CIRCULAR

Tenancy management: Eligibility and evictions

April 2007
This Circular is for the attention of:

• All Registered Social Landlords
• Local authorities
• Registered Social Landlords’ solicitors

This Circular updates and replaces Circular number:

Circular 07/04, first issued in July 2004

Note

‘Housing association’ is used as a generic term for registered social landlords.
‘Corporation’ means Housing Corporation.
Summary

This Circular sets out the Housing Corporation’s expectations of housing associations when assessing the eligibility of applicants for a housing association home, and when working to prevent or respond to breaches of tenancy.

1 Introduction

Housing associations have a duty to cooperate (as is reasonable in the circumstances) with local authorities in offering accommodation to people with priority on the authority’s register (or waiting list), and in assisting the local authority to discharge its housing functions, particularly to the homeless. These duties are set out in Part VI S.170 and Part VII S.213 of the Housing Act 1996.

Housing associations should act to prevent homelessness from occurring in the first instance. During the lifetime of a tenancy, housing associations should act to support and sustain, rather than terminate, a tenancy: early intervention is essential. Housing associations are often under pressure from tenants and communities to evict those accused of anti-social behaviour (ASB). Nevertheless, associations should pursue alternative interventions, retaining eviction as a last resort.

Applicants and tenants of different housing association landlords ought to receive reasonably consistent treatment. They ought to know what the consequences of breaches of their previous or current tenancy are and what action they can take to remedy the breach.

2 Corporation expectations: Eligibility

The following guidance applies to both new and transfer applicants and nominations by the local authority:

Financial circumstances

Rent arrears. Rent arrears should not be an automatic barrier to access. Where applicants are deemed to be ineligible for housing because they owe rent for a previous tenancy, associations should actively encourage applicants to enter into agreements to pay their arrears. If such agreements are kept for a reasonable period, the application should be re-activated (see Suspensions below). For transfer applicants, however, we recognise that a clean rent
record is normally expected except for re-housing emergencies.

Non-housing debt. Debts arising from arrears of non-housing payments, such as council tax or hire purchase, should not have a bearing on eligibility.

Credit checks. If associations conduct checks on the credit status of applicants, the policy should be approved by the governing board, the applicant should be informed and shown a copy of the check without charge. Details of a household’s financial position might help a landlord to identify vulnerability and to offer appropriate support, but should not have a bearing on eligibility.

Guarantors. Applicants for housing should not be asked to provide a guarantor for rent, as a condition of tenancy offer. The exception is tenancy offers to minors.

Deposits. Generally, deposits should not be taken from applicants for housing, whether as a bond for future behaviour or as a refundable administrative fee; a common exception to this rule is for furniture. However, after 6 April 2007, if a landlord takes a deposit of any kind from a tenant when offering an assured shorthold tenancy, the landlord will have to be a member of a statutory tenancy deposit scheme, as detailed in the Housing Act 2004.

Anti-social behaviour

Definition. The Anti-social Behaviour Act 2003 describes anti-social behaviour for the purpose of seeking an injunction as “conduct which is capable of causing nuisance or annoyance to any person and which directly or indirectly relates to or affects the housing management functions of a relevant landlord” (S.13 (3) (1)).

Evidence. Ineligibility for housing on the ground of the applicant’s anti-social behaviour should be based on evidence of the behaviour. Evidence might include the previous eviction of an applicant or a member of their household for ASB, or a previous injunction or Anti-social Behaviour Order (ASBO) taken out against the applicant or a member of their household. Previous tenancy enforcement action for ASB should not be taken into account if it occurred two or more years prior to the date of application and the tenant’s household has conducted a tenancy satisfactorily in the intervening period (see Suspension period, below).

Previous convictions. Landlords may not ask an applicant about “spent” convictions.
A previous conviction is not an automatic barrier to access, especially for low-risk offenders. Eligibility should only be in question if there is reason to suppose that the ex-offender is likely to pose a risk to their household, neighbours and/or the wider community. Associations should be able to justify the exclusion of ex-offenders, with an accountable policy and procedures for considering cases.

**Local issues**

**Local connection.** Housing need should normally override any special consideration of local connection. No applicant should be excluded by an association because they do not have a local connection, except in the following circumstances: on rural exception sites; where S.106 agreements apply; if an offer of accommodation would conflict with the association’s governing instrument; if a local lettings policy is in place. Local authorities may continue to select nominations from locally connected people.

**Local lettings policies.** Where associations operate local lettings policies, these should demonstrably and reasonably balance the competing demands of local authority nominations and pressing housing need, against policies promoting balanced communities.

**Vulnerability**

**Support packages.** Where assessments indicate vulnerability for whatever reason, housing associations should work with the local authority and other agencies to arrange appropriate support so that it is available at the beginning of a new tenancy. An applicant may be excluded if they will be unable to meet the conditions of tenancy without additional support and:

- the association, despite every effort, is unable to ensure that appropriate support is available; or
- the level of support required would seriously undermine the association’s ability to support other residents in a scheme.

**General**

**Blanket bans.** Applicants should not be excluded automatically from housing if their circumstances “fit” a defined category. Every case must be judged on its merits and efforts made to resolve any possible ineligibility.
Suspension period. The meaning and purpose of a suspension period, during which an application for housing is held inactive, should be clearly defined and should last no longer than two years. Suspension implies that the applicant is invited to apply to have their application re-activated at a specified time or for specified reasons.

Appeals. All rejected applicants should have information about and access to an appeals process. The appeal should be heard by adjudicators who were not involved in the original decision to reject the housing application.

Advice. Rejected applicants should be referred to housing advice agencies.

Procedures and documentation. The process to be followed by association officers involved in assessing eligibility for housing forms part of an association’s lettings policy. To achieve consistency, procedures should be clearly written; to achieve demonstrable fairness, decisions should be clearly documented and monitored.

3 Corporation expectations: Evictions

Financial circumstances

Housing Benefit. Possession proceedings for rent arrears should not be started against a tenant who can demonstrate that they have:

- a reasonable expectation of eligibility for housing benefit;
- provided the local authority with all the evidence required to process a housing benefit claim; and
- paid required personal contributions towards the charges.

Associations should make every effort to establish effective ongoing liaison with housing benefit departments and to make direct contact with them before taking enforcement action. A certificate should be obtained, if possible, to confirm that there are no outstanding benefit enquiries, according to Department of Work and Pensions good practice guidance.

Holistic debt advice. Tenants with rent arrears often face multiple debts. Associations should refer tenants in arrears to holistic debt counselling services as soon as possible after the debt has arisen and
should continue to do so during the recovery procedure. Possession action should not be taken where a tenant has maintained an agreement to pay the arrears.

Distress or distraint for rent. Distraint should not be used as a means of recovering rent arrears.

Mandatory grounds for possession (Ground8). Ground 8 of Sch.2 of the Housing Act 1988 is a mandatory ground that can be used to seek possession of an assured tenancy where a tenant has arrears of more than eight weeks’ rent. Before using Ground 8, associations should first pursue all other reasonable alternatives to recover the debt. Where the use of Ground 8 forms part of an arrears and eviction policy, tenants should have been consulted and governing board approval for the policy should have been given.

Other tenancy breaches

Anti-social behaviour. S.12 of the Anti-social Behaviour Act 2003 places a statutory duty on housing associations to publish policies and procedures for tackling anti-social behaviour. These should show a commitment to using the full range of tools now available to tackle ASB. Eviction should be considered only when other interventions have failed to protect the wider community.

Gas safety tests. The Gas Safety (Installation and Use) Regulations 1998 place on landlords a statutory duty to carry out an annual test of gas appliances that they have fitted in tenants’ homes. A failure to do so carries serious health and safety implications. Where tenants refuse to cooperate in allowing access to their home for safety tests, associations should consider alternative measures, such as injunctions, before seeking possession.

Sustainable tenancies

Prevention. At tenancy start-up, tenants should be offered advice and help with housing benefit claims and access to a benefits maximisation service.

Support for the vulnerable. Associations should make every effort at tenancy sign-up to identify the full range of the tenant’s needs, and support packages provided as appropriate.
Starter and demoted tenancies.
Associations that use assured shorthold tenancies as starter tenancies should do so as part of a managed strategy for dealing with ASB either:

- across their whole stock;
- across their stock in a local authority area; or
- in defined street areas or estates.

S.14 (2) of the Anti-social Behaviour Act 2003 requires associations to obtain a court order before demoting an assured tenancy.

4 Assessing compliance

The general standards of performance on approaches to applicant eligibility and evictions that housing associations are expected to meet

This Circular is issued as statutory housing management guidance under S.36 of the Housing Act 1996.

Our general expectations of housing associations are set out in the Regulatory Code and Guidance. The Code and Guidance identify, by means of paragraphs marked with an asterisk, which expectations are covered by Section 36. The relevant sections are:

- 3.5, sets out how associations should deliver their services;
- 3.5.c, requires associations to repossess a property only as a last resort;
- 3.5.d, expects associations to have strategies to tackle anti-social behaviour;
- 3.6, sets out expectations deriving from associations’ statutory duty to co-operate with local authorities;
- 3.6.d, expects local authorities to be consulted about rejection criteria;
- 3.6.e, explains the circumstances in which applicants can be excluded; and
- 3.6.f, seeks lettings policies that are responsive and fair.

Data returns

CORE lettings logs and the Regulatory and Statistical Return (RSR) record performance data on lettings to nominations and the homeless, and rejected nominations. The RSR also records performance data on the number of evictions carried out by associations, the reason for the eviction and the use of demoted tenancies. Associations’ practice and performance in relation to eligibility
and eviction policies may be subject to inspection by the Audit Commission.

**How we will assess compliance**

We will expect housing associations to certify that they have met the requirements of this Circular.

When undertaking a risk assessment, we will take account of and include any relevant findings from inspection reports. Where our risk assessment indicates an association might not be complying, we will undertake a more detailed review in accordance with our normal regulatory engagement.

We will consider and may act upon information brought to our attention by the Housing Ombudsman Service regarding non-compliance with this Circular.

**Enquiries about this Circular**

Please address enquiries about this circular to the appropriate Housing Corporation local field office.
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