



TENANCY & LETTINGS POLICY

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1.0 Introduction

- 1.1 This policy sets out the Council's approach to the issuing of council 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

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 If it is evident that the applicant cannot afford the tenancy an offer of a tenancy may be withdrawn.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 towards 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
- Knowingly given false or misleading information or has refused to provide information requested in a reasonable time scale.
- Has housing related debts and cannot provide evidence that they have either repaid or have significantly reduced the debt over a sustained period of time.
- Has recently been subject to anti-social behaviour injunction, anti-social behaviour order, an injunction, a demotion order, a closure order, a community protection warning/notice.
- Has been identified as being 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 would put them at risk by not being 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 month's 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	<p>Certain types of tenancies cannot be secure tenancies. These are specified in Schedule 1 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.</p> <p>A licence is issued when applicants are placed in Interim accommodation while enquiries take place into their homelessness.</p> <p>Licence agreements are not tenancies.</p>
Non-Secure Tenancy	Common law Protection from Eviction Act 1977 Schedule 1 Housing Act 1985 S.89 Housing Act 1980	<p>Certain types of tenancies cannot be secure tenancies. These are specified in Schedule 1 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.</p> <p>Non secure tenancies are granted to households placed in temporary accommodation by the Council.</p>
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 tenants do not have the Right to Buy, Mutual Exchange, make alterations and Improvements, take in lodgers, sub-let their home.</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 specific 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>

Type of Tenancy	Relevant Legislation	Brief Description
Demoted Tenancy	Replaces a Secure Tenancy following an order by the Court.	<p>Used as an alternative to possession proceeding for anti-social behaviour.</p> <p>Security of tenure is greatly reduced during the 12-month period of demotion.</p> <p>Security is similar to that of an Introductory tenant.</p>

- 7.2 The council has chosen to operate the Introductory tenancy scheme in the Housing Act 1996. Under s.124 Housing Act 1996, in general, all new tenancies granted for permanent accommodation will automatically be an Introductory Tenancy.
- 7.3 All new tenants will be offered a 12-month Introductory tenancy which can be extended at any time for a further 6 months. If there are no serious tenancy breaches during the initial 12-month period, the tenancy will automatically convert to a Secure Tenancy without the need to sign a new tenancy agreement.
- 7.4 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.
- 7.5 New tenants are people 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.

8.0 Tenancy Terms

- 8.1 The Council has adopted a combined standard form of tenancy agreement suitable for all types of Introductory and Secure tenancy which may be varied as set out below. The terms and conditions of Introductory tenancies may only be varied in accordance with the express tenancy terms.
- 8.2 Variation of tenancy terms and conditions
- The terms and conditions of weekly periodic Secure Tenancies can be varied under the procedure set out in s.103 of the Housing Act 1985.
 - Rent or service charge may be varied in accordance with s.102 of the Housing Act 1985
 - Services provided may be discontinued or changed upon 28 days' notice to tenants.
- 8.3 Consultation on matters of housing management
- 8.4 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.

9.0 Joint Tenancies

- 9.1 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 remain on the tenancy agreement
- 9.2 We will usually grant a joint tenancy to partners at the start of a tenancy, irrespective of their legal status providing the condition of the Allocation scheme has been met and they are joint applicants.
- 9.3 Decisions to create a joint tenancy is discretionary but we will not unreasonably refuse a request from a sole tenant providing the following conditions are met;
- the applicant meets the criteria set out as if they were being offered a new tenancy
 - there are no rent arrears outstanding
 - there is evidence that the applicant has lived at the property as their main and principle home for 12 months.
 - They are not considered to be a risk to the local community
 - They have not been evicted, or abandoned a previous council property

10.0 Succession

- 10.1 When a secure tenant dies, there is provision for succession to take place in certain circumstances. There cannot be more than one succession to a secure tenancy, unless the tenancy agreement allows for it.
- 10.2 The rights to succeed a tenancy only exist if the claimant qualifies as a successor and lives with the tenant at the time of death and occupies the property as their main and principle home.
- 10.3 For tenancies granted before 1 April 2012 succession rights are extended to members of the family in addition to spouse, and civil partner. A member of the tenant's family means a parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece. Step-relations, half-relations, and relations by marriage are included in the definition. Cohabitees in this context means a couple who are living together as if married or as if civil partners, whether a 'couple' meet this criterion will depend upon the facts in each individual situation
- 10.4 For tenancies granted after 1 April 2012 only spouses, partners and civil partners have the statutory right of succession.
- 10.5 Where the original tenancy is a joint tenancy and one tenant dies, the surviving tenant will take over the tenancy by survivorship. This is counted as 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.

10.6 For Introductory tenancies there is a right to succeed on the death of the tenant.

11.0 Transfers

11.1 Council tenants whose homes are no longer suitable for their needs 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.

12.0 Ending a Tenancy

12.1 Surrender

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

12.3 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.

12.4 Tenant Notice to Quit

12.5 Tenants 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.

12.6 There is no specified form of notice required and we will accept notice by letter, but it must be clear that it is the tenant's intention to end the tenancy. Once a Notice has been given it cannot be withdrawn.

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

12.8 A joint tenancy can be ended by either tenant giving notice without the consent of the other tenant. In this instance the notice period cannot be shortened to less than 4 weeks. At its discretion the Council may choose to grant the remaining tenant a new tenancy.

12.9 A valid Notice to Quit given by the tenant will end the tenancy. We will obtain a court order to evict any of the former tenants if they remain in the property after the expiry of the Notice to Quit.

12.10 Council Notice to Quit

12.11 Failure to give proper notice will result in the council serving a relevant Notice to Quit. During the period of the Notice the tenant will remain responsible for charges and rent.

12.12 The Council can terminate a Secure tenancy at any time by seeking possession relying on any of the statutory Grounds set out in the Housing Act 1985. The

Council can also rely on mandatory Grounds for anti-social behaviour as set out in s.84A in the Housing Act 1985.

12.13 On the death of a tenant the Council will serve a notice to quit where there is no statutory or contractual successor.

12.14 If the tenant does not occupy the property as their main and principle home, or sublets the whole of the property, the tenant will lose their secure tenancy status and the Council will serve a Notice to Quit to end the tenancy.

13.0 Decants

13.1 Tenants who have to vacate their home so that we can carry out major repairs, improvement or redevelopment work, or demolition, will be offered suitable alternative accommodation with the same type of tenancy as their original, or they will be provided with temporary accommodation until such time as suitable alternative accommodation is found; these tenants will retain their original tenancy until suitable alternative accommodation has been accepted.

13.2 Where tenants refuse the councils offer to find suitable alternative accommodation the council can also terminate tenancies for the purposes of demolition, re-development, repair or improvement, or in accordance with the council's policies and procedures from time to time.

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 Introductory tenants do not have the right to exchange their tenancy. Landlords, including the Council, can withhold consent to an exchange of tenancies in limited circumstances as listed under Schedule 3 of the Housing Act 1985. These include where:

- The Council has started legal proceedings to repossess 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.

14.3 Due to the shortage of social housing the Council are unable to consent to exchanges that would result in under occupation of properties. The size of property suitable for households is outlined in the Councils Allocations Policy.

- 14.4 The Council will only consider permeant members of the applicant's household when calculating the size of property suitable.
- 14.5 If an applicant has rent arrears, they will be asked to clear the arrears before the exchange can take place. If they qualify 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 exchange;
- Rent arrears
 - Housing related debts
 - Rechargeable cost for property damage
 - Cost for property or garden clearance
- 14.6 Most mutual exchanges are affected by Deed of Assignment, but where flexible tenancies are swapped with weekly Secure tenancies and the tenancy was granted before 1 April 2012 each tenant will be required to surrender their tenancy. They will then be granted a new tenancy with the same tenure as the original.
- 14.7 Un-authorized Mutual Exchanges – if tenants move without the council's permission, we will treat the occupiers as unauthorised occupants and take legal action to remove them.

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 suitable sized accommodation so that we 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 outlines above have been cleared.

16.0 Data Protection, Confidentiality and Information Sharing

- 16.1 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.

17.0 The Equality Act 2010 and the Human Rights Act 1988

17.1 Equality Act

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, 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.

17.2 Disability

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.

17.3 Human Rights

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.

17.4 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.

17.5 Article 6 - Right to a fair trial

17.6 Article 8 - Right to respect for private life, family life and the home.

17.7 Article 14 - Prohibition of discrimination.

17.8 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.

18.0 Decisions and Appeals

18.1 We will always consider requests in line with our policy and let you know in writing what our decision is.

18.2 If you are not happy with our decision you can appeal in writing to the Neighbourhood Services team with your reason. You must do this within 5 working days of our decision.

18.3 We will respond fully in writing to the appeal within 10 working days following receipt of the appeal.

18.4 While we are reviewing our decision, we will not vacate the property the tenancy

related to.

19.0 Equalities Impact Assessment

19.1 An equality impact assessment has been carried out on this policy.