SDAS HA Policy Issue - Nov 17

Specialist Debt Advice Team has been made aware of a 'Bankruptcy and Debt Relief' procedure operated by a large Housing Association that gives cause for concern.

Rent arrears are a qualifying debt and must be declared. It is accepted that landlords have discretion to seek possession based on non-payment of rent, but this is discretionary. They cannot recover the arrears entered in the DRO unless the client agrees to repay them. The DRO Team has agreed a client can do so to avoid eviction, although the repayments are not an allowable expense. This is covered in the DRO Toolkit.
There are potentially issues with the policy we have seen in terms of fairness:

- The policy repeatedly suggests that if arrears are entered in insolvency, the HA may have 'no option' but to seek a possession order.

The policy does state they 'may' have no option as opposed to 'will' have no option, but we are concerned that in practice discretion may be fettered. If a policy allows for discretion then it should also operate discretion on a case by case basis from a public policy angle.

- The policy urges clients to reconsider insolvency

There are potentially two issues with this. If a rent officer is discussing alternative options to insolvency then they *may* be 'debt-counselling' as defined by the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, article 39E. Whereas a HA may have FCA authorisation for debt-counselling, there may well be an issue over the advice being within the client's 'best interests' as per various rules in CONC chapter 8. It is also likely to be in breach of the FCA's principles for business (principle 6).

Advice should also be properly supervised and delivered by those with necessary skills for that role under the FCA's Senior Management Systems and Controls (SYSC) rules - If a rent officer is not trained to give debt advice, then they should not be making any recommendations, but should signpost to a debt adviser.

- The policy also urges a client to leave rent arrears out of insolvency

In bankruptcy, this is not possible as the scheme covers existing liabilities whether they are listed or not. In a DRO, if the debt is not listed it is not covered by the scheme. The same issue over 'best interests' applies.

Additionally, to purposefully omit goes against insolvency legislation. S.251B states a debtor '**must include** a list of the debts to which the debtor is subject at the date of the application.' The client will also be aware of the omission, so at any point will owe the DRO Team a duty to alert them to the omission under S.251J(3) and (5).

The DRO Team may revoke a DRO under s.251L(2)(b) if they deem a client has not complied with duties under s.251J.

If the rent arrears are omitted but would mean the debt level exceeded £20,000 then the DRO may be revoked under s.251(3)(b)

There may also be grounds to apply a Debt Relief or Bankruptcy Restriction Order under schedule 4ZB, para 2(2)(m) (failing to cooperate with the DRO Team) and schedule 4A, para 2(2)(m) in bankruptcy -

It is strictly an offence to knowingly make omissions under s.251O and potentially under s.356(d), although the HA policy *may* provide mitigation.
Although most HAs do operate clear policies in practices, the worry with policies such as this are that clients are discouraged from insolvency. The insolvency scheme may help reform their tenancy in due course, but regardless may otherwise be in the client's best interests. There is also a concern that a client may inadvertently engage in misleading the DRO Team or Official Receiver.

Such policies should be challenged within your networks and through policy work. In this instance Shelter will speak with the HA directly. If the HA in question is also an ALMO (and a public body) these procedures may be challengeable by judicial review. In any case, complaints can be made and escalated to the Housing Ombudsman where detriment is caused.