

Research report

Evictions by social landlords in Scotland 2008-09

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Shelter

Evictions by social landlords in Scotland 2008-09

Summary of key points

This report looks at the progress that has been made on social sector evictions over the last year, including developments at a local and national level. It recognises that progress has been made but argues that more needs to be done to protect social tenants from eviction.

Developments nationally and locally include:

- Following a recommendation from the Repossessions Working Group in June 2009, the Scottish Government recently held a one day summit to look at whether protection for social tenants from eviction is adequate.
- Section 11 of the Homelessness etc. (Scotland) Act 2003 came into force on 1st April 2009, imposing duties on landlords (and lenders) to inform a local authority of legal proceedings against tenants (or homeowners).
- Stirling Council and Glasgow Housing Association (GHA) have both reviewed their policies on eviction and rent arrears and implemented major changes in the way they engage with tenants in arrears.

The data from 2008-09 cannot reflect these developments as yet:

- In 2008-09 social landlords took 19,708 tenants to court, obtained 7,818 decrees, and evicted 3,297 tenants.
- Local authorities raised 13,323 court actions, obtained 5,246 decrees, and evicted 1,773 tenants.
- Registered Social Landlords (RSLs) raised 6,385 court actions, obtained 2,572 decrees, and evicted 1,524 tenants.
- The majority of evictions in 2008-09 were for rent arrears.
- Overall social landlords evicted 8 per cent fewer tenants than in 2007-08.
- Evictions by local authorities fell by 15 per cent in 2008-09, whereas RSL evictions increased by 3 per cent (or 19 per cent if GHA is removed from the figures).
- GHA's revised rent arrears policies have resulted in a 24 per cent drop in evictions in 2008-09.
- Local authorities evicted fewer tenants in 2008-09, but took a similar number to court as in 2007-08

From these trends Shelter makes a number of observations:

- There is no obvious connection between the level of overall arrears and the propensity to evict. Eviction remains a crude and ineffective way of dealing with rent arrears.
- The use of 'technical eviction' (where a tenant is evicted and then immediately rehoused) by social landlords remains an unclear area of practice.
- Action is needed by individual social landlords, the Scottish Government and the Scottish Housing Regulator to ensure that protection for social tenants from eviction is adequate and that eviction is only being used as a last resort.
- In particular, we recommend that the forthcoming Housing Bill includes a 'pre-action requirement' that all social landlords must demonstrate adherence to before a decree can be granted.

1. Introduction

A year ago Shelter Scotland published an analysis of evictions by social landlords in which we argued for a dramatic reduction in evictions. We showed that social landlords were twice as likely to evict as mortgage lenders. In the meantime, mortgage default has continued to command a lot of attention, so we wanted to review whether policy on eviction in the social rented sector was equally susceptible to change.

The 2008 report, 'Evictions by social landlords in Scotland', set out the case for a concerted effort by social landlords to explore alternative mechanisms for dealing with arrears and to ensure that eviction is only used as an absolute last resort.

So, what has changed over the past 12 months? Are social tenants better protected from eviction? Have councils and RSLs improved their practice overall, or is there still wide variation within the sector?

Over the past year there have been some significant developments in evictions policy and practice at both a national and a local level. The Scottish Government's Repossessions Working Group reported in June 2009 and made recommendations which are currently being taken through Parliament in a Bill which will offer far greater legal protection for home-owners. The group also recommended that enhanced protection for social housing tenants be considered. Also in June, Stirling Council took the decision to ban evictions for rent arrears. The council has subsequently reviewed its policies and procedures for dealing with rent arrears and has implemented a new approach based on earlier intervention and face-to-face contact with tenants.

Over the course of the year, Glasgow Housing Association (GHA), Scotland's largest landlord, has also been implementing changes to the way it manages and addresses rent arrears. As with Stirling, earlier intervention and personal contact with tenants in, or at risk of, arrears have been central to GHA's new approach. Finally, as recently as November, the Scottish Government convened a day long 'summit' of housing experts to look at the options for reducing evictions in the social rented sector.

These developments are all significant and welcome. Scotland's commitment to house all homeless people by 2012 in fast approaching and prevention of homelessness looms even larger in the list of priorities. In this report we examine whether that message is being universally shared by all social landlords.

2. National and local developments in eviction policy and practice

The national picture

Since last year's evictions report there have been a number of developments around evictions in the social rented sector. Legislation has come into force to give local authorities increased opportunities to prevent homelessness as a result of legal action and there has been public recognition that current protection for social tenants from eviction is as deserving of scrutiny as measures to reduce the risk of repossession for homeowners.

Scottish Government Repossessions Working Group recommendation

Earlier this year, the Scottish Government convened a working group of lenders, housing experts, consumer groups and representatives from the legal profession to look at whether homeowners in Scotland were sufficiently protected from repossession and what further action is needed to reduce the risk of repossession for households in Scotland. The group's final report included a recommendation that the Scottish Government should not consider the needs of social rented tenants to be any less significant than those of homeowners and should review the protection from eviction currently available to social tenants.¹

Scottish Government evictions summit

Following the recommendation of the Repossessions Working Group the Scottish Government held a one day evictions 'summit' to consider current evictions practice in the social rented sector, look at the alternatives to eviction, and discuss whether current protection for social tenants is adequate. This one day summit in November was attended by a range of housing organisations, landlords, representatives of the legal profession, and money advice agencies. Reflecting on recent changes in practice by Stirling Council and GHA, the group consensus was that more work is needed to ensure that evictions are truly a last resort, particularly in cases of rent arrears, and the Scottish Government has agreed to take this work forward in January 2010.

Section 11 notifications

In 2008-09 around 14 per cent of homeless applicants who were previously council or RSL tenants lost their accommodation because of rent arrears.² As 2012 grows ever closer, it is imperative that every opportunity to prevent homelessness is taken. Section 11 of the Homelessness etc. (Scotland) Act 2003 came into force in April 2009 and places a duty on RSLs (as well as mortgage lenders and private landlords) to notify their local

¹ Scottish Government (June 2009), 'Repossessions group: final report'

² Scottish Government (September 2009), 'Operation of the homeless persons legislation in Scotland: 2008-09'

council when they initiate legal proceedings to repossess a property. The motivation behind this legislation is to provide local authorities with an early warning of potential homelessness.

Scottish Government guidance states that councils should have the flexibility to develop their own responses to section 11 notifications³; however if used effectively this legislation should form a key part of a council's homelessness prevention work. Although each section 11 notification means that an RSL has started legal action against a tenant (which we would argue should only ever be a last resort), there is an opportunity for councils to try to prevent the eviction from occurring or to take a planned approach to finding alternative accommodation for the affected household.

Early data released by the Scottish Government at the request of the Scottish Parliament's Local Government and Communities Committee show that just under two-thirds of section 11 notifications in the first six months were from mortgage lenders but it also shows that one-third were from RSLs.⁴ What the data do not tell us however, is the number of tenants taken to court by RSLs who then fail to pass this information to the relevant local authority.⁵ We also cannot tell from the data what action was taken by local authorities upon receipt of a section 11 notice from an RSL. It is therefore somewhat difficult to judge how well section 11 is working in practice and whether RSL tenants threatened with eviction are receiving more support or are more likely to have a planned move into alternative accommodation as a result of this legislation.

Developments in local practice⁶

As already mentioned, the past year has seen a number of developments in evictions policy and practice at a local level in Scotland. We have seen two social landlords undertake a major review of their management of rent arrears and implemented a series of changes in policy, practice, and hopefully organisational culture.

The most far-reaching step has been taken by Stirling Council.

³ Scottish Government (July 2009), 'Section 11 Statutory Guidance'

⁴ Between the 1st April and 30th September 2009 local authorities in Scotland received 6,017 section 11 notifications. 3,832 were from lenders, 1,979 were from RSLs and 206 were from private landlords.

⁵ No direct sanctions for non-compliance with section 11 currently exist.

⁶ In November 2009 Shelter Scotland published the briefing 'Eviction of children and families: the impact and the alternatives', which looked at the impact of eviction on families with children and identified some good practice examples from the social rented and voluntary sectors. As we see with Stirling Council and GHA, this briefing identifies early face-to-face engagement with tenants as a key facet of rent arrears management and eviction prevention.

Study 1 - Stirling Council

In June 2009 Stirling Council took the decision to ban evictions for rent arrears following a motion submitted to full Council by the housing convenor. Since then the council has taken steps to implement a new approach to rent arrears focused on early intervention and face-to-face engagement with tenants. The new approach adopted by the housing department concentrates on the prevention of arrears.

The focus on early intervention includes making contact with potential tenants to:

- discuss the importance of paying rent,
- complete benefit applications before the start of a tenancy and,
- assess a tenant's support needs and potential vulnerability to rent arrears.

Following on from pre-tenancy discussions all new tenants are visited within 4 weeks of moving and tenants assessed as vulnerable to rent arrears are visited by an income maximisation officer. In addition to arrears prevention work Stirling Council continues to make use of alternatives to eviction such as payment decrees, housing list suspensions, deductions from compensation payments for tenants in arrears who are displaced by regeneration work, and (nominal) benefit deductions.

At the end of 2009, the Council was conducting a 'best value' audit of evictions in the previous year to determine what the consequent costs of eviction had been.

Stirling Council has blazed a trail across the UK. But major progress, albeit with a different starting point, has been made by GHA which has significantly reduced the number of tenants evicted for rent arrears.

Study 2 - Glasgow Housing Association

The 2007 inspection report from Communities Scotland found that GHA's performance on rent collection was "poor and worsening"⁷; with current and former tenant arrears totalling almost £16.7m in March 2007.⁸

Following this report GHA undertook a complete re-evaluation of its policy and procedures for collecting rent and managing rent arrears. The key problems identified included:

- a lack of upfront discussions with tenants about the importance of paying rent,
- little personal contact with tenants,
- limited payment methods for rent,
- overuse of legal action to deal with arrears, and
- problems with housing benefit administration in Glasgow City Council (GCC).

The new approach adopted by GHA saw a shift in emphasis from legal action to earlier intervention and direct engagement by frontline housing staff. GHA has successfully reduced the number of tenants evicted (from 558 in 2007-08 to 424 in 2008-09) through an increased focus on pre-tenancy support, early intervention if a tenant falls into arrears, a wider range of rent payment options for tenants, and improved joint-working with the benefits team at GCC and Glasgow Homelessness Partnership (GHP). Through this new approach to rent arrears management GHA has reduced its total arrears from £10.1m in 2007-08 to the current level of £7.34m.⁹

So, we can see how a comprehensive review of procedures and practice has led to a dramatic change in the way that rent arrears and eviction are dealt with by two social landlords. The early feedback has focused around whether there has been a negative impact on arrears. This has been a concern in Stirling where arrears have risen, although the year on year change is in line with that for local authorities as a whole and undoubtedly reflects the fact that we are in a recession rather than resulting from any

⁷ Communities Scotland (September 2007), 'Glasgow Housing Association inspection report'

⁸ The Communities Scotland report equated this figure to 8.3% of GHA's total possible rental income for the year. The average for all Scottish RSLs was 5.2% in March 2006.

⁹ These figures were reported at the Scottish Government's evictions summit in November 2009.

policy change¹⁰. In GHA, the evidence so far flatly contradicts the view that fewer evictions means more arrears.

A common theme of both Stirling's and GHA's revised approaches to arrears and eviction is pre-tenancy engagement, or discussing tenancy and rent obligations with waiting list (or homeless) applicants before a tenancy starts. This is something that all social landlords need to consider more fully.

But just as importantly both organisations emphasise that change is not all, or even mainly about **procedure**. The essential change is in staff culture; getting back to what many staff came into housing management for – dealing with tenants as people and seeking to offer help rather than sanctions.

¹⁰ The other thing to bear in mind in Stirling is that there was no lead-time for the change in policy. It was implemented with immediate effect and services have had to play 'catch-up' in the six months since then.

3. Evictions 2008-09

So, we have seen the changes that two social landlords have made in their approach to rent arrears and eviction. To a large extent, we will need to see the 2009-10 data to judge what the impact has been and even then policy and practice will continue to shift.

However, what do the most recent data tell us about eviction practice across Scotland as a whole? Table 1 gives a summary of eviction actions by social landlords in 2008-09.

	Councils	RSLs	Total
Taken to court	13,323	6,385	19,708
Decree granted	5,246	2,572	7,818
Eviction occurred ¹¹	1,773	1,524	3,297
Additional evictions in which tenant was rehoused immediately after.	No data	490	490
Source: Housing Statistics for Scotland 2009 – Scottish Government (August 2009) and Annual Performance & Statistical Return (APSR) - Scottish Housing Regulator 2009			

As the table shows, over the course of 2008-09 almost 20,000 social tenants were taken to court by their landlord and 7,818 of these had a decree granted against them. 3,297 of these decrees resulted in an eviction or an abandoned dwelling, which represents just 17 per cent of the total number of cases going to court in 2008-09. This is not to suggest that all cases brought to court should result in a tenant losing his or her home, but perhaps social landlords should be prepared to reassess whether the court actions they initiate are really a last resort, or whether there is more that can be done to address rent arrears before taking legal action.

Overall, the number of evictions by social landlords has declined by 8 per cent, but as we discuss later this decline is largely the result of action by local authorities.

Local authorities

Overall, local authorities in Scotland took 13,323 tenants to court in 2008-09 and obtained a decree in 5,246 (39 per cent) of these cases. In total 1,773 tenants lost their home due to eviction or post-decree abandonment during 2008-09, which represents 13 per cent of cases taken to court and 34 per cent of decrees granted in the same period.

Of these 1,773 tenants, 896 were actually evicted and 877 abandoned their home before Sheriff Court officers arrived to enforce the decree. 48 of these evictions (around 3 per

¹¹ This includes evictions and post-decree abandonments (i.e. where a tenant abandons a property after a decree has been granted).

cent) were for anti-social behaviour, with the remaining 97 per cent presumed to be for rent arrears.

RSLs

Turning to RSLs, 6,385 tenants were taken to court in 2008-09, with decrees granted in 2,572, or 40 per cent, of cases. 1,524 tenants lost their home as a result of eviction action, which equates to 24 per cent of court cases or 59 per cent of decrees granted. Of these 1,524 tenants, 99 (6 per cent) were evicted for anti-social behaviour, proportionally twice as many households as councils evict for behaviour. However, as the numbers of cases are small, this report will not discuss this issue further in this report.

There is greater disparity between the numbers of actual evictions and post-decree abandonments amongst RSL tenants than council tenants, with 894 households evicted and 630 abandoning their home after a decree was granted.

Broadly, RSLs take fewer people to court than local authorities but evict a higher proportion of those that they do take to court. This conclusion has remained true for a number of years despite the swelling of RSLs ranks with former local authority stock (and presumably local authority managers).

We now turn to look at the two sectors in more detail and how practice in 2008-09 has changed.

4. RSL progress from 2007-08

Are RSLs evicting fewer tenants?

We have seen that RSLs evicted fewer tenants than local authorities in 2008-09, but how do the current RSL data compare to the figures from the previous year? Table 2 gives a summary of eviction actions by RSLs in 2008-09 compared to 2007-08.

	2007-08	2008-09	% change
Taken to court	6,657	6,385	-4%
Decree granted	2,903	2,572	-11%
Eviction occurred	1,484	1,524	+3%
Additional evictions in which tenant was rehoused immediately after. ¹²	510	490	-4%
Source: Annual Performance & Statistical Return (APSR) - Scottish Housing Regulator 2008 and 2009			

¹² These are known as 'technical evictions'. We discuss these later in the report.

We can see that in 2008-09 over 6,000 RSL tenants were taken to court, which resulted in 2,572 decrees being granted. In total 1,524 RSL tenants were evicted or abandoned their homes, which equates to 24 per cent of all cases taken to court in 2008-09. As the table shows, in 2008-09 RSLs took fewer tenants to court and obtained fewer decrees than during 2007-08, but the number of tenants evicted increased. It is not clear to us why the number of tenants losing their homes as a result of legal action by RSLs should have increased by 3 per cent when local authorities have reduced their overall use of eviction by 15 per cent.

Indeed, RSL eviction performance may be even poorer than this suggests. It is worth mentioning that Glasgow Housing Association (GHA), by far the largest RSL in Scotland, reduced its eviction rate by 24 per cent in 2008-09. If we remove GHA's figures from the calculations we can see a 19 per cent increase in evictions amongst the rest of the RSL sector between 2007-08 and 2008-09. It does suggest that overall, RSLs have not risen to the challenge which some of their number have posed.¹³

Evictions amongst stock transfer organisations

Later in the report we detail trends for individual local authorities. There are too many RSLs to make this practicable in a brief report, but below we report on those larger RSLs which have emerged from whole stock transfer from LAs.

In 2008-09, whole stock transfer organisations evicted 589 tenants, a fall of 13 per cent from 2007-08. However, if we remove GHA from the calculations there has been an increase in the number of tenants evicted by stock transfer landlords.

¹³ We pick out GHA here partly because it is the biggest landlord; partly because we have had opportunities over the last year to discuss changes in detail with GHA staff. However, GHA is not alone. Other RSLs who seem to have made some progress include: Link Housing Association and Dumfries and Galloway Housing Partnership.

RSL	2007-08	2008-09	% change
Argyll Community Housing Association (ACHA)	24	31	+29%
Dumfries and Galloway Housing Partnership (DGHP)	56	44	-21%
Glasgow Housing Association (GHA)	558	424	-24%
Hebridean Housing Partnership (HHP)	4	7	+75%
River Clyde Homes (RCH)	n/a	33	n/a
Scottish Borders Housing Association (SBHA)	35	50	+43%
Overall total	677	589	-13%
Source: Annual Performance & Statistical Return (APSR) - Scottish Housing Regulator 2008 and 2009			

If we look at the whole stock transfer organisations individually in table 3 we can see that three of the six evicted more tenants in 2008-09 than in the previous financial year.¹⁴ As the vast majority of local authorities have reduced their use of eviction, it is unclear as to why this should be the case. Although GHA remains the largest evictor in the social sector, the 24 per cent reduction in evictions in 2008-09 highlights the success of the revised approach to rent arrears management adopted by GHA over the last year¹⁵.

¹⁴ As the River Clyde Homes transfer was completed late in 2007-08 we have no comparative data.

¹⁵ We understand from GHA that its eviction rate in 2009-10 has continued downwards at the same rate. This will be interesting to check next year.

5. Local authority progress from 2007-08

Eviction actions initiated

Turning to local authorities, table 4 shows us the wide variation in practice amongst councils in terms of taking tenants to court. Overall, there has been a 0.4 per cent decrease in eviction actions initiated by Scottish local authorities; however a number of councils took more tenants to court in 2008-09 than in 2007-08. Out of the 26 councils who have not gone through complete stock transfer, 10 took more tenants to court in 2008-09.

As table 4 shows, South Ayrshire and Angus saw the largest percentage increases between 2007-08 and 2008-09. However, it is also worth noting that North Lanarkshire, the council that took the largest number of tenants to court in 2007-08, took an extra 240 tenants to court in 2008-09. On the other hand, East Ayrshire, also mentioned in Shelter Scotland's 2008 evictions report, has reduced the number of court actions by 37 per cent. Overall, Renfrewshire and East Renfrewshire have made the greatest reductions in court actions initiated, both cutting the number of tenants taken to court by over half.

However, it remains the case for a number of councils that court action is too readily used and it would surely be better for local authorities to channel resources into better rent arrears management, including earlier engagement with tenants who fall into rent arrears.

Table 4: Eviction actions initiated by local authorities in 2008-09		
Area	No. of eviction actions	Percentage change from 2007-08
Scotland	13,323	- 0.4%
Aberdeen City	1,285	+10.5%
Aberdeenshire	231	-38.4%
Angus	324	+167.8%
Argyll & Bute	n/a	n/a
Clackmannanshire	124	-26.2%
Dumfries & Galloway	n/a	n/a
Dundee City	675	+70.0%
East Ayrshire	647	-37.2%
East Dunbartonshire	166	+16.1%
East Lothian	407	-17.3%
East Renfrewshire	82	-51.2%
Edinburgh, City of	1,274	+37.0%
Eilean Siar	n/a	n/a
Falkirk	458	-8.0%
Fife	759	-16.6%
Glasgow City	n/a	n/a
Highland	469	-8.6%
Inverclyde	n/a	n/a
Midlothian	134	-7.6%
Moray	66	-45.0%
North Ayrshire	1,125	+29.6%
North Lanarkshire	2,248	+12.0%
Orkney	7	0.0%
Perth & Kinross	84	0.0%
Renfrewshire	392	-58.6%
Scottish Borders, The	n/a	n/a
Shetland	5	-16.7%
South Ayrshire	289	+177.9%
South Lanarkshire	727	-17.0%
Stirling	218	-20.1%
West Dunbartonshire	104	+112.2%
West Lothian	1,023	+3.9%

Decrees obtained

Table 5 shows us the 'conversion' rate of court actions to decrees granted. Across Scotland as a whole 5,246 (or 39.4 per cent) of the 13,323 court actions initiated by local authorities resulted in an eviction decree being granted. This represents a similar conversion rate to 2007-08. North Lanarkshire remains the council with the largest number of decrees granted and has increased both the numbers of cases taken to court and decrees granted since 2007-08. Dundee City Council's conversion rate, one of the highest in 2007-08, has fallen by 30 per cent, with 675 cases resulting in 332 decrees being granted. Midlothian Council currently has the highest conversion rate with 114 decrees granted, representing 85 per cent of actions raised in 2008-09. On the other hand, Fife remains the local authority with the smallest proportion of court cases leading to decree, 15.7 per cent in 2008-09. The question must be raised as why councils such as Fife are continuing to start legal proceedings against so many tenants if only a minority of cases lead to a decree. This is not to suggest that the Sheriff Courts should grant more decrees, but rather that local authorities should be putting their effort and resources into non-legal remedies.

Table 5: Number of eviction actions resulting in a decree being granted			
Area	No. of eviction actions	No. of decrees granted	Percentage of eviction actions resulting in a decree
Scotland	13,323	5,246	39.4%
Aberdeen City	1,285	728	56.7%
Aberdeenshire	231	76	32.9%
Angus	324	59	18.2%
Argyll & Bute	n/a	n/a	n/a
Clackmannanshire	124	29	23.4%
Dumfries & Galloway	n/a	n/a	n/a
Dundee City	675	332	49.2%
East Ayrshire	647	219	33.8%
East Dunbartonshire	166	60	36.1%
East Lothian	407	114	28.0%
East Renfrewshire	82	47	57.3%
Edinburgh, City of	1,274	681	53.5%
Eilean Siar	n/a	n/a	n/a
Falkirk	458	226	49.3%
Fife	759	119	15.7%
Glasgow City	n/a	n/a	n/a
Highland	469	154	32.8%
Inverclyde	n/a	n/a	n/a
Midlothian	134	114	85.1%
Moray	66	13	19.7%
North Ayrshire	1,125	227	20.2%
North Lanarkshire	2,248	1,129	50.2%
Orkney	7	2	28.6%
Perth & Kinross	84	39	46.4%
Renfrewshire	392	268	68.4%
Scottish Borders, The	n/a	n/a	n/a
Shetland	5	2	40.0%
South Ayrshire	289	52	18.0%
South Lanarkshire	727	159	21.9%
Stirling	218	61	28.0%
West Dunbartonshire	104	49	47.1%
West Lothian	1,023	287	28.1%

Evictions

Across Scotland 34 per cent of decrees granted in 2008-09 resulted in a tenant having to leave his or her home, which is a fall of 7 per cent from 2007-08. Overall the number of council tenants losing their home as a result of legal action has fallen by 15 per cent across Scotland as table 6 shows. The majority of local authorities have reduced the number of tenants evicted since 2007-08, however six councils evicted more households in 2008-09 than in the previous year. North Lanarkshire still evicts the largest number of tenants¹⁶, but evictions decreased from 410 in 2007-08 to 302 in 2008-09, a fall of 26 per cent. The City of Edinburgh Council is the next biggest evictor, with 263 tenants losing their homes in 2008-09, an increase of 14 per cent on the previous year. The council with the biggest drop in evictions from 2007-08 is Moray, reducing the number of tenants losing their homes from 28 to five.

¹⁶ This is perhaps unsurprising given the size of North Lanarkshire as a local authority.

Table 6: Abandonments and evictions 2007-08 and 2008-09			
Area	No. of abandonments and evictions 2007-08	No. of abandonments and evictions 2008-09	Percentage change from 2007-08
Scotland	2,089	1,773	-15.1%
Aberdeen City	245	221	-9.8%
Aberdeenshire	36	33	-8.3%
Angus	14	28	+100.0%
Argyll & Bute	n/a	n/a	n/a
Clackmannanshire	25	26	+4.0%
Dumfries & Galloway	n/a	n/a	n/a
Dundee City	85	71	-16.5%
East Ayrshire	179	104	-41.9%
East Dunbartonshire	22	23	+4.5%
East Lothian	15	14	-6.7%
East Renfrewshire	10	6	-40.0%
Edinburgh, City of	230	263	+14.3%
Eilean Siar	n/a	n/a	n/a
Falkirk	110	76	-30.9%
Fife	63	73	+15.9%
Glasgow City	n/a	n/a	n/a
Highland	26	25	-3.8%
Inverclyde	n/a	n/a	n/a
Midlothian	60	49	-18.3%
Moray	28	5	-82.1%
North Ayrshire	69	54	-21.7%
North Lanarkshire	410	302	-26.3%
Orkney	4	1	-75.0%
Perth & Kinross	10	10	0.0%
Renfrewshire	170	146	-14.1%
Scottish Borders, The	n/a	n/a	n/a
Shetland	3	1	-66.7%
South Ayrshire	30	21	-30.0%
South Lanarkshire	97	70	-27.8%
Stirling	27	27	0.0%
West Dunbartonshire	29	49	+69.0%
West Lothian	92	75	-18.5%

Having reported the data, we can turn to some of the other issues surrounding social sector evictions and rent arrears management.

6. Evictions and rent arrears

As we touched on earlier, eviction is not an effective way of managing, or indeed recovering, rent arrears. The Scottish Housing Regulator (SHR) has identified preventative action and early intervention as the most effective ways to reduce rent arrears in its recent report looking at RSLs and homelessness. This report, which included six Glasgow case studies, found “no obvious correlation between our case study landlords’ evictions rates and their arrears performance”.¹⁷ A similar previous report from Communities Scotland also highlighted that eviction “rarely solves the problem [of tenant debt] for landlords” and merely converts the debt to former tenant arrears.¹⁸

Using eviction to stop arrears building up is not an effective way of addressing tenant debt overall. GHA’s revised approach towards rent arrears management has resulted in a drop of over £2.5m in current tenant arrears since 2007-08 combined with a 24 per cent reduction in the number of tenants evicted. This suggests that it is possible for a social landlord to effectively manage, and reduce, rent arrears without relying on eviction in every case.

Turning to the national picture, the total rent arrears for local authorities in Scotland was £37.3m in March 2009, an increase of £1.9m on the previous year. RSL arrears totalled £42.6m in 2008-09, a decrease of £2m from 2007-08.¹⁹ However, as we have seen, GHA has reduced its arrears by over £2.5m since 2007-08, so it would be reasonable to suggest that most, if not all, of this drop in RSL arrears is a result of GHA’s revised approach to rent arrears management. If this is the case then the remainder of the RSL sector has not reduced its overall arrears total over the last year, despite an increased number of evictions. Furthermore, despite the decrease in local authority evictions, the overall arrears bill for councils in Scotland has increased over the last year.

7. ‘Technical’ eviction?

Another area of evictions practice that warrants further scrutiny is the use of ‘technical eviction’. In addition to the 1,524 evictions by RSLs in 2008-09, a new post-decree tenancy was granted at the same dwelling in a further 490 cases. These ‘technical evictions’ raise questions as to the rationale behind a social landlord pursuing this course of action. What sets these 490 cases apart from the 1,524 tenants who had a decree

¹⁷ Scottish Housing Regulator (November 2009), ‘Thematic report: RSLs and homelessness’

¹⁸ Communities Scotland (2005), ‘Thematic study: evictions in practice’

¹⁹ The total arrears figures for councils and RSLs have been taken from the Scottish Government’s briefing paper for the evictions summit (November 2009), which set out the current picture of social sector evictions in Scotland, some of the alternatives to eviction, and the guidance and research currently available.

against them enforced by their social landlord? Why, for some tenants, has eviction really meant eviction, while others have been rehoused?

The answers to those questions remain elusive. Early on, it was suggested to us that those immediately rehoused would be given the insecure 'Short Scottish Secure Tenancy'. In effect, they would be on probation for a period. However, there are no data on the type of tenancy granted in 'technical eviction' cases. Indeed, we cannot see what the legal grounds would be for granting such a tenancy.²⁰

Would a social landlord also consider granting a new post-decree tenancy if a tenant was considered able to repay arrears in full or had promised to stick to a repayment plan? If this is the case then shouldn't social landlords be seeking to engage with tenants prior to initiating legal action to discuss debt recovery and repayment options?

Although the numbers of 'technical evictions' are only formally recorded for RSLs, this is not a practice confined to housing associations. To allow comparison with RSLs, the Scottish Government should require local authorities to submit figures for the number of tenants granted a post-decree tenancy as part of their annual statistical return. There is certainly a need for further exploration and discussion of the rationale behind, and the extent of the use of, 'technical eviction' across Scotland.

8. Conclusions

Overall, during 2008-09, we have seen a decrease in the number of council tenants evicted. Although the overall evictions figure for local authorities in 2008-09 was lower than the previous year, a small number of councils increased their use of eviction. This is concerning as local authorities should be exploring every possibility to prevent homelessness as the 2012 homelessness commitment approaches and should, therefore, only use eviction as an absolute last resort. Despite a reduction in the overall number of tenants evicted, local authorities took a similar number of tenants to court in 2008-09 as in the previous year. So, there is a need for councils to recognise that the principle of eviction as a last resort should include the initiation of legal proceedings against a tenant and not just the enforcement of a decree. Local authorities should be seeking to reduce the number of tenants being put through the eviction process, at every stage.

Turning to RSLs, there has been an increase in the number of tenants losing their homes as a result of legal action by an RSL. If we remove GHA from the equation the increase in

²⁰ The Housing (Scotland) Act 2001 gives the following grounds for an SSST to be created: where a tenant has been previously evicted for anti-social behaviour; where an Anti-Social Behaviour Order (ASBO) has been granted against a member of the household; for properties leased by a landlord from another body; and where the property is being used as temporary accommodation (including cases where a tenant is in receipt of housing support services).

RSL tenants being evicted is even starker. RSLs do not share the same legal duties to house statutorily homeless households as local authorities; however, it is reasonable to expect an RSL to promote tenancy sustainment and look for alternative ways to address rent arrears besides eviction. As the priority need categories widen in the run up to 2012 we can expect councils to refer an increasing number of statutorily homeless households to RSLs for permanent housing, so it makes little sense for housing associations to continue to evict at the current rate.

So, there is clearly still work to be done around evictions policy and practice in the social rented sector. One outstanding issue that merits further investigation is the practice of 'technical eviction'. To allow comparisons between local authorities and RSLs, the Scottish Government should require councils to submit data on 'technical evictions' as part of the annual homelessness statistical return. As this report has discussed, the rationale behind this practice is not entirely clear and an understanding of the scale of its use, as well as the motivations for each individual landlord would be helpful starting points.

9. Recommendations

Eviction should be a genuine last resort for social landlords in Scotland, particularly in cases of rent arrears. Better arrears prevention and management is needed across the social rented sector to ensure better outcomes for tenants, by keeping them in their home, and landlords, by addressing the cause of the arrears. Each social landlord should undertake a review of its arrears management and eviction policies to identify opportunities for better arrears prevention, earlier intervention, and alternative ways to address rent arrears without consistently relying on the use of eviction. The work that Stirling Council has pioneered over the last year, along with some other pace-setting landlords like GHA, demonstrates that an effective approach to managing rent arrears can be achieved with fewer, or no, evictions. Social landlords should take a critical look at their policies and consider different ways of working, such as pre-tenancy discussions, earlier interventions, and increased personal contact with tenants.

So, firstly, Shelter Scotland would like to see every social landlord undertake a review of its policy and practice on eviction and rent arrears management.

Secondly, there is a role for the Scottish Housing Regulator (SHR) to play in ensuring that eviction is only used by social landlords as a last resort and alternatives to eviction are put in place. The regulator should take account of eviction levels, including tenants taken to court, in regulatory risk assessments of local authorities and RSLs.

Thirdly, following the evictions 'summit' in November, Shelter Scotland is calling on the Scottish Government to include an addition to the current Housing Bill to increase

protection from eviction for social tenants. We are seeking a pre-action requirement, similar to that in the current Homeowner and Debtor Protection Bill, which will set out the actions that social landlords must take before an eviction case can call in court. A pre-action requirement will provide a uniform level of protection for social tenants and will ensure that social landlords are using eviction as an absolute last resort after all other alternative courses of action have been explored. We would expect required action to include: benefits checks, income maximisation tests, support needs assessments, and a consideration of the impact of eviction on children or other dependents within the household.²¹

Has evictions practice changed over the last 12 months? Yes, to some extent. We have seen radical changes to the way some landlords deal with arrears and evictions, and the Scottish Government has pledged to take action to increase protection for social tenants. However, over the course of 2008-09 a total of 3,297 social sector tenants lost their homes as a result of eviction action by their landlord. We have argued in this report that eviction is not an effective way to deal with rent arrears and as the 2012 homelessness commitment approaches all social landlords must urgently consider whether eviction is, in reality, always a last resort.

²¹ Further discussion of the impact of eviction on children can be found in Shelter Scotland's recent briefing 'Eviction of children and families: the impact and the alternatives'.