

11th July 2011

Our Ref : LP.MRD

By Post and Fax 0141 274 6210

FAO: Mr Martin Armstrong
Chief Executive
The Glasgow Housing Association Limited
Granite House
177 Trongate
Glasgow
G1 5HF

Dear Mr Armstrong

Your policy of ‘Arrestment in Execution’ against ‘innocent’ Private Sector Tenants

In relation to our Glasgow casework, Govan Law Centre is concerned that the GHA (YourPlace Property Management) are using arrestments in execution against private sector tenants in relation to debts owed by private landlords to you as a property manager.

We believe this policy approach will force private sector tenants to incur rent arrears, exposing them to eviction and the risk of homelessness. We believe this policy causes unnecessary cyclical monthly detriment to innocent private sector tenants, and exposes them to unnecessary potential fines and emotional distress.

The purpose of serving private tenants with arrestments is to arrest rent payments due to private landlords, and to require rent to be paid over to your company to meet the private landlord’s debt. We understand that this is a common method of debt recovery within YourPlace and a member of your staff has referred to such arrestments as “rent arrestments”.

It can be a frightening experience for our clients to have sheriff officers come to their door to serve such documents, and in our experience the service of schedules of arrestment is causing significant distress and inconvenience to ‘innocent’ private sector tenants.

Section 73G of the Debtors (Scotland) Act 1987 requires an arrestee to send to the creditor (and copy to the debtor), in the form prescribed by Regulation 4(b) of the Diligence (Scotland) Regulations 2009, information on the nature and value of any funds or property attached by the arrestment. Their failure to do so may result in them being ordered to pay the creditor up to £415.

Our concern is that private tenants receiving such documents will not understand the duties placed upon them and may not have the capability to comply. They may then suffer financially as a result of their lack of ability to deal with the document. This is very worrying, especially when GHA/YourPlace are unable to tell before service whether a tenant is particularly vulnerable or not.

Indeed, it would appear that even when GHA/YourPlace is aware that a tenant is vulnerable they are still minded to pursue this course of action. For example, in one case we were involved in, no funds or property were attached by the arrestment as the tenant did not hold any funds due to the debtor at the time the arrestment was executed. One of my colleagues wrote to GHA/YourPlace confirming this and advised that the client in question suffered from mental health problems which had been aggravated by the service of the schedule of arrestment in execution.

A member of staff from YourPlace telephoned my colleague to ask for details of the dates on which our client was paid her housing benefit to ensure that an effective arrestment could be carried out to

“*minimise the impact*” on our client as they intend to continue to pursue this method of recovery despite our client’s vulnerability. GHA/YourPlace are attempting to put private tenants in a situation where they are being forced to accrue rent arrears. This gives us serious concerns about the potential risk of homelessness.

Under Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988, private tenants can be evicted if they have accrued three months rent arrears which are still owed at the time the case calls in court. This is a mandatory ground for eviction and the sheriff generally has no discretion to consider whether or not it is reasonable to evict the tenant. We are concerned that should a private landlord choose to raise proceedings on this ground, a tenant may be evicted as a result.

Additionally, without receipt of the rent the landlord may be unable to maintain mortgage payments on the property which could result in the repossession of the property and the eviction of the tenant by the lender.

We are extremely concerned that the policy your organisation has chosen to adopt to recover debts from private landlords is putting vulnerable tenants at a real risk of homelessness. This appears to be in direct conflict with your Homelessness Prevention strategy where it is stated that “*GHA will embed the prevention of homelessness in all of our operational processes*”

The strategy advises that “*As the biggest Registered Social Landlord in Scotland, Glasgow Housing Association accepts that we have a moral responsibility to ensure that the homeless process for customers is seamless and that the outcome for our customers who have to take this route is positive*”.

Would you agree that this duty also extends to avoiding, wherever possible, taking action which puts people at risk of homelessness? GHA’s Rent Payment and Debt Strategy states, in relation to eviction of your own tenants for rent arrears, “*we aim to prevent homelessness and use legal action as a last resort, where all other options have been exhausted*”.

Whilst GHA’s policy may be to use eviction against your own tenants as a last resort it does not seem that consideration has been given to preventing the homelessness of private tenants in the same way. As pointed out in GHA’s Homelessness Prevention Strategy, there is:

“clear evidence that homelessness itself can impact on health and family cohesion due to lack of appropriate temporary accommodation and difficulties in accessing mainstream universal services such as health and education” and “without effective support this can lead to:

- *Loss of self esteem*
- *Becoming institutionalised*
- *Deterioration of mental and physical health*
- *Increase in substance misuse*
- *Loss of ability and will to care for oneself*
- *Increased danger of abuse and violence*
- *Increased chance of entering the criminal justice system*
- *Repeat homelessness.”*

These potential consequences faced by private tenants who owe no debt at all to GHA, and are ‘innocent’ parties in this matter, seem grossly disproportionate to the aim of recovering money from private landlords.

We therefore ask that you reconsider your policy here, and advise whether you will agree to stop serving schedules of arrestment on private tenants in Glasgow.

We are happy to meet with you to discuss this matter further if so advised, and look forward to your written response.

Yours sincerely

Mike Dailly
Principal Solicitor