



## **Tenancy Policy**

**Issued by Housing & Community Safety**

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## **Downsizing Policy**

### **Quality Record**

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<b>Contents</b>	<b>Page</b>
<b>1. Introduction</b>	<b>5</b>
<b>2. Responsibilities</b>	<b>8</b>
<b>3. The types of tenancy the Council will grant</b>	<b>8</b>
<b>4. Criteria for granting tenancy types</b>	<b>11</b>
<b>5. Introductory to Flexible and Flexible Tenancies</b>	<b>13</b>
<b>6. Flexible Tenancies (review procedures)</b>	<b>16</b>
<b>7. Demoted Tenancies</b>	<b>17</b>
<b>8. Joint Tenancies</b>	<b>18</b>
<b>9. Transfers, assignments and mutual exchange</b>	<b>19</b>
<b>10. Succession Rights</b>	<b>20</b>
<b>11. Tackling Social Housing Fraud</b>	<b>21</b>
<b>12. Tenancy Management</b>	<b>21</b>
<b>13. Equal Opportunities</b>	<b>22</b>
<b>14. Related Documents</b>	<b>22</b>
<b>14. Review Date</b>	<b>22</b>

## 1. Introduction

1.1 The purpose of this Tenancy Policy is to ensure that:

- our tenants receive the correct form of tenancy agreement
- the Council meets all applicable legal and regulatory requirements in relation to the form, use and management of its tenancy agreements.

1.2 In particular as a registered provider of social housing, the Council is required to comply with the Regulatory Framework set by the Regulator of Social Housing (the "Regulator"), including the Tenancy Standard.

1.3 By way of background, the Localism Act 2011 introduced more flexible tenure arrangements for tenants entering social housing. The Localism Act 2011 amended the Housing Act 1985 and the Housing Act 1996, to allow the Council to grant a new type of fixed term tenancy to its tenants called the flexible tenancy, which must be for a fixed term of at least 2 years, in addition to any probationary (introductory) period.

1.4 Following on from this the Tenancy Standard was updated and provides that the Council must publish clear and accessible policies which outline its approach to tenancy management, including interventions to sustain tenancies, preventing unnecessary evictions, and tackling tenancy fraud and set out:

- the types of tenancies it will grant
- the circumstances where a tenancy of a particular type will be granted,
- where it will grant a fixed term (flexible tenancy), the length of that fixed term
- the circumstances where a flexible (fixed term) tenancy term of less than 5 years will be granted in general needs housing following any probationary period
- the circumstances in which it may or may not grant another tenancy on the expiry of the fixed term in the same property or in a different property
- how applicants/tenants can appeal against the length of a fixed term tenancy offered, the type of tenancy offered and a decision not to grant another tenancy on the expiry of the fixed term
- its policy on taking into account the needs of those households who are vulnerable by reason of age, disability or health and households with children, including the provision of tenancies which provide a reasonable degree of stability
- the advice and assistance it will give to tenants on finding alternative accommodation in the event that it decides not to grant another fixed term tenancy at the end of the fixed term
- its policy on granting discretionary succession rights, taking into account the needs of vulnerable household members.

1.5 The Council is also required under the Tenancy Standard to:

- let its properties in a fair, transparent and efficient way, which takes into account, the housing needs and aspirations of applicants/tenants
- demonstrate how its letting terms make the best use of available housing, are compatible with the purpose of the housing and contribute to its Tenancy Strategy and sustainable communities
- have clear applications, decision making and appeals processes

- enable its tenants to gain access to opportunities to exchange their tenancy with that of another tenant by way of internet based mutual exchange services
- offer tenancies or terms of occupation which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community and the efficient use of its stock
- ensure its letting terms meet all applicable statutory and legal requirements
- grant general needs tenants either a periodic secure tenancy or a fixed term (flexible) tenancy for a minimum fixed term of 5 years, in addition to any probationary (introductory) tenancy period
- serve a written notice on tenants before a fixed term (flexible) tenancy ends stating that either that the Council propose to grant a new tenancy on the expiry of the existing fixed term or that the Council proposes to end the tenancy
- grant probationary (introductory) tenancies for a maximum of 12 months or a maximum of 18 months where reasons for extending the probationary period have been given to the tenant and where the tenant has been given the opportunity to request a review of the decision to extend the probationary period;
- offer reasonable advice and assistance to tenants on fixed term (flexible) tenancies where their tenancies are brought to an end at the end of the fixed term
- develop and provide services that will support tenants to maintain their tenancy and prevent unnecessary evictions.
- grant those who were social housing tenants before 1 April 2012 and have remaining social housing tenants since that date a tenancy with no less security where they move to another social rented home, either with the Council or with another landlord. This requirement does not apply however where a tenant chose to move to accommodation let on affordable rent terms
- grant tenants who have been moved into alternative accommodation during any development or other works a tenancy with no less security of tenure on their return to settled accommodation.

1.6 In addition, the Localism Act 2011 requires local authorities to publish a Tenancy Strategy, which must set out the matters to which registered providers of social housing in the local authority district are to have regard to in formulating their tenancy policies relating to:

- the types of tenancies they grant
- the circumstances in which they will grant a tenancy of a particular type
- where they grant tenancies for a certain term, the lengths of those terms and
- the circumstances in which they will grant a further tenancy on the ending of an existing tenancy.

1.7 The Council has therefore developed a Tenancy Strategy jointly with 3 other local authorities in Warwickshire, namely, Warwick District Council, Rugby Borough Council and North Warwickshire Borough Council (the “Warwickshire Tenancy Strategy”).

1.8 All registered providers of social housing with housing stock in Warwickshire are therefore required by the Localism Act 2011, to have regard to the Warwickshire Tenancy Strategy when formulating and implementing their own tenancy policies. The Tenancy Strategy was produced to give guidance to all registered providers of social housing on the 4 Councils’ expectations of how their tenancy policies should be framed.

1.9 The Council has therefore considered the Warwickshire Tenancy Strategy when formulating this Tenancy Policy.

1.10 This Tenancy Policy, in conjunction with the Tenants' Handbook, the Council's Housing Allocations Policy and the Council's other housing management policies, sets out how the Council will comply with the requirements of the Tenancy Standard, the Warwickshire Tenancy Strategy, and in particular:

- the types of tenancy agreements the Council will grant and in which circumstances
- the reasons for granting the types of tenancy agreement including taking into account the needs of vulnerable people and ensuring a reasonable degree of stability in tenure
- how the Council will help tenants to sustain their tenancy agreements including how the Council makes tenants aware of their rights and responsibilities, how the Council take interventions to sustain tenancies and prevent unnecessary evictions and how the Council deal with tenancy changes
- how the Council tackle tenancy fraud.

1.11 This policy:

- should be read in conjunction the Tenants' Handbook and with other relevant policies and procedures published by the Council including its Housing Allocations Policy
- has been developed to take account of all relevant legislation, regulations and statutory guidance including:
  - The Housing Act 1985
  - The Housing Act 1996
  - Introductory Tenants (Review) Regulations 1997
  - The Human Rights Act 1998
  - The Housing and Regeneration Act 2008
  - The Equality Act 2010
  - The Localism Act 2011
  - Flexible Tenancies (Review Procedures) Regulations 2012
  - Allocation of accommodation: guidance for local housing authorities in England June 2012 (as amended)
  - Right to Move and Social Housing Allocations 2015
  - The Domestic Abuse Act 2021
  - The Regulator's Regulatory framework and in particular the Tenancy Standard.

#### **Vulnerable persons statement**

1.12 The Council is committed to developing an equal and diverse culture where people are valued from all sections of society. The Council therefore oppose any form of discrimination in service delivery and employment practice. The Council aims to treat all applicants/tenants fairly and it will look to tailor its policies, procedures and services to meet the needs of all applicants/tenants.

1.13 Where the Council identify an applicant/tenant who is vulnerable by reason of age, disability or illness, it will look to make reasonable adjustments to its services accordingly to meet the needs of those individuals. This may include altering the way it communicates with an applicant/tenant or adjusting the service it offers to that person. Each case will be judged on its individual merits to avoid a one size fits all

approach. The Council will monitor its services regularly to ensure it is meeting all its applicants'/tenants' needs and make any adjustments required to improve and enhance the service it delivers.

## **2. Responsibilities**

- 2.1 The Head of Housing & Responsive Repairs retains the overall responsibility for the implementation of this Policy.
- 2.2 The Tenancy Services Manager and Tenancy Services Team Leader are responsible for the operational delivery of this policy and the associated procedures. This includes responsibility for monitoring and reviewing, staff awareness and training, policy development and communication to tenants.

## **3. The types of tenancy the Council will grant**

- 3.1 The Council aim to give customers as much security of tenure as appropriate, taking account of the purpose of the accommodation the needs of individual households, the sustainability of the community and the efficient use of its stock.

### **Introductory Tenancies**

- 3.2 The Council operates Introductory Tenancies whereby all new secure or flexible (fixed term) tenancies will have an introductory trial period (an "introductory period") which enables the Council to decide whether the tenant is able to sustain a tenancy and meet the conditions of the Council's standard tenancy agreement.
- 3.3 During the introductory period, an Introductory Tenancy can be ended by the Council by getting an order for possession by serving notice on the tenant in accordance with section 128 of the Housing Act 1996 for any reason.
- 3.4 If the Introductory Tenancy is to become a fixed term (Flexible Tenancy) at the end of the introductory period, the Council will serve a notice on the tenant in accordance with section 137A of the Housing Act 1996 before the grant of the Introductory Tenancy to make the transition from an Introductory Tenancy to a Flexible Tenancy clear, and setting out:
  - that the tenancy would become a Flexible Tenancy at the end of the Introductory Tenancy as long as possession proceedings have not been commenced against the tenant by the Council
  - the length of the fixed term of the Flexible Tenancy;
  - the express terms of the Flexible Tenancy.
- 3.5 The introductory period will generally be 12 months, unless the tenant has been an introductory tenant under another Introductory Tenancy with the Council or an introductory or assured shorthold tenancy of another registered provider of social housing. In this case, any such period as an introductory or assured shorthold tenant will count towards the introductory period as long as:
  - the period ended immediately before the start date of the new Introductory Tenancy; or
  - If there was more than one period, then the most recent period ended immediately before the start date of the new Introductory Tenancy and each period followed the other consecutively without a break.

3.6 In order to achieve sustainability of its tenancies and communities, the Council recognise that monitoring of the conduct of Introductory Tenancies and early intervention by the Council, is fundamental to the operation of Introductory Tenancies, particularly during the early stages of the tenancy.

3.7 During the introductory period, the Council will monitor the conduct of Introductory Tenancies to enable early intervention by the Council and prevention methods to tackle anti-social behaviour and other breaches of the tenancy to enable it to decide whether the tenant is able to sustain a long-term tenancy with the Council without breaching its terms.

3.8 The Council is able to extend the introductory period by further period of 6 months if the tenant does not conduct the tenancy to the Council's satisfaction during the introductory period in accordance with section 125A of the Housing Act 1996.

3.9 If the Council does intend to extend the introductory period, the Council will serve a notice on the tenant in accordance with section 125A of the Housing Act 1996 at least 8 weeks before the end of the introductory period, informing the tenant of the reason for extending the introductory period and that the tenant has a right to request a review of the decision within 14 days (a "notice of extension").

3.10 If the tenant does make a request to review the decision to extend the introductory period within 14 days, the Council will review its decision and notify the tenant of its final decision before the end of the introductory period.

3.11 Where the Council has served a notice of extension on the tenant and either the tenant has not requested a review of the Council's decision or the tenant has requested a review and the decision on the review was to uphold the Council's decision, then the introductory period will be extended by 6 months.

3.12 If the tenant does not conduct the introductory tenancy to the Council's satisfaction, the Council may seek to bring the introductory tenancy to an end and recover possession of the property. If the Council does this, it will:

- notify the tenant of their right to request a review of the decision to end the Introductory Tenancy; and if applicable:
  - review its decision to end the Introductory Tenancy; and
  - advise the tenant of the result of the review of the decision to end the Introductory Tenancy
- advise the tenant where they can seek advice and assistance in relation to the Council's decision to end the Introductory Tenancy in accordance with the Housing Act 1996.

### **Equitable tenancies**

3.13 As persons under the age of 18 ("minors") cannot hold a legal interest in land, the Council uses equitable tenancies for all tenancies granted to minors aged 16 or 17. As the tenancy will be held in trust for the minor, there must be a "trustee" to the tenancy agreement. The trustee will hold the benefit of the tenancy on trust for the tenant until they reach the age of 18. The trustee must be a third party and will usually be Warwickshire County Council but could also be a relative of the minor. Their details should be entered as a party to the agreement and they need to sign it.

- 3.14 The Council will not enter into an equitable tenancy without a third-party trustee. This is because otherwise, the Council (by default) would be the trustee, which would prevent it regaining possession of the property (as it would be a breach of trust).
- 3.15 The trustee must be served with any notices that are served on the equitable tenant.
- 3.16 A third party may also be asked to enter into a Guarantor Agreement to guarantee the obligations in the tenancy agreement, particularly payment of rent (this may be a different person to the trustee).
- 3.17 Equitable tenancies can be terminated in the same way as their respective non-equitable tenancies. In any court proceedings, the first defendant should be listed as the trustee and the second defendant as the minor. The minor cannot however represent themselves in court and the trustee should arrange for the appointment of a litigation friend.
- 3.18 Where a minor is going to be a tenant, the tenancy should be an equitable version of whatever form of tenancy the Council would grant to an adult in the same circumstances.
- 3.19 When the tenant reaches 18, the Council should grant the tenant a new "legal" tenancy in accordance with this policy.

### **Tenancy types**

- 3.20 The Council has the following tenancy agreements available for use:
  - Secure Tenancy
  - Flexible Tenancy
  - Introductory to Secure Tenancy
  - Introductory to Flexible Tenancy
  - Equitable Introductory to Secure Tenancy
  - Non-Secure Contractual Tenancy
- 3.21 Listed below is a brief summary of the different tenancy agreements:
  - Secure Tenancy: is a tenancy granted for life and can only be ended by the Council by getting an order for possession on one or more of the grounds for possession listed in Schedule 2 to the Housing Act 1985. Tenants on a Secure Tenancy have the rights set out in the Housing Act 1985, including the right to buy and the right to carry out improvements and compensation for improvements.
  - Flexible Tenancy: is a tenancy granted for a fixed period of time but which may be ended by the Council during the fixed term by getting an order for possession on one or more of the grounds for possession listed in Schedule 2 to the Housing Act 1985. At the end of the fixed term of the tenancy, the Council may end the tenancy or grant the tenant a new tenancy, depending on the circumstances at the time and the way the tenant has conducted the tenancy. Tenants on a Flexible Tenant have most of the same rights under the Housing Act 1985 as secure tenants, but do not have the statutory right to carry out improvement or to receive compensation for improvements. Tenants granted Flexible Tenancies will however be granted, through their tenancy agreement, both the Right to Improve and the Right to Compensation for Improvements

- Introductory to Secure Tenancy: is an Introductory Tenancy which converts automatically to a Secure Tenancy after 12 to 18 months (the “introductory period”) unless the Council or the tenant take action to end the Introductory Tenancy during the introductory period. During the introductory period tenants have the rights set out in the Housing Act 1996, which are fewer compared to rights of tenants on a Secure Tenancy (for example there is no right to buy, right to carry out improvements or to take in lodgers or sublet the property)
- Introductory to Flexible Tenancy: is an Introductory Tenancy which converts automatically to a Flexible Tenancy after 12 to 18 months (the “introductory period”) unless the Council or the tenant take action to end the Introductory Tenancy during the introductory period. During the introductory period tenants have the rights set out in the Housing Act 1996, which are fewer compared to rights of tenants on a Flexible Tenancy (for example there is no right to buy or right to take in lodgers or to sublet the property)
- Equitable Introductory to Secure Tenancy: an equitable version of an Introductory to Secure Tenancy to be used when the tenant is a minor
- Non-Secure Tenancy: is a tenancy excluded from statutory protection under the Housing Act 1985, and is usually given to tenants who are required to move out of their main home while works are carried out to their main home which cannot be carried out whilst the tenant remains living in their main home or to provide temporary housing to persons owned a homelessness duty by the Council. A Non-Secure Tenancy is a contractual tenancy without security of tenure and can be brought to an end by the Council by serving a notice to quit in accordance with the provisions of the tenancy for any reason. Because of the nature of a Non-Secure Tenancy, tenants on a Non-Secure Tenancy will have fewer rights than tenants on the other forms of tenancy agreement granted by the Council

#### **4. Criteria for granting tenancy types**

- 4.1 The tenancy agreements that the Council grant are based on the following principles:
  - tenure status – the tenure circumstances and status and history of the incoming tenant
  - creating sustainable communities - making the best use of our available housing and granting tenancy agreements that are compatible with the purpose of the housing, taking into account the needs of households, particularly those who are vulnerable by reason of age, disability or illness and households with children.
- 4.2 The main tenancy agreement that the Council offer to new tenants joining the Council is an Introductory Secure Tenancy to enable a settling in period, with the exception of those tenants who will be occupying a 4+ bedroom or extensively adapted property or who have the right to a Secure Tenancy.
- 4.3 If the customer conducts the Introductory Tenancy to the Council’s satisfaction during the introductory period, then it will automatically convert to a Secure Tenancy at the end of the introductory period.
- 4.4 Where an Introductory to Secure Tenancy or a Secure Tenancy is offered by the Council, the form of agreement will be the Council’s current form of Secure Tenancy, which since 1 April 2012, contains reduced rights than were previously offered to Secure tenants, due to changes made to the Housing Act 1985 by the Localism Act 2011. Further details are set out below at paragraph 10.

4.5 There are occasions when we will grant other tenancy agreement types. The list of tenancy agreements offered by the Council and the circumstances and reasons these are granted are outlined in the table below. In particular:

- The Council will offer Introductory Flexible Tenancies to persons who will be occupying 4 bedroom or extensively adapted properties
- the Council will protect the tenure status of existing and new tenants in the following way:
  - tenants who previously had a Secure Tenancy with the Council or a Secure or Assured Tenancy with another registered provider of social housing will be offered a Secure Tenancy where they (or a member of their household) was a victim of domestic abuse (within the meaning of the Domestic Abuse Act 2021) and the new Secure Tenancy is granted in connection with that abuse
  - tenants who have consecutively held a Secure Tenancy with the Council or a Secure or Assured Tenancy with another registered provider of social housing since or prior to 1 April 2012 will be given a Secure Tenancy unless the tenant chooses to move to accommodation let on affordable rent terms
  - tenants who have held a Secure Tenancy with the Council after 1 April 2012 who are under occupying their current accommodation and transfer to a property owned by the Council with less bedrooms, will be given another Secure Tenancy. Such tenure protection will only though be given on one occasion
  - the Council will grant existing tenants who have been moved into alternative accommodation during any redevelopment or other works a tenancy agreement with no less security of tenure on their return to settled accommodation.

Tenancy Type	Circumstances and Reasons
Introductory to Secure Tenancy	Is the usual offer to new tenants who will be permanently occupying Independent Living Accommodation, unless they: <ul style="list-style-type: none"> <li>• will be occupying a 4+ bedroom or extensively adapted property</li> <li>• have the right to a Secure Tenancy</li> </ul>
Introductory to Flexible Tenancy	Offered to new tenants who will be occupying 4 bedroom or extensively adapted properties, unless they have the right to a Secure Tenancy
Secure Tenancy	Offered to tenants: <ul style="list-style-type: none"> <li>• who have held a Secure Tenancy with the Council after 1 April 2012 and are under occupying their current accommodation and are transferring to a property with less bedrooms within the Council's stock</li> <li>• who previously had a Secure Tenant with the Council or a Secure or Assured Tenancy with another registered provider of social housing where they (or a member of their household) was a victim of domestic abuse (within the meaning of the Domestic Abuse Act 2021) and the new Secure Tenancy is granted in connection with that abuse</li> <li>• who can prove they currently and consecutively (i.e. with no breaks) have held a secure or assured tenancy since, or prior to April 1st 2012, unless the tenant chooses to move to accommodation let on affordable rent terms.</li> </ul>

Flexible Tenancy	Offered to existing Flexible re-let tenants and tenants who are moving from another Secure or Flexible Tenancy within the Council's stock if the property has 4+ bedrooms or is extensively adapted, unless they have the right to a Secure Tenancy.
Equitable Introductory to Secure Tenancy	Offered to minors who would be granted an Introductory to Secure Tenancy if they were an adult
Non-Secure Contractual Tenancy	<p>Offered to tenants occupying temporary accommodation whose tenancy will be excluded from security of tenure under the Housing Act 1985, including:</p> <ul style="list-style-type: none"> <li>• where a tenant is decanted from their permanent home whilst works are carried out. In such cases the tenant is not required to pay rent in relation to the temporary tenancy but does have a continuing obligation to pay rent in respect of their main home</li> <li>• a tenancy granted to a person owed a homelessness duty by the Council under the Housing Act 1996</li> </ul>

## 5. **Introductory to Flexible and Flexible Tenancies**

### **Length of fixed term of Flexible Tenancies**

- 5.1 The length of new Flexible Tenancies the Council will offer will be 5 years (in addition to any introductory period).
- 5.2 Exceptionally the Council may grant Flexible Tenancies of 10 years in special circumstances (see paragraph 5.11 below.)
- 5.3 Under section 107B of the Housing Act 1985, the applicant/tenant may request a review of the Council's decision about the length of the Flexible Tenancy offered.
- 5.4 The applicant/tenant may only request a review if the length of fixed term of the Flexible Tenancy does not comply with this Tenancy Policy.
- 5.5 The applicant/tenant must make the request for a review within 21 days of the days of receipt of the offer of the tenancy or the notice required by paragraph 3.4 above, whichever is earlier.
- 5.6 The review will be dealt with by the Council in accordance with the Flexible Tenancies (Review Procedures) Regulations 2012 (see paragraph 6 below).
- 5.7 At the commencement of each Introductory to Flexible and Flexible Tenancy, the Council will notify the tenant of the assessment criteria the Council will use at the end of the fixed term of the Flexible Tenancy to determine whether a further tenancy (either Secure or Flexible) will be offered to the tenant at the end of the fixed term.

5.8 During the fixed term of the Flexible Tenancy, the Council will monitor the conduct of the Flexible Tenancy and the tenant's occupancy and financial circumstances against its assessment criteria to enable it to decide whether to offer the tenant another tenancy of the same or another property (Secure or Flexible) at the end of the fixed term or whether it intends to bring the tenancy to an end.

5.9 In reaching its decision, the general presumption will be that a further Flexible Tenancy of the existing property will be offered to the tenant. Where a new Flexible Tenancy is to be offered to the tenant at the end of the fixed term, the Council will serve notice of this on the tenant in writing before the end of the fixed term.

5.10 A further tenancy Flexible Tenancy of the same property may not be granted by the Council and the Council may instead seek to end the Flexible Tenancy in the following circumstances.

- the tenant (or a member of their household) has been guilty of serious unacceptable behaviour, that would justify the issue of possession proceedings against the tenancy by relying on a ground for possession set out in Schedule 2 to the Housing Act 1985 (including rent arrears and other breaches of tenancy conditions)
- the tenant is under-occupying the accommodation (when considering people required to live with the tenant, for example family members and not lodgers). In these circumstances a further Flexible or Secure tenancy (as appropriate) may be offered to the tenant on a suitable smaller property, provided that none of the other assessment criteria apply
- where the accommodation is statutorily overcrowded. In these circumstances a further Flexible or Secure tenancy (as appropriate) may be offered to the tenant on a suitable larger property, provided that none of the other assessment criteria apply
- where the property has been extensively adapted and there is no one in occupation who is in need of these adaptations, and there is an applicant on the housing register who is in need of the adapted accommodation. In these circumstances a further Flexible or Secure tenancy (as appropriate) may be offered to the tenant on a suitable alternative property, provided that none of the other assessment criteria apply.
- where, from in accordance with the Council's Allocations Policy the tenant, in the opinion of the Council, has sufficient income and/or assets to enable them to meet their housing need themselves.

5.11 If any of the above circumstances apply but there are special circumstances, including where:

- the tenant is an active foster carer
- the Council's medical advisor confirms that the tenant, or member of their household, has a terminal illness or a long-term disability
- the tenant is a care leaver who is still in need of support; and/or
- there are dependent vulnerable children

a further Flexible Tenancy for a fixed term of 10 years may be granted, to enable those special circumstances to be monitored and re-assessed at a later date.

- 5.12 The Council recognise that there may be special or exceptional circumstances not covered by this Tenancy Policy. In such instances, the Head of Housing & Responsive Repairs will have delegated authority to make decisions as considered appropriate.
- 5.13 If the Flexible Tenancy is to be brought to an end at the end of the fixed term, at least 6 months before the end of the fixed term of the tenancy, the Council will serve on the tenant a notice in writing (a “minded to” notice):
  - stating that it does not propose to grant another tenancy of the property on the expiry of the Flexible Tenancy
  - setting out the Council’s reasons for not proposing to grant another tenancy of the property;
  - informing the tenant of their right to request a review of the Council’s decision not to grant another tenancy and the time when such a request must be made
  - setting out the deadline for requesting a review of the Council’s decision is 21 days.
- 5.14 The tenant must make the request for a review within 21 days of the days of receipt of the receipt of the minded to notice.
- 5.15 The review will be dealt with by the Council in accordance with the Flexible Tenancies (Review Procedures) Regulations 2012 (see paragraph 6 below).

### **Ending the Flexible tenancy**

- 5.16 During the fixed term of a Flexible Tenancy the Council is able end the tenancy if any of the grounds for possession listed in Schedule 2 to the Housing Act 1985 applies by serving notice on the tenant and getting a court order for possession of the property.
- 5.17 If at the end of the fixed term a further Flexible Tenancy is not to be granted, the Council can end the Tenancy by getting a court order for possession by either:
  - serving notice on the tenant relying on one or more of the grounds listed in Schedule 2 to the Housing Act 1985; or,
  - serving 2 months’ notice on the tenant in accordance with section 107D of the Housing Act 1985
- 5.18 If the tenant refuses to vacate the property when the notice period expires, possession proceedings will be commenced by the Council.
- 5.19 If the notice was a notice under section 107D of the Housing Act 1985, a court can only refuse to order possession if the Council has not followed the correct procedures, where a review of a decision has not been carried out by the Council in accordance with the Housing Act 1985 or where a review decision made by the Council is wrong in law.
- 5.20 A Flexible tenant may give 4 weeks’ notice in writing to end the Flexible Tenancy at any time during the fixed term; this may only be accepted by the Council where there are no arrears outstanding, and any other breaches of the tenancy are remedied.

## **Advice and Assistance if a further tenancy is not granted at end of Flexible Tenancy**

5.21 If at the end of the fixed term a further tenancy (Flexible or Secure) or the same or another property is not to be granted, the Council will provide advice and assistance to the tenant at least 56 days prior to the end of the fixed term to help the tenant find alternative housing. This advice and assistance will be provided by the Council's homelessness team and may include:

- assistance with securing privately rented accommodation
- assessing eligibility for a rental loan, damage deposit guarantee, a discretionary housing payment to assist with securing accommodation in the private rented sector, or any other forms of assistance available at the time
- advice on securing owner-occupied accommodation; and
- advice on joining the Council's housing register

## **6. Flexible Tenancies (review procedures)**

6.1 All Flexible Tenancy reviews (referred to above at paragraph 5) will be undertaken in accordance with the Flexible Tenancies (Review Procedures) Regulations 2012 as follows:

6.2 The Applicant must make an application for a review of the Council's decision in writing including the following:

- The applicant's name and address
- A description of the original decision of the Council in respect of which the review is sought including the date when the Council's decision was made;
- Where the review relates to the length of the Flexible Tenancy offered, a statement of the reasons why, in the applicant's opinion, the length of the tenancy does not accord with this Tenancy Policy .
- In any other case, a statement of the grounds on which the review is sought.
- A statement to the effect that the applicant does, or does not, require the review to be conducted by way of an oral hearing; and
- A statement to the effect that the applicant does, or does not, agree to receive communications relating to a review by email and, if so, the email address to which such communications should be sent.

6.3 Following receipt of the application, if the review is to be undertaken without an oral hearing, the Council will send a written notice to the applicant stating that the applicant may make written representations in support of the application (which will be considered by the person undertaking the review) not less than 5 days after the day on which the applicant receives the notice. The review will be conducted by a person who the Council has appointed for that purpose and may be an officer or employee of the Council. The appointed person will be of greater seniority than the person who made the original decision.

6.4 Following receipt of the application, if the review is to be undertaken by way of an oral hearing, the Council will send written notice to the applicant to notify the applicant of the day on which, and the time and place at which, it is proposed that the oral hearing is to take place, which will not be earlier than five days after the day on which notice is received by the applicant. If at any time before the hearing date the applicant requests, the Council may postpone the hearing to a later date.

### **Procedure at any hearing**

6.5 The hearing will be conducted by an officer senior to the officer who made the original decision and who was not involved in the original decision. It will be conducted with minimum formality and in accordance with the directions of the office conducting it. The tenant will be given every opportunity to make written or oral representations and be able to call persons to give evidence on any matter relevant to the decision to be made on review and put questions to any person who gives evidence at the hearing. The applicant will be able to be accompanied or represented by another person (appointed by the applicant) who will have the same rights and obligations as the applicant (or, as the case may be, the person who made the original decision) for the purposes of the conduct of the hearing.

6.6 If the applicant fails to attend the hearing, the person conducting it will either proceed with the hearing or re-arrange the hearing if it is considered appropriate. If the hearing is adjourned for more than one day, the person conducting the hearing will specify the date on which it will be resumed by sending a notice in writing to the applicant and any other person whose attendance is required at the resumed hearing.

6.7 The decision on review will be made by the person conducting the review who will notify the applicant in writing of the decision.

6.8 If, generally, there is no engagement from the tenant in the review process then the Council (if considered appropriate) will commence possession proceedings if applicable.

## **7. Demoted Tenancies**

7.1 If the Council has concerns about the way in which a tenant on a Secure or Flexible Tenancy has been conducting their tenancy, but the concerns are such that seeking possession is not felt appropriate, it may proceed to Court and seek a Tenancy Demotion Order. If the tenancy is demoted, the tenant will hold a lesser form of tenancy with reduced security of tenure for a period of 12 months. During this period, demoted tenants do not have the same rights as secure tenants, for example they do not have:

- The right to exchange
- The right of succession
- The right to take in lodgers; or
- The right to buy which is suspended until the tenancy is no longer demoted.

7.2 If the tenant continues to breach their tenancy conditions whilst the tenancy is a demoted tenancy, then the Council can proceed to Court for possession and provided the correct procedures have been followed by the Council, the Court will have no alternative, , but to grant the Council possession of the property.

7.3 On the expiry of the demotion period, a demoted tenancy that was a Secure Tenancy will be restored to a Secure Tenancy, unless the demoted tenancy is brought to an end by the Council.

7.4 In the case of demoted tenancy that was a Flexible Tenancy, on the expiry of the demotion period, the tenancy will be restored to a Flexible Tenancy, unless the demoted tenancy is brought to an end by the Council, as long as the Council has served a written notice stating that on the expiry of the demoted tenancy, the tenancy will become a flexible tenancy and specifying the length of the fixed term (which must be at least 2 years) and the other express terms of the Flexible Tenancy.

## **8. Joint Tenancies**

8.1 A Secure or Flexible Tenancy can be held by one person or by up to four joint tenants all of whom must be eligible for housing accommodation. However many tenants there are, there is still only one tenancy and the rights and duties relating to the tenancy apply jointly and severally to all joint tenants.

8.2 When a joint tenant dies, the tenancy passes in law to the surviving joint tenant/s. In these circumstances the tenancy will continue in the names of the surviving joint tenant/s. This is called the right of survivorship and happens automatically on the date of death. The names of any joint tenants cannot be removed from the tenancy unless by an Order of the Court, or where the joint tenant's interest in the tenancy is assigned to the other tenant/s.

8.3 Where the tenancy is an Introductory Tenancy or a Secure Tenancy a notice to quit served by one joint tenant will end the Tenancy for all tenants even if the other tenant/s object.

8.4 Where the Tenancy is a Flexible Tenancy, joint tenants may collectively end the tenancy by serving at least 4 weeks' written notice on the Council. In this case, the consent of all joint tenants is required.

8.5 For all tenancy types, the tenants may collectively seek to surrender the tenancy. In this case the consent of all joint tenants is required but no offer to surrender by joint tenants will take effect until it has been accepted by the Council in writing.

8.6 Joint tenancies will be offered to:

- married couples or civil partners, provided that both home seekers are named on the application form, unless both parties request the tenancy to be granted in a sole name
- unmarried couples, or those living as civil partners who can demonstrate a relationship similar to marriage or a civil partnership, providing that both request it, and the partner of the lead home seeker is registered on the application form; and
- home seekers and their live-in carers, where the live-in carer has occupied the property as their only or principal home for over 12 months and the Council considers it to be justified.

## **9. Transfers, assignments and mutual exchange**

- 9.1 The Council encourages the promotion and use of transfers, assignments and mutual exchange as a housing option. The Council has a separate Succession Policy which should be referred to for details.
- 9.2 The Council offers, an internet-based mutual exchange service, free of charge to assist qualifying tenants who want to enter into a mutual exchange. Any tenant who does not have access to the internet will be provided with support on request.
- 9.3 Where a mutual exchange takes place, unless the Localism Act 2011 applies or the particular tenancy agreement provides otherwise, the mutual exchange is carried out by a deed of assignment which means that a tenant takes over the rights and responsibilities and rent level of the other tenancy they swap with.
- 9.4 The Localism Act 2011 introduced a new mechanism for mutual exchanges which only applies when there is a certain combination of tenants. In summary this is when there is a mutual exchange between a tenant on an “old style tenancy” and a tenant on a “new style tenancy”.
- 9.5 The Localism 2011 Act applies to mutual exchanges between tenants on:
  - a fixed term social rent tenancy of 2 years or more (“new style”); and
  - a lifetime secure or assured tenancy if the tenancy began before 1 April 2012 (“old style”)
- 9.6 When the Localism Act 2011 applies the parties do not sign a deed of assignment but follow a process called “surrender and grant” in accordance with section 158 of the 2011 Act. This means that both tenants must surrender their respective tenancy agreements with their current landlords. The new landlord must then grant each tenant a new tenancy.
- 9.7 The Localism Act 2011 does not however apply where a tenant on an “old style tenancy” exchanges with a tenant on a “new style tenancy” whose property is let on an affordable, intermediate or mortgage rescue rent.
- 9.8 The Council is able to choose what tenancy to offer to any incoming tenant previously on a “new style tenancy” (this will be the Council’s current standard form of tenancy) but the Council must offer the tenant on an “old style tenancy”, a secure tenancy. For example, the Council cannot offer the tenant an Introductory Tenancy.
- 9.9 The Council will always check the tenancy agreement type of each tenant applying for a mutual exchange to establish whether the Localism Act 2011 applies.
- 9.10 The Council offers financial incentives under its Downsizing Policy to tenants who transfer to smaller accommodation. The incentives apply to Secure Tenants but only apply to Flexible Tenancies up to 3 years after the tenancy start date (including any introductory period). The Council’s Downsizing Policy should be referred to for details.
- 9.11 The law on transfers, assignments and mutual exchanges is complicated. Any tenants who are considering either a transfer, assignment of the tenancy or a mutual exchange should seek advice from their Tenancy Management Officer.
- 9.12 Where transfers, assignments and mutual exchanges take place, the Council will explain to tenants what will happen to their security of tenure if the transaction proceeds.

## **10. Succession Rights**

### **Family Members Pre-April 2012 Tenancies**

10.1 All of the Council's tenants on Secure Tenancies who signed up to their tenancy prior to 1 April 2012 enjoy many rights under the Housing Act 1985 Part IV. One of these is the right of succession to the tenancy to a spouse, civil partner or family member, subject to various conditions, upon the death of the tenant. Since 1 April 2012, any successor tenant who is either a spouse or a Civil Partner is able to remain at the accommodation regardless of any under-occupation. Under the amended legislation, however in the case of succession by a family member who meets all of the rules, if the accommodation afforded by the dwelling-house is more extensive than is reasonably required by the tenant, then the Council can serve a Notice of Seeking Possession more than 6 months but less than 12 months after becoming aware of the tenant's death. The notice requires the successor tenant to vacate the property and move to smaller accommodation.

### **Post April 2012 Tenancies**

10.2 Under the Localism Act 2011, for all tenancies (including flexible tenancies) commencing after 1 April 2012, the statutory right to succeed under the Housing Act 1985 was repealed for family members, unless an express term of the tenancy makes provision for a person other than a spouse or civil partner to succeed to the tenancy. This means that if at the time of the tenant's death, the dwelling-house is occupied by a family member (as defined by Section 113 of the Housing Act 1985) and not occupied by a spouse or a civil partner of the tenant as their only or principal home, the following additional rights will apply through the terms of the tenancy agreement:

- Provided there is no under-occupation, a family member will be allowed to succeed to the tenancy provided they meet all of the succession rules set out under the Housing Act 1985 Part IV and has been residing at the property as their only or principal home for over 3 years
- Where the property is under-occupied by a family member, if the family member meets all of the succession rules set out under the Housing Act 1985 Part IV and has been residing at the property as their only or principal home for over 3 years, they will be made one offer of suitable alternative accommodation. If the successor tenant refuses to move, then the Council will take court action to seek possession under Ground 15A of the Housing Act 1985
- Where the property is under-occupied by a family member who has resided at the property for less than 3 years then they can be required to vacate. If the occupier refuses to vacate, then the Council will take court action to seek possession.

## **11. Tackling Social Housing Fraud**

11.1 The Council employs a Corporate Fraud Team as part of the Government's national initiative to tackle social housing fraud, which in the main includes:

- The unlawful sub-letting of Council properties
- The detection of Right to Buy fraud
- The detection of fraudulent housing register applications
- The detection of fraudulent grant applications

- The investigation of all joint tenancy applications
- The investigation of all applications for succession to a tenancy; and
- The investigation of all mutual exchange requests

11.2 The Council participates in the Cabinet Office's National Fraud Initiative which is a data matching exercise to assist in the prevention and detection of fraud.

11.3 As social housing is a valuable asset, the Council considers it is important to ensure that properties are let fairly and are occupied by legitimate tenants. For this reason, all applications listed above are subject to anti-fraud vetting.

11.4 Before & during the tenancy, the tenant must inform the Council if they own a residential property or have another residential lease or tenancy.

**12. Tenancy Management**

12.1 The Council offers a range of support to tenants in order to assist them in sustaining their tenancy and preventing evictions, including:

- Undertaking in-depth sign-up interviews with all new tenants to ensure the tenant understands the terms and conditions of their tenancy
- Tenancy Management Officers undertaking new tenant visits to offer advice and support and to clarify the conditions of tenancy
- Recognising that early identification and intervention in response to unpaid rent can prevent long term difficulties for the tenant, including the use of standard letters, regular rent statements, home visits, office interviews and pre-court visits
- The Council offer a Tenancy Support Officer service who can provide support to those tenants who require it
- Housing Management collaborating closely with the Council's Homelessness Team
- Safeguarding policies including staff training and reporting procedures—including making referrals to appropriate social care agencies (Children Services, Adult Social Care, Mental Health etc). and liaise with partner agencies to support tenants and their tenancy.
- All tenants receiving the Council's tenant newsletter which includes articles on tenancy issues
- Offering mediation services to assist in resolving neighbour disputes
- Consulting regularly with the Council's Communities Team in order to design out anti-social behaviour, working in partnership to seek methods to avoid neighbour conflict

**13. Equal Opportunities**

13.1 The Council is committed to fulfilling its public sector duty under the Equality Act 2010 to:

- eliminate unlawful discrimination, harassment and victimisation, and other conduct prohibited by the Equality Act 2010,
- advance equality of opportunity between people who share a protected characteristic and those who do not,

- foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.

13.2 As an aid to ensuring that home seekers are not discriminated against on the grounds of their protected characteristics, the Council will monitor the protected characteristics of home seekers on the housing register and home seekers allocated housing.

#### **14. Related Documents**

Tenancy Agreement  
Allocation Policy  
Downsizing Policy  
Warwickshire Tenancy Strategy  
[https://www.nuneatonandbedworth.gov.uk/download/downloads/id/551/warwickshire\\_tenancy\\_strategy.pdf](https://www.nuneatonandbedworth.gov.uk/download/downloads/id/551/warwickshire_tenancy_strategy.pdf)

#### **15. Review Date**

15.1 This Policy will be reviewed every 3 years or when there is a change in legislation.