



# Public Document Pack

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26 February 2020

## HOUSING & CUSTOMER SERVICES WORKING GROUP

A meeting of the Housing & Customer Services Working Group was held in **the Pink Room at Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF on Thursday 6 February 2020 at 6.00 pm** and the following Councillors were requested to attend.

Members: Councillors Bennett (Chairman), Coster (Vice-Chair), Bicknell, C Blanchard-Cooper, Chapman, Charles, Mrs Catterson, Mrs Cooper, Mrs Haywood, Hughes, Mrs Pendleton and Ms Thurston

## AGENDA

### 7. TENANCY & LETTINGS POLICY

(Pages 1 - 22)

It was advised at this meeting of the Working Group that some minor changes were required to this Policy and once these had been completed and been signed off, a new version of the policy would be cascaded to Members.

**Attached** is the updated version of this Policy.

Note : Reports are attached for all Members of the Working Group only and the press (excluding exempt items). Copies of reports can be obtained on request from the Committee Manager.

Note : Members are reminded that if they have any detailed questions would they please inform the Chairman and/or relevant Director in advance of the meeting.

Note : Filming, Photography and Recording at Council Meetings - The District Council supports the principles of openness and transparency in its decision making and permits filming, recording and the taking of photographs at its meetings that are open to the public. This meeting may therefore be recorded, filmed or broadcast by video or audio, by third parties. Arrangements for these activities should operate in accordance with guidelines agreed by the Council and as available via the following link – [Filming Policy](#)

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# TENANCY & LETTINGS POLICY

<b>Policy Date</b>	April 2020
<b>Approved by Full Council on</b>	
<b>Review Date</b>	April 2023

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## **1.0 Introduction**

1.1 This policy sets out the Council's approach to the issuing of Council tenancies and the management of those tenancies to ensure they are sustainable and make the best use of Council homes.

1.2 This policy also explains the legal assignment and succession rights afforded to Introductory and Secure tenants.

1.3 This policy applies to:

- General needs accommodation;
- Retirement/sheltered housing;
- Temporary accommodation.

## **2.0 Grant of Council Tenancies**

2.1 This policy relates to the allocation of Council Housing under Part VI Housing Act 1996 in accordance with the Council's published Allocation Policy and to those persons whom the Council may owe a duty to secure accommodation under the Homelessness provisions of Part VII Housing Act 1996 or Homelessness Reduction Act 2017.

## **3.0 Policy Scope**

3.1 This policy includes the following:

- The grant of Introductory and Secure Council tenancies;
- The grant of Licences and Non-Secure Council tenancies;
- Mutual exchanges;
- Legal assignment and succession rights.

## **4.0 Related Policies**

- Equality and Diversity policy;
- Housing ASB policy;
- Housing Allocation policy;
- Income Recovery policy;
- Data Protection policy.

## **5.0 Tenancy Offers**

5.1 Before offering a tenancy for Council housing the Council will undertake:

- **Vulnerability risk assessment** – we will risk assess all applicants to identify any support needs. Where we identify a need, we will need to be satisfied that adequate support is in place.
- **Affordability assessment** – applicants will be asked to complete an affordability assessment including proof of income and expenditure and full details of any debts. We will also seek permission to carry out credit checks. Where applicants have housing-related debts, they will need to demonstrate that they have arrangements in place to repay them. If it is evident that the applicant cannot afford the tenancy, an offer of a tenancy may be withdrawn.
- **References** – we will seek references for all applicants to ensure they are able to maintain a tenancy, including condition of property, acceptable behaviour and rent payments. If there is evidence of previous significant tenancy breaches, we will withdraw an offer.

5.2 We will not normally make an offer of a tenancy where the applicant:

- Has breached the terms of a previous tenancy where, if action had been taken, possession would have been mandatory. This includes rent arrears, anti-social behaviour and tenancy fraud.
- Has behaved unacceptably toward Council staff or partner agencies. This includes verbal abuse, harassment and intimidation, threatening behaviour or abusive language.
- Was evicted from a previous tenancy or failed a probationary tenancy.
- Has knowingly given false or misleading information or has refused to provide information requested in a reasonable time scale.
- Has housing-related debts and cannot evidence that they have either repaid or significantly reduced the debt over a sustained period of time.
- Has recently been subject to an anti-social behaviour injunction, an anti-social behaviour order, an injunction, a demotion order, a closure order or a community protection warning/notice.
- Has been identified as unable to sustain the tenancy without additional support and there is no evidence that a support or care package is in place.
- Has been identified as needing adaptations that cannot be provided and that would put them at risk if not in place.

## 6.0 Conditions of Tenancy Offer

6.1 An offer of a tenancy is conditional on the following:

- **Payment in advance** - all applicants, including mutual exchange applicants and applicants currently claiming benefits, are expected to pay 1 months' rent in advance and maintain this throughout their tenancy.

- **Benefit claims** – applicants are expected to provide information to support a claim at the time of signing the tenancy.
- **Direct debit** – new tenants are expected to set up direct debits to make rent payments.

## 7.0 Types of Tenancy

7.1 A brief description of the types of tenancies the Council will grant is set out in the table below:

Type of Tenancy	Relevant Legislation	Brief Description
Licence	Common law Protection from Eviction Act 1977	Licence agreements are not tenancies. They are issued in limited circumstances, for example, when applicants are placed in interim accommodation while enquiries take place into their homelessness or a decant property while works are being undertaken to a tenant's home.
Non-Secure Tenancy	Common law Protection from Eviction Act 1977 Schedule 1 Housing Act 1985 S.89 Housing Act 1980	Certain types of tenancies cannot be Secure tenancies. Tenancies which are not Secure tenancies are specified in Schedule 1 of the Housing Act 1985 and include tenancies granted to homeless persons and asylum seekers, and properties let to the Council for use as temporary housing accommodation under Schedule 1, paragraph 6 of the Housing Act 1985.  Non-Secure tenancies are granted to households placed in temporary accommodation by the Council.

Type of Tenancy	Relevant Legislation	Brief Description
Introductory Tenancy	Housing Act 1985 Housing Act 1996	<p>Introductory tenancies are subject to a 12 month “probationary” period, during which the tenancy may be terminated on a mandatory ground in accordance with this policy. The probationary period may be extended by 6 months.</p> <p>All newly granted Council tenancies are Introductory tenancies.</p> <p>Introductory tenancies will automatically convert to a Secure tenancy after 12 months unless the Council has taken steps to extend or terminate the tenancy.</p> <p>Introductory tenants do not have the right to buy, mutual exchange, make alterations and improvements, take in lodgers or sub-let their home unless or until the tenancy converts to a Secure tenancy.</p>
Secure Tenancy	Housing Act 1985	<p>Traditional Council tenancies, often referred as lifetime tenancies, which last from week to week until terminated in accordance with specified grounds for possession (Schedule 2 Housing Act 1985).</p> <p>Introductory tenancies will automatically convert to a Secure tenancy after 12 months unless the Council has taken steps to extend or terminate the tenancy.</p>
Demoted Tenancy	Replaces a Secure Tenancy following an order of the Court	<p>A Demoted tenant is a Secure tenant who has lost their secure tenancy status under the Housing Act 1985 for a period, pursuant to a demotion order, before allowing the tenant to regain protection.</p> <p>A demotion order is an order of the court following court proceedings. Proceedings to seek a demotion order are usually issued as an alternative to possession proceedings for anti-social behaviour.</p>

## **8.0 Introductory Tenancies**

- 8.1 The Council has chosen to operate the Introductory tenancy scheme in the Housing Act 1996. Introductory tenancies are a form of probationary tenancy which provides the Council opportunity to assess whether or not tenants are able to maintain their tenancy obligations. This is also an opportunity for the tenant to demonstrate that they can be a responsible tenant during the period of the tenancy.
- 8.2 Under s.124 Housing Act 1996, all new tenancies granted by the Council for permanent accommodation will automatically be an Introductory tenancy for the first 12 months of the tenancy (the Introductory Period). New tenants are those who have received an offer of housing under Part VI of the Housing Act 1996 pursuant to the Council's Allocation Policy and are not already secure tenants of a Council, or assured tenants of a registered provider.
- 8.3 During the introductory period, the tenancy does not have the protection as a Secure tenancy and can be terminated under s.127 Housing Act 1996 at any time, subject to service of notice and the tenant's right to review.
- 8.4 If the Introductory Period is not satisfactorily completed, the Council can:
- Extend the Introductory Period by up to a further 6 months; or
  - Seek possession of the property under s.127 of the Housing Act 1996 at any time before the end of the Introductory Period or extended period.
- 8.5 If the tenancy has been conducted satisfactorily during the initial Introductory Period such that there has been no action to extend the Introductory Period or to terminate the tenancy within the Introductory Period, the tenancy will automatically convert to a Secure tenancy without the need to sign a new tenancy agreement.
- 8.6 If an Introductory tenant is unable to sustain the tenancy because of welfare reform changes, we will consider converting the Introductory tenancy to a Secure tenancy to facilitate a mutual exchange or transfer. Conversion will take place at the point of moving to suitable alternative accommodation and will only be considered if the tenancy has been conducted satisfactorily.

## **8.7 Managing Introductory Tenancies**

- 8.7.1 It is very important that the new tenant is aware of the implications of having an Introductory Tenancy. The tenant, therefore, is provided with a pack of standard information, including a copy of the Tenancy Agreement, which clearly and simply lays out the responsibilities and obligations of both landlord and tenant and the consequences of failing to fulfil these duties.

- 8.7.2 The majority of introductory tenancies will proceed to a Secure tenancy without incident. However, where there are issues, it is important to continuously review the tenancy during the Introductory Period and either allow the tenancy to automatically convert to a Secure tenancy or follow procedures to extend or terminate the tenancy. The Council aims to assist all introductory tenants to sustain their tenancies through visits, early interventions and clear communication of remedies for tenancy breaches.
- 8.7.3 The Introductory tenancy will be monitored during the Introductory Period so that any problems can be addressed as soon as they arise. Introductory tenants will be visited between 4 to 6 weeks following the commencement of their new tenancy, and then contact or a visit will be made at or before 9 months. Additional visits may be scheduled to discuss and monitor any specific problems that have arisen in line with current procedures regarding tenancy issues and rent arrears actions.
- 8.7.4 At or before 9 months, contact will be made with the tenant to check that the tenancy has been conducted in a satisfactory manner. If there are no issues, the tenant will be advised that their tenancy will automatically become a Secure tenancy on the anniversary of the start date of the Introductory tenancy. This will be confirmed in writing; however, the tenant does not need to sign a new agreement. If there have been any issues that have come to light at the 9 month period, then a decision will be made regarding any future action that may be deemed necessary.
- (i) The recommendations will be:
- To offer a secure tenancy;
  - To serve a notice to extend the tenancy;
  - To serve a notice to end the tenancy.

## **8.8 Extending the Introductory Tenancy**

- 8.8.1 Under s.125A of the Housing Act 1996, the period of an Introductory tenancy may be extended for a further period of 6 months. This allows the tenant further opportunity to modify their behaviour and remedy any specific breach of tenancy condition.
- 8.8.2 At the 9 month review contact, where there are concerns as to the conduct of the tenancy such as cases of outstanding rent arrears and/or anti-social behaviour, or other breaches of the tenancy agreement, the Council will consider an extension to the Introductory Period.
- 8.8.3 If it is decided that the Introductory Period is to be extended, a Notice of the Decision to Extend the Introductory Tenancy will be served on the tenant.

8.8.4 The Notice of the Decision to Extend the Introductory Tenancy will be served on the Tenant at least 8 weeks before the original expiry date of the Introductory Period, otherwise the tenancy will automatically convert to a Secure tenancy.

8.8.5 The Notice of the Decision to Extend the Introductory Tenant will include the following:

- Confirmation of the decision to extend the Introductory Period for a further 6 months;
- The reasons why the Council has chosen to extend the introductory period;
- Confirmation that the tenant has a right to request a review of the Council's decision, and that the request for a review must be made within 14 days of service of the Notice of Decision to Extend the Introductory Tenancy;
- Confirmation that the tenant has the right to request that the review, if requested, can take place via oral hearing.

The review of the Council's decision to extend the Introductory Period is dealt with at Section 8.10 to 8.13 below.

8.8.6 The Notice of the Decision to Extend an Introductory Tenancy must be served by hand or by first-class post.

8.8.7 The evidence compiled to support the decision to extend the Introductory Period must be comprehensive and an evidence report, detailing dates of events, will be recorded.

8.8.8 If the tenant has not requested a review of the decision to extend the Introductory Period, or if the tenant has requested a review and the decision on review was to confirm the Council's decision to extend the Introductory Period, at the 15 month review contact, a decision must be made within the extended period whether to terminate the tenancy or allow it to become a Secure tenancy.

## **8.9 Possession**

8.9.1 The Council will provide reasons why it has decided to terminate the Introductory tenancy. The Council will be satisfied that there is not only a breach of tenancy, but also that to seek possession is a proportionate means of achieving a legitimate aim.

8.9.2 Where a decision has been made to end the tenancy, a Notice of Proceedings for Possession (NOPP) will be served, giving the tenant sufficient notice of the Council's intention to terminate the tenancy in accordance with s.127(2) of the Housing Act 1996. The NOPP needs to be served at least 8 weeks before the end of the introductory period.

8.9.3 The NOPP will include the following:

- Confirmation that the Council has chosen to seek possession of the property and that the Court will be asked to make an order for possession;
- The reasons why the Council has chosen to seek possession of the property;
- The date after which proceedings for the possession may be begun;
- Confirmation that the tenant has a right to request a review of the Council's decision and that the request for a review must be made within 14 days of service of the NOPP;
- Confirmation that the tenant has the right to request that the review, if requested, can take place via oral hearing;
- Confirmation that if the tenant needs help or advice about the NOPP, and what to do about it, he should take it immediately to a Citizens' Advice Bureau, a housing aid centre, a law centre or a solicitor.

8.9.4 While the NOPP must state the reason for seeking possession, the Housing Act 1996 does not indicate what these reasons might encompass. It is envisaged that the majority of possession cases will relate to anti-social behaviour or rent arrears. As good practice, officers will include a full statement of the reasons for seeking possession.

8.9.5 Where no review is requested, the tenant will be notified of the date after which the Council will apply to court for possession.

## **8.10 Review of the Decision to Extend the Introductory Tenancy or to Seek Possession**

8.10.1 Introductory tenants wishing to seek a review of the decision to extend the Introductory Period or to terminate the tenancy can request a review of the decision. Information on appeals will be provided to tenants at the beginning of their tenancy and at the point where action to extend or terminate is initiated.

8.10.2 Tenants have 14 days in which to request a review. Tenants are expected to provide their reasons for requesting the review and supporting documentation. Tenants are advised to use the Request for a Review Form, which is sent out with the NOPP or the Notice of the Decision to Extend the Introductory Tenancy, but can request a review via any other means of communication.

8.10.3 The review must be undertaken by an officer of appropriate seniority who was not involved in the original decision to extend the Introductory Period or to terminate the tenancy. The officer must be senior to the original decision-maker.

8.10.4 The review is to be undertaken before expiry of the NOPP or Notice of the Decision to Extend the Introductory Tenancy.

8.10.5 The types of review are as follows:

- Oral hearing – where the tenant wishes to attend a review of the case to be heard.
- Review without a hearing – where the tenant wishes the case to be reviewed, providing further evidence/information in writing for the Reviewing Officer to consider.

8.10.6 The review will not be by way of oral hearing unless the tenant confirms that they wish to have an oral hearing within the 14 day time limit.

8.10.7 If there is not to be an oral hearing, the tenant may make representations in writing. The Council is obliged to consider such representations and to inform the tenant of the date by which the representations are to be received (this cannot be earlier than five clear days of the receipt of this information by the tenant).

## **8.11 Conducting the Review**

8.11.1 The review will be conducted by way of a reconsideration of the decision to extend the Introductory Period and/or to terminate the tenancy.

8.11.2 It will examine the following:

- Whether the proper procedure has been followed. If the relevant procedure has not been followed, whether this has caused any detriment to the tenant.
- Whether the decision to initiate possession proceedings was appropriate and proportionate.
- Whether the relevant notice was valid and correctly served.
- The evidence produced, including all evidence and/or representations provided by the tenant, the Council's file notes, correspondence and tenancy file notes relating to the case.

8.11.3 The outcome of the review may be to:

- Uphold the decision to seek possession and/or extend the Introductory Period.
- Overturn the decision to seek possession or extend the Introductory Period.

8.11.4 The review may take into account events occurring up until the date of the review and can consider reasons not given in the notice, provided that any prejudice to the tenant is avoided by giving him or her opportunity to address any new allegations.

## **8.12 Reviews by Oral Hearings**

8.12.1 Oral hearings will only be conducted if specifically requested by the tenant.

8.12.2 The tenant will be given written notice of the date, time and place of the oral hearing, which will not be less than five days after receipt of the request for an oral hearing.

8.12.3 The Introductory Tenancy Review Regulations 1997 provides that:

- The tenant has the right to be accompanied to the hearing and/or be represented by another person (who need not be professionally qualified); and
- The tenant or representative may call witnesses, question any witness and make written representations.

8.12.4 In a review involving allegations of anti-social behaviour, the name of any persons making complaints will not be divulged without prior consent from such persons. It must be remembered, however, that the conduct of the review must satisfy the requirements of administrative law and be fair, so that a tenant must be given the opportunity to answer the allegations against him or her.

8.12.5 The tenant and his or her representative must have an opportunity to prepare for the hearing. This means that documents that the landlord intends to rely on should be disclosed in advance of any hearing.

8.12.6 The Introductory Tenancy Review Regulations 1997 provides that:

- If the tenant or their representative fails to appear (notice having been given), the panel conducting the review may proceed (having regard to all the circumstances including any explanation offered for the absence) to give directions regarding the conduct of the review as they see fit.
- The tenant may ask for the Council to postpone the hearing and the Council may grant or refuse the application.
- The panel hearing the review has wide powers to adjourn the review at any stage. However, if the matter is adjourned part-heard, a complete re-hearing of the case is required.
- Postponed or adjourned hearings must be completed within the notice period.

## **8.13 Notification of Outcome of Review**

8.13.1 Notification of the outcome of the review must be given to the tenant before the date after which court proceedings for possession may be begun, as set out in the NOPP.

8.13.2 If the original decision to proceed with possession or extend the introductory period for a further 6 months is upheld, the Council must explain the reasons for doing so.

8.13.3 Notification of decisions will be in writing and sent via first class post.

8.13.4 If the review to serve a NOPP is not upheld or no review is requested, upon the expiry of the NOPP, an application to the county court for possession of the property will be made. No grounds for possession will need to be proved, as the end of an Introductory tenancy is a mandatory ground in itself. Where the tenant does not abide by the court order for possession, an application will be made to the court for a warrant of possession to evict the tenant.

## **9.0 Tenancy Terms**

9.1 The Council has adopted a combined standard form of tenancy agreement suitable for all types of Introductory and Secure tenancies, which may be varied as set out below.

### **9.2 Variation of Tenancy Terms**

9.2.1 The terms and conditions of Introductory tenancies may only be varied in accordance with the express tenancy terms.

9.2.2 The terms and conditions of Secure tenancies can be varied under the procedure set out in s.103 of the Housing Act 1985.

9.2.3 Rent or service charge may be varied in accordance with s.102 of the Housing Act 1985.

9.2.4 Services provided may be discontinued or changed upon 28 days' notice to tenants.

### **9.3 Consultation on matters of housing management**

9.3.1 The council is obliged to consult Introductory tenants (s.137 of the Housing Act 1996) and Secure tenants (s105 of the Housing Act 1985) who are likely to be affected by a relevant housing management matter.

## **10.0 Joint Tenancies**

### **10.1 Granting a Joint Tenancy**

10.1.1 Joint tenants have equal rights of occupation and are jointly and severally liable for all the obligations owed under the tenancy. This means the Council can pursue each of the tenants for arrears of rent, even in circumstances where one of the tenants has moved out of the property but still remains on the tenancy agreement.

10.1.2 The Council will usually grant a joint tenancy to partners at the start of a tenancy, irrespective of their legal status, provided a joint application is made and the qualification criteria in the Allocation policy is met. The Council will grant a joint tenancy to a maximum of two persons.

### **10.2 Adding a Joint Tenant**

10.2.1 The Council has discretion as to whether or not to allow an existing sole tenant to add a partner, irrespective of their legal status, as a joint tenant but will not unreasonably refuse a request from a sole tenant providing the following conditions are met:

- The proposed incoming joint tenant meets the necessary criteria as if they were being offered a new tenancy, and the criteria as set out in the Council's Allocations policy.
- The tenancy is unencumbered in that there are no tenancy breaches, including but not limited to outstanding rent arrears.
- There is satisfactory evidence that the proposed incoming joint tenant has lived at the property as their sole or principle home for at least 12 months.
- Neither the existing tenant nor the proposed incoming joint tenant have any outstanding housing-related debt.
- The proposed incoming joint tenant has not been evicted from or abandoned a previous Council property.

10.2.2 There are two ways in which to add a joint tenant as below:

- Assignment - officers should check whether it is lawfully possible for the joint tenancy to be assigned in accordance with s.91 Housing Act 1985 and as set out at Section 13 below. If so, the tenant should be referred for independent legal advice to complete a Deed of Assignment from sole to joint name. Where a tenant has a statutory right of assignment, it is not necessary to sign a new joint tenancy agreement.

The assignment will be treated as a succession to be consistent with the statutory right of assignment under s.91 Housing Act 1985. Officers should therefore ensure that reference to succession rights in the new tenancy agreement (if any) are removed prior to signature.

- Ending the existing tenancy to create a new joint tenancy - where assignment is not possible or practical, the Council will agree to grant a new replacement joint tenancy with the same status and tenure as the original tenancy, subject to a request being made by the existing tenant and in accordance with 10.2.1 above.

## **11.0 Succession**

11.1 This part does not apply in respect of Non-Secure tenancies or licences of the Council. These tenancies are not intended to be capable of giving rise to any succession, either statutory or discretionary.

11.2 When a secure or introductory tenant dies, the tenancy can sometimes be passed on to another member of the family. This is known as succession. There is provision for succession to take place only in certain circumstances.

11.3 There cannot be more than one succession to a Secure tenancy, unless the tenancy agreement allows for it.

## **11.4 Statutory Succession**

11.4.1 There are different statutory rights of succession for different types of tenancy as set out below.

11.4.2 For tenancies granted before 1 April 2012, the law allows for one statutory succession to either:

- The deceased tenant's spouse or civil partner providing they were living with the deceased tenant at the property at the time of their death as their main home; or
- A member of the deceased tenant's family who was living with the deceased tenant at the property as their main home for 12 months prior to the tenant's death

11.4.3 For the purposes of 11.4.2 above, family members are defined as a parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew, niece or partner. The law does not provide for joint succession, so if there are a number of potential successors, they must decide who will succeed to the tenancy. If they are unable to choose, the Council is able to do so.

11.4.4 For tenancies granted on or after 1 April 2012, the law allows for one statutory succession to:

- A spouse, partner or civil partner of the deceased tenant, who was living with the deceased tenant at the time of the tenant's death at the property as their main home

## **11.5 Discretionary Succession**

11.5.1 In certain circumstances, if the tenant dies and there has already been one statutory succession of the property, the Council reserves the right to offer a discretionary succession.

11.6 Where the original tenancy is a joint tenancy and one tenant dies, the surviving tenant will take over the tenancy by survivorship. This is a succession in law. If, however the surviving tenant does not live in the property, the tenancy will cease to exist on the death of the resident joint tenant.

## **12.0 Transfers**

12.1 Council tenants who wish to transfer to a different property can apply to go onto the Housing Register. Once they are accepted, they can bid for properties by choice-based lettings. If they bid successfully, they will be offered a tenancy with the same security of tenure as the tenancy they are giving up.

## **13.0 Assignment**

13.1 Assignment refers to a transfer of a tenancy from one person to another. Where an assignment takes place all the rights and responsibilities of the tenancy are passed from the original tenant (the assignor) to the new tenant (the assignee). The assignor will no longer have any rights or responsibilities in relation to the property.

13.2 Assignment can take place due to statute or as part of the Council's discretion.

## **13.3 Statutory Assignment**

13.3.1 The Housing Act 1985 allows for secure tenancies to be assigned to another person in certain limited circumstances, as follows:

- It is to a potential statutory or contractual successor – the Council must be satisfied that the assignee would be entitled to succeed to the tenancy upon the tenant's death (see Section 11 above). An assignment of a

tenancy will count as succession to the tenancy and so no further succession rights will arise after the assignment of a tenancy.

- It is pursuant to a court order – tenants have the right to assign their tenancy where assignment is pursuant to an order made under:
  - S.24 Matrimonial Causes Act 1973 (property adjustment orders in connection with matrimonial proceedings);
  - S.17(1) Matrimonial and Family Proceedings Act 1984 (property adjustment orders after overseas divorce);
  - Paragraph 1 of Schedule 1 of the Children Act 1989 (orders for financial relief against parents); or
  - Part 2 of Schedule 5, or paragraph 9(2) or (3) of Schedule 7 to the Civil Partnership Act 2004 (property adjustment orders in connection with civil partnership proceedings or after overseas dissolution of a civil partnership).
  
- It is an assignment by way of mutual exchange – see Section 14 below.

### **13.4 Discretionary Assignment**

13.4.1 The Council does not allow tenants to assign or transfer their tenancies except as permitted by law.

13.4.2 Requests for a discretionary assignment will therefore only be considered in the most exceptional of circumstances. In such exceptional circumstances, the proposed assignee must meet the eligibility and qualification criteria set out in the Council's Allocation Policy.

### **14.0 Mutual Exchanges**

14.1 A mutual exchange operates by assignment of the original tenancy agreement under s.92 of the Housing Act 1985. In most cases, new tenants by way of mutual exchange do not need to sign a new tenancy agreement as they become tenants of the property under the original agreement.

14.2 Most mutual exchanges are affected by Deed of Assignment, but where the exchange involves at least one Secure tenancy which began prior to 1 April 2012 and at least one flexible or fixed term tenancy, the exchange will be effected by the tenant surrendering their existing tenancy and the Council will grant a new tenancy with the same tenure as the original.

14.3 The Council may withhold consent to a request to a mutual exchange in limited circumstances, as listed under Schedule 3 of the Housing Act 1985. These include, but are not limited to, situations where:

- The Council has started legal proceedings to obtain possession of the property.
- The property has been adapted for someone with a disability and nobody in the exchange household has a need for the adaptation.
- The property is substantially more extensive than the incoming household needs, and the property would be under occupied.
- The property is smaller than the incoming household needs, and the property would be overcrowded.

14.4 Due to the shortage of social housing, the Council is unable to consent to a request to a mutual exchange that would result in under occupation of properties. The size of property suitable for households is outlined in the Council's Allocations Policy. In calculating whether the size of the property is suitable, the Council will consider permanent members of the applicant's household only.

14.5 Where an applicant has rent arrears, they will be required to clear the arrears in full before the mutual exchange can take place. If the applicant qualifies for an under-occupancy incentive, this will be used to clear the following before any remaining amount is sent to the tenant on completion of the mutual exchange:

- Rent arrears;
- Housing related debts;
- Rechargeable cost for property damage;
- Cost for property or garden clearance.

14.6 In the case of an un-authorized mutual exchange where tenants effect a move without the Council's permission, the Council will treat the occupiers as unauthorised occupants and commence legal action to seek possession of the property.

## **15.0 Under-Occupancy Incentive**

15.1 The Council may from time to time offer a fixed payment to existing Council tenants wishing to move to suitably sized accommodation so that it can make best use of Council homes. This payment will be made after the tenant has moved and will only be paid once any debts owing to the Council as outlined above have been cleared.

## **16.0 Ending a Tenancy**

### **16.1 Surrender**

16.1.1 An implied surrender will result from the tenant handing the keys back to the Council with the intention to end the tenancy, and the Council accepting the keys and agreeing to the termination of the tenancy with immediate effect.

16.1.2 If the keys are simply handed back, this does not amount to implied surrender. It would only be the tenant's offer of surrender which the landlord is not bound to accept.

## **16.2 Tenant Termination**

16.2.1 Tenants or licensees can end their tenancy at any time by serving a valid Notice to Quit with a notice period of at least 4 weeks' notice in writing and expiring on the first or last day of a period of the tenancy or licence.

16.2.2 During the period of the notice the tenant will remain responsible for charges and rent.

16.2.3 There is no specified form of notice required and the Council will accept notice by letter, but it must be clear that it is the tenant or licensee's intention to end the tenancy or licence and it must comply with the formalities as set out in the Protection from Eviction Act 1977.

16.2.4 Once a Notice to Quit has been given, it cannot be withdrawn. Failure to give proper notice will result in the Council serving a relevant Notice to Quit. However, the Council's Notice to Quit will only take effect if the tenant or licensee has vacated the property.

16.2.5 The Council may, at its discretion, choose to accept less than 4 weeks' notice for sole tenancies. This decision will be confirmed in writing.

16.2.6 A joint tenancy can be ended by either tenant serving notice without the consent of the other tenant. In this instance the notice period cannot be shortened to less than the period required by law. At its discretion the Council may choose to grant the remaining tenant a new tenancy.

16.2.7 A valid Notice to Quit given by the tenant will end the tenancy. Upon expiry of the notice, tenants must deliver vacant possession of the property. Where any occupants remain in the property upon expiration of the notice the Council will commence legal proceedings to obtain vacant possession.

## **16.3 Council Termination**

16.3.1 The Council may seek to terminate a Secure tenancy at any time by seeking possession on any of the relevant statutory Grounds set out in the Housing Act 1985. The Council may also rely on mandatory Grounds for anti-social behaviour as set out in s.84A in the Housing Act 1985. The Council will be required to comply with the notice provisions as set out in the Housing Act 1985.

- 16.3.2 The Council will serve a Notice to Quit if the tenancy ceases to be secure. For example, if the tenant does not occupy the property as their main and principle home, sublets the whole of the property or otherwise parts with possession of the property.
- 16.3.3 The Council will serve a Notice to Quit on the Estate or Personal Representatives of the deceased upon the death of a tenant where there is no statutory or discretionary successor.
- 16.3.4 The Council may seek to terminate an Introductory tenancy upon service of a valid Notice of Proceedings for Possession which complies with the requirements of the Housing Act 1996.
- 16.3.5 The Council may seek to terminate a Demoted tenancy upon service of a valid Notice of Proceedings for Possession which complies with the requirements of the Housing Act 1996.
- 16.3.6 The Council may seek to terminate a Non-secure tenancy upon service of a valid Notice to Quit.
- 16.3.7 The Council may seek to terminate a Licence upon service of reasonable notice. Service of a valid Notice to Quit will usually suffice subject to the terms of the Licence agreement.

## **17.0 Decants**

- 17.1 Tenants who are required by the Council to vacate their home so that the Council can carry out major repairs, improvement or redevelopment work, or demolition, will be offered suitable alternative accommodation, or they will be provided with temporary accommodation until such time as suitable alternative accommodation is found or they can return to their original property. Tenants in temporary accommodation will retain their original tenancy and will occupy the temporary accommodation by way of a licence.
- 17.2 Where a tenant refuses the Council's offer to find suitable alternative accommodation, the Council may seek to terminate the tenancy on any of the suitable grounds for possession as set out in Schedule 2 of the Housing Act 1985 and/or in accordance with the council's policies and procedures from time to time.

## **18.0 Data Protection, Confidentiality and Information Sharing**

- 18.1 The council will ensure it complies with the requirements of the Data Protection Act 1998 and its own data Protection Policies when managing information it holds about its tenants.

## **19.0 The Equality Act 2010 and the Human Rights Act 1988**

### **19.1 Equality Act**

19.1.1 The Equality Act 2010 identifies those characteristics in respect of which it is unlawful to discriminate (protected characteristics). Examples of these are: age, disability, race, sex, religion or belief, and sexual orientation. The Act protects a person from discrimination if they are associated with someone who has a protected characteristic, e.g. a family member.

### **19.2 Disability**

19.2.1 The Council must have regard to those who have a disability. This is called the Public Sector Equality Duty. In relation to disability, the duty may mean treating disabled people more favourably than other tenants, having due regard to the need to remove or minimise disadvantage suffered by protected groups, taking steps to meet their needs, where different, and encouraging participation in public life where participation is disproportionately low, e.g. tenant representative groups. The Courts have held that the disability Equality Duty applies to decisions about individuals, including decisions about evictions.

### **19.3 Human Rights**

19.3.1 The Convention Rights have a specific role to play in the context of social housing. The rights protected under the Human Rights Act 1998 are incorporated into the law of England and Wales. The Council is required to treat people in accordance with the Convention Rights unless required by Act of Westminster to do something that is incompatible with the Convention Rights. Interference with a person's human rights must be proportionate to those rights. This means balancing the rights of the individual with the duties and responsibilities of the Council as a landlord. The Council is responsible for showing that the actions it takes are necessary and therefore proportionate. Thus, the principles are directly relevant to the day to day decision making of officers.

19.3.2 The Equality and Human Rights Commission states that there are rights contained in Articles 6, 8 and 14 that are most likely to be relevant to social housing:

- Article 6 - Right to a fair trial;
- Article 8 - Right to respect for private life, family life and the home; and
- Article 14 - Prohibition of discrimination.

19.3.3 These rights do not necessarily prevent the Council from managing its housing stock and acting to end or manage tenancies, but the Council must act in accordance with the law and in a way that is in pursuit of a legitimate aim and both necessary and

proportionate. This is a balancing exercise between the human rights of a tenant or occupier and the rights of others. The convention does not prohibit the Council from taking sensible and proportionate measures to encourage or enforce payment or other compliance.