



SHA Abandonment Policy

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1. INTRODUCTION

- 1.1 This policy describes Southside Housing Association's (SHA) approach to handling situations where we believe that one of our properties is not being occupied. This policy aims to ensure that a consistent and professional approach is adopted by SHA employees in handling incidences of abandonment or suspected abandonment of a property, and that this process is compliant with law, best practice, and internal SHA policy.
- 1.2 It is set out in the provisions of the Scottish Secure Tenancy Agreement (SST) that a tenant and each joint tenant must live in the tenancy as their only or principal home.
- 1.3 The SST also provides the actions which should be taken by tenants in order to terminate their tenancy with SHA. When a tenant fails to follow those actions in no longer occupying the property then that property is deemed to have been abandoned
- 1.4 SHA through administration of this policy and associated procedures aims to minimise the number of SHA properties which are abandoned, where the tenant has ceased to occupy the property as their only or principal home but has not formally provided notice to SHA to end their tenancy.
- 1.5 SHA Abandonment procedures have also been developed which complement this policy, and provide a practical framework for SHA employees to administer and implement the aims of this policy.

2. AIMS

- 2.1 SHA aims to ensure that appropriate action is implemented at the earliest opportunity where it is anticipated that a property has been abandoned by the tenant. The key aims are:
 - To determine that a property has been abandoned.
 - To minimise the time a property is unoccupied.
 - To minimise the risk to surrounding properties where a property has been deemed to have been abandoned.
 - To minimise the potential rent loss resulting from abandoned properties.
 - To protect the rights of tenants and the Association when repossessing a property.
 - To minimise costs to the Association in relation to potential repairs, forced access costs, storing of belongings etc.
 - To make the best use of housing stock by ensuring that abandoned properties are timeously repossessed for re-let.

- To ensure compliance with legislation, guiding standards and best practice.
- To mitigate risk.

3. LEGAL AND REGULATORY FRAMEWORK

3.1 The Housing (Scotland) Act 2001 (H(S) A2001) empowers the landlord of a Scottish Secure Tenancy to recover an abandoned property without the need for court proceedings through the issue of relevant notices, served on the Tenant at the property. All aspects of the Abandoned Tenancy Policy and Procedures adhere to equality, housing and other relevant legislation;

- Housing (Scotland) Act 2001 – Sections 17 - 21
- Housing (Scotland) Act 2014
- Scottish Secure Tenancy (Abandoned Property) Order 2002
- Data Protection Act 2018 and the UK General Data Protection Regulation
- Equality Act 2010
- Human Rights Act 1998
- Matrimonial Homes (Family Protection) (Scotland) Act 1981
- The Adults with Incapacity (Scotland) Act 2000
- Scottish Secure Tenancy Agreement

Scottish Secure Tenancy Agreement

3.2 Section 2.1 of the Scottish Secure Tenancy agreement specifies the Tenant: must take entry to the house, occupy, and furnish it and use it solely as their only or principal home.

Section 2.3 specifies if the house is going to be unoccupied for more than four weeks the tenant must tell SHA before they leave.

Section 6.4 specifies: SHA will give the Tenant at least four weeks' notice that the association believe that the property is abandoned. If at the end of that period there are reasonable grounds for believing the property is abandoned, SHA may repossess it by service of another notice.

Section 6.8 specifies the abandonment process when SHA have reasonable grounds to believe that a joint tenant has abandoned the property

3.3 The H(S)A2001 and the Tenancy Agreement give SHA the right to enter any property in which there are reasonable grounds to believe it has been abandoned, in order to secure the property against vandalism and repossess the property for future letting, in accordance with the Scottish Secure Tenancy (Abandoned Property) Order 2002.

3.4 The Scottish Social Housing Charter

- 3.4.1 The Scottish Social Housing Charter (the Charter) was introduced by the Housing (Scotland) Act 2010 and provides sixteen outcomes which social landlords must meet. The Scottish Housing Regulator monitors and assesses social landlords' compliance with the relevant outcomes which they must meet.
- 3.4.2 Social landlords must report annually through an annual return on the Charter on the number of abandoned properties which they record.
- 3.4.3 The following Charter outcomes are directly relevant to this policy:

Charter Outcome 1: Equalities : “Social landlords perform all aspects of their housing services so that every tenant and other customer has their individual needs recognised, is treated fairly and with respect, and receives fair access to housing and housing services”

Charter Outcome 2 – Communication: “Social landlords manage their businesses so that 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”

Charter Outcome 6 – Estate Management , anti-social behaviour, neighbour nuisance and tenancy disputes : “Social landlords, working in partnership with other agencies help to ensure as far as reasonably possible that tenants and other customers live in well-maintained neighbourhoods where they feels safe”

Charter Outcome 11 – Tenancy sustainment: “Social landlords ensure that 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”

4. DEFINITIONS

- 4.1 References are made in this policy to the following terms, defined as follows:

- Tenant: The Tenant or Joint Tenant of the property, as named on the tenancy agreement with SHA.
- Occupant: Anyone permitted access to the house by the Tenant or Joint Tenant. This can include permanent household members, or visitors.
- Abandoned: When SHA are satisfied that the property is unoccupied; and that the Tenant does not intend to occupy it.
- Reasonable Enquiries: The enquiries undertaken to contact the Tenant, or to ascertain their whereabouts. Examples may include, but are not limited to:

- Property visits and inspections.
- Contact via telephone, text, email, or letter.
- Speaking with neighbours, family members, next of kin or emergency contacts.
- Partnership working with agencies such as Police Scotland, Scottish Prison Service and Glasgow's Health and Social Care Partnership.

4.2 **Lacking capacity:** The law in Scotland generally presumes that adults (i.e., those over the age of 16) are capable of making personal decisions for themselves and of managing their own affairs. The Adults with Incapacity (Scotland) Act 2000 provides a framework for safeguarding the welfare and managing the finances of adults who lack capacity due to mental illness, learning disability, dementia or a related condition, or an inability to communicate.

4.3 **Power of Attorney (POA):** A legal document appointing someone to act for and make decisions on behalf of the granter. It can cover:

- Financial matters only (e.g., dealing with bank accounts)
- Welfare matters only (e.g., deciding on appropriate care/accommodation)
- Or both financial and welfare matters. A person can only grant POA if they have capacity. Once the deed is signed and registered with 'The Office with the Public Guardian' it remains in force until it is either revoked by the granter or until death

4.4 **Guardianship Order (GO):** An order appointing someone to act on another's behalf. It can cover:

- Financial matters only
- Welfare matters only.
- Or both financial and welfare matters. Financial and/or welfare guardianship is only appropriate where a person does not have capacity to make decisions on their own behalf, and therefore cannot appoint a POA to act for them.
- GOs involve an application to the court – the procedure is lengthy (typically 6+ months) and complex, and when granted are normally for a period of 5-10 years.

4.5 **Intervention Order:** A one-off intervention order, which governs a specific action or decision which an adult lacks the capacity to make. An order can be made, via the Sheriff Court, relating to the adult's property (including termination of a Scottish Secure Tenancy), financial affairs or personal welfare.

Generally, there is no fixed period of time the order will remain in place, rather the order will last only until the action has been carried out. S.53(3) of the Adults with Incapacity (Scotland) Act 2000 places a duty upon the local

authority to apply for an intervention order relating to a particular decision, under circumstances where it appears that an order is necessary but nobody else is applying for one.

5. ABANDONMENT POLICY

General

- 5.1 Where SHA believes a Tenant has abandoned the property an exhaustive and auditable process of reasonable enquiries will be carried out, in accordance with the Abandoned Properties Procedure. A record of the enquiries undertaken will be retained.
- 5.2 It may be required, in some instances, for SHA to secure the house and any fittings, fixtures or furniture against vandalism, prior to repossession. In doing so, the Association, or appointed persons working on behalf of the Association, are permitted to force access to the house.
- 5.3 In all instances the approval of a Team Manager is required to recover a property via abandonment procedures.

Abandonment of tenancy (by all parties)

- 5.4 If, after conducting reasonable enquires, SHA is satisfied that the property has been abandoned, a notice will be served on the Tenant(s) which states that we have reason to believe the property is unoccupied and that they [the tenant] do not intend to occupy it.
- 5.5 The notice will specify that:
- the Tenant is required to inform us, in writing, within 4 weeks (28 days) of service of the notice if the Tenant intends to occupy the property.
 - the property will be recovered by service of a second notice (after expiry of the 4 weeks/28 days) if no contact is made, in writing, within that 4-week (28 day) period.
 - items within the house **may** be disposed of at point of repossession.
- 5.6 Following service of the notice SHA will continue to make reasonable enquiries as necessary to ensure that we are satisfied that the property remains unoccupied and that the tenant does not intend to occupy it.
- 5.7 If, following expiry of the 4-week (28 day) timeframe as specified in the first notice, the Tenant has failed to make written contact, SHA will serve a final notice bringing the tenancy to end with immediate effect, and take possession of the house without any further proceedings.

Abandonment by joint tenant alone

- 5.8 In instances where one joint tenant has alerted SHA to another joint tenant's abandonment of the tenancy, reasonable enquiries will be undertaken to **independently** verify the information.
- 5.9 If, after conducting reasonable enquires, SHA is satisfied that a joint tenant has abandoned the property, a notice will be served which states that we have reason to believe the property is not being occupied (by the abandoning tenant) and that they do not intend to occupy it. This notice will be served on the abandoning tenant, and each of the joint tenants.
- 5.10 The notice will specify:
- SHA has reason to believe that the abandoning Tenant is not occupying the house, and that they do not intend to occupy it as their home.
 - the Tenant is required to inform SHA, in writing, within 4 weeks (28 days) of the serving of the notice if they intend to occupy the house as their home.
 - their interest in the tenancy will be brought to an end if it appears to the Association at the end of this period that the Tenant does not intend to occupy the house.
 - SHA will serve a copy of the notice, as served on the abandoning Tenant, on each of the joint Tenants.
- 5.11 Following service of the notice SHA will continue to make reasonable enquiries as necessary to ensure that we are satisfied that the property remains unoccupied and that the joint-tenant does not intend to occupy it.
- 5.12 If, following expiry of the 4-week (28 day) timeframe as specified in the first notice, the abandoning Tenant has failed to make contact, SHA will serve a final notice bringing the abandoning Tenant's interest in the tenancy to an end (no less than) 8 weeks (56 days) later than the date of the second notice is served.

Personal belongings found within an abandoned property.

- 5.13 SHA will take a detailed inventory and photographs of any items left within the abandoned house at the point of repossession.
- 5.14 Items will be removed and disposed of with immediate effect if their cumulative value (if sold) is deemed to amount to less than the cost of 6 months storage.
- 5.15 Items will be removed and stored for a maximum of 6 months if their cumulative value (if sold) is deemed to amount to greater than the cost of 6 months storage.

- 5.16 In instances where items have been stored in accordance with 5.15; if the abandoning Tenant contacts the Association within the 6-month storage period, items will be released subject to receipt of payment for unpaid rent and all expenses. Expenses may include costs incurred as a result of:
- Securing property
 - Forced access.
 - Lock change
 - Storage of items
 - Outstanding rechargeable repairs
 - Outstanding court expenses
- 5.17 In the event that items are not claimed within the 6-month period, they may be disposed of at SHA's discretion, including by way of sale. Any funds obtained through sale will be offset against unpaid rent or any expenses, as described in 5.14 above.

Abandonment Register

- 5.18 The Scottish Secure Tenancies (Abandoned Property) Order 2002 places an obligation on landlords to maintain a register of houses in which property (personal belongings, household contents etc.) has been found. SHA will maintain a digital register of all abandoned houses and associated inventories.

Tenants lacking capacity and permanently residing in a care facility.

- 5.19 In some instances SHA may receive notification from a third party (i.e., family member, Social Worker etc.) that a Tenant, who has been deemed to lack capacity, has been made a permanent resident within a care facility, and thus is not occupying the property, nor will they return to occupy it as their principal home. SHA will not seek to recover the tenancy as an abandoned property in such instances.
- 5.20 The Association's primary course of action will always be to liaise with family members or Social Work Services to verify the incapacity and confirm the permanence of the residence within the care facility.
- 5.21 Where permanence has been confirmed the Association will seek to identify whether a Power of Attorney (POA) or Guardianship Order (GO) exists, and to engage with the named POA or Guardian to terminate the tenancy, in writing, on behalf of the Tenant. SHA requires sight of the original POA or GO, and to take a copy for our records in such instances.
- 5.22 In the event no Power of Attorney (POA) or Guardianship Order (GO) is in place, and no pending application is underway, SHA will liaise with Social Work Service to enquire about the Local Authority's intention to pursue an intervention order to bring the tenancy to an end.

- 5.23 In instances where Social Work Services confirm they will not pursue a GO or an intervention order, SHA will initiate court action to seek decree to end the tenancy, and for expenses incurred as a result of the action. Where the Association has concern that the tenant lacks capacity, guidance will always be sought from agencies qualified to determine the tenant's capacity, or to confirm a prior diagnosis (e.g., Social Work Services, GP, Hospital Consultants, and Solicitor). SHA will never presume to make a determination about the tenant's capacity.

6. APPEALING A DECISION

Appeals

- 6.1 A tenant or other customer who has been the subject of abandonment proceedings may appeal against repossession of the property.
- 6.2 The H(S) A2001, Chapter 1, Section 19 sets out that an individual who is aggrieved by the termination of their tenancy can raise a summary application to challenge the validity of the notices served. This must be done within 6 months of the second notice being served.
- 6.3 SHA will be obligated to allow continuation of the tenancy (if the property has not been re-let) or make other such accommodation available to the Tenant if the court decrees that the Association:
- a) Has failed to comply with the statutory procedures.
 - b) Did not have reasonable grounds for finding that the: (i) house was unoccupied, or (ii) Tenant did not intend to occupy it as their home.
 - c) Made an error in establishing the Tenant's lack of intention to occupy the property as their home, and the Tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the landlord of their intention so to occupy it.
- 6.4 Appeals against repossession of joint tenancy
- 6.5 In accordance with section 21 of the H(S) A2001, a Tenant who is aggrieved by termination of their interest in a joint tenancy by SHA under Section 20(3) of the Act may raise proceedings by summary application within 8 weeks after the date of service of the final notice.
- 6.6 SHA will be obligated to re-instate the joint tenancy or make other such accommodation available to the Tenant if the court decrees that the Association:
- a) Has failed to comply with the statutory procedures.
 - b) Did not have reasonable grounds for finding that the tenant: (i) was not occupying the house, or
 - (ii) Did not intend to occupy it as their home.

c) Made an error in establishing the Tenant's lack of intention to occupy the property as their home, and the Tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the landlord of their intention so to occupy it.

6.7 In the case where a declarator (re-instatement of joint tenancy) is granted, the court has additional powers to grant further orders in relation to the Tenant's interest in the tenancy as it sees fit; for example, for compensation to be paid.

7. COMPLAINTS

7.1 Any individual who is dissatisfied with how SHA have administered this Abandonment Policy may make a complaint to the Association. Any complaint will be considered in accordance with SHA's Complaints Handling Procedure, a copy of which is published to the SHA website or is otherwise available on request from SHA.

7.2 When a complaint has progressed through both stages of SHA's Complaints Handling Procedure, if an individual remains dissatisfied they may take their complaint to the Scottish Public Services Ombudsman (SPSO) who are the independent review body for public services complaints in Scotland.

8. EQUALITY AND HUMAN RIGHTS

8.1 In applying the Abandonment Policy, SHA will ensure it complies with the Equality Act 2010. The Act makes it unlawful to discriminate against, harass or victimise a person because they have one or more of the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

8.2 Article 8 of the Human Rights Act 1998 requires that an occupier is given respect for their home. Termination of the tenancy without legal grounds may constitute a breach of human rights. This policy provides a framework for the legal repossession of a property through Abandonment proceedings which ensures that human rights are respected.

8.3 An Equality Impact Assessment (EqIA) (Appendix 2) has been carried out in relation to this policy to assess the positive and negative Equality Impacts of this Policy.

9. DATA PROTECTION

9.1 SHA will treat all personal data in line with our obligations under the Data Protection Act 2018, the UK General Data Protection Regulation and the SHA Privacy Policy and Data Retention Policy. Information regarding how SHA process personal data and the legal basis for processing personal data is set out in SHA Fair Processing Notices.

10. DELEGATED AUTHORITY

- 10.1 Delegated authority is granted by the Management Committee through the SHA Scheme of Delegated Authority to the Director and SHA staff to implement the Abandonment Policy and Procedures.

11. POLICY REVIEW

- 11.1 This policy will be reviewed every three years, or sooner, in the event of a significant legal or regulatory change which affects this policy.
- 11.2 The policy, in parts, attempts to summarise current legislation. In any case of conflict between the two, legislation will always preside.



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