



# **Income Collection & Recovery Policy**

January 2023

HOU-POL-06

<b>0.</b>	<b>DOCUMENT CONTROL</b>		
<b>0.1</b>	<b>SUMMARY</b>		
	Income Collection & Recovery Policy		
<b>0.2</b>	<b>DOCUMENT INFORMATION</b>		
<b>Role</b>	<b>Name/Position</b>	<b>Date</b>	
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<b>Document Reference</b>	HOU-POL-06		
<b>0.3</b>	<b>DOCUMENT STATUS HISTORY</b>		
<b>Version</b>	<b>Date</b>	<b>Change owner</b>	<b>Reason for Update</b>
Version 1	Nov 2019		
Version 2	January 23		Routine review of Policy – change of legislation
Version 3	February 25		Update to section 3.19 regarding Rent Refunds
<b>0.4</b>	<b>DOCUMENT REVIEW DATE</b>		
<b>Review Due</b>	October 2027		
<b>Responsible Officer</b>	Paul Warburton, Group Housing Director		
<b>0.5</b>	<b>DISTRIBUTION</b>		
<b>Name / Department</b>	<b>Title</b>		
<b>0.6</b>	<b>ASSOCIATED DOCUMENTS</b>		
<b>Ref:</b>	<b>Title:</b>		
<b>Ref:</b>	<b>Title:</b>		

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## 1. Scope

This policy covers rental income collection and arrears recovery services for all Torus housing stock and tenure types including current and former tenants, leaseholders, shared owners and tenants of 'rent to buy' products.

## 2. Policy Statement

Torus is committed to providing excellent customer services that represent value for money for customers and partners. To enable this, rental income must be maximised. This policy sets out how Torus will manage income collection with a focus on early communication with those in debt, comprehensive financial support, and information about assistance. Collaborative working with partners will combine to achieve our aims of assisting customers to sustain tenancies, with eviction being the last resort. The policy is underpinned by a suite of supporting procedures.

## 3. Implementation

3.1 The policy is aimed at ensuring that rent and service charges are collected in a timely manner and that tenants are given assistance to enable rent to be paid on time and to avoid the build-up of any debt. The policy is designed to take a firm but fair approach considering customer needs and the requirement for Torus to remain a viable business in keeping with regulatory requirements and corporate and business plan objectives. The key objectives of this policy are to:

- Maximise income and minimise debt.
- Provide pre-tenancy support for prospective tenants to develop a payment culture.
- Provide support and assistance for tenants to maximise their income and manage their debts through a financial support offer which includes internal services and partnership arrangements with other agencies.
- Work with the customer to identify any disabilities or vulnerabilities, and when required make reasonable adjustments.
- Ensure recovery action is firm but fair in relation to those who do not pay.
- Provide a full range of flexible and accessible methods of payment for the customer.
- Undertake partnership work with respective stakeholders including Local Authority Benefits Services and the Department of Work & Pensions (DWP), to ensure that claims for Housing Benefit and Universal Credit are processed efficiently.
- Promote and publicise services available to tenants to bring about increased financial inclusion, confidence and capability.

3.2 The policy is aligned with the Pre-action Court Protocol guidance document which is available from the Ministry of Justice and the Pre-action Protocol for Debt Claims for leaseholder and shared ownership (SO) and Rent to Buy tenants which all social landlords must comply with. This focuses on the need for social landlords to make every reasonable effort to contact the customer in order to find a satisfactory solution to their rent arrears before commencing legal action.

### **3.3 Accessible Payment Methods**

Torus uses a comprehensive suite of rent payment methods that are convenient, cost effective and flexible providing the opportunity for tenants to pay their rent in a way that suits their needs. These include:

- Direct Debit with a flexible range of customer payment dates.
- Swipe rent card payments
- 24- hour telephone payments
- Standing Orders
- Internet Payments
- Cheque payments
- Debit Card/credit card
- Recurring card payments
- On-line payments via Torus 24/7 self-service portal

### **3.4 Current Tenant Arrears Process**

Torus has developed a separate suite of detailed procedures to guide staff to implement this policy. These can be found on the Sharepoint Income Services site.

In applying the procedures, Torus staff will take a person-centered approach and will apply reasonable adjustment to target timescales in recognition of the tenant's individual support needs. Adjustments should be used to facilitate referrals, risk assessments and arrangements for ongoing support in relation to safeguarding concerns including identification of domestic abuse and referrals to specialist support services.

### **3.6 Grounds for Possession – All Tenancy Types**

The legal grounds for eviction for each tenancy type are outlined within Torus's Tenancy Agreements. Torus will principally rely upon Ground 10 to seek possession under schedule 2 Housing Act 1988 for tenants in rent arrears; apart from Right to Buy (RTB) Leaseholders, Shared Ownership and Rent to Buy tenants which are detailed below. As the paragraph states, the legal grounds for Torus seeking a possession order to recover vacant possession of the property for each tenure type are contained in the new revised Torus agreements. This includes the use of Ground 12 of Schedule of 2 of the Housing Act 1988 for seeking possession in respect of tenancies where there are water rates arrears on the tenant's rent account.

### **3.7 Right to Buy (RTB) Leaseholders**

It is a condition of a Leaseholder's lease to pay the service charges. Failure to pay could lead to forfeiture of the lease and the loss of the leaseholder's home which would then be returned to Torus ownership. Torus will contact a leaseholder as soon as the account goes into arrears. Contact will be by letter, phone or email and at least two attempts to contact will be made.

If there is no response and no payment is received the following steps will be taken to recover the debt:-

- With mortgage – Torus will contact the lender who may offer to consolidate the outstanding arrears (this will then be added to the leaseholder's mortgage).
- Without mortgage or no response from mortgagee – Pre-Court protocols will be followed, and an application made to Court for a County Court Judgement. Once judgement is granted, further contact with the leaseholder and/or mortgage company will be attempted, and payment of the debt requested.

Grounds for Forfeiture - Torus will only seek to commence Forfeiture Proceedings when all alternative debt management actions have been exhausted. This will include liaising with mortgage lenders (if applicable), signposting to benefit/debt advice, considering Torus buyback of the property and the Leaseholder selling the property. All requests to commence Forfeiture Proceedings will need to be approved by the respective Regional Director.

### **3.8 Shared ownership**

The lease is treated as an assured tenancy under the Housing Act 1988. Torus will principally rely on mandatory grounds 2, 7 and 8 (part 1); and all discretionary grounds except grounds 9 and 16.

Torus will contact the shared owner as soon as the account goes into arrears. Contact will be by letter, 'phone or email and at least two attempts to contact will be made.

If the shared owner has a mortgage, it is a requirement of the lease that written contact is made with the lender prior to Torus taking possession proceedings. The lender may offer to consolidate the outstanding arrears (this will then be added to the shared owners' mortgage – however if the property is subsequently repossessed by the lender, then this sum will need to be repaid by Torus to the lender). Torus will work with the lender and the shared owner to ensure every effort is made to keep the customer in the property. All requests to enforce possession action or commence Forfeiture Proceedings will need to be approved by the respective Regional Director.

### **3.9 Rent to Buy**

All Rent to Buy tenants will have a monthly Assured Shorthold Tenancy and this will inform the arrears process. An external referencing agency (Rent Shield) will be used to reference applicants for affordability purposes and will be used to inform tenant eligibility in line with the Rent to Buy Policy.

Torus' rent to buy process requires a deposit from the tenant of the value of one month's rent at the start of the tenancy and this may be used to offset any arrears (or tenant damage) at the end of the tenancy. Contact will be made with a tenant within seven days of non-payment. If further non-payment occurs, or the arrears are not rectified following an agreed payment plan, then possession proceedings will commence as per the tenancy.

### **3.10 Additional Grounds for Possession – Use of Ground 8**

In some cases, Torus reserves the right to rely on mandatory Ground 8 of Schedule 2, Housing Act 1988 for possession. Ground 8 will only be considered for Shared Owners, Rent to Buy, Starter Tenancies and Assured Tenancies. Ground 8 will not be relied upon for Protected Assured Tenancies.

Mandatory Ground 8 can only be relied upon when both at the date of the service of the Notice Seeking Possession and at the date of the Court hearing there is at least 8 weeks' rent unpaid. (if the rent is to be paid either weekly or fortnightly).

The court has only limited discretion to postpone possession (whether by the order or a stay of execution) to a date later than fourteen days after the making of the order, unless the court is satisfied that exceptional hardship would be caused and cannot postpone the date of giving up possession to a date later than six weeks after the making of the order.

Torus will consider using Ground 8 in the following circumstances:

- Where the tenant has failed to engage with Torus and/or partner advice agencies, following on from repeat attempts to contact the tenants.
- There is a significant history of rent arrears, with or without previous court action.
- There is a long history of the tenant failing to complete the necessary documentation for their benefit claims to be processed, without good reason.
- A Notice of Intention to Seek Possession has been served using the discretionary Ground and the arrears have continued to significantly increase and/or the tenant has failed to engage with Torus.
- Customers in receipt of Universal Credit who willfully refuse to pay their rent.

The above list is not exhaustive, and each household's circumstances will be considered carefully.

Torus will not use Ground 8 if the tenant or a member of their household is in receipt of community care services by reason of mental health, disability or illness.

### **3.11 Approval for Evictions**

Torus will make applications to the Court for an eviction as a last resort when the tenant is not engaging and is wilfully failing to maintain payment of rent and repayment of arrears as set out by the Court. The Service Manager in conjunction with the Service Lead for Income will consider and approve any cases put forward for a warrant for eviction, prior to submission to the Regional Director with responsibility for Income for final approval and sign off.

### **3.12 Housing Advice – Commitment to Refer**

The Homelessness Reduction Act 2017 came into force on 3 April 2018. It places new legal duties on English local authorities and some public bodies. The Act focuses on prevention and, in a significant change, anyone who is homeless or at risk of homelessness will be able to access meaningful help. Whilst Housing Providers are not bound by any duties in the Act, Torus has signed up to the National Housing Federation's 'Commitment to Refer'.

Torus, prior to notifying the Local Authority will seek permission from the tenant to ensure compliance with The Data Protection Act 2018, if there is a risk the tenant may become homeless within the next 56 days. If the household is vulnerable or where the arrears levels are particularly high, we may use our discretion to make a referral without the approval of the tenant.

Torus will report to Landlord Operations Committee Quarterly on the number of evictions that have been carried out.

### **3.13 Government Debt Respite Scheme – Breathing Space**

In response to COVID-19, the Government Debt Respite Scheme (Breathing Space) came into force on the 4 May 2021 and offers a moratorium for debtors around being both pursued by creditors and having enforcement action taken against them.

There are two types of breathing space: -

- A Standard Breathing Space (SBS) which runs for 60 days.
- Mental Crisis Breathing Space (MCBS) which runs for the length of the mental crisis treatment plus 30 days after it ends.

The Scheme can only be administered by either the Financial Conduct Authority or a Local Authority where debt advice is provided to residents.

Anyone can apply for Standard Breathing Space but must owe a qualifying debt (rent arrears is one). The “breathing space” includes joint liabilities and covers the non-breathing space partner so it is based on the debt being included in the process not the individual.

The debtor will not qualify for a breathing space if they have a Debt Relief Order or an Individual Voluntary Arrangement (IVA) or active bankruptcy or had a “breathing space” in the last 12 months. For a Mental Crisis Breathing Space (MCBS) the debtor must also be receiving help from an Approved Mental Health Professional. A Mental Health Breathing Space can be commenced upon evidence by an approved mental health professional (AMHP).

#### During breathing space:

When a tenant is being supported through the scheme, Torus will receive notification from the Insolvency Service via email. The breathing space starts from the day after the Insolvency Service register is updated. Once notification is received Torus must:

- Stop any current enforcement or recovery action.
- Not commence any legal proceedings against the tenant.
- Not enforce a Court Order without the court’s permission.
- Not obtain a warrant.
- Not contact the tenant to chase the debt that is part of the breathing space.
- Not continue to receive or apply to the Department for Works and Pensions for third party arrears payments for the debt included in the breathing space.

If legal proceedings have already commenced, Torus must immediately inform the Court. The Courts may continue to make the order.

Contact with the tenant can only continue to be made in relation to ongoing liabilities or excluded debt. The tenant must maintain payments for on-going rent liability. If the tenant fails to do this Torus can contact the debt advisor and request a review of the Breathing Space with a view to it ending.



### Midway review

During a Standard Breathing Space, the debt advisor will conduct a review to confirm that the debtor is complying with their obligations. Torus will be informed by the debt advisor if the Standard Breath Space is ended as a result of the review.

The midway review does not apply to Mental Health Breathing Space, but the advisor should check regularly that the debtor is still receiving mental health crisis treatment. The Mental Health Breathing Space will continue for the duration of the treatment plus 30 days.

The Mental Health Breathing Space could be ended if the debt advisor has evidence that inaccurate or fraudulent information has been provided and it would not affect the personal circumstances of the debtor if cancelled. The debtor requests for it to be ended.

### At the end of the process

Torus can enforce the debt via the arrears recovery process unless the debtor has gone into a formal debt solution (Individual Voluntary Arrangement/Debt Relief Order / Bankruptcy).

## **3.14 Former Tenant Arrears (FTA) Collection**

Torus aims to minimise its losses to former tenants who leave owing rent and other debts and will make every effort to recover the monies owed. Torus has detailed procedures that guide staff in operational implementation of the collection of former tenant arrears. Whilst the detailed procedures are separate documents to this policy, outlined below are key elements of the operational procedures for the collection of former tenant arrears:

Torus will carry out a pre-termination visit with tenants who provide notice of their intention to terminate the tenancy, to discuss any arrears and agree a repayment plan, obtaining a forwarding address if possible. When the tenant formally relinquishes the tenancy, if there are rent arrears owing an arrangement with the tenant for repayment of the debt will be made.

If the tenant is deceased and there are outstanding arrears above £50 a letter will be sent to the tenant's Executor or the next of kin. If there is no response to the letter or the Executor indicates that no funds are available to clear the debt the account will be forwarded for write-off.

If the tenant has moved into residential care and the debt is over £50 a letter will be sent to the tenant at the residential home requesting repayment of the debt in compliance with Data Protection 2018 Act. If there is no response to the letter or it is evident there are no funds available to clear the debt it will be submitted for write-off.

Contact with former tenants will be made using a variety of methods including letters, telephone calls, and emails. All contacts and actions taken will be clearly recorded on the Housing Management System. Torus will use debt collection agencies, which are registered with the Office of Fair Trading, to pursue debtors who have failed to maintain a repayment agreement. Torus will also use tracing software to obtain forwarding addresses for debtors which will comply with data protection requirements.

Torus will consider taking legal action if the debt is over £500 and the debt is returned as unable to collect from the debt collection agency. Legal action could include enforcement of Money

Judgements via an Attachment of Earnings and/or a Charging Order (a charge on land or property).

### **3.14 FTA Write-Offs**

On some occasions FTA debts may not be recoverable. Torus will consider writing off debt in the following circumstances:

- Tenant cannot be traced.
- The debt is under £50 and uneconomical to pursue.
- The debt is less than £100 and no arrangement has been entered into to reduce arrears.
- The tenant has died, and estate cannot meet the debt.
- The tenant has entered residential care on a permanent basis and write-off is requested on compassionate grounds.
- The tenant has emigrated and has not provided a forwarding address and Torus are not able to trace any relatives.
- The tenant has been given a prison sentence and attempts to contact the tenant have proven unsuccessful.
- There are other personal circumstances, which make it unfair/unrealistic to pursue the debt i.e. severe physical/mental ill/disability.
- The tenant has entered into a settlement agreement for re-payment of the debt. The debt is part of a DRO or Bankruptcy Order.
- Tenant is able to provide evidence that they are a victim of domestic abuse and whereby economic abuse has been a factor.
- Tenant is able to provide evidence that they are a victim of a crime and whereby economic abuse has been a factor.

The Group Financial Director has the authority to approve the write off of any single bad debt of up to £5,000. A single bad debt of over £5,000 may only be written off on the authority of the Torus Board.

The Landlord Operations Committee receive an overview report in advance of cases being submitted to Board for write-off to give detailed scrutiny and provide assurance to the Board that every effort had been made to recover the outstanding debt.

The total amount of bad debts written off is reported to Board on a quarterly basis. Write-off' is a technical action and any debt can be written back on to the accounts if the former tenant is subsequently traced.

### **3.15 Bankruptcy Orders**

A Bankruptcy Order may be applied for by the debtor as a means of freeing themselves from overwhelming debts and Torus will manage such applications in accordance with Insolvency Act 1986 as amended by the Enterprise Act 2002 (in effect from 1 April 2004) and Torus' income recovery procedures.

### **3.16 Debt Relief Orders (DROs)**

The Tribunals, Courts and Enforcement Act 2007 introduced Debt Relief Orders (DROs), on 6 April 2009 to provide an alternative to bankruptcy. Unlike other forms of debt relief, DROs involve a

partnership between the Insolvency Service and the professional debt advice sector. Advisers from the debt advice sector act as 'approved intermediaries' and help debtors to apply for a DRO. The Official Receiver (not the court) will consider the application and if the application meets the criteria, grant the DRO. In instances where Torus is advised or becomes aware that a tenant is considering applying for a DRO, Torus will also review taking legal action to recover the property if rent payments are not maintained. On notification of such an Order, Torus would move the applicable debt to a sub account.

- A DRO usually lasts for 12 months. If the rent arrears are included in the DRO then during this time, Torus will accept payments off the debt, but would not be able to pursue payment of the debt.
- At the end of the DRO period, the debt on the DRO sub account will be written off, unless the Order has been revoked by the official receiver, which may occur if the tenant's circumstances have changed during the 12-month DRO period.
- If rent arrears start to accrue again after the DRO has been issued, Torus can pursue this debt using the procedures outlined within this policy.
- A DRO does not prevent Torus from applying for possession of the property if that action is considered appropriate to regularise the rent account. Although the rent under the DRO cannot be claimed, or a suspended possession order made including a term that they are to be repaid, it will not affect Torus claim for possession.
- If the tenancy is a joint tenancy and only one tenant has obtained a DRO, Torus can recover the rent arrears from the joint tenant, against whom there is no DRO, as the tenants remain jointly and severally liable for the rent.
- As with a sole tenant who has obtained a DRO, Torus will be able to seek a possession order against the joint tenant, but any money judgement would only be against the tenant whom there is no DRO.
- In certain circumstances it may be beneficial for Torus for the customer to apply for a DRO. For example, where they are maintaining rent payments but are struggling because of other debts, such as Council Tax arrears, Housing Benefit overpayments.
- Tenants should take independent legal advice before considering the DRO route.

Delegated authority is granted to the Group Financial Director to write-off any current or former tenancy arrears under £5,000 that have been discharged after the 'moratorium' period in relation to a DRO or bankruptcy. If the arrears are over £5,000 the cases will be presented to Torus Board for authority to be granted to write off the debt.

### **3.17 Financial Inclusion & Publicity**

Torus recognises the importance of providing tenants with opportunities to increase their financial capability and awareness in order to maximise their income and minimise the risk of falling into debt. In response Torus' charitable arm, Torus Foundation has in place a Community Strategy. The Strategy sets out four key objectives which are:

- Increase access to employment and training,
- Provide customers with support on Money Matters and benefit advice,
- Reduce digital exclusion; and,
- Promote health and well-being.

### **3.19 Rent Account and Former Tenant Arrears Credit Balances**

To ensure customers are managing and using their rent accounts appropriately and to minimise the risk of fraud, Torus will monitor on a quarterly basis, all former and current rent accounts with a credit balance of over £1,000. Torus will attempt to contact both former and current customers and as appropriate offer a rent refund.

Staff will follow procedures for the handling and processing of rent refunds, which include verifying all sub-accounts for any outstanding debts before issuing a refund. In exceptional cases, a rent refund may be granted if a banking error has caused a duplicate payment by the customer, resulting in financial hardship. All rent refunds must receive approval from the Income Services Manager or a Team Leader.

For former customers whose accounts have been terminated and who were receiving Housing Benefit (HB) or Universal Credit (UC), the rent refund will be delayed for up to 28 days after the tenancy ends. This delay will be in place unless HB or UC confirm that there is no overpayment. The purpose of this delay is to ensure any potential overpayment of benefits is resolved before the refund is processed.

For former tenants the following guidance will apply:

- Any credit under £10 will be written off where the tenant has not transferred, and Torus do not have a forwarding address.
- If the credit is over £10 and there is no forwarding address an attempt will be made to trace the ex-tenant. If the trace proves unsuccessful or there is no response to contact the credit will be written off.
- Where the credit is over £50 Torus will attempt to contact the customer via all methods available, including attempting to trace. All attempts at contact must be clearly recorded before the case can be submitted for approval for write off.
- Where a former customer cannot be traced and there are no sub- accounts which are in arrears, credit balances will be written off; however, should the customer be traced at a later date then the credit balance will be written back onto the system; this may occur for example if a former tenant is re-housed at a future date.

## **4. Consultation/Resident Involvement**

The policy has been subject to scrutiny via Torus Talk, Torus's Diversity and Inclusion Group and the Landlord Operations Committee.

## **5. Responsibility**

It is the responsibility of the Regional Director with responsibility for Income Services to ensure that:-

- All relevant staff are aware of this policy
- Customers are aware of this policy, and it is published on the company's website

It is the responsibility of all staff to ensure that the policy is applied.

## 6. Diversity & Inclusion

Torus will not discriminate against anyone on grounds of their race, colour, ethnic or national origins, religion, sexual orientation, disability, gender or age. We will take into account the needs of vulnerable households and households with children both within this policy and in its application. Households may be vulnerable for a variety of reasons including age, disability or illness. Taking into account the needs of vulnerable people and people with children may involve providing tenancies with a reasonable degree of stability, taking into account their needs when considering any changes to the tenancy and (upon the death of the tenant) giving consideration to their needs when deciding whether further tenancy rights should be granted.

When applying the policy, Torus will take a person-centred approach where appropriate and apply a reasonable adjustment where deemed fair and necessary. Torus reserve the right to adjust the policy by using options available for example: -

- Making a safeguarding referral.
- Responding to disclosures of domestic abuse or where staff suspect domestic abuse is a related to the tenant's arrears.
- Responding to disclosures of economic abuse or where staff suspect economic abuse is suspected.
- Adjusting target timescales for arrears pursuant to facilitate ongoing support.
- Providing alternative communications to support the tenant's understanding and engagement.
- Signposting to support services involving third parties who have specialist knowledge or expertise.

## 7. Monitoring & Review

This policy will be subject to a review in April 2025 The application of the policy is subject to ongoing scrutiny by Torus' Landlord Operations Committee and the Service Lead for Income Management.