

East Devon District Council

Possession of Council Homes and Garages Policy

Version 1

Officer Responsible: Housing Services Manager

Authorised by Housing Review Board on 8th March 2018

1 Previous Policies/Strategies

[Click here to add information on old policies/strategies being superseded.](#)

2 Why has the council introduced this policy?

This document outlines East Devon District Council's (EDDC), approach to the repossession of council homes and garages. The aim of this Policy is to establish guidelines for the recovery of Council homes and garages created by a breach of tenancy/license conditions, whilst supporting our tenants in matters relating to financial/social inclusion.

3 What is the council's policy?

3.1 Introduction

- 3.1.1 This policy applies to how the Rental and Estate Management sections will oversee the possession of council homes, garage licenses and formal license agreements where tenants have failed to adhere to the terms of their tenancy agreements/licenses.
- 3.1.2 A fair but firm approach to possession will be adopted, which is sensitive to individuals' circumstances.
- 3.1.3 Proactive steps are to be taken to prevent and minimise eviction where possible, recognising that from time to time tenants may experience financial/social difficulties. In these circumstances, Officers aim to support and work with tenants at the earliest opportunity to help tackle financial/social exclusion and to provide assistance to individuals experiencing difficulty in managing their tenancy/license.
- 3.1.4 The council's primary concern is to correct the breach of tenancy rather than to regain possession. Eviction shall be considered as a last resort if all other action has failed.

3.2 Council House and Garage Rents

- 3.2.1 Garage licenses are non-essential expenditure. Therefore, failure to pay will result in the license being terminated.
- 3.2.2 There is no-tolerance for arrears on garage licenses . Once garage rent is outstanding, we will serve a Notice to Quit and at the end of that period of notice (7 days minimum) we will change the locks and repossess the garage. (See Appendix 1 for full details of the recovery process). This is the only exception to point 4.2 below.

- 3.2.3 The Council's primary concern is to recover the rent debt rather than to regain possession. We will consider eviction only as a last resort if all other action has failed.
- 3.2.4 The administration, collection and recovery rests with the Strategic Lead – Housing, Health & Environment.
- 3.2.5 The Council believes that preventing rent arrears from building up is the preferred option. The measures that we will take to support this are:
- Adopting tenancy start-up procedures which include providing the new tenant/licensee with a Housing Benefit form or Universal Credit information, welfare benefits checks, a Welcome Pack and rental advice at accompanied lettings stage. The tenants/licensees will also be offered budgeting advice at this stage if they require it.
 - Advising tenants/licensees to submit their Housing Benefit claim form or application for Universal Credit straight away to maximise benefit and help prevent unnecessary delays.
 - Providing readily accessible information to tenants/licensees, particularly those with specific needs such as lack of numeracy and literacy skills.
 - Providing advice on the various payment options.
 - Making sure that tenants/licensees know who their Rental Officer is so that they can discuss tenancy issues at an early stage.
 - Estate Management will provide a follow-up visit to the new tenant/licensee within the first 6 weeks after sign-up.
 - We will signpost any tenants/licensees facing financial difficulty to our free, independent floating support service or other free financial support services, such as CAB, Stepchange, etc.
 - We will keep our Housing Options Team involved with any action, from Notice stage onwards, for any of our tenants/licensees that we know, or suspect, are vulnerable.
- 3.2.6 The Council will act promptly in contacting tenants/licensees if rent /service charge arrears begin to accrue and will adopt the following procedure:
- We will send reminder letters, make telephone calls and may also carry out a home visit.
 - If the reminders are ignored we may serve a Notice Seeking Possession / Notice Seeking Termination or a Notice to Quit, depending on the type of tenancy/license the tenant/licensee has. This is the first step of the legal process to obtain possession of the dwelling. The Notice gives a period of at least 28 days to clear the debt in full or to make an arrangement to pay in instalments. If the debt continues to increase, we will apply to the County Court for a hearing to seek a Suspended Possession Order on the property.
 - At the hearing, the District Judge will normally grant a Suspended Possession Order or an Adjournment on Terms, requiring the debtor to pay the rent and/or service charge as it falls due plus a fixed sum each week towards the arrears. At the Hearing, we will also seek an order for costs, which will be added to any arrears on the rent account.
 - If the debtor fails to keep to the terms ordered in the County Court we will inform the Court of the default and request the issue of a Possession Warrant, which the County Court enforcement agent will serve and execute to take possession of the property.

- 3.2.7 The Council will do everything possible to prevent evictions but, as a last resort, we will evict tenants if they do not pay their rent/service charges.
- 3.2.8 See appendix 2 for full details of the recovery process.

3.3 Changing possession orders

- 3.3.1 A tenant/licensee may be able to request a possession order be varied. This will depend on whether or not the judge had a choice when making the possession order in the first instance, for example in some situations the judge has no choice about making an order and cannot change it once made, as long as the landlord followed the correct legal procedure to obtain the order (This applies to introductory or demoted tenancies).
- 3.3.2 Where a tenant/licensee requests that a change to a possession order be made, they will be advised to seek independent advice about applying to the court to either have the possession order set aside, suspend or postpone the date for possession or vary the terms of the order. It will be the responsibility of the tenant/licensee to supply the relevant evidence (for example the reason they missed a rent payment, details about change in income, details of an outstanding housing cost claim) in their application to have a case re-heard or the possession order to be varied, set aside or delayed.
- 3.3.3 Any application to the court to set aside a possession order, does not automatically stop the court bailiff carrying out an eviction. It is the responsibility of the tenant/licensee to request the court to stay or suspend any warrants at the same time they apply for an order to be set aside or varied.

4. Equality impact considerations – the policy is high relevance to equality if it has a big impact on residents and users of the service

High

The Rental section will tailor its service to meet the diverse needs of individuals. They will foster good relations with people when providing their services to eliminate discrimination and promote equality of opportunity.

5. Data protection considerations

b) The collection and use of tenant's personal data will not exceed that agreed to in their tenancy agreement

The [EDDC Data Protection Policy](#) provides further information on how we store and use personal information.

The following privacy notice(s) provide further information on how we will use tenant's personal data, how it is gathered, and how long we will retain this information, and what rights tenants have in relation to this.

Rental - Collection of housing rent
Housing Services - Enforcing conditions of tenancy agreement

All our privacy notices can be found on the EDDC website
(<https://eastdevon.gov.uk/access-to-information/data-protection/privacy-notices/>)

6. Appendices and other relevant information

- Appendix 1 – Recovery of garage rents
- Appendix 2 – Recovery of rent arrears

7. Who authorised the policy/strategy and date of authorisation.

Authorised by Housing Review Board on 8th March 2018

8. Related Policies/Strategies, Procedures and Legislation

- Corporate Debt Collection Policy
- Tenancy Agreement
- Data Protection Act 1998
- Pre-action Protocol for Possession claims by Social Landlords
- Rent Arrear Procedures
- Housing Service Plan
- Income Management including Debt Collection Policy
- The breathing space moratorium and mental health crisis moratorium

9. Policy date for review and responsible officer

This Policy has been written in line with good practice and current relevant legislation. Unless there are any changes to such legislation beforehand, the next review of this Policy is due October 2025 and every four years thereafter.

Appendix 1

Recovery of Garage License

As a garage is a luxury item, as soon as the tenancy falls into arrears the Rental section will send a Notice to Quit. Unless the arrears are cleared within the 28 notice day period, the repairs section will be asked to organise a contractor for the locks to be changed.

The Estate Management Team will be notified at the time the notice is served, giving them advance warning that an inventory and garage clearance may be required.

Should a tenant (who has been evicted from garage) require the garage to be reinstated the rent arrears and charge for the lock change and any storage charges, must be paid in full prior to garage being considered for relet.

Should a former tenant debt be outstanding; the former tenant will be contacted by post to recover the debt through the Council's Former Tenant Recovery Procedure.

Appendix 2

Recovery of rent arrears

All tenancy/license agreements state that rent payments are due in advance. Rent is charged weekly to rent accounts and tenants can pay, in advance, at any frequency from weekly to monthly. Where rent is not paid when due the Council will take the following action:

Reminders – if rent has not been paid a reminder letter will be sent requesting that payments are brought up to date. If the full amount is not paid an arrangement can be made to pay the debt by instalments. If the debt is not settled or an instalment is missed a final reminder will be sent.

Final Reminders – if the debt remains unpaid or is not reducing a final reminder is sent warning of further action. Usually 2 different types of final reminder will be sent to the tenant/licensee prior to any kind of Notice being sent.

Notice Seeking Possession/ Notice Seeking Termination & Notice to Quit – if the debt reaches a level of £250, or 4 weeks arrears, a Notice will be served on tenants. A Notice Seeking Possession/ Notice Seeking Termination or a Notice to Quit will be served, depending on the type of tenancy/license the tenant/licensee has. These Notices give a minimum period of twenty eight days for the debt to be paid or for a repayment programme to be agreed and maintained. After the period of notice and for a further period of 52 weeks the Council can commence steps to recover possession of the dwelling by making an application to the County Court. Accompanying this letter are details of housing benefit surgeries, CAB contact details and a debt advice leaflet giving contact details of a number of debt advice agencies that give free and independent advice.

Telephone calls and/or text messages – telephone calls will be made to the tenant/licensee throughout the debt recovery process, to increase engagement. Text messages would only be used to ask the tenant/licensee to please contact us.

Home visits – Visiting the tenant's/licensee's home will be made throughout the debt recovery process to try to increase engagement.

County Court Hearing – at the hearing the Council will seek possession of the property, but this will normally be suspended or adjourned on terms depending on the size of the debt and the history of payment. The terms granted will be a reasonable amount in addition to the rent as it falls due and will be agreed with the County Court Judge. The Council will also be entitled to an order for costs, currently £395.50 and these costs will be awarded on the same terms as the repayment of rent arrears.

If the rent arrears are paid in full or at a low level the matter in Court can be adjourned generally or to the next available date or the proceedings withdrawn, but an order for costs will still be sought.

If rent arrears are substantial and the payment record is poor an outright order for possession can be sought.

If a tenant/licensee breaches the terms of an adjourned or suspended order an application will be made to the Court for the matter to be restored for hearing.

Warrant for Possession of Property – if a tenant/licensee breaches the terms of an adjourned or suspended possession order a letter is sent advising of the amount of that breach, giving 7 days for the sum to be paid and requesting that future payments are made when due. If the letter is ignored a further warning is given before a possession warrant is applied for. An application for a possession warrant will be made and this will incur a cost of £121, which will be added to the tenant's rent account. The County Court enforcement agent will then issue a date to the tenants/licensees when the warrant will be executed and their home repossessed. The tenant/licensee has the right to apply to have the warrant set aside and on receipt of such an application the Court will set a hearing date to hear the application. The District Judge will hear both parties and can decide to make a further suspended order on terms and give another opportunity for the tenants/licensees to remain in their home and pay the debt or the application can be dismissed, the warrant enforced and the tenants/licensees being evicted.

Principles of court action

- Possession Action should not be taken if tenants have made and successfully maintained repayment arrangements, including direct deductions from the appropriate state benefit.
- If housing benefit/ Universal Credit issues are outstanding, court action should be delayed.
- Court action should cease if a Breathing Space application is received. Court action can resume again once the 60 day period of delay has been surpassed or the tenant/licensee has breached the terms of the Breathing Space application..
- Court action should be the last resort when all other action has failed to result in repayment of arrears.
- Rental Officers should encourage tenants/licensees to seek advice, before they go to court, from advice agencies like the Citizens' Advice Bureau and floating support agencies. They should also encourage tenants/licensees to attend the court hearing in person so they can discuss their financial situation.

- Personal contact should always be maintained through the legal process. Providing effective advice and support will help to ensure tenants/licensees are able to remain in their homes.
- The Court will provide tenants/licensees with information on how to apply to the Court to vary the terms of a suspended order or how to apply to set aside a repossession warrant.
- In cases of possible eviction, close liaison with the Housing Options Team is essential, especially where children or vulnerable people are involved. We will notify the Housing Options Team at Notice stage of anyone we feel may need extra support, are vulnerable or likely to become homeless.