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Managing Arrears Arising from Housing Benefit Under-occupancy Restrictions

Item number	7.1(d)
Report number	
Wards	All Wards

Links

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Council outcomes	CO10 , CO16 , CO23 , CO24
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Executive summary

Managing Arrears Arising from Housing Benefit Under-occupancy Restrictions

Summary

The UK Government is introducing a range of welfare reforms, one element of which is reduced Housing Benefit (HB) entitlement for social housing tenants who are under-occupying their home.

This report is in response to a motion to the Corporate Policy and Strategy Committee on 26 February 2013.

The report sets out the implications for tenants, the Housing Revenue Account (HRA) and the housing service of the HB under-occupation reforms.

The report sets out three options for managing rent arrears arising from the under-occupation reform.

Recommendations

It is recommended that Corporate Policy and Strategy Committee:

- 1 Notes that around 3,800 Council tenants will be affected by the reform.
- 2 Notes that rental income funds housing management services, improvements to existing homes and building new affordable homes.
- 3 Notes the approaches adopted by other local authorities and that of the Govan Law Centre.
- 4 Notes the Council's current practice for managing rent arrears is in line with policies now being adopted by Dundee, Clackmannanshire and West Dunbartonshire Councils which support a no evictions approach.
- 5 Notes the additional measures that could be introduced to support tenants who are affected by the under-occupation charge and the assessment of the risks associated with disregarding arrears due to under-occupation.
- 6 Refers the report to the Health, Wellbeing and Housing Policy Development and Review Sub-Committee on 23 April 2013 for discussion.

Measures of success

No tenant is evicted where they engage with the Council to work towards repaying rent arrears.

Financial impact

Approximately £2.7 million of rental income is currently at risk as a result of the HB under-occupation restrictions. Adopting a policy of disregarding arrears arising from HB under-occupation restrictions puts at least a further estimated £1.2 million at risk. Any significant loss of income to the HRA would have a major impact on the Council's ability to improve homes, build new homes and provide core services.

Equalities impact

There are no equalities issues arising directly from this report. However, some of the policy options raised in the report may impact on rights and equalities. If any of these policy options are taken forward, full equalities impact assessments will be carried out.

Sustainability impact

There are no sustainability issues arising from this report.

Consultation and engagement

Councillors Henderson, Day, Work and Burgess were consulted in the development of this report. Edinburgh Tenants Federation, Edinburgh Homelessness Forum, Shelter and the Edinburgh Affordable Housing Partnership were also consulted.

Background reading / external references

None.

Managing Arrears Arising from Housing Benefit Under-occupancy Restrictions

1. Background

- 1.1 This report is in response to the motion agreed by Corporate Policy and Strategy (CP&S) Committee on 26 February 2013.
- 1.2 The motion states: “Committee shares the concern about the introduction of the ‘Bedroom Tax’ and agrees to continue the motion for one cycle and requests a report on the implications for the Council’s Housing Revenue Account (HRA) and housing service by adopting a ‘No Eviction’ policy as requested by the motion”.
- 1.3 Committee also agrees that, “after consideration by CP&S on 16 April 2013, the report is referred to the Health, Wellbeing and Housing Policy Development and Review Sub-Committee on 23 April 2013, with a request that the sub-committee discuss recommendations for mitigation measures and support for tenants with a view to preventing evictions”.
- 1.4 From 1 April 2013, local authority and housing association tenants who are below pensionable age (currently 61 years and five months), who are claiming Housing Benefit (HB) and who have more bedrooms than they are deemed to need, will have their HB reduced.
- 1.5 It is estimated that this reform will affect around 3,800 Council tenants, with affected tenants seeing reductions in HB of between 14% and 25%. This means that a couple who are under-occupying their home by one bedroom are likely to have their HB reduced by around £13 per week. A family under-occupying by two bedrooms will see their HB reduced by around £27 per week. They will be required to meet this shortfall from other income.
- 1.6 In mid March the Department of Work and Pensions (DWP) announced that the following groups would be exempt from the HB under-occupation restrictions:
 - Armed Forces Personnel - Adults who are still living with their parents but are serving in the armed forces will be treated as living at home, even when they are deployed on operations, as long as they intend to return home. This means that their parents will be entitled to an extra bedroom. In addition, non-dependent deductions will not be applied until the armed forces personnel returns home.

- Foster Carers - Approved foster carers will be entitled to an extra bedroom as long as they have fostered a child or been registered as an approved foster carer in the last 12 months.
 - Children with a Disability - Children who cannot share a room because of their disability will be entitled to their own bedroom. It will be up to local authorities to determine whether an additional bedroom is required on a case by case basis.
- 1.7 Of the 3,800 Council tenants who are under-occupying their home approximately 3,100 are only eligible for HB for a one bedroom home. Each year about 500 one bedroom Council homes become available to let. Demand for these homes comes from EdIndex (Edinburgh's common housing register) applicants and homeless households as well as current tenants who are under occupying. In 2011/12, approximately 15,500 households (60% of all applicants) were registered on EdIndex and required a one bedroom home.
- 1.8 Rental income paid by tenants is ring-fenced in the HRA. The Council's ability to collect rent affects the services tenants receive and investment in their homes. Rental income pays for letting homes, tenancy management and support, repairing homes, estate and environmental management, property management and concierge services. It also funds anti-social behaviour and community safety services as well as supporting tenants' organisations.
- 1.9 Rental income is also directly invested in the Capital Programme and pays for additional borrowing. This allows the Council to build new modern, cheap to heat homes and to fund the modernisation of existing homes with new kitchens and bathrooms, energy efficiency and energy generation measures.
- 1.10 It is currently estimated that £2.7 million of rental income will need to be collected directly from tenants as a result the HB under-occupancy reforms. However the actual amount of lost income is dependent on the extent to which tenants pay the shortfall between their HB and the total rent due.
- 1.11 As part of the HRA business planning process, it has been estimated that welfare reform will result in a £6-8 million loss of income per year, or £43 million over the next five years. This is based on the assumption that tenants will continue to pay their rent.

2. Main report

Potential Solutions

- 2.1 Social landlords have considered ways in which they can reduce the numbers of tenants who are affected by the HB reforms. The following options have been considered but not taken forward due to risk to the Council and tenants.

Remodelling the Stock

- 2.2 The Scottish Government Minister for Housing and Welfare, in a letter to local authority chief housing officers, highlighted that local authorities have flexibility in terms of bedroom classification. One option might be to consider reclassifying some bedrooms as public rooms or storage. The Council's current rent charging system is based on the type of property (flat or house) and the number of bedrooms that the property has. Any change in property size to reduce the number of bedrooms would therefore have potential impacts on income to the HRA.
- 2.3 It is possible for local authorities to reclassify properties on a case by case basis, however, there is a risk that such an approach could be the subject of challenge from tenants who are not affected by HB under-occupancy restrictions. The Council could be challenged on the grounds that it would not have an equitable rent policy. In order to avoid such a challenge, any change would have to apply to all similar sized properties. If 10,000 two bedroom homes were to be reclassified as one bedroom and two public rooms, this would mean average loss of around £14 per property per week in rent. It is estimated that this would reduce rental income to the HRA by £6.7 million. Alternatively, rents could be increased across all properties to address this shortfall. However this would mean that tenants in a one bed-roomed property would experience a significant increase in their rent charges. Again it is likely this could be subject to a challenge.
- 2.4 The Association of Local Authority Chief Housing Officers (ALACHO) is currently reviewing what action, if any, local authorities are taking to reconfigure housing stock or redesign rent structures. To date and to our knowledge, no local authority in Scotland has considered proposals to reconfigure stock or redesign rent structures.

Review Rent Charging Policy

- 2.5 In order to reduce the impact on affected tenants, rent levels could be reduced for those on HB who are under-occupying. However, the impact of doing this would be minimal. For example, if the rent for a two bedroom flat was reduced by £5 per week, this would result in a reduction in the tenants rent contribution of approximately £1.50 per week.
- 2.6 Again, there is a risk that the Council could be challenged on the grounds of not having an equitable rent policy, so a complete review of the rent charging policy would be required.
- 2.7 Any review of rent would need to maintain the current level of rental income to ensure services could be paid for. This would potentially mean a significant increase in the rent for a one bedroom property.
- 2.8 The Council is required to extensively consult on any changes to rent policy. The Council has recently undergone a major review of its rent policy and there is unlikely to be support for another review.

Using Discretionary Housing Payments (DHP) to Cover the Shortfall

- 2.9 Local authorities can provide any person who is in receipt of HB with a DHP if it considers that additional financial support is required. Local authorities receive an allocation of resources from the DWP to fund this. Edinburgh's DHP fund for 2013/14 is £1.3 million, some of this has been ring-fenced for tenants with a disability where their current home has been significantly adapted.
- 2.10 It has been suggested that DHPs may be a mechanism for reducing the shortfall faced by tenants due to under-occupation. The total shortfall is £2.7 million per year and the DHP pot for 2013/14 is £1.3 million. It should also be noted that DHP is open to any tenant (Council, Registered Social Landlord or private) experiencing financial hardship and struggling with housing costs.
- 2.11 In addition, DHPs provide only a short term solution. It is unclear how much DHP funding will be provided by the DWP in future years.

Other Approaches

- 2.12 A number of local authorities are currently reviewing their arrears recovery policies in light of the HB under-occupancy restrictions. The Council is working with ALACHO to monitor policy development in this area.
- 2.13 On Monday, 11 March 2013, Dundee City Council passed a motion which stated that "...the City Council resolves that for a transitional period of one year, where the Director of Housing is satisfied that tenants who are subject to the under-occupancy charge are doing all they reasonably can to avoid falling into arrears, it will use all legitimate means to collect rent due, except eviction".
- 2.14 On 26 March 2013, Fife Council agreed a motion which stated "that for any tenant facing difficulties as a direct result of the 'Bedroom Tax' provided they have contacted the Council to discuss their financial position, are doing all they reasonably can to avoid falling into or escalating arrears, and where applicable have entered into an agreed financial arrangement, Fife Council will use all legitimate means of supporting tenants to ensure the collection of rent but will not pursue eviction measures".
- 2.15 The Minister for Housing and Welfare, in her letter to local authority chief housing officers, highlighted Dundee's approach and suggested that it "provides a useful template to protect tenants who genuinely cannot make up the shortfall in rent caused by the bedroom tax".
- 2.16 Other Councils such as Clackmannshire and West Dunbartonshire have passed motions similar to those of Dundee which require their Councils not to evict where tenants are doing all they can to avoid falling into arrears.

Stirling Council

- 2.17 In 2009 Stirling Council introduced a no evictions policy which operated for 18 months. According to Audit Scotland performance information, following the introduction of the no evictions policy, rent arrears increased by 140%. Many

tenants will now be on long term repayment plans to repay arrears that they accrued during this period.

Govan Law Centre

- 2.18 These HB reforms have been the subject of a high profile campaign in recent weeks, involving a number of prominent campaigners, including the Govan Law Centre. The Govan Law Centre has organised a petition to the Scottish Parliament which calls for a change to the Housing (Scotland) Act 2001. This would require social landlords to disregard debt arising from the under-occupation restrictions in eviction actions.

Managing Arrears Arising from HB Under-occupation Reforms

Edinburgh Council - Current Practice for Recovering Arrears and Sustaining Tenancies

- 2.19 The Council's current policy for managing rent arrears is to support tenants in arrears to sustain their tenancies wherever possible. The Council's approach focuses on prevention, early intervention and eviction as a last resort.
- 2.20 The Council is at the forefront of preventative arrears recovery and has been focusing for a number of years on working closely with tenants to help them maintain their tenancies. In the period 2008/9 to 2012/13, the number of arrears cases the Council has lodged in court has reduced from 1274 to 318. The number of cases where the Council has recovered possession has fallen from 230 to 86. However, court action remains an important part of the process for those tenants who do not engage with the housing service.
- 2.21 In 2012/13 the Council recovered possession of 86 homes (0.43% of all Council tenants). Applying this ratio to those affected by under-occupation reforms and assuming no change in practice, there could potentially be a maximum of 15 additional cases where recovery of possession may be enforced. However, given that the current practice is to only recover possession where a tenant fails to engage with the Council, even after a decree for possession has been granted, the anticipated increase would be negligible.
- 2.22 Before serving a Notice of Proceedings for recovery of possession, the Council will always make efforts to provide advice and assistance on HB and other financial help, and put in place a reasonable plan for repayment of rent arrears and future rent. The Council will only seek possession of a property where the tenant refuses to engage with the Council and negotiate repayment arrangements.
- 2.23 Currently, where all other efforts to recover arrears have been unsuccessful, the Council raises a joint payment action under Schedule 2 of the Housing (Scotland) Act 2001. The case is lodged in court seeking repayment of the arrears, repossession of the property and court expenses. It is possible to take action seeking repayment only, without seeking possession of the property, however enforcement measures are limited.

- 2.24 Even where the Council has sought possession and a Decree for eviction has been granted, the Council will still seek to work with the tenant to avoid eviction. If the tenant engages and is willing to repay the rent arrears, the eviction will not proceed.
- 2.25 To help tenants pay their rent the Council's Housing Service provides a range of advice and support services. These include Neighbourhood Rent teams, an income maximisation service and a team of staff that specialises in assisting tenants to make applications for HB.
- 2.26 The Council's current practice in managing arrears for all tenants closely reflects the policies agreed by Dundee and other Councils for managing arrears by tenants affected by the under-occupation charge.

Additional Protection for Tenants Affected by Under Occupation

- 2.27 All tenants have been sent information on how the new rules will affect them. Additionally neighbourhood staff have been directly contacting every person who will be affected to provide advice and help on moving to a smaller home, taking in lodgers or budgeting on a lower income.
- 2.28 Through this process the Council will ensure that any tenant who is affected by the new under-occupation rules and is having difficulty paying will:
- Be offered budgeting advice.
 - Be assessed for DHP, where appropriate.
 - Be offered a review of their housing options with housing options staff.
- 2.29 In order to provide additional safeguards for tenants affected by under occupation, current procedures could be amended in the following ways:
- A reduced repayment rate could be considered for rent arrears due to the new under-occupation rules.
 - Housing options advice could be embedded into arrears processes to ensure that tenants are provided with early information on how a move to a smaller home may help them manage their rent payments.
 - A revision to the Allocations Policy could allow re-housing of tenants to proceed, even where they have rent arrears, if this would assist with mitigating or removing under-occupation restrictions on HB.
 - All new tenants who are under-occupying could be referred for advice in managing rent payments and budgeting.
- 2.30 Adopting some or all of these measures is likely to reduce the proportion of the £2.7 million that is at risk by providing greater flexibility to housing managers to manage arrears cases on a case by case basis.

Disregarding Arrears Arising from Under-occupation when Seeking Recovery of Possession

- 2.31 If the Council were to disregard rent arrears arising from under-occupation, the process for doing so would be as follows:
- Prior to starting a possession action, officers would review the case to establish whether the arrears have been accrued solely as a result of HB under-occupancy restrictions. This would take account of any existing arrears, the history relating to any previous court action, any changes to entitlement or the level of award of HB over the period during which the arrears accrued and the individual household circumstances.
 - A manual process would then be used to disregard the element of arrears arising from under-occupancy.
 - Recovery of possession would then be sought on the balance of outstanding arrears. Any court determined repayment arrangement would only cover the arrears balance sought in court and would not take account of the remaining arrears balance relating to the under-occupation element.
 - Under the Council's rent collection policy, full payment of rent due would continue to be sought from tenants using the existing robust processes that aim to help tenants remain in their home whenever possible.
- 2.32 This approach has the greatest financial risk to the Council as it risks giving tenants mixed messages about implications of non payment of rent. In addition to the £2.7 million that is at risk due to the requirement to start collecting this directly from tenants, a further £1.2 million rental income is paid by tenants who are on partial HB. Any confusion about the Council's approach to rent collection puts this sum at risk, increasing the risk of income loss from £2.7 million to nearly £4 million. The loss of £4 million from the HRA would equate to 100 housing management jobs, a £4m reduction in direct capital investment, or reduced borrowing capacity of around £40-£50 million.
- 2.33 If some tenants believe that eviction will not be considered, they may not engage with the Council's other processes and services to discuss financial problems and ways to manage their rent payments. Currently around one in seven tenants only engage with the Council when a notice of proceedings is served. There is also a greater risk that tenants will get into longer term larger debt which may affect credit rating and reducing housing options, particularly in the private sector.
- 2.34 HRA rent arrears assumptions are based on a culture of paying rent. The risk is that this could be replaced with one of non payment. This could result in a significant increase in rent arrears and further loss of rental income to the HRA.

- 2.35 A reduction in rental income would reduce resources available for advice and support services, at a time when demand for these is increasing. Under these circumstances, if advice and support services are to be provided at current levels, other services may need to be reduced or higher rents considered.
- 2.36 The Council has a duty to ensure equal access to and a consistency of service received by tenants. There will be a number of tenants on low incomes who are just outwith the HB eligibility thresholds who may also get into arrears due to financial hardship. Any legal action against these tenants would be based on the full balance of rent due. There is a risk that the equity of the Council's approach may be challenged in court if, under some circumstances, the Council does not pursue all arrears.

3. Recommendations

It is recommended that Corporate Policy and Strategy Committee:

1. Notes that around 3,800 Council tenants will be affected by the reform.
2. Notes that rental income funds housing management services, improvements to existing homes and building new affordable homes.
3. Notes the approaches adopted by other local authorities and that of the Govan Law Centre.
4. Notes the Council's current practice for managing rent arrears is in line with policies now being adopted by Dundee, Clackmannanshire and West Dunbartonshire Councils which support a no evictions approach.
5. Notes the additional measures that could be introduced to support tenants who are affected by the under-occupation charge and the assessment of the risks associated with disregarding arrears due to under-occupation.
6. Refers the report to the Health, Wellbeing and Housing Policy Development and Review Sub-Committee on 23 April 2013 for discussion.

Mark Turley

Director of Services for Communities

Links

Coalition pledges	P8 – Make sure the city’s people are well-housed, including encouraging developers to build residential communities, starting with brownfield sites.
Council outcomes	CO10 – Improved health and reduced inequalities. CO16 – Well-housed – People live in a good quality home that is affordable and meet their needs in a well managed Neighbourhood. CO23 – Well engaged and well informed – Communities and individuals are empowered and supported to improve local outcomes and foster a sense of community. CO24 – The Council communicate effectively internally and externally and has an excellent reputation for customer care.
Single Outcome Agreement	SO2 – Edinburgh’s citizens experience improved health and wellbeing, with reduced inequalities in health. SO4 – Edinburgh’s communities are safer and have improved physical and social fabric.
Appendices	None