



Consultation Response:

Eviction of Tenants in the Social Rented Sector:
Protection of Tenants with Rent Arrears



Introduction

The Edinburgh Housing Advice Partnership (EHAP) is a service delivery partnership comprising the Community Help & Advice Initiative (CHAI), Granton Information Centre, Four Square and Move On - all of which are established charities delivering a range of advice and homelessness prevention services in Edinburgh.

EHAP was formed in 2009 as a vehicle to deliver a newly commissioned Housing Advice & Information Outreach Service to the residents of Edinburgh, the main purpose of which is to deliver advice and information to people in a range of settings to enable them to avoid homelessness, in particular a first episode of homelessness, and to secure preventative housing support for those who need it.

As well as providing Housing Advice from a variety of fixed and outreach locations across the City of Edinburgh, EHAP also has a formal presence at Edinburgh Sheriff Court, providing advice and representation to tenants subject to formal legal proceedings for recovery of their tenancies due to rent arrears. The vast majority of these cases are related to tenancies in the Social Rented Sector.

We welcome the opportunity to comment on the Scottish Governments' Consultation Paper, 'Eviction of Tenants in the Social Rented Sector: Protection of Tenants with Rent Arrears'. Our response, based on the considerable experience of our partner organisations in this field – and on the specific experience of operating the new EHAP service over the past year - is contained herein.

Consultation Response

Question 1

Do you think there is a need to do more to reduce the number of tenants evicted in the social rented sector for rent arrears?

Yes, Edinburgh Housing Advice Partnership (EHAP) believes there is a clearly defined need to do more to reduce the numbers of tenants evicted in the social rented sector for rent arrears. Nationally there were almost 20,000 tenants taken to court as a first step to eviction for rent arrears in 2008-09 of which 17% ended in eviction or abandonment. These statistics suggest that in over four fifths of court actions for rent arrears the landlord was able to reach an acceptable agreement with the tenant without recourse to decree.

With additional emphasis on early intervention marked improvements can be seen in these outcomes. EHAP, City of Edinburgh Council's new commissioned service providing free and independent housing advice, has been leading on a joined-up approach to early intervention and preventative work with tenants in rent arrears for the last year. Working closely with City of Edinburgh Council we believe it is no coincidence that over the same period City of Edinburgh Council has been able to report a 41% reduction in cases lodged in court, a 28% reduction in decrees granted and a 33% reduction in evictions carried out.

EHAP's experience demonstrates that when sufficient alternatives to court action for eviction are available to both landlord and tenant mutually acceptable agreements can be reached without recourse to evictions.

Question 2

Do you think that identifying and sharing good practice on preventing rent arrears **would** help to reduce the number of tenant evictions?

Yes. EHAP has a remit to work across all tenures and over the whole City of Edinburgh. This brings us into regular contact with a range of different landlords and gives us an overview of their differing approaches to managing and recovering rent arrears. We can see what works and what is less effective.

Sharing and promoting good practice across the sector would be of benefit to tenants – who would be supported appropriately when experiencing difficulties with rent payment – and landlords, who would recover rent more effectively and economically than they would by resorting too quickly to legal recovery remedies, and whose relationship with their tenants would likely be improved through dialogue rather than confrontation.

Input from tenant representative organisations and from advice agencies, who regularly find themselves intervening in broken down relationships, would also be important in developing good practice models. Our response to 'Question 4' highlights some local good practice initiatives that EHAP is involved in with social landlords in the City.

Question 3

How can we encourage landlords to adopt good practices in sustaining tenancies?

Some landlords will recognise the benefits of voluntary adoption of good practice measures around tenancy sustainment without too much encouragement; many already do. However, in order to ensure a consistency of approach for tenants in the social rented sector EHAP would support the introduction of a regulatory framework, incorporating Pre-Action Requirements (PARs) and formal audit and regulation of landlord practices in this area by the Scottish Housing Regulator.

Question 4

What examples of good practice in preventing rent arrears do you think should be shared with other social housing providers?

The Edinburgh Housing Advice Partnership, has developed a variety of interventions targeting tenants at every level of need.

Two examples which demonstrate different but complementary approaches are:

- 1) the New Tenancy Sustainment Initiative, a small scale support service for new tenants contracted by one registered social landlord (RSL)
- 2) the South West Early Intervention Project, a neighbourhood-wide pilot approach to reducing local landlords' dependency on shrieval remedies to recover rent arrears.

New Tenancy Sustainment Initiative (NTSI)

Dunedin Canmore Housing Association, a large Edinburgh-based RSL, is making a significant investment in new housing in the Oxbgangs and Gilmerton areas of Edinburgh which will result in hundreds of new tenancies being filled during 2010. This development has created the impetus for an enhanced approach to responsive

housing management, in order to give these new tenants, families and communities the best possible start and improved long term prospects.

The NTSI has been developed in partnership with CHAI, EHAP's lead contractor, to bring additional capacity, expertise, skills and experience to help tackle tenancy support issues more effectively. CHAI staff will be working alongside Dunedin Canmore housing management staff to provide bespoke tenancy support as required. This type of support is specialised and goes beyond the normal day-to-day support that a housing officer could help with.

This unique arrangement between Dunedin Canmore Group and CHAI will lead to better local partnership working and pro-actively prevent homelessness while ensuring that there is ongoing support to help people sustain their tenancies and settle into their new community.

This project has received funding from the Scottish Government 'Wider Role Fund' to pilot the initiative in South Edinburgh. Dunedin Canmore and CHAI hope to continue the project after the pilot funding and if possible expand it across other parts of Edinburgh.

South West (Rent Arrears) Early Intervention Project (SWEIP)

Edinburgh Housing Advice Partnership (EHAP) and Cyrenians Homelessness Prevention Service (HPS) have joined forces with social landlords including the local authority housing department in the South West of the City to offer a new service aimed at helping tenants who are struggling with rent payments.

The new service provides free advice and support to those who are in the early stages of having problems paying their rent, with a view to sorting the problems out *before* the landlord starts legal action to recover the tenancy.

The participating landlords will identify tenants who are starting to struggle with rent payments and offer independent assistance from EHAP and Cyrenians HPS. Trained Housing Advice Workers and Personal Advisers will then be on hand to offer all the advice, support and assistance required to resolve the problem at an early stage, before losing the home becomes a serious risk.

Both of these interventions place an emphasis on early intervention and prevention, without removing the option for landlords of addressing issues with those tenants who simply will not pay, by proceeding with court action at a later date. This combined approach is already demonstrating its effectiveness by contributing to the positive trend in tenancy sustainment across Edinburgh (see question 1.) and by an accompanying reduction in net debt, down 10.2% on the previous year at the end of 2009/10 (CEC Rent Collection Strategy Performance and Inclusion Report).

Question 5

How best do you think the sharing can be done?

Local authorities should be encouraged to develop 'Communities of Practice' to highlight, promote and share good practice examples. The City of Edinburgh Council, for example, has established a practitioner network – Edinburgh Housing Advice and Homelessness Network (EHAHN) – which brings together a range of statutory, voluntary sector and RSL personnel to share practice, experience and training. As well as operating an 'online' forum, EHAHN also periodically holds meetings, events and training opportunities for members to develop good practice ideas.

This would be an effective means of developing awareness of, say, any new Pre-Action Requirements and promoting debate as to how any framework provided by PARs might be further developed to promote even more effective early intervention models.

The Scottish Government may also have a National role in highlighting good practice developments across local authority areas. An example of how this is facilitated in the field of Housing Support is through the Housing Support Enabling Unit (<http://www.ccpscotland.org/hseu>).

Question 6

Do you think that including in the Social Housing Charter an outcome on landlords' effectiveness in helping tenants maintain their tenancies would help to reduce the number of tenants evicted for rent arrears?

Including outcomes on landlords' effectiveness in helping tenants maintain their tenancies in the Social Housing Charter would be a useful way of monitoring landlord practice and highlighting examples of good or poor performance. However in order to ensure that this measure contributes to the protection of tenants in rent arrears these outcomes must be specific, targeted and aspirational, ensuring an emphasis on year on year improvements to practice rather than accepting mediocre results as 'satisfactory'.

It is also noted in this consultation document that the Charter will not specify how landlords will deliver these outcomes. The only way to ensure a fair and level playing field Scotland-wide is to legislate for specific Pre-Action Requirements which will bring the rights of social tenants in line with the greater protection recently awarded to home owners at risk of mortgage repossession.

Question 7

Do you think that a pre-action protocol would help to protect tenants from eviction?

A Pre-Action Protocol, as envisaged in the Consultation Paper would provide a framework for development of the good practice approaches we have already highlighted. However, our experience suggests that those landlords who would be most receptive to adopting positive protocols are already largely doing so. The lack of a requirement on landlords to adopt good practice methods would simply maintain the inconsistency of approach that can already be seen in the sector.

EHAP strongly prefers the introduction of Pre-Action Requirements rather than a voluntary Protocol.

This mirrors the approach taken for home-owners in the 'Home Owner and Debtor Protection (Scotland) Act 2010'. We can see no reason why a lesser protection be applied to tenants than to home-owners in analogous circumstances.

Question 8

Are there any unintended consequences in pursuing this option?

The intention behind the introduction of a Pre-Action Protocol would be to develop a minimum platform of good practice for social landlords to adhere to prior to their commencing legal action for the recovery of a tenancy for rent arrears.

However, the voluntary nature of a Protocol may have the unintended consequence of simply reinforcing the inconsistency in approach between those landlords committed to following good practice, and those who simply view legal proceedings as a standard element of their arrears recovery process.

Question 9

Do you think that a pre-action requirement would help to protect tenants from eviction?

EHAP supports the introduction of Pre-Action Requirements (PARs). The legislative requirement for all social landlords to adopt the same minimum standard actions will remove the risk of inconsistencies in approach across the sector, and will extend the

same rights to tenants in the social rented sector as have recently been introduced for home owners by the ‘Home Owner and Debtor Protection (Scotland) Act 2010’.

We believe that the introduction of PARs will lead to a reduction in the number of cases brought unnecessarily to Court, and therefore the number of decrees granted and the number of evictions carried out.

It is the clear experience of EHAP that interventions by advice and support agencies – particularly in cases where the landlord has not been able to establish a positive dialogue with tenants – result in outcomes which are positive and sustainable for both tenant and landlord. Our experience, in providing a ‘First Aid’ and representation service at Edinburgh Sheriff Court is that a significant proportion of cases which end up in Court have Housing Benefit and/or debt issues at their core. These issues are generally resolvable with earlier interventions. A requirement on landlords to undertake PARs prior to commencing legal recovery action is likely to result in higher resolutions of problems at that stage.

This is particularly true where the landlord and local advice agencies form co-operative working relationships. EHAP’s relationship with the City of Edinburgh Council and other social landlords (described in our response to Question 4) is a good example of where such an approach can be beneficial.

Progressing with legal action for the recovery of a tenancy because of rent arrears should always be regarded as a ‘last resort’ by landlords. Introduction of PARs will have the effect of ensuring that at least a minimum level of Pre-Action steps are taken to ensure that such an action only becomes that ‘last resort’ in the most difficult or intransigent of cases.

Question 10

Are there any unintended consequences in pursuing this option?

Variations in the scale and scope of money and housing advice provision within and across local authorities may currently impact upon the ability of some social landlords to satisfy rigorous Pre-Action Requirements.

Where resources are insufficient to offer a service to every tenant in need additional funding will be required to reduce inequalities and ensure that, in line with the ethos of PARs, all social housing tenants receive a fair and comparable package of assistance.

There is also a risk that Sheriffs may utilise a standardised list of PARs to adopt a ‘tick box’ approach to evaluating the relative merits of cases which do end up in Court without maintaining a proper regard for the ‘reasonableness’ test.

Question 11

What do you think should be included in a pre-action protocol or pre-action requirement for social landlords?

Pre-Action Requirements should provide a legislative framework which will preserve and safeguard the good practice preventative measures which many social landlords already have established mechanisms to provide.

Furthermore pre-action requirements are necessary to ensure tenants of social landlords have equal rights to home-owners as set out in the Home Owner and Debtor Protection (Scotland) Act. That is why they should closely replicate the conditions laid out in the Act at Section 4, subsections (2) to (6) and should include:

- A requirement for landlords to provide tenants with clear and easy to understand information about the outstanding debt, including the amount due, the timescale of when payment was missed and the next steps and potential consequences if payment is not received
- A requirement for landlords to make reasonable efforts to contact tenants and agree a re-payment plan suitable to both landlord and tenant
- A requirement for landlords to refrain from taking action to repossess a tenancy where the tenant is taking steps likely to result in the payment of arrears, including accessing independent advice or financial assistance
- A requirement for landlords to provide tenants with information about sources of advice and support for managing debt (including independent services), and provide assistance with accessing those services where required.
- A requirement that where the landlord is not a local authority they will put their tenants in touch with the relevant local authority.

Question 12

Should landlords be able to retain tenants in their existing tenancy?

From a landlord perspective the ability to retain tenants in their existing tenancy post-decree without arrears being converted to former tenants arrears, which are harder to recover, would be a useful alternative to eviction in some cases. Where a viable solution has been reached between tenant and landlord post-decree this course of action would significantly reduce certain costs such as temporary accommodation. EHAP considers any changes in the law that result in reduced numbers of evictions to be a worthwhile addition to current housing legislation.

Question 13

Are there any unintended consequences of pursuing this option?

EHAP does not see any unintended consequences to tenants in pursuing this action provided Pre-Action Requirements are put in place to ensure that eviction remains a last resort.

Should PARs *not* accompany an amendment in the law on retaining tenants within their tenancy post-decree this would create a situation where landlords will have greater rights without greater responsibilities. This potential situation could be dangerous and damaging to the impetus for landlords to focus on preventative pre-court interventions, especially in light of the cost savings that could be seen to be involved in gaining greater powers over tenants in arrears post-decree.

Question 14

Is there anything else that we could do to make sure that eviction of tenants for rent arrears is a last resort?

All social landlords should be encouraged, through the inspection and regulatory regimes, to regularly review their rent collection strategies and to adopt best practice standards, where these develop ahead of the minimum requirements envisaged by the Pre-Action Requirement framework outline in our response to Question 11.

The Pre-Action Requirement framework should be promoted as a minimum standard, with an expectation that responsible social landlords will aim to exceed those standards in practice.

Question 15

Are there any issues around eviction for particular groups, for example, around age, disability, gender, race or religion?

There are always particular difficulties and sensitivities around dealing with these issues for households with specific needs around age, disability, gender, race or religion. EHAP would support moves to ensure that any literature explaining the

PARs was fully accessible and that landlords were encouraged to be sensitive to the specific needs of their tenants when dealing with the issue of rent arrears management, and that the appropriate use of interpreting, translating and support services was utilised as required.

As a matter of good practice, landlords should be encouraged to fully fund access to interpreting services for tenants whose first language is not English, and who are subject to potential legal action for recovery of their tenancy. This should include funding the interpreting needs of tenants seeking independent advice and representation with regard to their situation.

Question 16

What comments do you have on our Partial Regulatory Impact Assessment, specifically on any other costs or additional burdens associated with the options set out in this consultation document?

EHAP supports the introduction of Pre-Action Requirements and an amendment to section 16(5) of the Housing (Scotland) Act 2001. EHAP does not foresee any specific cost implications to local authorities or registered social landlords arising from these revisions.

Although not outlined in the Partial Regulatory Impact Assessment EHAP does wish to emphasise that provision of advice and information services must be sufficient to accommodate an increase in the numbers of referrals that may arise from the implementation of PARs. In some areas additional funding may be required to enhance existing provision and ensure capacity is available to offer advice and assistance to all eligible tenants. Any additional spending required to bolster advice services is likely to be balanced against the significant savings that will be generated through reduced numbers of court representations and eviction actions.

Stirling Council recently carried out an evaluation of the cost of carrying through eviction actions, and estimated that each eviction cost the authority an average of £7,000. With 1,773 recorded evictions by local authorities alone in Scotland in the year to 31 March 2009 the fiscal cost of maintaining the status quo makes no sense – even before the social costs to families and communities are considered.

Further information on EHAP, or about our response to this Consultation can be obtained from:

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