

Appendix 4: Rent arrears and forfeiture procedure

Shared Ownership Rent Arrears and Forfeiture Procedure

1	Introduction This procedure details Wolverhampton Homes (WH) approach to managing a payment culture in the recovery of shared ownership rent arrears. WH manages the stock on behalf of CWC
2	Aims <ul style="list-style-type: none">• To manage shared ownership rent arrears in accordance with leasehold legislation and in a consistent manner• To promote payment culture in which shared owners pay their rent, service charges and any other charges on time and in accordance with their lease• To act in accordance with best practice
3	Objectives <ul style="list-style-type: none">• To discharge our legal duty as a landlord and maximise our ongoing income stream• To minimise debt to protect our interest in the asset (property)
4	Legal and Regulatory Dependencies This guidance incorporates and complies with the following legal and regulatory requirements: <ul style="list-style-type: none">• Landlord and Tenant Act 1985• Landlord and Tenant Act 1987• Leasehold Reform, Housing and Urban Development Act 1993• Commonhold and Leasehold Reform Act 2002• Law of Property Act 1925• Protection from Eviction Act 1977• Lease Agreements• The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013• Civil Procedure Rules 1998• Council of Mortgage Lenders (CML) Guidance for handling arrears and possession sales of shared ownership• Shared ownership: Joint guidance for England produced by the CML, Homes and Communities Agency (HCA) and National Housing Federation (NHF) – updated October 2016
5	Shared Ownership Tenure
5.1	When a property is sold on a shared ownership basis, the shared owner is granted a leasehold interest. CWC will be the freeholder of the property.

	The shared owner pays a percentage share of the freehold value of the property and pays rent on the remainder.
5.2	As well as paying the rent and service charge, the shared owner may also be repaying a mortgage.
5.3	The lease will prescribe certain conditions for staircasing, which is when the shared owner is given the opportunity to buy an increased share of the property. CWC will transfer the freehold interest to the shared owner once 100% of the shares have been purchased.
5.4	The lease sets out the requirement for shared owners to pay the specified rent, buildings insurance and any service charges. Service charges are payable for the management of blocks of flats and communal grounds and estates.
6	<p>Responsibility for Payment of Specified Rent, Insurance, Service Charges and Ground Rent</p> <p>Responsibility for the payment of specified rent, ground rent, insurance and/or service charges rests with the person(s) named in the lease agreement as the shared owner(s) or following an assignment, as detailed on the Notice of Transfer.</p>
7	<p>Charging Frequency</p>
7.1	Charges are payable as identified in the lease, in advance on the first of each month.
7.2	Generally, payment of the specified rent, building insurance and/or service charge should be made in advance on the first day of each month.
8	<p>Payment Methods</p> <p>The following payment methods will be offered:</p>
8.1	<p>Direct Debit</p> <p>Direct Debit is the preferred method of payment and as part of the sales process new owners will be required to complete a direct debit mandate and pay the apportioned charges and a further month's rent in advance on completion of the sale.</p> <p>As payments of the specified rent, building insurance and/or service charge should be made in advance on the first of each month, by our preferred method of payment direct debit.</p>
8.2	<p>Other methods of payment are also offered:</p> <ul style="list-style-type: none"> • Payment card at any PayPoint outlet • Bank Standing Order • Online via the WH website

	<ul style="list-style-type: none"> • Debit or credit card over the telephone • Debit or credit card on automated payment line 08001804464
9	<p>Service Charge Queries</p> <p>If the shared owner queries the service charges, the Home Sales & Leases Team will explain the charges. If the shared owner is not satisfied and the charges are disputed the system should be updated and will be moved to the disputed charges process. There may be occasions when the disputed charges process and the arrears process run concurrently.</p>
10	<p>Deceased Shared Owners</p> <p>If the shared owner dies, the payments become the responsibility of the executor of the estate until probate is settled. A copy of the Death Certificate is required together with a copy of the Grant of Probate or the Grant of Letters of Administration. These are required to confirm who is authorised to act as executor. The executor should be treated as if they are the shared owner and the correspondence address on the system changed to that of the executor.</p> <p>The executor is responsible for making the regular rent/service charge payments but where the executor has decided to sell the property we will accept a letter of undertaking from a solicitor stating that the full arrears will be paid from the sales proceeds.</p>
11	<p>Assigning the Lease</p> <p>Where a rent account is in arrears and the shared owner wishes to assign (sell) the lease, consent should be withheld. However, if the shared owner cannot clear the arrears the Home Sales & Lease Team may authorise an agreement to be entered into to clear the arrears on completion of the sales. In these circumstances an undertaking in the form of a letter is required from the owner's solicitor stating that the shared owner will pay the full arrears from the sales proceeds.</p>
12	<p>Summary of Legal Action</p> <p>There are two legal routes that can be taken when WH shared owners fail to pay their rent and/or service charges:</p>
12.1	<p>County Court</p> <p>An application can be made to the County Court to obtain a money judgement for the debt, known as a County Court Judgement (CCJ). If payment is not made in accordance with the CCJ it can be enforced in several ways:</p> <ul style="list-style-type: none"> • Information Order – the shared owner is ordered to attend court to be questioned on oath by a court officer. Information can be obtained including employment status, details of employer and

	<p>salary, details of bank account and their balances, additional income etc...</p> <ul style="list-style-type: none"> • Charging Order • Attachment of Earnings • Bailiff action • Recovering the debt from the bank or building society accounts • Bankruptcy
12.2	<p>Forfeiture The landlord may serve a Section 146 Notice of the Law of Property Act 1925 on the shared owner to commence proceedings to obtain possession of the property. Court proceedings cannot be commenced unless the shared owner fails within a reasonable time to remedy the breach of lease.</p> <p>Forfeiture means extinguishing the lease as if it never existed. The debt must be over £350.00 and/or outstanding for more than three years before forfeiture proceedings can be commenced. The landlord cannot serve a valid Section 146 Notice unless the shared owner has agreed the arrears or that the breach has occurred, or that the breach has been finally determined by a Tribunal or Court. The quickest and easiest way of determining the breach is by obtaining a CCJ. The other option is to get a determination from the First Tier Tribunal (FTT).</p> <p>If the shared owner has a mortgage secured on the property, a copy of the Section 146 Notice must be sent to the lender. This will often prompt them to protect their interest in the property by clearing the debt on the mortgagor's behalf and adding this to the mortgage debt.</p>
13	<p>Arrears Process Responsibilities</p> <p>The following are responsible for the implementation of this guidance;</p> <ul style="list-style-type: none"> • Head of Home Sales and Lease (HHSL) – Principal responsibility for rent arrears, recovery performance for the shared ownership stock in addition to ensuring compliance with the procedures • Home Sales & Leases Officers (HSLO) – responsible for monitoring all arrears and deciding actions to be taken • WCC Legal Team – Responsible for dealing with the County Court process and forfeiture process. • Finance Team
14	<p>General</p>
14.1	<p>We will treat customers fairly and in a professional manner. We will be proactive in pursuing arrears and will use a variety of contact methods in pursuing arrears.</p>
14.2	<p>We will provide rent statements as and when they are requested and will use discretion on whether to charge for arrears letters.</p>

14.3	<p>In order to exercise flexibility, we will maintain the ability to override any actions but must provide the rationale behind such overrides.</p>
14.4	<p>If shared owners are vulnerable, disabled or required documents or correspondence to be translated, this will be dealt with in line with our Equality and Diversity Strategy.</p>
14.5	<p>Housing Benefit/Universal Credit Where shared owners require assistance in making a claim for housing benefit/universal credit to cover their rent and service charge they will be signposted to the relevant agencies including WH Money Smart Team.</p> <p>Housing benefit is usually paid 4 weekly at the end of each month and may be paid to the shared owner or direct to WH. Customers are responsible for payment of any shortfall to ensure that the rent account is not in arrears. Where housing benefit is paid direct to the customer the monthly housing benefit entitlement can be calculated by multiplying the four-weekly housing benefit payment by 13 and divide by 12. From this any shortfall in housing benefit can be calculated.</p> <p>If payment is not being made due to any application for housing benefit/universal credit the shared owner is still required to pay their rent/service charges until housing benefit/universal credit is confirmed.</p> <p>Universal credit is usually paid direct to the shared owner, although alternative payment arrangements are available for vulnerable customers or here customers have problems paying their rent/service charge. WH can request that the part of the universal credit that covers rent/service charge is paid direct to WH where the shared owner is in two months' rent/service charge arrears or more.</p> <p>Where a shared owner is claiming housing benefit/universal credit, action can be taken if there is shortfall in the housing benefit/universal credit payments and the shortfall is not being paid. However, any action can only relate to the shortfall and not to any amount that it is believed will be subject to a housing benefit/universal credit claim. Action can also be taken for arrears that were incurred before the shared owner was claiming housing benefit/universal credit. However, this action needs to be appropriate and may include claiming for deductions directly from other benefit payments.</p>
14.6	<p>Anyone speaking with a shared owner must check the shared owner's up-to-date contact details, including mobile number, landline number and e-mail address and contact address if approval have been given for the property to be sub-let. The system must be updated on the Northgate housing system.</p>

14.7	Any correspondence should be addressed to all shared owners named on the lease. However, correspondence issued in relation to rent arrears must be sent individually addressed to each shared owner in order to comply with the relevant protocol. In practice this will mean issuing two or more letters with the same content where there are two or more shared owners.
14.8	When the shared owner is not resident in the property and a charge is outstanding correspondence should be sent to the shared owner at their alternative address. If there is a sub-letting arrangement in place, it is the shared owner's responsibility to ensure that charges are paid and it is the shared owner that will be subject to action under this procedure.
14.9	If there is a breakdown in the relationship between two or more shared owners, all shared owners are liable for charges until such a time as the position is rationalised by assignment of the lease to one of the shared owners or to a third-party purchaser. This is true even if the shared owners are a married couple. If one party has moved out, correspondence needs to be sent to their new address if known, or their last known address, until assignment/transfer is complete.
15	Throughout the arrears process and forfeiture process the HHSL/HSLO should ensure that all correspondence clearly states the account is in arrears, provide copies of the rent account showing when the rent was due, the amounts and the dates of any payments made, including housing benefit/universal credit and the running total of the arrears. A copy of the rent account statement dating from the beginning of the debt should be included with all arrears letters.
16	<p>Arrears Stages</p> <p>The first trigger for the arrears process will be once the account has been in arrears for one week.</p>
16.1	<p>Stage 1 – Personal Contact and Letter 1</p> <p>The HSLO will attempt to contact the shared owner by telephone or by visiting the property to ascertain the reason for non-payment and attempt to obtain the payment in full by debit or credit card. If personal contact is made it should be established whether the problem is a short term one or whether the shared owners should be considering should be considering a longer-term solution such as selling the property, downsizing.</p> <p>If the payment cannot be made in full the HSLO should offer to make an agreement to clear the arrears. Any payment plan must be confirmed in writing.</p> <p>Signposting to the Money Smart Team may be offered where necessary.</p>

	<p>If the HSLO is unable to make direct contact by telephone or by visiting the property other methods such as voicemail, text and email should be used.</p> <p>If the HSLO is still unable to make contact Letter 1 with a rent statement should be sent by post. Attached to this letter should be the Service Charge Summary of Rights and Obligations. THE HSLO must update the Northgate housing system with actions and clear notes on why action was taken.</p> <p>16.2 Stage 2 – Letter 2 If payment is not forthcoming following the stage 1 process and the shared owner still cannot be contacted following the methods listed in 16.1, Letter 2 with a rent statement should be sent by post. Attached to this letter should be the Service Charge Summary of Rights and Obligations. Letter 2 advises the shared owner that WH will contact their mortgage lender (where there is a mortgage in place) to request payment of the arrears and will also advise them that unless payment is made, within 14 days, the case will be referred to CWC Legal team. The HSLO must update the Northgate housing system with actions and clear notes on why action was taken.</p> <p>16.3 Stage 3 – Refer case to CWC Legal Team The HSLO will proceed to this stage when the balance, exceeds £350.00, and there has been no payment or contact within 14 days of Letter 2 being sent or if a payment plan has been broken and Letter 2 has already been sent. The HSLO will refer the case to the Legal Services Department of CWC using the Instruction Pro Forma.</p> <p>At this stage the HSLO should check Land registry to determine is a mortgage lender is noted and if so should note this on the Instruction Pro Forma.</p> <p>The HSLO must update the Northgate housing system with actions and clear notes on why action was taken.</p> <p>16.4 Stage 4 – Solicitors letter before action Within seven working days of being instructed the case Legal Services will send the shared owner the Letter before Action (LBA). A copy of this letter will also be sent to the mortgage lender. This letter will state payment of the debt is required.</p> <p>The LBA will include details of Legal Services costs for setting up the file and issuing the LBA and will also advise how much interest will be applied to the account, in accordance with the terms of the lease, if payment is not received by the deadline date.</p> <p>Legal Services will ensure that the HSLO is kept updated on action with clear notes detailing their actions and the outcome of any contact with the</p>
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<p>16.5</p>	<p>shared owners. The HSLO must update the Northgate housing system with actions taken by Legal Services.</p> <p>Stage 5 – County Court Proceedings If Legal Services receive no contact with the shared owners or mortgage lender and/or the debt is not cleared by the deadline date Legal Services will submit the Money Claim Online (MCOL) application for a County Court Judgement (CCJ). The County Court will write to the shared owners to advise them of the MCOL application.</p> <p>If the shared owners contact Legal Services to make an arrangement to pay they will liaise with the HSLO to determine if the payment plan is acceptable to WH.</p> <p>28 days after the MCOL application and where the shared owners have not responded to the claim by either paying, agreeing a payment plan or filing a defence Legal Services will request a judgement using MCOL.</p> <p>Legal Services will receive written confirmation that the judgement has been entered and the shared owner will be sent a copy of the judgement by the court.</p> <p>Legal Services must ensure that the HSLO is kept updated on action taken and the HSLO must update the Northgate housing system.</p>
<p>16.6</p>	<p>Stage 6 – County Court Judgement (CCJ) Once the court service proceedings the shared owner has 14 days to acknowledge the service/admit the debt otherwise Legal Services will enter the judgement by default. Legal Services will include all costs and court fees with the claim so the judgement obtained will include these sums.</p> <p>Legal Services will ensure that the HSLO is kept updated and the HSLO must update the Northgate housing system with actions taken.</p>
<p>16.7</p>	<p>Stage 7a – Section 146 Notice 14 days after the judgement has been obtained and if the debt is more than £350.00 and has been outstanding for 3 years or more Legal Services will serve a notice under Section 146 of the Law and Property Act 1925. This is served on the shared owner and their lender and demands payment within 14 days and advises that forfeiture proceedings will be issued in default. The HSLO must agree to the commencement of any forfeiture proceedings.</p> <p>Within 10 to 14 days the mortgage lender will usually clear the debt. If the debt is not cleared forfeiture proceedings can begin which is an application to extinguish the lease so the freeholder can gain possession of the property.</p>

	<p>Legal Services will ensure that the HSLO is kept updated and the HSLO must update the Northgate housing system with actions taken.</p>
16.8	<p>Stage 7b -Enforcing a County Court judgement (CCJ) 14 days after judgement has been obtained and if the balance has not been cleared and there has been no payment plan made or a payment plan has been broken AND there is no lender/and or the arrears are less than £350.00 and have been outstanding for less than 3 years Legal Services will apply to the court to enforce the order. Enforcement action can include:</p> <ul style="list-style-type: none"> • Information Order – the shared owner is ordered to attend court to be questioned on oath by a court officer. Information can be obtained including employment status, details of employer and salary, details of bank account and their balances, additional income etc... • Charging Order • Attachment of Earnings • Bailiff action • Recovering the debt from the bank or building society accounts • Statutory demand – the first step to a bankruptcy order <p>Legal Services will ensure that the HSLO is kept updated and the HSLO must update the Northgate housing system with actions taken.</p>
16.9	<p>Stage 8 – Forfeiture Proceedings Following consultation with the HHS Legal Services may proceed to this stage if the mortgage lender or shared owner have not cleared the arrears, has not made a payment plan or has broken a payment plans since the Section 146 Notice was served.</p> <p>Legal Services will ensure that the HSLO is kept updated and the HSLO must update the Northgate housing system with actions taken.</p>
16.10	<p>Stage 9 – Grant of Forfeiture Legal Services shall inform the HSLO the date forfeiture is granted and this shall be recorded on the Northgate housing system. The HSLO will attempt to arrange with the shared owners an exchange of keys and then arrange for the locks to be changed.</p> <p>If the property is not vacated in line with the court order the HSLO instruct Legal Services to make an application to court for a Warrant of Possession and for a bailiff appointment. Once the bailiff appointment is confirmed the HSLO will arrange to meet the bailiff at the property with a locksmith. Eviction can then take place. The HSLO will update the Northgate Housing system and passed to the CWC for the property to be offered for resale</p>

17	Review This procedure will be reviewed annually
18	Appendices Letter 1 Letter 2 Instruction Pro Forma to CWC Legal Services

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November 2017