

Written by:	Head of Housing	Version:	1
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1	Introduction
1.1	<p>The purpose of this policy is to define Waverley Housing's approach to implementing streamlined evictions. This will only be considered where there has been a criminal conviction of the tenant or someone residing in or visiting the house, for an offence punishable by imprisonment or a conviction for using the house or allowing it to be used for immoral or illegal purposes.</p>
2	Purpose, Aims and Objectives
2.1	<p>It is the aim of Waverley Housing to assist tenants in sustaining their tenancy by helping them adhere to the conditions of their tenancy and enjoy the occupation of their home. However, there will be occasions when it is necessary to enforce the conditions contained within the Scottish Secure Tenancy and this may result in legal action and ultimately eviction action as a last resort, being taken to repossess the property.</p>
2.2	The objective of this Policy is to clarify Waverley Housing's position and to give staff guidance when referring any case for the streamlined process for eviction.
2.3	Waverley Housing aims to ensure that a consistent and professional approach is adopted and the service delivered is compliant with law, best practice and internal policy.
2.4	By having a written detailed Streamlined Eviction Policy Waverley Housing can ensure that a uniform and professional approach is adopted throughout the organisation and the service delivered is compliant with law, best practice and internal policy.
2.5	The risk of not having this Policy in place is an absence of the above, leaving Waverley Housing open to bias, unfairness and inequality and a poor reputation.
3	Key Priority
3.1	<p>The key priorities that underpin Waverley Housing's work in relation to legal action and evictions are:</p> <ol style="list-style-type: none"> To comply within the legal framework and good practice guidance To prevent breaches of tenancy To prevent homelessness occurring by exhausting all other management remedies, where appropriate To encourage the voluntary co-operation of tenants to adhere to the terms of their tenancy wherever possible

	<ul style="list-style-type: none"> e) To provide early intervention and work with the tenant at all stages of the legal action and eviction process to prevent an eviction enforcement. f) To tailor action to the individual circumstances of the tenant with a sensitive and flexible approach being adopted. g) To enlist support/information/advice from any appropriate agency for the tenant where a benefit could exist. h) To only obtain an Eviction Decree as a last resort once other methods have failed. i) To retain confidentiality so that any discussions at Committee will not reveal the identity of the tenant. j) To protect the wellbeing and interests of qualifying occupiers and other residents in the community.

4 Responsibilities

4.1 Overall responsibility for the implementation of this policy lies with the Head of Housing, however operational responsibility for compliance with this policy lies with staff responsible for providing a comprehensive, high quality customer service, including but not limited to the management of tenancies and anti-social behaviour.

5 Monitoring & Reviewing

5.1 This Policy will be reviewed on a 5 yearly basis or as necessary in terms of changes in legislation.

6 Legislative & Regulatory Requirements

6.1 Waverley Housing will comply with all relevant legislation and associated regulations, including but not limited to:

- a) The Housing (Scotland) Act 2001, 2010 & 2014
- b) Antisocial Behaviour etc (Scotland) Act 2004
- c) The Scottish Social Housing Charter
- d) Equalities Act 2010
- e) Antisocial Behaviour etc (Scotland) Act 2004
- f) Data Protection Act 2018

6.2 The Housing (Scotland) Act 2001, the Antisocial Behaviour etc (Scotland) Act 2004 set out a range of measures that landlords can take to help address antisocial behaviour as well as the Housing (Scotland) Act 2014. Grounds are detailed for both within the Scottish Secure Tenancy Agreement.

In addition to the existing measures available to landlords to address antisocial behaviour in, or in the locality of a social housing tenancy, a number of new provisions were introduced in the Housing (Scotland) Act 2014 (the 2014 Act). These measures include:

A new streamlined eviction process where there has been a criminal conviction punishable by imprisonment for antisocial or criminal behaviour within the previous 12 months, committed in or in the vicinity of the house by the tenant or someone residing in or visiting the house or there has been a conviction for using or allowing the house to be used for immoral or illegal purposes.

This new provision gives landlords the flexibility to use a streamlined process for eviction where a tenant (or any one of joint tenants), a person living in or lodging in the house, a

	<p>sub-tenant or a person visiting the house has been convicted of an offence punishable by imprisonment within the previous 12 months.</p> <p>The new provisions include the following changes/amendments:</p> <ul style="list-style-type: none"> • Section 14(2) of the 2014 Act amends section 16 of the 2001 Act to alter the powers of the court in possession proceedings in certain cases where there has been an offence punishable by imprisonment. • Section 16(2) (aa) of the 2001 Act removes the requirement that the court is to consider whether it is reasonable to make an eviction order, in cases where the landlord has a ground for recovery of possession set out in paragraph 2 of schedule 2 to the 2001 Act and a notice of proceedings has been served before the specified day.
6.3	<p>The grounds for recovery of possession set out in paragraph 2 of schedule 2 are as follows: "the tenant (or any one of joint tenants), a person residing or lodging in the house with, or subtenant of, the tenant, or a person visiting the house has been convicted of:</p> <ol style="list-style-type: none"> a) using the house or allowing it to be used for immoral or illegal purposes, or b) an offence punishable by imprisonment committed in, or in the locality of, the house. <p>An "offence punishable by imprisonment" means that the offence carries imprisonment as a possible penalty but does not require that a custodial sentence was imposed as the penalty in the particular case.</p>
6.4	<p>The landlord must have served the tenant with a notice of proceedings before the specified day which is the 12 months after:</p> <ol style="list-style-type: none"> a) The day on which the person was convicted of the offence forming the ground of recovery of possession; or b) Where that a conviction was appealed, the day on which the appeal is dismissed or abandoned.
6.5	<p>In summary, this means that where a court has convicted a tenant (or sub-tenant, or someone living with the tenant or visiting the house) of using the house for immoral or illegal purposes or of a criminal offence punishable by imprisonment, committed in or in the locality of the house and the landlord has served a notice of proceedings on the tenant under section 14(2) within 12 months of the conviction or the dismissal or abandonment of an appeal, the court must make an order for recovery of possession of the house without considering whether the court thinks it is reasonable to do so.</p> <p>However, in implementing our approach Waverley Housing is also mindful of our rights and responsibilities contained within other legislation. Waverley Housing will ensure it complies with such legislation.</p>
7	Purpose of Streamlined Eviction Process
7.1	<p>The streamlined eviction process is intended to help speed up eviction in cases where:</p> <ol style="list-style-type: none"> a) Serious antisocial or criminal behaviour has already been proven in court. b) The behaviour which led to the conviction was in the locality of the tenant's house.

	<p>and</p> <p>c) The landlord considers that eviction action is appropriate in the best interests of the community and to protect neighbours and other people living in or near an Waverley Housing property from harm.</p>
8	Use of the Streamlined Eviction Process
8.1	<p><i>Factors that will be considered</i></p> <p>There are a number of factors that will be considered when deciding whether raising an eviction action using the streamlined eviction process is both appropriate and proportionate. These include:</p> <ul style="list-style-type: none"> a) The nature and seriousness of the offence, for example any recurring nature of convictions or cumulative effect of several incidents, or the potential seriousness of a one-off offence. b) Who has been convicted of the offence and their connection to the property. c) Where the offence was committed and the connection to the tenancy. d) Whether and to what extent the offence has affected neighbours or others in the community. e) The impact on neighbours and communities over time and the impact on the stability of the community. f) What action, if any, the person convicted of the offence is taking to make positive change. g) Impact of eviction on household members. h) Other steps taken/which could be taken by the landlord or partner agencies to address the anti-social or criminal behaviour.
8.2	<p><i>Examples of Behaviour</i></p> <p>The type of criminal convictions that allow use of the streamlined process are only those for offences "punishable by imprisonment committed in, or in the locality of, the house".</p> <p>Some examples of behaviour that Waverley Housing may consider using the streamlined process are:</p> <ul style="list-style-type: none"> a) Breach of an Anti-Social Behaviour Order (ASBO). b) Threatening and abusive behaviour. c) Offences related to the use of offensive weapons. d) Serious Drug related Offences (for example drug dealing, cultivation of drugs). e) Offences which could endanger life (for example fire raising, tampering with utility supplies). <p>This is not an exhaustive list and is for example only.</p> <p>The nature and severity of the offence is only one of the factors Waverley Housing will consider as part of their assessment of whether using the streamlined process is appropriate and proportionate.</p>
8.3	<i>Person convicted and connection to the property</i>

	<p>If the person who has been convicted of an offence is not the tenant of the property, the following will be considered, along with the seriousness of the offence:</p> <ul style="list-style-type: none"> a) How frequently the person visits or lives in the property. b) Any action the tenant is taking to stop the person returning to the property. c) Whether it is reasonable in the circumstances for the tenant to try and prevent the person returning to the property.
8.4	<p>Tenancy Sustainment</p> <p>It is possible that there will be situations when the person who has received the conviction has changed their behaviour. For example:</p> <ul style="list-style-type: none"> a) The behaviour has stopped; there have been no repeat offences, convictions, disturbances or complaints. b) The person convicted has participated in a rehabilitation or treatment programme for drug/alcohol/mental health. c) Regular and meaningful engagement with support services to change behaviour in a positive way. <p>Waverley Housing will consider the impact an eviction action may have on preventing positive change. It will also take into consideration the potential for re-offending in such cases where an offender has demonstrated positive change and will take all of the foregoing together with the seriousness of the offence, into account in deciding whether or not to proceed with seeking an eviction.</p>
9	<p>Legal Action Process</p> <p>9.1 Once Waverley Housing has decided to recover possession of a tenancy under the streamlined eviction process, a Notice will be served on the tenant(s) that explains that we will raise proceedings for possession and sets out the grounds for doing so.</p> <p>We will confirm the following:</p> <ul style="list-style-type: none"> a) The action to be taken and what will happen. b) The timescale for the action. c) Why the action has been taken. d) Who the tenant can contact for advice and assistance. <p>The Housing Officer dealing with the tenant has the authority to raise a Notice of Proceedings for Recovery of Possession.</p> <p>The Senior Housing Officer (SHO) is ultimately responsible for agreeing court action with the Housing Officer and all cases must be approved by the SHO before proceeding to the court stage of legal action.</p> <p>The Head of Housing has delegated authority to authorise enforcement of a Decree of Eviction once approved by the CEO.</p>

	<p>The streamlined eviction process removes the ability of the court to consider whether it is reasonable to grant an eviction order. The court must grant the order where it is satisfied that:</p> <ul style="list-style-type: none"> a) There is a ground for recovery of possession set out in paragraph 2 of schedule 2 to the 2001 Act. <p>And</p> <ul style="list-style-type: none"> b) The notice of proceedings was served on the tenant before the first anniversary of the date of the conviction, or where that conviction was appealed, the day on which the appeal was dismissed or abandoned.
9.2	<p><i>Right Of Appeal</i></p> <p>A tenant who disagrees with our decision to raise court proceedings can seek a judicial review of the landlords decision to seek a court order and/or defend the repossession action.</p>
10	<p><i>Reporting & Customer Care</i></p>
10.1	<p>The Head of Housing will report annually to the ARC on the number of evictions including:</p> <ul style="list-style-type: none"> a) Number of streamlined eviction actions raised. b) Number of streamlined actions resulting in eviction.
10.2	<p><i>Confidentiality</i></p> <p>Waverley Housing stresses that the tenant's privacy must be safeguarded. As detailed earlier, Waverley Housing has various legal responsibilities (see 6.1), which must be adhered to in this respect.</p> <p><i>Customer Care</i></p> <p>Waverley Housing will ensure that tenants at risk of eviction are dealt with in a clear, respectful, customer friendly manner to ensure that tenants feel they are being supported in dealing with problems and that they feel comfortable approaching staff.</p> <p><i>Equality Commitment</i></p> <p>Waverley Housing is committed to treating all people equally and with respect irrespective of their age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, or sexual orientation".</p>
11	<p><i>Scottish Social Housing Charter</i></p>
11.1	<p>Waverley Housing will meet the requirements of the Scottish Tenants Charter in this policy as it relates to anti social behaviour and managing our estates. In particular cognisance is given to:</p> <p>1: Equalities</p> <p>Social landlords perform all aspects of their housing services so that:</p> <ul style="list-style-type: none"> a) they support the right to adequate housing. b) every tenant and other customer has their individual needs and rights recognised, is treated fairly and with respect, and receives fair access to housing and housing services.

	<p>2: Communication</p> <p>Social landlords manage their businesses so that:</p> <ul style="list-style-type: none"> a) tenants and other customers find it easy to communicate with their landlord and get the information they need about their landlord, how and why it makes decisions and the services it provides
	<p>6: Estate Management, Anti-Social Behaviour, Neighbour Nuisance and Tenancy Disputes</p> <p>Social landlords, working in partnership with other agencies, help to ensure as far as reasonably possible that:</p> <ul style="list-style-type: none"> a) tenants and other customers live in well-maintained neighbourhoods where they feel safe
	<p>11: Tenancy Sustainment</p> <p>Social landlords ensure that:</p> <ul style="list-style-type: none"> a) tenants get the information they need on how to obtain support to remain in their home; and ensure suitable support is available, including services provided directly by the landlord and by other organisations
12	Case Law
12.1	<p>Waverley Housing are led by our Policies and the legal guidance we are given, the following offers insight into the case law in relation to the use of Streamlined Evictions but more importantly the appeal decision underlines the importance of landlords having regard to both the statutory guidance and their own policy, when tenants are convicted of offences connected with the property</p> <p>The Sheriff Appeal Court has just issued a decision, Argyll Community Housing Association Ltd v George [2D21] CiY)..9 (4 February 2021), which will be of significance to RSLs throughout Scotland. It concerns the operation of the "streamlined" eviction process in terms of ground 2 in the Housing (Scotland) Act 2001, designed to be used when tenants are convicted of criminal offences committed in or near the rented property. Since May 2019, the "reasonableness" test has been removed from this ground, meaning that the court must grant an eviction where the ground is established. However the Government issued guidance which, in terms of the Act, must be considered before any proceedings are raised. The removal of the reasonableness test did not affect any other right which a tenant might have under any other rule of law.</p> <p><i>Drug conviction</i></p> <p>Argyll Community Housing Association ("ACHA") sought an eviction order against their tenant, Daley George. He was detained following a drugs search of his house, during which 412g of cannabis, £1,815 in cash, paraphernalia associated with the distribution of drugs and a tick list of customers were recovered. He was convicted and sentenced to four months' imprisonment at Dunoon Sheriff Court in April 2019. Notice of proceedings was served on the tenant in June 2019 and the eviction order was granted in June 2020. George appealed against the order. His lawyers argued that ACHA had not taken the guidance into account before coming to a decision on pursuing eviction against him. It was claimed that the evidence at best only demonstrated the factors that they took into</p>

account in terms of their policy- such as the nature and seriousness of the offence, who was convicted and where the offence was committed. Other factors which appeared in the guidance, including to what extent it had affected other household members and others in the community, what action (if any) the person convicted was taking to make positive changes, and other steps that could be taken by the landlord or partner agencies to address the criminal behaviour, had been ignored.

On behalf of ACHA, it was submitted that the words in the Act do not require that the guidance be slavishly followed. The guidance should not be viewed as a checklist. Paragraph 4.8 of the guidance illustrated factors which could be taken into account. The guidance was intended to assist landlords in taking an overview of whether the decision to use the streamlined eviction process was proportionate and appropriate in any case.

Burden on the tenant

In its decision the court indicated that the burden is on the tenant in an action for possession under the streamlined eviction process to demonstrate that a social landlord has not had regard to the guidance. The tenant would be well advised to explain, in response to the notice of proceedings and in defence of the action, the specific reasons why the landlord (having regard to the guidance) should not proceed with the eviction, or why in these particular circumstances the streamlined procedure should not be followed.

The Appeal Court took the view that compliance with the requirements of the Act about "having regard to the guidance" could be presumed. The onus to prove a contrary position rested with the appellant. It was for the appellant to lead evidence that the respondent had failed to have regard to the guidance, and thus demonstrate the irregularity founded upon.

No such evidence to challenge the guidance had been produced by the appellant. The Appeal Court also stated that it could well be understood that seeking to evict those convicted of drug dealing accorded with the aim of the Scottish Parliament to empower landlords to take steps to support the local community.

Guidance trumps policy

This judgment should reassure landlords that the streamlined process will be supported by the courts. However those representing tenants will no doubt look at this judgment and take the view that challenges may still be possible in certain cases where they can show that landlords have not taken the guidance properly into account.

The decision emphasises that landlords need to ensure that they apply the law properly and that they bear in mind the terms of the guidance. They must not simply raise proceedings for eviction based on their own policy without ensuring that policy requires consideration of the guidance. There have been previous court decisions when the "reasonableness" test existed where a "zero tolerance" policy was not enough to persuade the court that an eviction order should be granted.

While being very broadly supportive of RSL policies, this decision does raise the possibility that not all evictions sought on this ground will succeed, despite the apparent mandatory nature of the ground.

The Author Jim Bauld was until recently a partner with TC Young LLP, and an accredited specialist in housing and residential tenancy law until his recent retirement.