



# Tenancy Policy

## Housing Services

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## 1. Introduction

- 1.1. This Tenancy Policy applies to Guildford Borough Council's own housing stock. A separate Tenancy Strategy has been produced to guide providers of social housing in setting policies for their own stock.
- 1.2. This policy supports the Council's wider housing and corporate strategies and should be read alongside the Housing Strategy, Housing Allocations Scheme, Homelessness Prevention and Rough Sleeping Strategy, and Regulator of Social Housing standards as well as with the Legal and Regulatory Framework listed in Section 4.
- 1.3. This policy sets out the Council's approach to tenancy management and does not override statutory rights.

## 2. Aims and Objectives of the Policy

- 2.1. The purpose of this Tenancy Policy is to explain the types of tenancies that will be offered in properties owned and managed by Guildford Borough Council (the Council). The policy is to ensure that the most appropriate tenancies are granted to maintain cohesive communities and enable the best use of the Council's homes.
- 2.2. The Regulator of Social Housing (RSH) sets the regulatory framework for social housing in England, including the Consumer Standards. The Tenancy Standard requires local authorities and registered providers to publish clear and accessible policies outlining their approach to tenancy management. This includes how tenancies are granted and managed, the support available to help sustain tenancies and prevent unnecessary evictions, and the approach to tackling tenancy fraud. The Council will ensure its tenancy policies comply with these requirements.
- 2.3. The Regulatory Framework requires the Council to issue tenancies that are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community and the effective use of their housing stock.
- 2.4. Following a review and consultation the Council decided to cease issuing Flexible tenancies for general needs housing. The Council recognised that there are more disadvantages than advantages in operating flexible tenancies. Both are proactive in tackling stigma associated with social housing residents, recognise the Charter for Social Housing Residents' commitments and support tenants and communities to thrive. Offering all new and existing tenants a lifetime tenancy assists in achieving these aims and make best use of council resources.

## 3. Scope

- 3.1. The Council will grant introductory, secure or temporary non secure tenancies for general needs housing. Flexible tenancies are used only for supported housing. This allows the council to regularly review tenancies to ensure that the housing continues

to meet the tenant's needs and to provide opportunities for tenants to move on when they are ready to live independently. Flexible tenancies in these settings support the effective use of housing resources while ensuring tenants receive the support they need. The tenancies that the Council will grant are:

### 3.2.

| Type of tenancy              | Legal basis                                                                           | Definition                                                                    | Tenancy length                                           |
|------------------------------|---------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|----------------------------------------------------------|
| Secure tenancy               | Housing Act 1985, Part IV, Sections 79-81                                             | Lifetime tenancy, following an introductory tenancy                           | Lifetime                                                 |
| Introductory tenancy         | Housing Act 1996, Part V, Chapter 1, Sections 124-125                                 | One year tenancy issued to new tenants for the first year of their tenancy    | One year                                                 |
| Temporary Non secure tenancy | Housing Act 1985, Schedule 1                                                          | Non secure tenancy granted to homeless households in temporary accommodation. | Periodic tenancy                                         |
| Flexible tenancy             | Sections 107A–107E of the Housing Act 1985 amended by Part 7 of the Localism Act 2011 | A type of secure tenancy that is granted for a fixed term.                    | Minimum of 5 years or 2 years in specific circumstances. |
| Licence                      | Supported/temporary                                                                   | Licence term                                                                  | No tenancy rights                                        |

### 3.3. Licences

- 3.3.1. The Council uses licences in limited circumstances where accommodation is provided on a short-term or temporary basis and where it is not appropriate to grant a tenancy. Licences are commonly used to enable households who are homeless, or threatened with homelessness, to access interim or emergency accommodation while their housing situation is assessed or longer-term accommodation is secured. A licence does not create a tenancy and does not confer security of tenure; however, the Council will ensure that licence holders are treated fairly and with dignity, are provided with clear information about their rights and responsibilities, and are supported in accordance with the Council's homelessness duties and relevant legislation. The use of licences supports the effective management of temporary accommodation while helping households move towards more settled housing.

## 4. Legal and Regulatory Framework

4.1. This tenancy Policy complies with the following legislative and regulatory frameworks:

- (1) The Regulator of Social Housing: Tenancy Standard
- (2) Housing Act 1985, 1988, 1996 as amended
- (3) Immigration Act 2014
- (4) Protection from Eviction Act 1977
- (5) Localism Act 2011
- (6) HMCTS Pre-Action Protocol for Possession Claims by Social Landlords Part VII of the Family Law Act 1996
- (7) Prevention of Social Housing Fraud Act 2013
- (8) The Secure Tenancies (Victims of Domestic abuse Act 2018)
- (9) The Equality Act 2010

## 5. Definitions

### Affordable Rent tenancy

Affordable rent tenancies are higher than social rents and can be up to 80% of market rents. Where possible, homes will be let on reduced rents, or at social rents.

### Assignor

The person that is transferring, or passing their tenancy, which includes all the rights and responsibilities of that tenancy to another person.

### Assignee

The person to whom the tenancy referred to above is transferred.

### Housing Allocation Scheme

The Council's policy on the allocation of housing for those that have applied and are eligible under the Housing Act 1996. It sets out who is eligible for housing, who can be included on the application and who has priority for housing.

### Intermediate housing

Housing for people that cannot afford market housing but do not qualify for social housing. There are different intermediate housing products, which may include low-cost home ownership products or discounted rental schemes.

### Joint Tenancy

A joint tenancy means two people are responsible for making sure the tenancy conditions are met and have equal rights to stay in the property until the tenancy

is ended. If one joint tenant formally ends the tenancy, the tenancy comes to an end even if the other joint tenant has not asked to end the tenancy. A joint tenant cannot be removed from the tenancy. Joint tenancies must be completely terminated before either of the joint tenants are to be considered for rehousing. This will be assessed on a case-by-case basis and need approval by a senior officer with delegated authority.

## Vulnerability

There is no single definition of vulnerability. This is assessed by the Council on a case-by-case basis which involves a holistic view of a tenant's circumstances. This involves assessing circumstances to understand tenants, who due to their personal circumstances or characteristics are susceptible to unfair treatment and poorer outcomes. Vulnerability therefore may be exacerbated further if the Housing service does not act with appropriate levels of care to better support a vulnerable tenants.

## 6. Types of Tenancies

### 6.1. Introductory Tenancy

- 6.1.1. All new tenants entering general needs housing will be granted an introductory tenancy for the first 12 months, followed by a secure tenancy, provided the conditions of tenancy have been met. The Council has the option of extending an introductory tenancy by an additional six months if the terms and conditions of the tenancy have not been met.
- 6.1.2. Temporary non-secure tenancies are granted to homeless household or failed succession applicants while alternative accommodation is secured.

### 6.2. Secure Periodic Tenancy (lifetime)

- 6.2.1 Allows the tenant to remain in their home indefinitely, provided that they continue to satisfy the statutory tenancy condition (in the Housing Act 1985) of occupation of the tenanted premises as their only or principal home, and comply with the tenancy conditions. The secure tenancy can only be ended by the council on specific statutory grounds and following due legal process. Secure tenants also have defined rights, including rights to succession, assignment, consultation, and – where eligible – the Right to Buy. "Periodic" just means the tenancy renews automatically each week or month, rather than ending on a set date.
- 6.2.2. The Council grants tenancies in accordance with the Housing Act 1985, unless otherwise stated. Tenants have clearly defined rights and responsibilities, which are set out in their tenancy agreement. These include, but are not limited to:
  - (1) The right to occupy the property
  - (2) The right to quiet enjoyment of the property

(3) Responsibilities relating to the care of the property and behaviour towards neighbours and the wider community

6.2.3. The Council is committed to managing secure tenancies fairly and proportionately, balancing the rights of individual tenants with its duty to protect communities and manage its housing stock effectively.

### **6.3. Flexible Tenancies**

6.3.1. All existing flexible tenancies used for general needs housing will be transitioned to secure lifetime tenancies. This may be either during or at the end of a fixed term, depending on the results of individual consultation with all tenants currently holding a fixed term tenancy.

6.3.2. In future, flexible tenancies will only be used for supported housing schemes. This allows the council regularly to review individual tenancies to ensure that the housing continues to meet the tenant's needs and to provide opportunities for tenants to move on when they are ready to live independently. Flexible tenancies in these settings support the effective use of housing resources while ensuring tenants receive the support they need.

### **6.4. Variation and exclusions**

6.4.1. In certain circumstances, the Council may not issue a secure tenancy, or specific terms and conditions may vary. This may include, but is not limited to:

- (1) Temporary or short-term accommodation, or;
- (2) Situations where statutory exclusions apply under housing legislation.

6.4.2. Where a tenancy is subject to variations or exclusions, this will be clearly explained to the tenant in writing, including:

- (1) The type of tenancy granted
- (2) Any differences from a standard secure tenancy
- (3) The tenant's rights and responsibilities under that tenancy

6.4.3. The Council will ensure that any variation or exclusion is applied lawfully, transparently, and consistently, and that tenants are provided with appropriate advice and information to understand their tenancy status.

## **7. Approach to Tenancy Management**

7.1. The Council is committed to managing its tenancies in a way that is fair, proportionate, and transparent. The Council recognises that a secure and well-managed tenancy contributes to stable communities and positive outcomes for tenants. The Council's approach to tenancy management focuses on:

- (1) Preventing tenancy breakdown wherever possible
- (2) Supporting tenants to meet their tenancy responsibilities
- (3) Taking early and appropriate action where issues arise

(4) Balancing the needs of individual tenants with the wider community

- 7.2. The Council has over 5,000 properties and is committed to ensuring that tenants are well informed about their rights, responsibilities and how to access services. A wide range of information is available including a tenant's handbook, information on the Council's website and social media and a regular resident magazine 'Contact Point'.
- 7.3. Tenants are informed of the issues which affect them and their homes and communities, and the Council works to ensure tenants have a proper say in decision making through the Tenant Engagement Group, Sounding Board Panel and community outreach 'Keep in Touch' events.
- 7.4. The Council takes a strong position on Anti-Social Behaviour. Anti-social behaviour (ASB) includes conduct which causes, or is likely to cause, harassment, alarm, or distress to others, deliberate damage to the property and, behaviour which interferes with the council's housing management function. The Council will take proportionate action, including legal enforcement where appropriate, to protect communities and uphold the quality of life for all residents, in accordance with the Anti-social Behaviour, Crime and Policing Act 2014 and any new ASB legislation which is brought into force by Parliament. Housing Management teams work closely with the police and other agencies to ensure that problems are investigated and where appropriate legal action is taken in line with policies, to protect residents.
- 7.5. Tenancy management will be carried out in accordance with this policy, the tenancy agreement, and relevant legislation, guidance, and best practice.

**7.6. Roles and responsibilities**

- 7.6.1 The Council recognises that successful tenancy management is a shared responsibility between the Council and its tenants.
- 7.6.2 The Council is responsible for:
- (1) Granting and managing tenancies in accordance with the law and this policy
  - (2) Communicating clearly with tenants about their rights and responsibilities
  - (3) Providing advice, information, and support where appropriate
  - (4) Taking proportionate action where tenancy conditions are breached
- 7.6.3. Tenants are responsible for:
- (1) Complying with the terms of their tenancy agreement
  - (2) Occupying the property as their only or principal home
  - (3) Behaving in a way that does not cause ASB, nuisance, harassment, or harm to others

**7.7. Expectations of tenants**



7.7.3. The Council expects tenants to engage constructively with any support or intervention offered to help sustain their tenancy.

7.7.4. Tenants are expected to:

- (1) Pay rent and any other charges in accordance with their tenancy agreement
- (2) Take reasonable care of the property and report repairs promptly
- (3) Not cause or allow anti-social behaviour, nuisance, or harassment by themselves, household members, or visitors
- (4) Allow reasonable access to the property for inspections, repairs, and statutory safety checks
- (5) Notify the Council of any changes in circumstances that may affect their tenancy

## **7.8. Expectations of the council**

7.8.1. The Council will:

- (1) Treat tenants with fairness, dignity, and respect
- (2) Communicate clearly and provide information in an accessible way
- (3) Consider individual circumstances when making tenancy-related decisions
- (4) Act proportionately and consistently when addressing breaches of tenancy
- (5) Have regard to equality, vulnerability, and safeguarding considerations
- (6) Seek to prevent unnecessary evictions by exploring support and early intervention wherever appropriate

7.8.2. The Council will ensure that all tenancy management actions are lawful, evidence-based, and aligned with this policy.

## **8. Tenancy sustainment and early intervention**

8.1. The Council is committed to supporting tenants to sustain their tenancies and to preventing tenancy breakdown wherever possible. Every effort is made to support tenants to sustain their tenancies, and this includes working closely with support workers in some cases and assisting tenants to manage their finances through providing access to benefit, money and debt advice. The Council also works to refer tenants to local services where available, for money saving, employment and training advice. The Council recognises that early identification of issues and timely intervention can help resolve problems before they escalate.

8.2. Tenancy sustainment focuses on:

- (1) Promoting successful, long-term tenancies
- (2) Identifying risks to a tenancy at an early stage
- (3) Working collaboratively with tenants to address concerns
- (4) Reducing the need for formal enforcement or legal action

- 8.3. Where potential issues are identified, the Council will seek to engage with tenants at the earliest opportunity. This may include:
- (1) Providing advice or information about tenancy responsibilities
  - (2) Signposting tenants to relevant support services
  - (3) Working with partner agencies, where appropriate and with consent
  - (4) Agreeing reasonable actions or support plans to help address concerns
- 8.4. New tenants are advised at the outset of what is expected of them throughout their tenancy and early visits are carried out to ensure they have settled into their new home and to provide more detailed information on available services.
- 8.5. Tenants must use the property for residential purposes. Any illegal use of the property, including unauthorised subletting, use for criminal activity, or other unlawful conduct, constitutes a breach of tenancy. The Council may take enforcement action, including possession proceedings, in accordance with statutory powers.
- 8.6. The Council will take account of individual circumstances, including vulnerability, health issues, or changes in personal or financial circumstances, when considering appropriate early intervention measures.
- 8.7. Tenancy sustainment and early intervention do not remove a tenant's responsibility to comply with their tenancy agreement. Where issues persist or where there is serious or repeated breach of tenancy, the Council may take further action in accordance with this policy and relevant legislation.
- 8.8. Serious or persistent breaches of tenancy include repeated failure to pay rent, ongoing anti-social behaviour, deliberate damage to the property, or repeated breaches of tenancy conditions. Where such breaches occur, the Council may take formal enforcement action, including seeking possession, following appropriate warning and support measures.
- 8.9. The Council recognises that tenants can become vulnerable at any point in their tenancy for reasons such as illness, age or financial difficulties and there are processes in place to help identify vulnerable tenants and link them with the right support.
- 8.10. Frontline staff and contractors are trained in identifying and supporting the vulnerable tenants by prioritising early interventions and being empathetic in their actions when delivering services.
- 8.11. Ending a tenancy and seeking possession for a breach of tenancy conditions is always a last resort and is only ever considered after all available support has been offered but has been declined or has failed to remedy the problems being encountered. Even once a possession claim is being pursued, support will continue to be offered.

Throughout any possession proceedings tenants are clearly advised of the seriousness of the situation and of their legal rights.

- 8.12. A property may be considered abandoned where the tenant has vacated without notifying the Council and shows no intention to return. In such circumstances, the Council may take possession in accordance with the Protection from Eviction Act 1977, ensuring all reasonable steps are taken to verify abandonment before repossession action is taken.

## **9. Vulnerable households, equality, diversity and inclusion**

- 9.1. The Council recognises that some tenants may be vulnerable due to personal circumstances, health conditions, age, disability, financial hardship, domestic abuse, or other factors. Vulnerability may be temporary or long-term and may change over the course of a tenancy.
- 9.2. When managing tenancies, the Council will take vulnerability into account and will seek to make reasonable adjustments where appropriate. This may include adapting communication methods, offering additional support, or working with partner agencies to help tenants sustain their tenancy.
- 9.3. The Council will ensure that decisions are made fairly and consistently, with due regard to the Equality Act 2010 and safeguarding responsibilities. Vulnerability does not remove a tenant's responsibility to comply with their tenancy agreement, but it will be considered when deciding the most appropriate and proportionate course of action.

## **10. Breach of tenancy and enforcement action**

- 10.1. A breach of tenancy occurs when a tenant fails to comply with the terms of their tenancy agreement. This may include, but is not limited to, rent arrears, anti-social behaviour, damage to the property, or failure to use the property as the tenant's only or principal home.
- 10.2. Persistent non-payment of rent constitutes a breach of tenancy. The Council will provide advice, support, and repayment plans where possible. Legal action to recover possession may be taken where rent arrears are serious or persistent, in accordance with statutory grounds under Schedule 2 of the Housing Act 1985 . The Council will follow the Pre-Action Protocol for Possession Claims by Social Landlords. The Council will take a proportionate and graduated approach to enforcement, seeking to resolve issues at the earliest opportunity. This may include warnings, support referrals, tenancy visits, acceptable behaviour agreements, or other non-legal interventions.

- 10.3. Formal enforcement action, including legal proceedings, will only be considered where breaches are serious, persistent, or where earlier interventions have failed. Any action taken will be lawful, reasonable, and supported by evidence.

## **11. Ending a tenancy**

- 11.1. A tenancy may be ended by the tenant, the Council (with court approval in the case of a secure tenancy), following the Pre-Action Protocol for Possession Claims by Social Landlords. Tenants wishing to end their tenancy must provide written notice in accordance with their tenancy agreement. In some cases where a tenant has abandoned a property without notice this might be treated by the council as a surrender of the property which will end the tenancy.
- 11.2. The Council may seek possession of a property held under a secure tenancy only on statutory grounds and following the correct legal process. Grounds for possession may include, but not limited to, rent arrears, anti-social behaviour, breach of tenancy conditions, or the need to recover the property for specific lawful purposes.
- 11.3. Ending a tenancy is a serious step and will always be considered as a last resort. The Council will ensure that tenants are informed of the reasons for action, their rights, and the support available to them.

### **11.4. Advice and assistance when a tenancy is ended**

- 11.4.1 Where a tenancy is ended, the Council will provide advice and assistance to help tenants understand their housing options. This may include information about homelessness services, housing register applications, or support agencies.
- 11.4.2 Where the Council has a statutory duty under homelessness legislation, appropriate assessments and support will be provided in line with the Council's Homelessness Strategy and legal obligations.
- 11.4.3 The level of advice and assistance offered will depend on individual circumstances and eligibility.

## **12. Succession, Assignment and Mutual Exchange**

### **12.1. Succession**

- 12.1.1. Succession is the statutory process by which a secure tenancy may pass to another person following the death of a tenant. Succession rights are governed by Part IV of the Housing Act 1985, as amended by the Localism Act 2011, and by the terms of the Council's tenancy agreements. The Council is committed to handling succession cases sensitively, fairly, and in accordance with the law, while ensuring the effective use of housing stock.

12.1.2. Only one statutory succession is permitted for each secure tenancy, whether arising by law or by assignment (Housing Act 1985, section 88).

## **12.2. Statutory succession**

12.2.1. Statutory succession applies where the tenancy is eligible and the deceased tenant was not themselves a successor, in accordance with sections 87–90 of the Housing Act 1985, as amended.

12.2.2. For secure tenancies granted before 1 April 2012, statutory succession may occur to:

- (1) A spouse or civil partner who was living with the tenant at the time of death as their only or principal home (Housing Act 1985, section 87); or
- (2) Another qualifying family member, as defined in section 113 of the Housing Act 1985, who had been residing with the tenant as their only or principal home for a continuous period of at least 12 months immediately prior to the tenant's death.

12.2.3. For secure tenancies granted on or after 1 April 2012, unless the tenancy agreement expressly provides otherwise, statutory succession is limited to a spouse or civil partner (or a person treated as such) who was living with the tenant at the time of death as their only or principal home, in accordance with the amendments introduced by the Localism Act 2011.

12.2.4. In cases of joint tenancies, where one joint tenant dies, the surviving joint tenant automatically becomes the sole tenant by way of the common law doctrine of survivorship. Under this doctrine, the tenancy passes automatically to the surviving joint tenant(s). While survivorship is a common law principle and not a statutory succession, section 88 of the Housing Act 1985 deems it also to be a succession for the purpose of determining whether any further right to succeed to the tenancy exists.

12.2.5. For the purposes of succession, “family member” is defined in accordance with section 113 of the Housing Act 1985 and includes parents, spouses, civil partners, grandparents, children, grandchildren, siblings, uncles, aunts, nephews, and nieces. Section 113 does not include foster children or children of one partner only in a non-marital or civil partnership relationship. Applications for all successions will be reviewed on a case-by-case basis.

## **12.3. Eligibility Criteria**

12.3.1. To qualify for statutory succession, the applicant must:

- (1) Be a person eligible to succeed under the Housing Act 1985;
- (2) Have occupied the property as their only or principal home at the time of the tenant's death;

- (3) Have met the required qualifying residence period where applicable; and
- (4) Provide satisfactory evidence of both relationship and residence.

#### **12.4. Suitability of Accommodation**

- 12.4.1. Where a statutory successor is entitled to succeed but the accommodation is considered unsuitable—for example due to significant under-occupation or the presence of specialist adaptations no longer required—the Council may seek possession of the property under Ground 15A of Schedule 2 to the Housing Act 1985, or other relevant statutory grounds. Ground 15A does not apply to spouse and civil partner relationships.
- 12.4.2. In such cases, the Council will offer suitable alternative accommodation in accordance with its Housing Allocation Scheme, normally with enhanced priority. Spouses and civil partners will generally be permitted to remain in the property unless the accommodation is significantly unsuitable.

#### **12.5. Use and Occupation Charges**

- 12.5.1. Where no statutory or discretionary succession is granted and the tenancy is brought to an end by service of a Notice to Quit, any remaining occupant will be subject to a use and occupation charges (damages for use) equivalent to rent, until they vacate the property or alternative accommodation is provided.
- 12.5.2. The council will look to terminate an occupation if it feels the occupier is not proactively engaging in finding alternative accommodation.

#### **12.6. Appeals and Complaints**

- 12.6.1. Applicants may appeal succession decisions through the Council's complaints procedure. The Council will consider all relevant evidence and circumstances before making a final decision.

#### **12.7. Discretionary succession**

- 12.7.1. Where there is no statutory or contractual right to succeed to a tenancy, the Council may, in its absolute discretion, consider granting a discretionary succession. Discretion will be exercised sparingly and consistently, having regard to the Council's duties under the Housing Act 1985, the Allocation Scheme, and the need to make best use of housing stock.
- 12.7.2. Each case will be assessed on its individual merits, taking into account factors including the length and nature of the applicant's residence, their relationship to the deceased tenant, the significance of any financial support they gave to the deceased tenant, the availability of alternative accommodation, the size and suitability of the property, and any relevant vulnerability considerations. A discretionary succession is

not an automatic right and will only be granted in exceptional circumstances, and will be considered by an appropriate senior officer to whom power has been delegated under the Allocation Scheme and the Council's Scheme of Delegations. The Council reserves the right to offer alternative accommodation where appropriate.

- 12.7.3. If a discretionary succession is agreed the new tenancy offered will be a Secure tenancy. The tenancy may be at the address where the assignee has been living, or another property depending on the size of property needed which will be assessed by the Housing Allocation Scheme and the lead officer responsible for the service area at the council.
- 12.7.4. To determine the size of property needed only the following family members will be considered part of the discretionary successor's household:
- (1) Dependent children normally resident with the main applicant parent
  - (2) Co-habiting partners included married, non-married and same sex partners
  - (3) Adult relatives reasonably expected to reside with the main applicant, who moved into the property at the same time as the discretionary successor and who live in the property as their only and principal home.
- 12.7.5. Where a representative of the assignor holds power of the tenancy by way of a Power of Attorney, or purports to be acting in the interests of the tenant, but is also the assignee, the request will be considered by an appropriate senior officer to whom power has been delegated under the Allocation Scheme and the Council's Scheme of Delegations.

## **12.8. Assignment**

12.8.1. Assignment is the transfer of a secure tenancy during the tenant's lifetime and is governed by section 91 of the Housing Act 1985. Lawful assignment of a secure tenancy is restricted by statute to three circumstances as 12.8.2 below.

12.8.2. A secure tenancy may be assigned:

- (1) By way of a mutual exchange;
- (2) By way of a court order made under family or matrimonial legislation; or
- (3) To a person who would be qualified to succeed to the tenancy if the tenant had died immediately before the assignment.

## **12.9. Statutory assignment**

12.9.1. A statutory assignment to a potential successor cannot be agreed where the tenant was themselves a successor, as only one succession or equivalent assignment is permitted by law.



- 12.9.2. In the case of an assignment the existing tenancy continues, and the tenancy terms and conditions do not change, only the tenant changes. 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 original tenant no longer has any rights or responsibilities whatsoever in relation to the property.

#### **12.10. Assignment by way of a court order**

- 12.10.1. Transfers of tenancies can be ordered in some circumstances under the; Family Law Act 1996, Matrimonial and Family Proceedings Act 1984, under Schedule 1 of the Children Act 1989, Matrimonial Causes Act 1973 and Civil Partnership Act 2004.

#### **12.11. Assignment by way of Mutual Exchange**

- 12.11.1. Council tenants are able to exchange their homes with another council tenant, or another tenant of an approved landlord in specific circumstances and with the Council's consent and in accordance with the Council's Mutual Exchange Policy and Procedure.

- 12.11.2. Consent to exchange may only be withheld by the Council on statutory grounds detailed in the Schedule 3 of the Housing Act 1985, or Section 158 and Schedule 14 of the Localism Act 2011 depending on what type of mutual exchange is taking place. The grounds for withholding consent include, but are not limited to:

- (1) Possession Proceedings – if action is currently being taken to evict the tenant a mutual exchange would likely be refused.
- (2) Anti-social behaviour – if a tenant has a history of disruptive behaviour.

- 12.11.3. Possession proceedings are being sought, or a possession order has been granted.

- (1) The accommodation is larger than is needed or is not suitable for the needs of the proposed tenant which will be assessed by the Housing Allocation Scheme and the lead officer responsible for the service area at each council.
- (2) Tied accommodation – if the property has been provided as part of the tenant's job.
- (3) Special needs adaptations – if the property has been adapted for a disabled person and the new tenant does not require those adaptations.

- 12.11.4. The Council will consider requests for mutual exchange in accordance with the relevant statutory provisions. Where an exchange takes place by way of assignment under section 92 of the Housing Act 1985, consent cannot be refused solely on the basis of rent arrears. However, consent may be refused where statutory grounds apply, including where possession proceedings have commenced or a Notice of Seeking Possession is in force. In such cases, the Council may also make consent



conditional on the tenant remedying any breach of tenancy, including clearing rent arrears.

- 12.11.5. Where an exchange is undertaken by way of surrender and regrant under section 158 of the Localism Act 2011, rent arrears are a ground on which consent to the exchange may be refused.
- 12.11.6. For the avoidance of doubt, Housing Benefit overpayments, rechargeable repair charges and court costs do not constitute rent arrears.
- 12.11.7. The Council will comply with the statutory 42-day time limit for processing mutual exchange applications from the date of receiving all the required information, as per the Mutual Exchange Policy.

## **12.12. Exchanges between Introductory tenants and Secure tenants of the Council**

- 12.12.1. The law does not allow an Introductory tenancy to be assigned by way of mutual exchange. However, if a Secure tenant and an Introductory tenant want to exchange, the Council may offer both tenants, on a discretionary basis, the option to make a written request to agree to each surrendering their existing tenancy on the condition that they are offered a new tenancy at the other person's property.
- 12.12.2. These types of arrangements will be agreed where the exchange makes the best use of the Council's housing stock. Where this is agreed the new tenancy offered will be a Secure tenancy on the successful completion on an Introductory tenancy.
- 12.12.3. In all cases, regardless of the way in which the exchange is affected, the incoming tenant will be charged the same rent as the outgoing tenant.

## **13. Exceptional circumstances**

- 13.1. There may be limited circumstances when the Director responsible for Housing or duly delegated persons, may exercise discretion in relation to the Tenancy Policy due to exceptional circumstances, and will do this by taking into account all the relevant circumstances including the demand for and supply of accommodation and the general housing circumstances within the Council while having regard to relevant legislation, guidance, and the Council's Allocation Scheme.

## **14. Equality, Diversity and Inclusion**

- 14.1. The Council is committed to promoting fair and equal access to services and equal opportunities in employment, the procurement of goods and as a community leader. The Council's policies, procedures and day to day practices have been established to promote an environment which is free from unlawful and unfair discrimination, while valuing the diversity of all people.

- 14.2. Discrimination on the grounds of race, nationality, ethnic origin, religion or belief, gender, marital status, sexuality, disability, and age is not acceptable: the Council will take action to ensure no person using the council's premises or services receives less favourable treatment or is disadvantaged by requirements or conditions that cannot be justified. The Council will tackle inequality, treat all people with dignity and respect and continue to work to improve services for all service users.
- 14.3. The legal framework for the Council's approach is provided by the requirements Equality Act 2010, including the Public Sector Equality Duty, under which a public authority must have due regard to the need to eliminate discrimination, harassment, victimisation and to advance equality of opportunity and foster good relations between people with differing characteristics.

## **15. Complaints and Appeals**

- 15.1. The Council is committed to dealing with complaints quickly and effectively, using complaints, comments, and compliments to review and improve its services. There is no right of internal appeal against decisions made under this policy. Any person wishing to challenge decisions made under this policy must do so via the complaints procedure. This does not affect a person's statutory rights to seek legal redress or judicial review where applicable.

## **16. Information Storage and Management**

- 16.1. The Council collects and keeps information about tenants and applicants so it can manage tenancies and provide housing services.
- 16.2. All personal information is stored securely and handled in line with data protection law. Only authorised Council staff can access this information where it is needed to do their job.
- 16.3. The Council will keep information accurate and up to date and will only share it with other organisations where this is necessary to manage a tenancy, meet legal duties, or protect people's safety.
- 16.4. Information will only be kept for as long as needed. Tenants have the right to see their personal information and ask for it to be corrected if it is wrong.

## **17. Reviewing the Tenancy Policy**

- 17.1. This Tenancy Policy will be subject to regular review to address any legislative, regulatory, best practice or operational issues. Any changes will be agreed with the relevant Executive Member and any significant changes will be consulted on and an Equalities Impact Assessment will be completed.