

## Your Money or Your Tenancy...



Uncomfortable choices on maximising income?

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Landlords face some forthcoming uncomfortable choices on maximising income. Not wanting to be associated with a mass use of county courts, while rent arrears debt is certain to be the first and highest debt on the insolvency claim. In many respects it will come down to whether the landlord wants the money or the tenancy. Might it be better and cheaper to leave the tenants where they are and just collect the rent?

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### **Half a £billion is a lot of money**

That's the amount that social housing is spending to collect its rent, and the full consequences of welfare reform haven't even kicked in yet. But this amount isn't strictly true. The figure includes both the cost of rent collection and rent arrears recovery. They are not the same thing. Rent is an on-going household expense. Rent arrears are a debt.

Rent arrears policies and processes chase, remind, visit, interview, advise, agree instalment plans and arrange financial assessments. Rent arrears procedures are mostly about issuing notices of seeking possession, warnings of court actions, hiring legal advice, issuing court claims and possession orders – some suspended, some postponed and some granted. In tens of thousands of cases, people lose their homes.

### **It's rent arrears procedures that are expensive**

There's a lot of checking of transactions and debits and, whilst housing benefit exists, quite a bit of liaising with benefit departments. Around 60% of arrears caseloads are connected to the changing circumstances of those on some form of housing benefit.

The resources of income sections become stretched and with the predicted hike in arrears as a result of welfare reforms (especially bedroom tax but universal credit is looming) these same resources might just stretch a little too far. Things are likely to change.

With any financial assessment in social housing, rent is of course the main household expenditure. Rent arrears are top of the box called 'debt'. Rent arrears is a priority debt, reflecting the landlord as the most powerful creditor of any others owed money by the tenant.

### **The Ground 8 Dilemma**

Recently there has been talk of the Housing Act 1988 Ground 8 dilemma, splitting the industry into those who hate it (like the Welsh government) and those who must have it. But the argument is wider than this. The argument is about what the landlord wants most. It's mainly down to whether the landlords want the money or the tenancy though.

Traditionally, housing rarely gets both money and tenancy. Millions are written-off every year as bad debt. Landlord policies typically pronounce possession as the 'last resort' before promoting page upon page of eviction guidance and escalated procedures. Ground 8 must be tempting addition, with its mandatory guillotine waiting to be rolled out.

In 2006 the Pre-Action Protocol was imposed on a sector that had become too comfortable with asking the courts to act as the rent collector of last resort. Despite much defensiveness, landlords had

become complacent and displayed a preference for court action to other, more helpful, tactics. It took the protocol to help with the revision of some bullying processes.

In Scotland, the equivalent Pre-Action Requirement was added to legislation last August. Could the same happen for England and Wales as and when the protocol is reviewed? Landlords might need to be careful what they wish for. A new protocol may make possession proceedings very difficult and expensive.

### **The overall problem is debt**

As New Charter Housing points out, the problem is debt. Its Moneycare service has revealed an average indebtedness of £8,400. Remember, bedroom tax and universal credit are not rent. These are and will be about income, ability to pay and debt. Rent arrears are usually the largest debt of all, accumulating quickly as the landlord creditor looms.

When Debt Relief Orders (DROs) were launched in 2009, they recognised this credit debt monster. DROs are an easier and cheaper way for those with unsecured debts of up to £15,000 and few assets to file for insolvency.

Housing became embroiled in DROs when the cases of Godfrey and Sharples were subject to the appeal court directing a right for a landlord to pursue possession but not the debt itself. Landlords, as with other creditors, are left to consider writing-off the arrears debt after 12 months.

The number of DROs had increased to over 31,000 by the end of 2012, a 300% increase in less than four years. This is without the impact of welfare reform and during a time when the number of Individual Voluntary Arrangements and bankruptcies reduced.

### **Uncomfortable choices**

Landlords face uncomfortable choices. Talk of bedroom tax cases in the courts seems farcical compared to the amounts and sensitivity of the issues involved. Advising tenants to receive debt advice may result in a DRO being the best remedy for many. It is almost a given that DROs will increase by large numbers in the next couple of years as and when welfare reform tightens and the easy access to loans only serves to exacerbate this.

The small claims court has also increased its limit to £10,000 and is likely to be a route for some to follow, especially if a third-party order can be attached to the same bank account that receives universal credit.

Eviction is expensive and leaves a horrible taste. Despite this, housing does not want to be associated with an en-masse use of the county courts. Just as well, as many district judges are not going to be too welcoming and the housing lawyers are circling, waiting for those test cases.

So, if the tenancy route is blocked, the diversion to debt seems a likely alternative. Figures are not known of the number of DROs connected to social housing but it's certain to be high. Should DROs increase, rent arrears debt is also certain to be the first and highest debt on the insolvency claim, probably accounting for 20% of total debt.

Yes, pressure from all the other creditors, including those payday people, will be applied to the insolvency. However, the fingerprints of housing will be all over them.

## Do the Maths

Consider all the uncomfortable choices and implications; the impact on expenditure and bad debts of pursuing legal action - and the impact on neighbourhoods and communities of evictions. Neither of which will in all likelihood actually recover the debt owed.

Perhaps it might be better and cheaper to leave the tenants where they are and just collect the rent after all?

## About PHHS

Since 2007 we have undertaken a range of strategic work for organisations, and since 2011 have been at the forefront of providing strategic and operational advice, assistance, insight and training for landlords in preparing for welfare reform.

For further details of what we do, who we are and what we have done, and for free advice or a discussion on how we could help your organisation, visit [www.phhsl.co.uk](http://www.phhsl.co.uk), call us on 01202 233214. email us: [info@phhsl.co.uk](mailto:info@phhsl.co.uk), or follow/message us via twitter ([@UltimateVFM](https://twitter.com/UltimateVFM))

## About this article

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