



# **OAK TREE HOUSING ASSOCIATION**

## **Streamlined Eviction Policy**

This document can also be provided in large print, braille, audio or other non-written format and in a variety of languages, on request.

Adopted	November 2019
Review Due	November 2024
	Next Review November 2029

## **CONTENTS**

- 1 Introduction**
- 2 Aims and Objectives**
- 3 Risk Management**
- 4 Key Policy Goals**
- 5 Legal Background and Compliance**
- 6 Purpose of Streamlined Eviction Process**
- 7 Use of Streamlined Eviction Process**
- 8 Legal Action Process**
- 9 Right of Appeal**
- 10 Committee Reporting**
- 11 Confidentiality / Data Protection**
- 12 Customer Care**
- 13 Equality Commitment**
- 14 Review**

## **1.0 INTRODUCTION**

The purpose of this policy is to define Oak Tree Housing Association'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.

The Association has a separate Legal Action and Eviction Policy.

## **2.0 AIMS AND OBJECTIVES**

- 2.1 It is the aim of Oak Tree Housing Association 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.

- 2.2 The objective of this Policy is to clarify the Association's position and to give staff guidance when referring any case for the streamlined process for eviction.
- 2.3 The Association aims to ensure that a consistent and professional approach is adopted and the service delivered is compliant with law, best practice and internal policy.

## **3 RISK MANAGEMENT**

- 3.1 By having a written detailed Streamlined Eviction Policy the Association 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.
- 3.1 The risk of not having this Policy in place is an absence of the above, the Association being open to bias, unfairness and inequality and a poor reputation.

## **4 OUR KEY GOALS ARE:**

The key goals that underpin Oak Tree Housing Association's work in relation to legal action and evictions are: -

- 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.
- To provide early intervention and work with the tenant at all stages of the legal action and eviction process to prevent an eviction enforcement.
- To tailor action to the individual circumstances of the tenant with a sensitive and flexible approach being adopted.

- To enlist support/information/advice from any appropriate agency for the tenant where a benefit could exist.
- To only obtain an Eviction Decree as a last resort once other methods have failed.
- To retain confidentiality so that any discussions at Committee will not reveal the identity of the tenant.
- To protect the wellbeing and interests of qualifying occupiers and other residents in the community
- To comply with the Scottish Social Housing Charter and the relevant Charter Indicators

## 5 LEGAL BACKGROUND & COMPLIANCE

5.1 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 sub-tenant or a person visiting the house has been convicted of an offence punishable by imprisonment within the previous 12 months.

The new provisions include the following changes/amendments:

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.

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 –

- (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.

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.**

The landlord must have served the tenant with a notice of proceedings before the specified day which is the 12 months after:

- 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.

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.

5.2 However, in implementing our approach the Association is also mindful of our rights and responsibilities contained within other legislation. The Association will ensure it complies with the following legislation: -

- Data Protection Act 2018 General Data Protection Regulation (GDPR)
- Equality Act 2010
- Equality Act Children Scotland Act 2010 and Children’s Hearings (Scotland) Act 2011
- Human Rights Act 1998
- Homelessness etc (Scotland) Act 2003
- Housing (Scotland) Act 2010
- Housing (Scotland) Act 2018
- The Scottish Social Housing Charter

## **6. PURPOSE OF STREAMLINED EVICTION PROCESS**

The streamlined eviction process is intended to help speed up eviction in cases where:

- Serious antisocial or criminal behaviour has already been proven in court.
  - The behaviour which led to the conviction was in the locality of the tenant’s house.
- and**
- 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 Oak Tree Housing Association property from harm.

## **7. USE OF THE STREAMLINED EVICTION PROCESS**

### **7.1 Factors that will be considered**

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:

- 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.
- Who has been convicted of the offence and their connection to the property.
- Where the offence was committed and the connection to the tenancy.
- Whether and to what extent the offence has affected neighbours or others in the community.
- The impact on neighbours and communities over time and the impact on the stability of the community.
- What action, if any, the person convicted of the offence is taking to make positive change.
- Impact of eviction on household members.
- Other steps taken/which could be taken by the landlord or partner agencies to address the anti-social or criminal behaviour.

### **7.2 Examples of Behaviour**

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”.

Some examples of behaviour that Oaktree may consider using the streamlined process are:

- Breach of an Anti-Social Behaviour Order (ASBO)
- Threatening and abusive behaviour
- Offences related to the use of offensive weapons
- Serious Drug related Offences (for example drug dealing, cultivation of drugs)
- Offences which could endanger life (for example fire raising, tampering with utility supplies)

This is not an exhaustive list and is for example only.

The nature and severity of the offence is only one of the factors Oak Tree HA will consider as part of their assessment whether using the streamlined process is appropriate and proportionate.

### 7.3 Person convicted and connection to the property

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:

- How frequently the person visits or lives in the property.
- Any action the tenant is taking to stop the person returning to the property.
- Whether it is reasonable in the circumstances for the tenant to try and prevent the person returning to the property.

### 7.4 Tenancy Sustainment

It is possible that there will be situations when the person who has received the conviction has changed their behaviour. For example:

- The behaviour has stopped, there have been no repeat offences, convictions, disturbances or complaints.
- The person convicted has participated in a rehabilitation or treatment programme for drug/alcohol/mental health.
- Regular and meaningful engagement with support services to change behaviour in a positive way.

The Association 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

## **8. LEGAL ACTION PROCESS**

8.1 Once the Association 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.

We will confirm the following: -

- The action to be taken and what will happen.
- The timescale for the action.
- Why the action has been taken.
- Who the tenant can contact for advice and assistance

8.2 The Housing Officer dealing with the tenant has the authority to raise a Notice of Proceedings for Recovery of Possession.

8.3 The Senior Housing Officer is ultimately responsible for all legal action and all cases must be approved by them before proceeding to the court stage of legal action.

8.4 The Director of Housing has delegated authority to authorise enforcement of a Decree of Eviction.

8.5 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:

- There is a ground for recovery of possession set out in paragraph 2 of schedule 2 to the 2001 Act:  
**and**
- 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. RIGHT OF APPEAL**

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.

## **10 COMMITTEE REPORTING**

10.1 The Director of Housing will report quarterly to the Housing Services Sub-Committee on the following;

- Number of streamlined eviction actions raised
- Number of streamlined actions resulting in eviction

## **11 CONFIDENTIALITY**

11.1 The Association stresses that the tenant's privacy must be safeguarded. As detailed earlier, the Association has various legal responsibilities, which must be adhered to in this respect.

## **12 CUSTOMER CARE**

The Association 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.

## **13 EQUALITY COMMITMENT**

13.1 Oak Tree Housing Association 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".

To ensure that the Association is fair in its dealings with people from diverse backgrounds, the Association will periodically analyse tenants at risk of eviction by household type, gender, age, disability and ethnicity. Equality information will also be reviewed on those tenants who are taken to court and on those who are evicted.

This will enable the Association to establish whether there are higher rates of legal action and evictions amongst particular groups.

## **14 REVIEW**

The policy will be subject to review a minimum of every 5 years or sooner if relevant.

This policy has been assessed with law, regulatory standards and good practice. This covers all relevant protected characteristics. The policy is therefore likely to have a positive effect in respect of equality issues.