Former tenant arrears policy

# Introduction

* 1. This policy sets out how Medway Council Landlord Services collects and manages Former Tenant Arrears (FTA’s).

# Purpose

* 1. The purpose of the Former Tenant Arrears policy is to:
     1. maximise income and sustain the HRA Business Plan;
     2. manage FTA’s consistently and prevent ‘bad debt’ remaining on tenants accounts.

# Scope

* 1. This policy applies to:
     1. Medway Council Landlord Services employees;
     2. Current/former tenants of HRA managed residential properties;
     3. Partners to which Medway Council refers former tenants’ debt.
  2. The policy relates to rent, service charges and sundry debts owed to Medway Council on residential properties and garages.

# Legislation and Guidance

* 1. **External**
     1. Housing Act 1985
     2. Protection from Eviction Act 1977
     3. Landlord and Tenant Act 1987
     4. Civil Procedure Rules 2019
     5. County Court Act 1984
     6. Human Rights Act 1998
     7. Equalities Act 2010
     8. General Data Protection Regulation (GDPR) 2018
     9. The Limitation Act 1980
  2. **Internal**
     1. Medway Council Tenancy Agreement(s)

# Policy

## Current Tenants with former tenant arrears (FTA’s)

* 1. The Council does not allow tenants to transfer within our stock if they owe debt unless exceptional circumstances apply. An exceptional circumstance may be the police or social services’ informing us someone in the household is at risk if they are unable to transfer.
  2. Senior Officers review cases with ‘exceptional circumstances’.
  3. If a transfer for a tenant in arrears is approved, repaying the FTA will be made a condition of the new tenancy Tenants will be informed of this and must sign up to a payment plan for the FTA before the move can take place.

Where a tenant has transferred with FTA, and repayment of the FTA has not been made a condition of the current tenancy, they will still be responsible for repaying the debt (including FTA’s relating to garages). Landlord Services will notify the tenant and make arrangements with the tenant to set up a payment plan.

* 1. Any Credit on the tenants current rent account or sub-accounts will be used to offset any FTA.

## New Lettings

* 1. Housing Officers will follow the Rent Arrears Policy to minimise the potential for FTA’s to accrue.
  2. Landlord Services ask tenants to provide personal details and contact details of a relative or friend in order to trace FTA’s if they occur. Information is kept secure and used in compliance with GDPR 2018.

## Tracing former tenants

* 1. Tenants that end their tenancy by notice and have arrears on their account will be asked to agree a repayment plan within their termination document. Tenants must provide a forwarding address and contact details.
  2. Landlord Services will aim to contact former tenants with debt within four weeks of them terminating their tenancy if they have not agreed a payment plan or made any repayments. This will be done in accordance with our FTA procedure.
  3. Landlord Services will state in correspondence that if the reader is not the intended recipient they return the letter along with the address of the intended recipient if known.

## Recovery where an address is known

* 1. The debtor will be able to pay the debt in full or set up a payment plan that is affordable and has a reasonable time scale.

## Recovery following the death of a tenant or a tenant moving into care

* 1. If the tenant has died or moved into care leaving an FTA the usual recovery procedures will apply, and officers will attempt to recover the debt from the estate or the from the tenants own finances. Housing Officers will take a sympathetic approach when contacting the next of kin or executors.
  2. If the tenant has died and there is no known next of kin or estate, the debt will be written off.

## Enforcement

* 1. Landlord Services will take enforcement action against former tenants in arrears that fail to repay the debt or adhere to a repayment plan.
  2. Landlord Services will use methods and processes in pursuit of FTA’s appropriate to the amount and age of the debt.
  3. Landlord Services may refer debt to a collection agency.
  4. Landlord Services must obtain a Money Judgement Order before any other court recovery action can be pursued.
     1. A Money Judgement is valid for six years and can be enforced at any point throughout that period. Only the amount specified in the judgement can be enforced.
  5. Landlord Services will refer a case back to court for a warrant ordering payment if the debtor does not honour the conditions of a County Court Judgement (Money Judgement) Order.
  6. The extent and length of time to which a debt is pursued will depend on the level of the debt compared to the cost of recovery.

## Write Offs

* 1. Landlord Services will refer debt to senior officers for ‘write off’ where efforts to trace the debtor have failed, the FTA is not economically worthwhile to pursue, or other circumstances indicate that the chances of recovery are small. Examples of this are debts that have arisen due to domestic abuse, poor health or long-term imprisonment
  2. If the tenant has died and there is no known next of kin or estate, the debt will be written off.
  3. If Landlord Services has not contacted a debtor for a period of six years the debt will be considered Statute Barred and written off in accord with The Limitations Act 1980.

# Role, responsibilities and authority

* 1. The Assistant Director of Physical and Cultural Regeneration retains the overall responsibility for implementing this policy.
  2. The Head of Housing is responsible for the operational delivery of this policy, associated procedures and ensuring compliance with regulatory and legislative requirements.

# Monitoring, review and evaluation

* 1. The Income Manager will monitor FTA cases with reference to the amount of debt and that procedure is followed.
  2. This policy will be reviewed every two years or in line with legislative or regulatory changes.

This version published: May 2020

Next review due: May 2022