

## Appendix 1

### Explanation Letter to all those on Court Orders

"You will be aware that **mhs homes** has a Court order in respect of the property you occupy for rent arrears. If you are paying your rent in accordance with that order then your legal status as a tenant will not be altered. However, if you fail to make payments on time then **mhs homes** is planning to introduce a new Policy relating to "Tolerated Trespassers" which comes into operation on 02 January 2006.

The purpose of this letter is to explain just what this means and how it might affect you.

The legal definition relating to tolerated trespassers comes into effect only if **mhs homes** has been granted a possession order by Medway County Court and notification has been received from Direct Debt Collection (DDC) that the required payments have not been made in full, or on time, and the terms of the possession order have therefore been breached.

This could have a significant impact on your tenancy agreement, which due to this breach would come to an end. Future occupancy would be treated as a "tolerated trespasser" which means there is no longer an assured tenancy, any protected status, and rights under the tenancy agreement are no longer applicable.

Occupants would have to continue to make required payments as they would still be responsible for the debt, but payments received would be classed as mesne profits for use and occupation only.

It is important that you are made aware of the following implications of this change in status. When a breach of the order occurs a letter will be sent out by the Area Housing Manager outlining the change in status.

The letter will contain an explanation of "tolerated trespasser" and the following points would be outlined;

- The tenancy agreement is not automatically revived by bringing the Court order payments up to date at a later stage.
- If an occupant wishes to revive the tenancy they must apply to the Court before the order is cleared in full or there is no method for revival.
- There are significant implications for those tenants with a protected rent status as the right to a 'protected rent' is lost as soon as the order is breached and the original tenancy ceases to exist. From the April following the beginning of the tolerated trespasser status, the use and occupation charges will be increased by inflation plus 10% per annum.

- As a tolerated trespasser there is no succession right on the property.
- As a tolerated trespasser there is no Right to Buy on the property.
- If other factors e.g. nuisance or property condition arise so that **mhs homes** are no longer prepared to tolerate the trespass, **mhs homes** may apply direct to the bailiff for an eviction warrant.
- It is not our intention to create a new tenancy by sending the standard rent increase letter each year. This will be stipulated in rent increase letters from April 2006.
- Once the debt and costs are cleared in full **mhs homes** may agree to initiate a new tenancy agreement but this would be as a Trial Tenant on an assured shorthold tenancy (periodic). Those who previously held a tenancy with protected status would also be offered a trial tenancy but the rent would be based on the current protected rent with an annual increase of inflation plus 10%.
- If an occupant refuses to sign a new tenancy agreement they would continue paying for use and occupation at the higher level and have no tenancy rights, but remain as tolerated trespasser. If an occupier with previous protected status refuses to sign a new tenancy then they will be charged use and occupation at the higher assured rent level. In both situations it would be in the occupants interest to sign and gain tenancy status.

If the occupant refuses to sign a new tenancy **mhs homes** could apply to court for possession, as there is no tenancy agreement in effect.

If you have any queries relating to this letter please contact the undersigned. Alternatively independent advice can be obtained from the Citizens Advice Bureau who can be contacted on 01634 573525 or Shelter on 01634 811166."