

LSA

Legal Services Agency

Doing the Right Thing,  
the Right Way

# What to do if you are facing eviction for rent arrears:

Information for tenants of housing  
associations, councils and other  
registered social landlords (RSLs)  
in Scotland



Includes information about services for those living  
in or around Glasgow and in Inverclyde

## About this leaflet

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With help, it is possible to sort out most rent arrears problems, even if it seems as if there is no hope:

- You may be able to keep your home and pay off rent arrears at a reasonable rate
- Even if your case goes to court, you have a good chance of getting more time to pay off any arrears in a way that you can manage

This leaflet gives some information about your rights and was funded by the Scottish Government.

It is aimed at tenants (and their family members) of councils (local authorities), housing associations or other registered social landlords (RSLs) who are facing eviction because of rent arrears.

It also gives details of where you can get help if you live in Glasgow or Inverclyde.

If you are not sure what kind of tenancy you have; are a private tenant; or are facing eviction for other reasons, contact one of the organisations on page 22 for advice as soon as possible. This may help you avoid eviction.

## How LSA can help

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We can help you with any aspect of eviction for rent arrears. This includes:

- Giving you legal advice
- Representing you in court
- Putting you in touch with money and benefits advisers

We are legal aid solicitors (lawyers).

You can phone for an appointment or come to one of our drop-ins without an appointment. For our Glasgow and Greenock phone numbers and opening times see pages 22–24 and 26.

We are also at Glasgow Sheriff Court every Wednesday before the eviction courts. Come early and we will try to help you in court.

The information in this leaflet is correct at October 2013.

## Advice and legal help

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The threat of eviction can be very frightening. But, there is usually a way to prevent it. If you get advice about money and benefits, speak to your landlord, and get a solicitor (lawyer) to do any court work, there is a very good chance that you will keep your home, even if the rent arrears are serious.

The main thing is to get help as soon as there is a problem. If you get official letters, don't ignore them. Take them to someone who can help (see page 22).

### **Remember:**

- Rent arrears will not go away. The sooner you get advice the better
- Try to sort things out directly with your landlord. If this is difficult get help (see page 22)
- Your landlord should try to help you sort things out. By law, they have to do this before starting any court action. Remember that, even if they threaten eviction, landlords usually want to keep their tenants in the house, paying the rent
- If you are facing court action, get a solicitor

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- Make sure that you are getting all the benefits due to you. Ask an advice service (see page 25) to check this. Many housing associations have a welfare rights adviser who can help their tenants
  - If you get some housing benefit, but are having difficulty paying the rest of the rent due, you may be able to get extra help with your housing costs through the Discretionary Housing Payment Fund. Get advice about this (see page 25)
  - If you are claiming housing benefit, make sure you give the housing benefit office all your supporting evidence. Get a receipt. If you need more time, ask for it, in writing if possible
  - Get money advice (see page 9 and 25) for help with debts or budgeting or other money matters
  - Keep copies of all official letters and papers you get or send

# What to do if you have rent arrears

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## **If you are behind with your rent:**

- Get money and legal advice as soon as there is a problem (see page 22). The sooner you ask for help the better as this can prevent eviction
- Have your benefits checked to make sure that you are getting all the money you are due
- Speak to your landlord as soon as possible and keep in touch with them
- Make sure you pay your rent now. Arrange to repay the arrears, even if it is only a very small amount every week. A CAB or other advice service ('money advice') can help you with this

## **Your landlord must help**

- By law, your landlord must offer you information and offer to help you to sort out the rent arrears before starting any court action to evict you
- If your landlord does not do what they are supposed to do by law, then the court may refuse to evict you

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## **The landlord must:**

- Give you information about your tenancy agreement and how much you owe
- Give you advice about housing benefit or any other help you are due (or tell you where to get help)
- Tell you where you can get help to deal with debt problems
- Help you to work out a reasonable plan for paying your rent and any rent arrears

## **The landlord should not start any court action if:**

- You have applied for housing benefit which would allow you to pay off or reduce the arrears to an amount which is acceptable to your landlord
- You have agreed a repayment plan and are paying that or you are doing anything else which is likely to pay off the arrears in a reasonable time

So, keep in touch with your landlord and stick to what you agree with them. If you are not sure of anything, get advice.

If you are sent any court documents: get a solicitor immediately.

# Housing benefit

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## The 'bedroom tax'

The council may decide not to give you your full housing benefit if it thinks you have more rooms than you need.

If you disagree with its decision, get advice as soon as you receive any letters about it. You usually only have **one month** from the date of the decision to appeal. If you miss this deadline get advice as soon as possible.

If it is difficult to pay your rent because you do not have enough housing benefit, get advice about money and benefits (see page 25).

Your landlord may try to evict you if you have rent arrears. So, although it is very difficult, your rent is a priority debt.  
**Try to pay it.**

You can also apply to the landlord for a smaller house. Keep any letters about this. If there are no smaller houses, the fact that you have applied for one may help if your landlord takes you to court because of rent arrears caused by the 'bedroom tax'.

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## **Housing benefit overpayment**

If the council decides that it has paid too much housing benefit to you in the past, it will reclaim this by taking money from what it pays you now. Rent arrears will build up if you do not pay the extra.

If you are not getting enough housing benefit to cover all the rent, get benefits advice.

You can:

- Appeal a decision that you have been overpaid housing benefit and
- Ask for less to be taken from your housing benefit

This will help to increase the amount going towards your rent.

## **Extra help with your housing costs**

If you are getting housing benefit, but are still finding it difficult to pay your rent, you may be able to get extra help from the Discretionary Housing Payment Fund.

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This fund is quite flexible. So if you are in financial hardship it is a good idea to ask. Some examples of when the fund can help are:

- When a tenant's housing benefit is reduced because of changes to welfare benefits like the 'bedroom tax', and they are a foster carer or their home has been significantly adapted to meet disability needs
- A tenant has started work and so their housing benefit is reduced – but they cannot make ends meet because they have new expenses such as buying overalls, tools or other equipment they need for their job

Other issues that the fund may help with include major rent arrears, multiple debts or financial hardship for any other reason, for example as a result of domestic abuse.

Each council has its own scheme. Your local housing benefit office can give you more information. In Glasgow, contact Glasgow City Council Revenue and Benefits Service on 0141 287 5050 or go to your local council tax or housing benefit office.

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## **Money Advice:**

If you are struggling to pay bills or ongoing credit commitments, money advice services can negotiate more affordable payments upon your behalf. Money advisors will help you deal with emergencies first like rent and mortgage arrears, then work out a budget that suits your circumstances. By making sure that you can afford the necessities, such as rent, fuel and food, they will consider all your options and explain these to you. If appropriate, they can contact your creditors and arrange reduced payments, allowing you to ensure that your essential outgoings are prioritised.

If your debts turn out to be difficult to manage they can discuss the remedies that may be open to you in order to help you get things under control again. Money advisors may also help you link to a credit union or Scotcash. See page 25 for agencies which provide free and independent money advice.

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## **Scotcash**

If you find it difficult to get a bank account or affordable credit, you are likely to be paying more in interest charges and for paying bills and cash. Scotcash can help you open a bank account, even if you do not have photographic ID, and assist in looking at how to get the best deal. Scotcash can also provide an affordable loan as an alternative to home collected credit, so if you need to borrow, they can help to ensure you do not pay excessive interest charges.

Scotcash is a voluntary organisation and a charity.

## **Credit Unions**

Credit unions provide saving accounts – members are encouraged to build up their assets and accumulate savings. They also offer affordable loans taking into account the members personal circumstances, payment history and ability to repay the loan. Many credit unions also supply banking services offering members a current account so they can access their savings as well as financial education, money advice and sometimes insurance products and other financial services.

Credit unions distribute their profits to members in dividends which means that the money stays in the community rather than going to faceless shareholders.

## **Your rights if you are a family member of a tenant**

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If you are not the tenant but you are a 'qualifying occupier', you can negotiate with the landlord and apply to the court to take part in any court action. You can do this even if the tenant does not. But this is complicated. So, it is better if you can work with the tenant.

Qualifying occupiers are:

- Wife/husband (spouse)
- Unmarried partner (cohabitant)
- Children aged 16 or over
- Permitted lodgers/sub-tenants
- Other family members aged 16 or over

It is much easier to negotiate with the landlord if you or somebody else pays off the rent arrears.

It may be possible to get the house transferred into your name with the landlord's permission.

## What you can do to prevent eviction

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The best way to prevent eviction is to agree a way to pay your rent and arrears with your landlord. This may avoid the stress and expense of a court case.

- The law says that any arrangement to pay rent arrears should be fair to the tenant **and** the landlord. It also has to be realistic so that you can afford to pay it
- An adviser can help make an agreement that is fair to you and the landlord. If any problems arise, you or your adviser should tell your landlord. If you keep in touch with your landlord, they may be sympathetic to you
- Remember, by law, your landlord must help you
- Even if you end up in court, there are still things which can be done to prevent eviction. It is best to get a solicitor to help because the court process is complicated (see pages 22–24 and 26 for LSA contact details)
- Both you and the landlord have rights and interests which the court wants to protect. Having a solicitor can make all the difference so that a good result is achieved for you and the landlord: that you can stay in your home **and** pay your rent

## If your landlord is threatening to evict you

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If your landlord takes legal action, you may be able to keep your home. Get all the help you can. Most people who do so are successful in preventing eviction.

If you get any official papers threatening court action, contact a money/benefits adviser **and** a solicitor because:

- It is always a good idea to get both sorts of help as soon as possible
- It may be possible to come to an agreement with the landlord
- You may find that you have not claimed benefits you are due

If you receive a formal document like a court summons, you do not need to leave your home but you should get legal advice **immediately** (as soon as possible before the date on the front of the summons which says when the case will go to court). Show any documents to a solicitor.

Even if you think you understand any forms which come from the court, **always** get advice before sending them back. There are hidden problems with these forms which a solicitor can help you avoid.

Remember that the court has strict time limits, so do not put off getting help.

## If it goes to court

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If the case goes to court, the landlord is likely to ask for two things:

- Payment and
- Eviction

Having someone experienced (a solicitor) to help you makes eviction less likely. Do not be tempted to represent yourself in court unless you have no other option.

Show a solicitor any documents the court sends you and get a solicitor to represent you **every time** the case goes to court. They should be able to tell the court all about your case each time. You must keep in touch with your solicitor.

You may qualify for legal aid to have a solicitor represent you in court. Your solicitor can tell you about legal aid. LSA lawyers will explain all this to you.

If a case goes to court, the solicitor should be able to ask for time (continuation) to look at the reasons why you should not be evicted.

If all else fails, your solicitor will ask the court for time to prepare written defences (reasons).

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## Reasons (defences) to give the court

Defences can include:

- **The landlord did not follow the correct legal procedures.** The procedures are complicated and it may be that the landlord did not give the proper warnings to you in good time
- **Some or all of the rent is not due.** There could be a mistake or the landlord may owe you money because, for instance, of unreasonable delay in carrying out essential repairs
- **It would not be reasonable to evict you.** This involves comparing the effect eviction would have on you and your family with the benefit to the landlord. The court should look at all the circumstances, including how much you owe, what you are paying, what you have offered to pay, and why there were rent arrears in the first place

A defence that works for the tenant is often good for the landlord too because it usually includes paying the rent arrears.

If you are paying the rent and a reasonable amount towards the arrears, the court is likely to take this seriously. This should be part of the defence that it would not be 'reasonable' to evict you.

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It is also a good reason for delay ('continuation') so you can show the court that you will stick to the arrangement to pay by instalments. 'Continuation' is what happens in most cases and can last for months or even years.

## **Continued hearing**

After the first time the case goes to court, the court may 'continue' it to a later date. This is to allow time, for example to negotiate, pay agreed instalments, apply for housing benefit or lodge defences. **Keep in touch with your solicitor** during this time to prepare for the hearing and also to give any instructions about the case.

## **'Proof hearing'**

If the court sets a 'proof hearing' get a solicitor immediately if you do not have one already. A proof hearing is when you and the landlord and others need to go to court to give evidence. It is still possible to negotiate. If successful, the proof hearing will not go ahead and the case will be delayed while you pay the arrears and the current rent.

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Proofs can be long and difficult but most do not take place. This is because setting a date for a proof often encourages landlords and tenants to negotiate. So, use any time the court gives to prepare for the court date and to negotiate. Make sure that you keep in touch with your solicitor during this time.

### **Incidental applications**

Incidental applications are when one party to a court action asks the court to make an order. Sometimes tenants suddenly get one of these, and it can be difficult to work out the reason for it. If you get an 'incidental application' contact your solicitor well before the court date in the document to make sure that your solicitor represents you in court.

## **If all goes well at court**

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In most cases, the court makes an arrangement which both the landlord and the tenant can agree with.

If you do as agreed, you will not be evicted.

If you do not do as agreed, you risk going back to court.  
If you miss payments:

- Start them again as soon as possible and
- Contact your landlord to explain or
- Ask your adviser to do so

If you get any court documents or are called back to court for any reason, contact your solicitor.

## If the court decides to evict you

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Usually, when a court decides to evict a tenant it is because nobody represented them in court, and the tenant (or a family member) was not in court.

It may be possible to stop the eviction by using the '**recall of decree**' procedure. Speak to a solicitor as soon as possible. Each party to an action can only use this once.

If you cannot get a solicitor or other adviser to represent you every time the court meets, make sure that you always attend.

Sometimes a court orders eviction even though the tenant is in court and/or represented. If this happens, it may be possible to **appeal**, although there are strict limits. A solicitor can help you with this.

If the court says you must pay the rent arrears, you may be able to agree a way to make this manageable, for example, by paying regular instalments.

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## **Last chance**

Even if you cannot use the 'recall' procedure or appeal, you may still be able to negotiate with your landlord or occasionally find another court remedy. Ask a solicitor to help you.

## **Remember**

Even if you receive an eviction notice, it may be possible to sort things out. Get help from a solicitor **immediately**. If you live in Glasgow or Inverclyde, you can see someone at LSA. You do not need an appointment to attend our drop-ins (see pages 22–24 and 26).

## Finding somewhere else to stay

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If you are, or are about to be, evicted the council must help you.

It can help you apply for a house in the usual way.

A housing association or RSL must not hold the fact that you have rent arrears against you if:

- You have arranged to repay them
- Have made the agreed payment for at least three months and
- Are still making them

If the council cannot arrange somewhere for you to stay permanently, you have a right to temporary housing because you are homeless. You may well have a right to permanent accommodation subsequent to any 'homelessness assessment'.

The council may say that you made yourself homeless 'intentionally' by being evicted for rent arrears. It may refuse to help you. If this happens it is best to speak to a solicitor (see pages 22–24 and 26) or another expert advisor because this can be complicated. Do not delay.

If you have a 'mental disorder' the local authority has to arrange for care and support services. This duty is separate from any homelessness assessment. Get advice on these duties.

## Sources of help

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### Glasgow

**Legal Services Agency:** [www.lsa.org.uk](http://www.lsa.org.uk)

**Fleming House, 134 Renfrew Street, Glasgow, G3 6ST**  
**Tel: 0141 353 3354 or freephone 0800 316 8450**

LSA's housing and social welfare law drop-ins  
(no appointment needed):

- |                  |   |
|------------------|---|
| <b>Monday</b>    | 11am to 4pm (any topic)   |
| <b>Tuesday</b>   | 11am to 2pm (preventing homelessness/<br>defended eviction cases – next day court cases)  |
| <b>Wednesday</b> | 9.30am and 1.30pm – advice desk and<br>representation at Glasgow Sheriff Court<br>eviction court<br><br>11am to 1pm (preventing homelessness) |
| <b>Thursday</b>  | 11am to 1pm (street homeless, roofless special<br>drop-in)<br><br>4.45 to 6.45pm (any topic) jointly with Glasgow<br>Central CAB              |
| <b>Friday</b>    | 11am to 2pm (preventing homelessness)   |

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**North Glasgow Advice Centre, 1169 Royston Road,  
Glasgow, G3 6ST  
Tel: 0141 770 7869**

Drop-in (no appointment needed):

**Monday** 2 to 4pm

**Tuesday** 2 to 4pm (housing specialist session – eviction and mortgage)

**Wednesday** 10am to 12 noon (money advice/benefits/employment session)

2 to 4pm (housing specialist session – eviction and mortgage)

**Friday** 10am to 12 noon

**Saturday** By appointment

### **Glasgow Sheriff Court**

LSA runs a free emergency advice desk and offers free legal representation to **tenants every Wednesday** immediately before the 10am and 2pm 'eviction' courts. Arrive early.

LSA runs a free emergency advice desk and offers free legal representation to **homeowners every Friday** at 9.30am immediately before the 'repossession' or 'ordinary' court for defended mortgage cases.

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## **Outreach and other services**

LSA also runs drop-in surgeries in Maryhill, Possilpark, Drumchapel and other areas.

LSA runs other services including for people with mental health problems or dementia or their carers and:

- Free advice and representation for women with an unsettled immigration background or who have been trafficked
- Free advice and representation in some areas of law for young people, under the age of 25, from abroad

Phone 0800 316 8450 for information

## **Other sources of legal help and money advice in Glasgow**

Govan Law Centre: 0141 440 2503  
[www.govanlc.blogspot.co.uk](http://www.govanlc.blogspot.co.uk)

Castlemilk Law & Money Advice Centre: 0141 634 0313  
[www.castlemilklawcentre.co.uk](http://www.castlemilklawcentre.co.uk)

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## **Money and benefits advice and information**

Your landlord may provide a welfare rights service. You may also be able to get services through the social work department.

Glasgow Advice and Information Network (GAIN):

[www.gain4u.org.uk](http://www.gain4u.org.uk)

Free advice helpline: 0808 801 1011

There are GAIN organisations, money advice centres, Citizens Advice Bureaux and law centres all over Glasgow. The free advice helpline can give you more information.

Anyone in Glasgow can go to Glasgow Central Citizens Advice Bureau: [www.glasgowcentralcab.org.uk](http://www.glasgowcentralcab.org.uk). You can drop in (no appointment necessary) Monday to Friday, 9.30am to 4.30pm: 1st floor, 88 Bell Street, Glasgow G1 1LQ. Phone: 0141 552 5556

For information about CAB in your area and helpline support see: Citizens Advice Bureaux:

[www.cas.org.uk](http://www.cas.org.uk) and [www.adviceguide.org.uk](http://www.adviceguide.org.uk)

Citizens Advice Direct: free advice helpline: 0844 848 9600

Citizens Advice free money advice service: 0300 500 5000

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## **Homelessness**

If you are homeless in Glasgow you can get advice and help from the Hamish Allan Centre, 180 Centre Street, Glasgow, G5 8EE Tel: 0800 838 502 (out of hours)

During office hours you will be directed to a Community Casework Team: more information at Glasgow Homeless Information Pages:

[www.ghn.org.uk/hip/emergency\\_accommodation](http://www.ghn.org.uk/hip/emergency_accommodation)

## **Greenock and Inverclyde**

### **Legal:**

LSA Inverclyde Housing Rights Project, 9 Sir Michael Street, Greenock, PA15 1PQ Tel: 01475 725665

Drop-in (no appointment needed):

Tuesday 10am to 1pm

Thursday 10am to 1pm

### **Money and benefits advice**

Financial Fitness, 29 West Stewart Street, Greenock, PA15 1SH,

Tel: 01475 729 239

Website: [www.financialfitness.btck.co.uk](http://www.financialfitness.btck.co.uk)

Email: [finfitteam@yahoo.co.uk](mailto:finfitteam@yahoo.co.uk)

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## **Scotland-wide**

Citizens Advice Bureaux:

[www.cas.org.uk](http://www.cas.org.uk) and [www.adviceguide.org.uk](http://www.adviceguide.org.uk)

Citizens Advice Direct: free advice helpline: 0844 848 9600

Citizens Advice free money advice service: 0300 500 5000

Shelterline: free housing advice helpline: 0808 800 4444

[www.scotland.shelter.org.uk/getadvice](http://www.scotland.shelter.org.uk/getadvice)

For a legal aid lawyer phone the Law Society of Scotland:

0131 226 7411

There are in-court advice and representation projects in many sheriff courts

## **More information**

LSA has published a detailed booklet in large print explaining eviction for rent arrears and the court process. It is free. We also publish a booklet on homelessness. For details of these and other LSA publications phone us on 0800 316 8450 or see our website [www.lsa.org.uk](http://www.lsa.org.uk) or contact [celiahay@lsa.org.uk](mailto:celiahay@lsa.org.uk).

Remember: it is very important to get benefits and money advice AND legal help as soon as possible.

# Legal Services Agency Ltd

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Freephone: 0800 316 8450

LSA is one of Scotland's leading law centres. We undertake a wide range of casework in all courts and tribunals, organise seminars and publish leaflets on many topics. See also [www.lsa.org.uk](http://www.lsa.org.uk) for full details of our work and how we can help you. We specialise in social welfare law, including asylum, landlord and tenant disputes, homelessness, criminal injuries compensation, children's rights, mental health, community care, disability discrimination and dementia.

We also provide free advice and representation for women with an insecure immigration status who have experienced violence and for victims of trafficking. We provide free advice and representation in certain areas of the law for young people from abroad.

LSA's legal work is undertaken by a team of solicitors in the firm of Brown & Co., which is regulated by the Law Society of Scotland.

LSA is managed by a Board of Directors elected by members. It receives funding from, amongst others, Glasgow & Inverclyde Councils and the Scottish Government.

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### **Legal Services Agency, Glasgow**

3rd Floor, Fleming House, 134 Renfrew Street, Glasgow, G3 6ST.

Tel: 0141 353 3353

Email: [lsa@btconnect.com](mailto:lsa@btconnect.com)

### **Legal Services Agency, Edinburgh: LSA's Mental Health Legal Representation Project Edinburgh and Lothians**

3rd Floor, Princes House, 5 Shandwick Place, Edinburgh, EH2 4RG.

Tel: 0131 228 9993

Email: [Isaedin@lsa.org.uk](mailto:Isaedin@lsa.org.uk)

### **Legal Services Agency, Greenock**

Inverclyde Housing Rights Project, 9 Sir Michael Street,  
Greenock, PA15 1PQ.

Tel: 01475 725665

Email: [Greenock@lsa.org.uk](mailto:Greenock@lsa.org.uk)

### **Legal Services Agency at North Glasgow Advice Centre (NGAC)**

LSA and Glasgow Central CAB run North Glasgow Advice Centre at  
1169 Royston Road, Glasgow, G33 1EY.

Tel: 0141 770 7869

Email: [ngac@btconnect.com](mailto:ngac@btconnect.com)

Legal Services Agency  
134 Renfrew Street  
Cowcaddens  
Glasgow G3 6ST

Freephone: 0800 316 8450  
0141 353 3354 [www.lsa.org.uk](http://www.lsa.org.uk)

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It is community controlled.

Registered office: Fleming House, 134 Renfrew Street, Glasgow, G3 6ST.

Telephone: 0141 353 3354 or [www.lsa.org.uk](http://www.lsa.org.uk).

Chief Executive/Principal Solicitor: Paul D. Brown



Glasgow's Advice &  
Information Network



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