housing Manager or Housing Manager may have regard to the number of previous GNTQs served or arrangements breached in making their decision.
- 1.4 Seven days after the GNTQ has been issued housing staff will raise a lock change request with Sanctuary Maintenance. Once the lock change has been completed rechargeable works will be billed to the customer.