



# Factoring Arrears & Debt Recovery Policy & Procedures May 2023

<b>POLICY IMPLEMENTATION CHECKLIST</b>	
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Approved by Director:	16 May 2023
Effective From:	24 May 2023
Date of Next Review:	May 2028
Diversity compliant:	YES
Equality Impact Assessment:	LOW
Data Protection compliant:	YES
Health & Safety compliant:	YES
Procedure implemented:	YES
SDM system changes made:	N/A
Training Completed:	
Posted on Sharepoint:	
Posted on website:	

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# FACTORING ARREARS & DEBT RECOVERY POLICY & PROCEDURES

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## 1.0 INTRODUCTION

Forgewood Housing Co-operative Ltd is a Registered Social Landlord, responsible for implementing this Factoring Arrears and Debt Recover Policy.

The Co-operative, in line with the Property Factors (Scotland) Act 2011, has registered as a Property Factor and our Registration Number is *PF000179*.

This Policy sets out to provide an efficient factoring service for owners in factored properties.

We will ensure the level of debt is minimised in a sensitive but effective manner, applying consistency where possible.

The Policy has four key elements, which seek to reduce factoring arrears and other debt:-

- Arrears prevention;
- Arrears management;
- Legal action;
- Debt recovery.

The prevention and effective management of factoring arrears and other debt is crucial to maximising resources available to the Co-operative to improve and maintain its stock.

Factoring arrears arise when owners do not pay their bills by the due date. Where owners have failed or delayed making payment, the Co-operative must have an effective procedure in place to recover sums due.

To minimise the risk, the Co-operative will engage in robust and timely recovery practices, to ensure that settlement of outstanding balances is achieved at the earliest possible opportunity.

## 2.0 POLICY AIMS AND OBJECTIVES

The Co-operative follows relevant legislation and good practice principles in managing factoring arrears and other debts, aiming to reduce the overall level of debts owed.

We seek to ensure that we recover factoring arrears and outstanding debts from current and former owners.

We expect that all customers fulfil their legal obligations to pay factoring and other outstanding debts. We will adopt a pro-active approach in pursuing sums due by engaging with owners at a personal level at the earliest possible stage. We will discuss sums due to ensure the level of debt is minimised in a sensitive but effective manner, applying consistency where possible.

Where such obligations are not met, we have a firm but sympathetic approach providing assistance and support.

Where an owner expresses difficulty in making payments, we will offer the services of the Co-operative's AFTAR project with Citizens Advice Bureau (Income / Money Advice services).

The Co-operative will maximise the use of all available alternative remedies and use legal proceedings once all other reasonable steps have been taken.

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 personal 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 SDM system to assist staff to record payments, change in ownership and manage arrears / balances and record action taken.

### 3.0 LEGAL & REGULATORY FRAMEWORK

This Policy incorporates the relevant statutory and regulatory requirements.

The main statutory requirements are contained within the Property Factors (Scotland) Act 2011, including the Code of Conduct for registered property factors (the revised Code of Conduct came into effect on 16<sup>th</sup> August 2021).

#### ➤ **Written Statement of Services**

We have a written statement of our services which all our factored owners will receive and will be available from our website;

#### ➤ **Financial Obligations**

We will ensure the homeowners know exactly what they are paying for and how the charges are calculated. Invoices will be issued 6 monthly in arrears;

➤ **Arrears Recovery**

To initiate prompt and consistent debt recovery activity through internal efforts and if necessary court action and subsequent enforcement.

➤ **Complaints Resolution**

We have a written Complaints Policy and details of how to access the First Tier Tribunal for Scotland Housing and Property Chamber.

#### **4.0 CHARGE SETTING AND COLLECTION**

The Co-operative will ensure that all charges have been set and apportioned in line with the Deed of Conditions.

Charges will be reviewed annually to ensure that any changes in service levels and costs are accounted for.

The Co-operative will ensure that owners pay their full share of costs for common works and the services they enjoy to prevent tenants' rents being used to subsidise owners.

The Co-operative will issue 6 monthly invoices in arrears for factoring charges (giving 30 days to pay).

We will, however, provide a variety of payment options to include weekly, fortnightly, 4 weekly or monthly payments. The method and frequency of payments should be the most convenient to the factored owner and the most likely to help them adhere to the arrangement.

The Co-operative offers a variety of payment methods which include: -

- Online Banking;
- On the Internet;
- Bank Payment (standing order);
- Virtual Payment;
- Card Payment Machine;
- By Telephone using a credit/debit card;
- At the Post Office;
- Paypoint;
- Cheques;
- Payment in person at Office using cheque, credit/debit card.

#### **5.0 ARREARS MANAGEMENT**

The Co-operative utilises SDM Housing Management system which holds accounts and associated records for owners.

All payments to factoring accounts or changes in ownership are reflected in SDM along with relevant balances with a clear record of all actions taken by staff.

SDM Housing Management system 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 factored owner via memo accounts;
- All contact information and action can be recorded via diary notes on each factored owner's account;
- Provides monitoring prints and reports;
- Provides operational, management, and performance data.

## **6.0 ARREARS RECOVERY**

Finance staff are responsible for managing and producing factoring accounts while Housing Officers are responsible for the full process of the arrears recovery as outlined within this Policy.

Housing Officers will monitor the payments on a regular basis however on a monthly basis they are required to run a report from SDM and check for any owner that the 30 day payment period has lapsed. This will be carried out in conjunction with Finance to ensure all payments have been posted to the factored owner account. Any non-payment will be pursued by the Housing Officer for payment in line with the procedures.

A proactive approach to arrears recovery is essential to pursue at the earliest possible stage. This will prevent arrears escalating and reinforce to the owner that factoring arrears will be dealt with as a matter of priority.

Early personal contact is required by the Housing Officer to establish reasons for non-payment 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.

The Housing Officer will use a range of methods of personal contact to suit customer needs, including: -

- Interviews at the Co-operative's office;
- Home visits;
- Telephone;
- Email.;
- Text.

We will continue to maintain personal contact whilst a factored owner remains in arrears, to encourage regular payments and ensure their circumstances have not changed.

Written communications will be used to record formal steps in the process and confirm actions and repayment agreements are logged on SDM. 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 factored owner in arrears, in whatever form, will be recorded on their account via SDM diary.

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

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

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

We will adopt a firm but sensitive approach to arrears recovery. Communication with factored owners as soon as arrears arise may reveal other issues such as multiple debts, illness, harassment or relationship breakdown. Where they are vulnerable, specialist support may be required.

We can make a referral via our AFTAR Project with Citizens Advice Bureau for Income / Money Advice services or other external advice or support services as required.

All invoices are due to be paid within 30 day from when they are issued. In order to prevent arrears increasing should payment not be received within 30 day a first reminder will be issued:-

- Advising of the outstanding balance and need for immediate payment;
- Advise of the potential consequence of non-payment;
- Invite factored owner contact to establish reasons for non-payment and to make a suitable repayment arrangement.

If a factored owner contacts the Housing Officer will:-

- Make a formal written arrangement with the debtor to pay the arrears with an agreed amount and frequency and commencement date. This will be signed by both the owner and the Co-operative, with copies held by both parties;
- Confirm the arrangement will be monitored and the consequences of breaching the arrangement;
- Log all action, notes and arrangement on the factored owner's SDM diary notes.

If a payment arrangement is adhered to and all new invoices are paid on time, no further recovery action will be required. On completion of the payment the account will return to a routine status.



Continued non-payment and /or failure to maintain arrangement will result in action being taken by the Co-operative to prevent arrears from accumulating.

The Deed of Condition allows for interest to be charged on overdue payments which shall bear interest at the rate equivalent to 4 % above the Bank of Scotland base lending rate from the due date until payment. The Co-operative currently do not impose this charge.

## **7.0 DISPUTED ARREARS**

In cases where a factored owner is disputing an arrear, all attempts by the Housing Officer should be made to speak with the factored owner to resolve the matter satisfactorily.

Any paperwork or contractor invoices that may clarify the dispute should be shown to the factored owner where possible and explained by the Housing Officer in conjunction with the maintenance staff.

Our Complaints procedure should also be used where applicable in an attempt to resolve any disputed arrears.

If all attempts to resolve the disputed arrears have failed, the factored owner has the right to apply to the First Tier Tribunal (FTT) to have their case heard. If the FTT agree to hear the case, no further debt recovery action can be taken by the Co-operative until the outcome of the FTT hearing. Their decision on the disputed arrears will be final.

## **8.0 REFERRAL TO A SOLICITOR**

When the Co-operative has exhausted all means at its disposal to recover the outstanding debt, those cases will then be referred to the Co-operative's solicitor to initially send out a 7 day letter for payment.

## **9.0 SIMPLE PROCEDURE ACTION**

If no payment is received after the 7 day solicitor's letter, then individual cases over £300 should be considered for referral to our solicitors for a "Simple Procedure" court action to pursue the debt. All possible actions to recover the debt must have been exhausted prior to a referral of this nature.

Any outstanding arrears less than £300 will be carried forward onto the next invoice issues by the Co-operative.

The Use of the "Simple Procedure" which is a court process designed to provide a speedy and informal way to resolve disputes where the monetary value does not exceed £5,000. A claim is made in the Sheriff Court by a Claimant (the Co-operative's solicitor can be instructed to do this on behalf of the Co-operative).

The party against whom the claim is made is known as the Respondent. The final decision in a claim is made by a Sheriff or a Summary Sheriff on whether Decree is granted.

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

## **10.0 ENFORCING A DECREE**

If a decree for recovery of the outstanding arrears is awarded by the court via our "Simple Procedure" action the Housing Officer will write to the factored owner with details of the Decree and any expenses awarded asking for payment.

The awarded legal expenses will be added to the memo accounts on SDM.

Our solicitor should be instructed to issue a Charge for Payment notice on the factored owner for payment of the outstanding sum.

If no payment or suitable arrangement is made, our solicitor (with approval from Senior Management) should be instructed to pursue one of the following actions:-

- Arrestment of wages;
- An Inhibition Order placed on the property;
- A Notice of Potential Liability placed on the property.

An Inhibition Notice stops an owner from being able to sell their property until such time as their outstanding debt to the Co-operative is paid.

A Notice of Potential Liability can be attached to the Title Deeds of property and alerts any potential purchaser to an outstanding debt and transfers this debt to the purchaser if they go ahead with the purchase of the property.

This is required to be served through Registers of Scotland and needs to be lodged at least 14 days before the sale takes place. The notice lasts for 3 years but can be renewed thereafter.

In these cases once recovery action commences, legal / court costs start to accumulate, and all such costs accrued will be added to the debt and recovered from the debtor. This can substantially add to the principal sum owed and the debtors will be warned by the Housing Officer, before their details are passed to the solicitor, of the potential amount that could be involved in court action.

These actions are clearly the last resort and will only be commenced where no arrangement to settle the debt within the terms acceptable to the Co-operative can be reached.

## **11.0 PERFORMANCE MONITORING / REPORTING TO MANAGEMENT COMMITTEE**

The Co-operative will put in place a system which monitors and measures performance in relation to factoring arrears and debt recovery.

A report in relation to factoring arrears will be presented to the Management Committee annually. This will include recommendations on cases for write-off when appropriate and in line with the Write-off Policy.

## **12.0 DATA PROTECTION**

The Co-operative will process information and data contained within the application in accordance with its policies and procedures relating to the General Data Protection Regulations.

Information regarding how data will be used and the basis for processing data is provided in the Co-operative's Fair Processing Notice.

## **13.0 EQUALITY & DIVERSITY**

The Co-operative is committed to providing fair and equal treatment to all customers 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.

This complying with the Co-operatives policies on Equality and Diversity.

## **14.0 POLICY REVIEW**

This Policy will be reviewed on a 3 yearly basis or earlier if the legislation changes to ensure that its aims are being met.