

## **Housing Tenancy Management Policy**

### **Introduction**

The purpose of this document is to set out the Council's overall approach to tenancy management. The policy and underlying procedures will allow the Council to provide a service which reflects our statutory responsibilities and good practice. The policy will also ensure tenancies are managed consistently across the district.

The Council aims to deliver an efficient and effective housing management service and supports tenants to sustain their tenancies. We acknowledge that some households will face difficulty in managing their responsibility for tenancy conduct and will assist vulnerable tenants to receive the support they need to sustain their tenancies.

- SHDC manages a range of different tenures:
- Introductory tenancies
- Secure tenancies
- Licenses (interim and temporary accommodation)
- Shared Ownership leases
- Garage licenses
- Assured tenancies.

Please note: reference to tenants relates to tenants and licensees. Some aspects of this policy only relate to secure tenants – this will be highlighted in the relevant sections.

The statutory framework for management of tenancies is set out in the following Acts:

- The Housing Act 1985 - secure tenancies
- The Housing Act 1988 - which provide legal grounds for seeking possession assured tenancies and shared ownership properties
- The Housing Act 1996 - introductory tenancies, demoted tenancies and temporary accommodation.

The Council must also pay regard to related legislation including the Protection from Eviction Act 1977, the Anti-social Behaviour, Crime and Policing Act 2014, Matrimonial Causes Act 1973, Matrimonial and Family Proceedings Act 1984, Civil Partnership Act 2004, Prevention of Social Housing Fraud Act 2013, the Law of Property Act 1925, the General Data Protection Act 2018, GDPR, 2018, Freedom of Information Act 2000, Human Rights Act 1998 and Equality Act 2010. The County Court Civil Procedure Rules set out the requirements for making applications for possession.

For the purposes of clarity, there may be some instances where the Council is duty bound to follow the law. In other instances, the Council may define its approach in policy. Examples may include but are not limited to, anti-social behaviour and the responsibility for trees and fencing.

This policy should be read in conjunction with the Housing Income Management Policy and the Housing Repairs Policy.

The overall strategic aim is to apply a firm but fair approach to managing tenancies, which takes account of individual tenant circumstances, and is sensitive to equality considerations including vulnerability, language spoken, age and literacy.

The Council will provide advice and assistance or signpost tenants to partner agencies. We will engage with tenants to identify vulnerabilities at the earliest opportunity and will assist in identifying and securing appropriate support in order for tenants to sustain their tenancy.

### **Management of introductory tenancies**

The Council operates an introductory tenancy scheme. Introductory tenancies are granted by the Council to all new tenants let properties through the Housing Register. This is a trial period to ensure that the tenants are capable of complying with the terms of a tenancy for the introductory tenancy period. The period is normally 12 months although the Council can extend it by a further 6 months if tenancy breaches occur. A tenant can appeal any decision to extend.

It is easier to evict an introductory tenant if they breach their tenancy. Introductory tenants do not have as many rights as secure tenants. They cannot:

- Make any improvements/alterations to the property
- Have a lodger
- Buy the property
- Mutual exchange/swap the property.

After the first 4 weeks, a Council housing officer will visit the property to complete a new tenant check. Further checks are carried out at approximately 3 months and 8 months after the grant of the tenancy. Failure to comply with tenancy checks will amount to a breach of tenancy.

Where an introductory tenant is in breach of their tenancy, the Council may take action against the tenant. The Council can decide what action to take, but it could include:

- sending the tenant a warning letter;
- extending the introductory period;
- serving a notice to end the introductory tenancy and/or a notice to quit
- issuing possession proceedings.

### **Succession, assignment and mutual exchange**

#### **Succession**

Sometimes, on the death of the tenant, another person may be able to succeed to and take on the tenancy. This can only occur when the tenancy allows for a succession. There are different rules for introductory and secure tenancies.

Unless there are rare and extreme circumstances, there can only be one succession to a tenancy. The Housing Landlord Services Manager will approve discretionary successions.

In Housing law, a joint tenant will always succeed to the tenancy on the death of the other joint tenant, even if they are no longer occupying the property. In which case, the Council will serve the absent tenant a notice to quit as they have ceased to occupy the property as their only or main home. This will terminate the tenancy and the Council may issue possession proceedings.

In accordance with the Localism Act 2011, where a tenancy was granted on or after 1<sup>st</sup> April 2012, a spouse, partner or cohabiting partner will be able to succeed to a tenancy if they occupied the property as their only or main home with the sole tenant (who was not themselves a successor) and at the time of their death.

If the tenancy was granted before 1<sup>st</sup> April 2012 or is an introductory tenancy, a partner who is neither a spouse or a civil partner, will also have to show that they resided with the tenant as their only or main home for 12 months prior to their death. If the tenant was absent from the property because they were in hospital or a nursing home, or if they were not 'partners' for the duration of the 12 months, they will not be able to succeed.

No other person will be entitled to succeed to a secure tenancy unless the tenancy agreement permits it. In the case of introductory tenancies, another family member (as defined by s140 of the Housing Act 1996) may be able to succeed to the introductory tenancy, provided that they resided at the property with the deceased as their only or main home for the 12 month's preceding and at the time of the tenant's death. If the accommodation is more extensive than is reasonably required by the family member, the Council may ask the successor to move to more suitable alternative property and, if necessary, take possession proceedings to enforce a move. Suitability of the accommodation will be considered in line with the Council's Allocations and Lettings Policy.

Applications to succeed to a tenancy shall be made to the Council on the succession form which can be provided on request.

Where persons were occupying the property prior to death and cannot succeed, the Council may issue possession proceedings to regain possession and evict the occupiers. The Council may require the occupiers to pay use and occupation charges equivalent to rent from the date of the expiry of the notice to quit until possession is given up. Please see the 'Use and Occupation' section for further information.

### **Assignment**

Sometimes, tenancies can be transferred to another person. The Council will only permit assignments to:

- Someone who is entitled under statute to succeed to the tenancy;
- Where it has been ordered by the court in family or matrimonial proceedings; or
- Where there is a mutual exchange (for secure tenancies only).
- Where the tenancy agreement allows assignments.
- Assignment is not possible under any other circumstances.

It is not legally possible for one joint tenant to assign their tenancy to the remaining joint tenant (to create a sole tenancy).

### **Mutual exchange**

Where the tenancy agreement allows, tenants are able to mutually exchange their tenancy with another tenant of a social housing property such as a Council or a housing association. A mutual exchange can only proceed with the consent of the Council and exchange partner's landlord. There are two types of mutual exchange and which applies will depend on the types of tenancy held by the parties and when they were granted.

The Council can only refuse to agree to a mutual exchange on specified grounds in the legislation that governs mutual exchanges (either the Housing Act 1985 or the Localism Act 2011). We will give or refuse consent within 42 days of the application to exchange being received.

Conditional consent can be given in cases where there are breaches of tenancy, such as rent arrears or poor condition/damage to of the property. The exchange cannot proceed until the breach of tenancy has been remedied. Where appropriate, we will have regard to household members that have a disability as defined by the Equality Act 2010 - properties that have been adapted for medical reasons will not be let to households that do not require the adaptations.

The original rights granted in tenancy agreements can be lost during mutual exchange, for example there may be different rules about succession, rent levels (higher or lower) and assignment, so tenants are advised to read tenancy agreements properly and take their own legal advice from a solicitor, Citizen's Advice or legal advice centre before agreeing to an

exchange.

Depending on the type of tenancies held by the parties mutually exchanging, sometimes the properties are swapped but the tenancy continues and stays with the property being assigned to the new occupier. In other cases, a mutual exchange takes effect as a surrender of the existing tenancies, which brings them to an end and the tenants are granted comparable but new tenancies of the new property.

### **Right to buy**

Secure tenants have the right to buy their home. A tenant can apply to buy their Council home if:

- It is their main residence
- It is self-contained
- They have held a public sector tenancy (e.g. Landlord is a Council, housing association or NHS trust) for three years - it does not have to be three years in a row.

Some properties are excluded from the Right to Buy, including:

- Property designated for people over 60 years of age (as per Right to Buy legislation);
- Property designated for people who have special needs or who are physically disabled
- Properties within rural exception sites.

The Council's Legal Team processes Right to Buy applications. The government has an official government right to buy website which tenants can check to see if they are eligible – [www.righttobuy.gov.uk](http://www.righttobuy.gov.uk)

### **Joint tenancies**

A joint tenancy is a tenancy held by two or more persons and all joint tenants have all of the rights and must comply with all of the obligations of a tenancy agreement. For example, both joint tenants owe all of the rent, not 50% each, and are responsible for meeting that rent for as long as they remain a joint tenant, even if they have vacated the property.

A breach of tenancy by one is the responsibility of all the tenants.

Legally, a joint tenant can usually serve a notice to end a joint tenancy even without the knowledge or consent of the other joint tenant. The tenancy will come to an end and both tenants will have to move out or the Council may issue possession proceedings to evict.

The Council may grant a joint tenancy to spouses, civil partners and cohabiting partners.

Inter-generational joint tenancies (e.g. parent and child, grandparent and child) will not be granted.

### **Sole to Joint tenancy**

It is not legally possible for a sole tenant to 'add' a joint tenant to their tenancy. The Council may agree to a surrender of an existing sole tenancy where there has been no succession and a re-grant to the original tenant and a new joint tenant, but it is not obliged to do so.

The Council can refuse to consent to a surrender and re-grant from sole to joint tenancy. Reasons for refusal include (but are not limited to) if:

- There has been a previous succession to the tenancy or an assignment to a potential successor
- There are outstanding rent arrears;
- There is legal action being taken against the property including but not limited to a

notice seeking possession has been served, an injunction is in force, a possession claim has been issued; a suspended possession order is in force;

- The house would become overcrowded or under occupied;
- The applicant is under 18 years old, unless it can be shown the joint tenancy is necessary for the minor;
- The applicant would not qualify for an allocation of social housing; or
- There is a history of relationship breakdown between the sole tenant and the applicant.
- The Council have previously taken enforcement action against the proposed joint tenancy, or they are known to be anti-social or have engaged in criminal conduct.

The Housing Services Manager will determine whether a new tenancy is granted.

### **Joint to sole tenancy**

The Council cannot legally remove a joint tenant from a joint tenancy and it is not possible for a joint tenant to assign their tenancy to the other joint tenant.

A joint tenant may terminate the tenancy by serving a valid notice to quit which will have the effect of ending the tenancy for both. The Council can either take possession proceedings against anyone continuing to occupy the property or offer a new sole tenancy to the remaining occupier although it is not obliged to do so.

Alternatively, the Council may agree to a surrender of the joint tenancy and a re-grant of a new tenancy to a sole tenant.

The Council can refuse to consent to a new sole tenancy. Reasons for refusal include (but are not limited to) if:

- There has been a previous succession to the tenancy or an assignment to a potential successor
- There are outstanding rent arrears;
- There is legal action being taken against the property including but not limited to a notice seeking possession has been served, an injunction is in force, a possession claim has been issued; a suspended possession order is in force;
- The house would become overcrowded or under occupied;
- The applicant is under 18 years old, unless it can be shown the joint tenancy is necessary for the minor;
- The applicant would not qualify for an allocation of social housing; or
- There is a history of relationship breakdown between the sole tenant and the applicant.
- The Council have previously taken enforcement action against the proposed joint tenancy, or they are known to be anti-social or have engaged in criminal conduct.

Discretion to grant a new sole tenancy lies with the Housing Services Manager in accordance with the Allocations and Lettings Policy.

### **Relationship breakdown**

It is possible for a non-tenant occupier to obtain a court order in family or matrimonial proceedings to have a sole tenancy transferred into their name. It is also possible for a court to order that a joint tenancy should be transferred into a sole name. This can be under matrimonial or family law, or under the Children Act 1989. Where the court orders this, the Council will transfer the tenancy as ordered, unless the tenancy has already been brought to an end or will be brought to an end by a notice to terminate which was served before the court order.

It may be possible, prior to breakdown, for a sole tenant to request an assignment of the tenancy to someone who could be a successor. (The tenancy would remain a sole tenancy).

Where a joint tenant or occupier is a victim of domestic abuse, the Council will ensure referrals to partner agencies are made including (where appropriate) a MARAC referral. The Council will also consider use of its Sanctuary Scheme to complete minor works such as installation of security lighting upon recommendation from the Police.

Where a joint tenant or occupier is convicted by the Courts of a domestic abuse related offence, the Council will interview the perpetrator and consider whether to take action to evict the perpetrator. A perpetrator is someone who uses or threaten to use violence or abuse (including physical, psychological, sexual, emotional abuse, or restricting financial control), or intimidates any person (including children) living with them.

### **Running a business from home**

Tenants must not run a business from their properties without obtaining prior written permission from the Council. Permission is discretionary, and may be conditional.

Permission can be revoked at any time and for any reason, but reasons for refusing permission or revoking permission can include:

- The business not being suitable for a residential area;
- Where the business activity is likely to amount to or lead to a breach of other terms of the tenancy;
- Where the business causes or is likely to cause a nuisance or annoyance to anyone living, working or visiting the neighbourhood of the property.
- Where the business causes or is likely to cause excess wear and tear or damage to the property or its fixtures and fittings
- Issues with tenancy conduct.

If permission is granted, the tenant will still need to check with the Council's planning department to see if any additional consents are needed, and permission by the Council as landlord does not amount to permission on behalf of any other department of the Council nor imply that such permission will be forthcoming.

The Council will not give permission for the property to be used as a B & B, Airbbnb or holiday let. Such instances will be treated as tenancy fraud.

Where a business is run from a property without consent, the Council may take steps to stop such activity, for example seeking an order from the court to prevent the business activities or taking steps to end the tenancy.

### **Sub-letting and lodgers**

A lodger is someone who lives with the tenant as part of their household and pays a small amount for board and lodging.

Subletting is the act of allowing someone else to live in your property in return for rent. The sub-tenant has exclusive use of part of the property.

Whether a tenant is allowed to have a lodger or sub-let part of the property will be set out in the tenancy agreement. Introductory tenancies do not allow for lodgers or sub-letting. If a tenant sub-lets or has a lodger, the tenant must continue to live in the property as their only or main home, or they will lose security of tenure. This means the Council can serve notice to quit and the tenant can be evicted.

Consent is required from the Council to sub-let part of a property or have a lodger, and the tenant must tell the Council the names and details of the proposed sub-tenants or lodgers. The Council can refuse to give consent, for any reason, including (but not limited to):

- The presence of the lodger or sub-tenant will make the property overcrowded;
- The lodger or sub-tenant is known to the Council and not considered to be a suitable occupier; and
- The property is not suitable for a lodger or sub-tenant.

The Council may also tell a tenant to make a lodger or sub-tenant leave if they put the tenant in breach of their tenancy, including by engaging in anti-social behaviour.

It is a criminal offence to sub-let the whole of a property to someone else and a tenant can be prosecuted for this. In addition, any security of tenure will be lost and cannot be regained. This means the Council can serve a notice to quit to end the non-secure periodic tenancy and then will take steps to evict the tenant. In addition the Council can ask the court for an unlawful profit order which will force the tenant to pay to the Council the profits of their unlawful sub-letting.

### **Gardens**

Some properties are let with individual gardens and others have use of communal gardens and spaces.

Tenants are not permitted to make any alterations to communal gardens and are expected to act respectfully in them, refraining from behaviour which causes or is likely to cause a nuisance or annoyance to neighbours, visitors and others working in the neighbourhood.

A tenant remains responsible for their garden regardless of their personal circumstances and is therefore expected to make suitable arrangements for the continued maintenance and upkeep.

Dogs must be kept on leads and under control in communal areas and faeces immediately cleared up.

Where the property has its own garden, the tenant is responsible for keeping it in a tidy and acceptable condition as per the terms of their tenancy agreement. The garden area must be tidy and free from rubbish, pests, and animal waste or faeces. Trees are tenants responsibility, however they must not cut down or remove any trees without getting prior permission (unless they have planted it themselves). Tenants are responsible for fences.

Tenants must have the Council's written permission before they:

- Install decking or a conservatory, greenhouse, fence, wall, garage, drive shed, patio, aviary, pigeon loft, fishpond, pool or other structure in their garden – please see Repairs Policy for further information
- Remove, damage or destroy any trees
- Remove, alter or replace any fencing or boundary
- Plant trees.

We recognise that untidy gardens can affect the neighbourhood and not just those immediately adjacent to the property. The Council will take enforcement action if:

- the material in an untidy garden is liable to decay, for example foodstuffs, faeces, nappies, dead animals; and
  - it is causing a nuisance to neighbours (as per the Anti-Social Behaviour, Crime and Policing Act 2014); or
  - there is evidence that it is attracting rats or mice,

- there is harbourage for vermin such as rats or mice.
- there is evidence of inert materials which are unsightly but are unlikely to be causing a statutory nuisance.
- there is an accumulation of material that can make access to a premises difficult and that may present a physical or fire risk to the occupants or those of adjoining properties. It should be noted that this does not include premises which are merely unsightly, untidy or in a bad state of repair.

In the scenarios above, the Council will ask a tenant to complete work to the garden within a reasonable timeframe. Consideration regarding vulnerabilities will be taken into account regarding timescales set for work. The Council will seek to explore legal remedies to encourage a tenant to bring their garden up to an acceptable standard including (but not limited to) Community Protection Warning/Notice, injunctions or possession proceedings.

In circumstances where the garden is below the threshold for enforcement action, the complainant will be encouraged to speak to their neighbour direct. The Council will facilitate mediation if both parties are happy to accept.

### **Infestations**

Tenants are required to ensure that they do not do anything in the property which causes or encourages infestations of bed bugs, cockroaches or other insects or rodents. Excess food must not be thrown out of windows, balconies, into gardens, or communal areas for birds or other animals, and food waste must be properly disposed of in rubbish bins and not left open in the property.

The Council will treat the following infestations:

- Rats and mice within the property or communal areas
- Wasps nests attached to the property or inside the property
- Fleas, bedbugs or cockroaches reported within the first four weeks of the tenancy

Tenants are responsible for the following infestations:

- Ants, beetles, spiders, woodlice in their home
- Bees – the British Bee Keepers association will advise on a bee keeper that can collect them - [www.bbka.org.uk](http://www.bbka.org.uk)
- Flea, bedbugs or cockroaches reported after the first four weeks of the tenancy.

### **Keeping animals and pets**

Tenants may keep up to 2 small caged birds, 1 small fish tank or 1 small caged rodent. Permission to keep any other pets (including cats and dogs), must be requested in writing from the Council. Permission will depend on the type of property, when the tenancy agreement started and the conduct of the tenancy. Permission must be requested each time the tenant moves house.

Permission to keep dogs will not be given to tenants living in flats or bedsits with a communal entrance, unless the animal is recognised as an official support companion. Permission will not be given to store cockerels.

Permission will not be granted to anyone that has convictions for abandonment, cruelty, neglect or mistreatment of animals or have been disqualified from keeping animals due to a conviction.

Tenants must not:

- breed animals at the property
- keep any breed of dangerous dog as per section 1(1) of the Dangerous Dogs Act



1991, or keep any illegal breed of animal as per Dangerous Wild Animals Act 1976 or similar

- tether any livestock on any Council land
- allow any animal to cause a nuisance, annoyance or disturbance to neighbours or others lawfully in the locality of your home,
- allow any animal to behave in an intimidating, aggressive or dangerous manner
- carry out acts of cruelty to animals - cases will be reported to the RSPCA and/or the police
- build any animal enclosures without our permission.

Where the Council is satisfied that pets are causing a nuisance to neighbours or damaging the property, the Council has the right to withdraw at any time any permission implied by the tenancy agreement or expressly given. Permission can be withdrawn for any reason and the Council may enforce its decision by taking appropriate legal action.

### **Anti-Social Behaviour**

Anti-social behaviour (ASB) is the broad term used to describe a range of nuisances, disorder and crime that is repeated, persistent and affects people's daily lives (as per the Anti-Social Behaviour, Crime and Policing Act 2014).

There is no single definition of anti-social behaviour but it can include conduct such as:

- Excessive/unreasonable noise
- Domestic violence and abuse
- Physical violence
- Hate-related incidents (e.g. based on race, sexual orientation, gender, disability or belief)
- Verbal abuse, harassment, intimidation or threatening behaviour
- Vandalism and damage to properties
- Prostitution, sexual acts or kerb crawling
- Criminal behaviour.

The Council accepts that neighbours will naturally have different values or opinions and sometimes this can cause problems. We expect our tenants to show consideration to their neighbours as well as understanding that we all have a right to live our lives.

Not all reports relating to behaviour that impacts on an individual will be considered to be ASB. It is important to show tolerance and be respectful of differing lifestyles and circumstances. For the purpose of this policy, we do not consider the following to be anti-social behaviour:

- Noise or disturbance from children when they're playing at reasonable hours
- Family disputes at reasonable levels and hours
- Children crying
- Smells from cooking including BBQs
- Sounds of normal living that we can hear such as opening and closing of doors, going up and down stairs, hoovering, washing machines,
- One-off parties such as BBQs, birthday or Christmas parties providing they don't cause an unacceptable disturbance
- Clashes of lifestyle, including cultural differences
- Smoking cigarettes
- Minor personal differences such as 'dirty looks' or fall outs between children
- Putting rubbish out on the wrong day.

In these scenarios, the Council will offer mediation to help neighbours find their own

solutions. If this is refused, the case will be closed. (Vulnerabilities will be taken into consideration as part of this).

We are committed to taking effective action against ASB and using the powers available to us, where we consider they can provide effective remedy. The Council has a range of tools available to address ASB. The Housing and Community Safety Team will work together on any enforcement in conjunction with the Council's Enforcement Policy.

Where ASB is the result of criminal activity, such as drug dealing or harassment, we will expect residents to report criminal behaviour to the police. We will support the police and other statutory agencies to take action where they have sufficient evidence to do so. Where a tenant, a member of their household or visitor is convicted in a criminal court, we will consider whether additional enforcement action against the tenancy is required. The steps taken will depend on the circumstances of each case, including the severity of the behaviour, the nature of the conduct, whether it is persistent, evidence available and the vulnerability of any complainant or perpetrator.

The Council may make use of the following enforcement tools depending upon what is proportionate:

- Meet with the tenant to discuss concerns;
- Write to the tenant and warn them not to behave anti-socially;
- Arrange mediation between the complainant and perpetrator.
- Signpost or refer the perpetrator to relevant third party agencies who may be able to assist and prevent a repetition of the behaviour
- Apply for an injunction to restrain behaviour and/or exclude the tenant or someone else from the property and the locality.
- Apply for a closure order to shut the property for a period of time to prevent further ASB
- Issue Community Protection Notices and Fixed Penalty Notices
- Extend an introductory tenancy;
- Serve any relevant notices, and/or take possession proceedings to evict. A successful outcome through the courts is heavily reliant on the quality of evidence and witnesses.

### **Access**

The Council has a number of duties in respect of property maintenance and compliance. Tenants also have a duty to provide access to the Council, its staff, agents and contractors. Tenants must allow Council employees, their contractors, agents or other statutory bodies to enter the property (at reasonable hours) if they have been given reasonable written notice (usually 24 hours). Examples include (but are not limited to):

- Carrying out maintenance, repairs or other works
- Carrying out gas safety checks or electrical safety checks,
- Inspecting the condition of the property.

Tenants must make sure the property is safe for anyone accessing it for any lawful reason, including gaining access to roofs and loft spaces. Animals must be kept under control at all times when visited by the claimant's employees, contractors or agents. An adult (aged 18 and over) must be present for the appointment.

Where a property has a gas supply, the Council must carry out a gas check every year to make sure the gas installations are safe (Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998). The Council and/or its contractors will write to tenants to notify them when the check will be carried out. We will ensure tenants are provided information highlighting the risks of not having the annual gas safety inspection. If access is refused,

the Council may take action in the county court to force a tenant to provide access, or allow the Council to enter the property to carry out the same. In addition the gas may be capped at its source to remove any potential danger to property and people.

Where a property does not have a gas supply, the Council must service alternate source including solid fuel systems and air source heat pumps. The Council and/or its contractors will write to tenants to notify them when the check will be carried out. We will ensure tenants are provided information highlighting the risks of not having the service completed. If access is refused, the Council may take action in the county court to force a tenant to provide access, or allow the Council to enter the property to carry out the same.

The Council must also carry out 5 yearly electrical checks. The Council will write to tenants to notify them when the check will be carried out. If access is refused, the Council may take action in the county court to force a tenant to provide access, or allow the Council to enter the property to carry out the same.

When the Council requests access for any maintenance, repairs, checks or inspections but it is refused by the tenant, the Council may take action to gain access to the properties or seek to evict tenants.

In an emergency, the Council is permitted to force access without notice being given. An emergency includes (but is not limited to) situations where:

- There is an imminent risk of physical harm to any person, or
- There is significant damage to the property on any other property in the locality, or
- The property is unoccupied and inadequately secured against unauthorised entry or vandalism.

Where an emergency has led to forced access, the Council will make good any damage caused when entering the property. The Council will secure the property against unauthorised entry. However, the tenant may be liable for any costs incurred when access has been unreasonably refused or if the emergency is caused from the tenant's neglect of the property.

### **Abandonment**

We recognise that tenants may be away from their homes for an extended period for a number of reasons. A tenant must live in their property as their only or main home and must notify the Council of if they are going to be away from their property for more than 28 days including the dates of their absence and the name and contact details of a nominated key holder (in case of emergencies). The tenant must ask our permission to appoint a caretaker - permission will not unreasonably be withheld. In extenuating circumstances, a tenant may be away from their property for up to 12 months and it not be considered to be abandoned – this includes situation such as a victim fleeing domestic abuse and a tenant going into a care home whilst determining their long term needs.

Where we believe that the tenant may have abandoned the property (including anonymous notification) we will take appropriate action, in accordance with the legislative requirements and our abandonment procedure.

If a tenant no longer wishes to hold the tenancy, they can serve on the Council a notice to terminate the tenancy, which should normally be in writing and give at least 28 days notice. The Council may at its sole discretion accept shorter notice.

If a tenant has not served a notice to terminate, but has abandoned the property, they will lose security of tenure which means the Council can serve on the tenant a notice to quit

which will end the non-secure tenancy.

The Council may then take back the property or issue possession proceedings and enforce possession order by a bailiff's warrant to get possession back. In such cases the Council will ask the court to order that the absent tenant pay the Council's legal costs.

A tenant will also have to pay the Council rent or damages for use and occupation until the Council gets possession of the property so it is always in a tenant's best interest to give up a tenancy if they have no intention to return. This will also allow the Council to re-let the property to someone who needs it.

### **Disabled aids and adaptations**

This section should be read in conjunction with the Housing Assistance Policy.

Under the Equality Act 2010 (Section 36(1)(a), Paragraph 2, Schedule 4, and Section 190) A controller of let premises (e.g. landlord) may have to make reasonable adjustments in response to a request from a disabled tenant or occupier of those premises (and paragraph 2, Schedule 4, Equality Act 2010).

Reasonable adjustments include changing how things are done and providing an auxiliary aid, and these are subject to exclusions. The Council cannot be compelled to make changes which results in the removal or alteration of a physical feature of the premises. However, disabled tenants of residential properties can apply for their landlord's consent to make their own alterations and improvements to the premises at their own expense (Section 190).

The Council is committed to providing a high quality aids and adaptations service to enable disabled tenants to live safely and more independently within their homes, through efficient management of resources and funding.

All aids and adaptations work undertaken by the Council will only be carried out as a result of an assessment by an Occupational Therapist (OT) to determine eligibility and both short/long term medical needs. If the resident does not have an OT, they will be advised to contact Lincolnshire County Council, as an assessment of their disability is required. The OT's assessment will determine the urgency of the adaptation work required. Whilst guided by this, the Council will also work to ensure a balance between both priority need and time spent on the waiting list.

The financing of adaptations is set out in the Housing Assistance Policy.

### **Feasibility of adaptations**

The Housing Department will undertake a feasibility assessment in exceptional cases, for example, when the resident's circumstances are of a complex nature and/or the proposed adaptations may have a very significant impact on the property itself. Upon receipt of the OT referral, the feasibility assessment will be carried out in consultation with the OT along with our Private Sector Housing Team and/or Building Control. The feasibility assessment will seek to establish:

- If there is a possibility for the tenant to be moved to more suitable accommodation.
- The implications of the adaptation work when the property becomes available to re-let, in particular the impact on future allocations and under occupancy issues.
- If the adaptation works are suitable for the tenant.
- The feasibility of the adaptation in relation to the layout and structure of the property
- Whether the estimated cost of the adaptation work is likely to exceed the Local Authority's maximum grant provision.

Adaptations will not be carried out to a property where it is under-occupied. We will look to transfer tenants to a more suitable property. Couples who need separate bedrooms for medical reasons will not be adversely affected by this rule and we will seek advice from medical professionals in such cases. It may be decided that the resident's needs are best met through a managed move. This decision would be made by the Housing Services Manager and Housing Options Manager in consultation with the tenant. A priority transfer within the Council's stock would be approved under the Council's Allocations Policy and/or a priority move to another property may be arranged. The OT will be consulted on the suitability of a proposed property.

In general, the Council does not purchase adapted properties or properties suitable for adaptations on the open market. Where it has been identified that a move to a more suitable property is both reasonable and practicable, the Council reserves the right to refuse approval for the adaptations requested for the original home. The Housing Landlord Services Manager will make this decision and such decisions will be final. The OT will be consulted on the suitability of the proposed alternative home.

### **Termination of tenancies**

Tenancies can be terminated in a number of ways: by the Council, normally through the courts granting and enforcing a possession order; by the tenant; or by consent of the Council and the tenant.

#### **By the Council**

Most Council tenancies have security of tenure and are protected by the Protection from Eviction Act 1977, which means that, unless the tenant agrees to leave, the Council cannot regain possession without an order of the court. In such cases, the Council may first serve any relevant notices on the tenant, which will state the reasons why possession is being sought, unless it has asked the court to dispense with a notice. The Council may then issue a claim for possession which will be determined by the court. In some cases the court has a discretion as to whether to evict the tenant.

Where a tenant has lost security of tenure, for example by ceasing to reside in the property as their only or main home, or subletting or parting with possession of the whole of the property, the Council can serve a notice to quit on the tenant. Notices to quit normally give the tenant 28 days to give the property back to the Council. If a tenant fails to do this, the Council may then issue possession proceedings. Normally these proceedings result in a possession order as the court has little discretion to refuse.

#### **By the tenant**

A tenant can surrender their tenancy back to the Council. Normally the Council will require a notice to terminate tenancy form to be completed giving the Council 4 week's notice and the return of the keys. If a tenant has been offered a Council property through the Council's Allocation Policy, a minimum of one week's notice would be accepted. A joint tenant can usually serve a notice to end a joint tenancy even without the knowledge or consent the other joint tenant. Once served, a tenant's notice cannot be revoked and the tenancy will come to an end. If the tenant does not vacate or give the property back with vacant possession, the Council may issue possession proceedings in the court to evict.

#### **Death of tenant**

Where a tenant dies and there is no-one who can succeed to the tenancy, the tenancy will cease to have security of tenure and the Council will end the periodic non-secure tenancy by serving a notice to quit on the personal representatives/executors of the deceased and the Public Trustee, unless the personal representatives/executors serve the Council with a notice to terminate and clear the property, surrendering or giving up the tenancy.

Rent remains payable by the estate of the deceased during the notice period, and thereafter use and occupation charges equivalent to the rent are payable by the estate until the property is cleared and given back to the Council or a court possession order is enforced (whichever is the latter). Further information around charges during the notice period is available in the Housing Income Management Policy.

Where persons are left in occupation of the property and they do not have a right to succeed, once the notice to quit served on the deceased's estate has expired, the Council may issue possession proceedings to regain possession and evict the occupiers. The Council may require the occupiers to pay use and occupation charges equivalent to rent from the date of the expiry of the notice to quit until possession is given up. Please see the 'Use and Occupation' section for further information.

### **Mutual exchange**

Tenancies can also be terminated where tenants exchange their homes with another social housing tenant. See the Mutual Exchange section on page 3 for further information.

### **Belongings left in a property after tenancy terminated**

When a tenant ends their tenancy, or a tenant has been evicted, they are required to give the property back to the Council empty of all rubbish, furniture and other belongings.

Where a tenant ends their tenancy, the Council will dispose of any items left in the property and re-charge the tenant.

In all other instances, the Council will

- Dispose of any rubbish or damaged goods
- Remove any animals and place them with the RSPCA, animal shelter or rehome;
- Store any other items left in the property.

The Council will serve a notice under the provisions of section 41 of the Local Government (Miscellaneous Provisions) Act 1982, telling the tenant when they must collect their possessions.

The Council will give the tenant at least one month to do this and will send the notice to the tenant's last known address or any forwarding address they have given to the Council, or in the absence of such an address, may affix it to the property. If the items are not collected, the Council will dispose of them and is entitled to charge the tenant its reasonable costs of disposal and storage. The Council may choose to store the items away from the property during this period.

### **Rent and use & occupation accounts**

The Council charges tenants a weekly rent and, where applicable service charge, for occupying a Council property. Rent levels are set by the Council following guidelines set by statute and the Social Housing Regulator. Rents are often changed on or around 1<sup>st</sup> April each year.

There may be circumstances where an occupier occupies a property as a trespasser or a licensee (a personal licence to occupy a property). In both cases the occupiers are not tenants and have no or limited security of tenure, making it easier for the Council to evict.

In such circumstances, the occupier does not pay rent but is liable to pay the Council a sum for use and occupation of the property which is normally equivalent to the rent that the Council would charge under a tenancy.

The payment of such sums does not give the occupier any greater right to occupy, nor does it create a tenancy or prevent the Council from taking action to evict the occupiers.

Use and occupation charge accounts are set up in a number of cases, including:

- If the tenant has died, a notice to quit to end the tenancy has expired and the occupier has no right to succeed to the tenancy or the property has not been cleared by the personal representatives or executors of the deceased tenant;
- The occupier occupies a property when the tenant has served a notice to quit or otherwise surrendered the property;
- For squatters;
- Where a joint tenant has ended the tenancy leaving the other joint tenant in occupation.

An occupier who is not a tenant may be able to obtain housing benefit or the housing element of universal credit even if they do not have a right to legally occupy the property.

The Council can ask the court to order that an occupier pays the Council any arrears of use of occupation charge which remains unpaid

The Council's Housing Options Team will advise and support the occupier on how to secure alternative accommodation including access to the Housing Register. If an offer is made from the Housing Register, it will be let in accordance with the Allocations and Lettings Policy. The case will be reviewed frequently by the Housing Options Team as part of the occupiers Personalised Housing Plan.

Timescales regarding submitting possession proceedings applications to court will be made by the Housing Services Manager on a case by case basis with the case reviewed quarterly.

### **Other breaches of tenancy**

Where a tenant fails to comply with their tenancy agreement, the Council have a number of enforcement tools available to them. What action the Council takes will depend on a number of matters, including (but limited to) the type and number of breaches, whether they are serious or persistent, and whether they can be remedied by the tenant.

The Council may:

- Write or meet with a tenant to explain the breaches and how they can be remedied if that is possible;
- Issue Community Protection Warnings and Notices followed by Fixed Penalty Notices
- Involve third party agencies and bodies if it is considered they may be able to assist;
- Remedy the breach itself, and then recharge the costs to the tenant;
- Obtain a court order to force the tenant to remedy the breach or to prevent further breaches;
- Take steps to evict the tenant.

A tenant is also responsible for the behaviour of their household and visitors. The Council may take action against non-tenants for their behaviour if it is considered appropriate.

Where the Council has to take legal action, the court will be asked to make the tenant or defendant pay the Council's costs.

### **Decanting to alternative accommodation**

#### **Temporary decanting**

There may be occasions when a tenant and their household have to vacate their property temporarily and move into temporary alternative accommodation.

The Council may need to have full access to a tenanted property, in the absence of the tenant, for example, in order to carry out extensive or dangerous repairs or improvements.

Where a tenant and their household are required to decant, the Council will explain the nature of the works and the likely timeframe.

The Council may decant a tenant and their household into another dwelling, B and B or hotel. Rent will continue to be due on the tenanted property and no charge will be made to the tenant for the temporary dwelling. Where the Council decants the tenant and their household into B and B or hotel type accommodation, the Council will directly pay the provider for that accommodation.

The Council will require the tenant to sign a license to occupy the temporary dwelling and will request that the tenant does not return to their home until the Council confirms the works are completed and/or the property is safe. In the majority of cases, the locks will be changed temporarily until the tenant can return to their home.

If the tenant does not return to the tenanted property when asked to do so, the Council can serve a notice to end the non-secure licence of the decant property and if necessary take possession proceedings to force a return.

Where a tenant and their household have been placed in temporary accommodation such as a hotel, we will meet the following expenses:

- Accommodation costs (paid directly by SHDC).
- An allowance of £10 per adult and £5 per child per day for meals. This will be reimbursed upon production of receipts
- the cost of using a launderette where no laundry facilities are available and the decant exceeds 7 days. This will be reimbursed upon production of receipts
- Short term cost of kennels/boarding for pets where landlord permission has previously been granted to the tenant for pets, and the pets cannot be looked after by family/friends.
- We will not pay for bar bills, phone calls, room service, etc.

All Home-loss payments must be authorised by the Housing Landlord Services Manager.

### **Permanent decanting and home loss payments**

In some cases, it may not be possible for the tenant to return to their home. In this scenario, they will qualify to join the Housing Register and will be let a property in accordance with the Allocations Policy.

Home loss is a statutory payment made to a person to compensate them for the permanent loss of their home. It can be paid to a tenant provided that they have lived there for 12 months before the date of moving and are being permanently displaced as a result of redevelopment of land or improvement to any dwelling. Where the tenant has been resident for less than 12 months, they may still be entitled to a payment as any period of occupation by a predecessor will count where the applicant succeeded to the tenancy. This compensation is paid as a flat rate as set by the Government from time-to-time. Any outstanding payments due by the tenant or owner to us e.g. arrears and recharges will be offset against any Home Loss Payment offered.

A statutory Home Loss payment is only payable where displacement occurs as a result of the compulsory purchase of the home or a possession order is granted to facilitate redevelopment of



the land or where a move is inevitably required. It is not payable where a tenant agrees to move voluntarily.

Please note that any outstanding debt to the Council including arrears and rechargeable repairs will be deducted from the amount of home loss and disturbance payments the tenant is eligible for.

The amount of payment for Home loss is fixed by law, and is reviewed annually.

Tenants need to make a claim for Home Loss payments.

The Council may, at its sole discretion, make a discretionary home loss payment to a tenant, who has agreed to move voluntarily where if they had not done so, and a compulsory purchase or a possession order were made, they would have been entitled to a statutory home loss payment.

All Home Loss payments must be authorised by the Housing Landlord Services Manager.

### **Disturbance allowance**

In very limited circumstances, prescribed by the Land Compensation Act 1973, the Council must pay statutory compensation for the costs incurred in permanently moving homes. There is a non-qualifying period (as with Home Loss) however the tenant must be in lawful occupation at the time of moving. The payment allowances are intended to reimburse the resident for actual and reasonable expenses incurred in moving and setting up home, or allow a notional sum in appropriate circumstances. The effect of the payments will be that the resident will be in no worse or no better a position than they would have if had they not needed to move. There is a maximum payment allowable and it will cover such things as removal of contents and furniture, disconnection and reconnection of cookers and washing machines, disconnection and reconnection of aerials or satellite dishes, telephone and broadband, and the redirection of mail.

Home loss payments and disturbance payments are not payable for temporary decants.

All Home-loss payments must be authorised by the Housing Landlord Services Manager.

### **Monitoring tenancies and the condition of our properties**

Effective management is necessary to ensure our tenants can live comfortably in their homes. We expect that tenants will maintain their properties in a reasonable condition at all times in accordance with their tenancy agreement. We will monitor that all our tenants keep to the terms of their tenancy agreement and take appropriate action to resolve any breaches effectively. Where a tenant requires it, we will provide support or sign-post them to external support agencies. We will carry out and promote regular tenancy visits and estate inspections to focus on the quality of the neighbourhoods.

Particular attention will be paid to:

- How many people appear to be living in the property, and where relevant, whether the Council has been given prior notice or consented to them;
- Whether the property and any gardens and outdoor space is in repair, and in a clean and tidy condition;
- Whether any there have been any alterations, improvements or changes without consent;
- Whether any other tenancy condition appears to have been breached.
- Where a tenant refuses to engage with tenancy inspection, the Council will request access to inspect the property, and if access is refused the Council will follow its policy and procedures on access, which may result in court action against the tenant compelling them to give access or an eviction order.

## **Safeguarding**

The Council is committed to safeguarding its community so it is a safe place for all to live in. The aim is to prevent abuse and neglect wherever possible, whilst promoting an approach that focuses on improving life for all concerned.

It's not always obvious to tell when someone is being abused or neglected. There may be specific signs or instinct may tell you something is wrong, however abuse is never acceptable in any circumstance, and everyone has the right to be safe. Safeguarding is everyone's business.

The Council works in partnership with others and aims to make sure that those using its services are listened to and protected from abuse and neglect. Officers have regular training on Safeguarding, Modern Day Slavery and Domestic Abuse and report all incidents or concerns they have relating to the wellbeing of an individual. The Housing Officers follow the Council's corporate policy and procedure on safeguarding. Officers attend and refer into multi-agency meetings including but not limited to the following:

- Team Around the Child meetings
- Child Protection meetings.
- Vulnerable Adult Panel
- Anti-Social Behaviour Risk Assessment Conference
- Multi Agency Risk Assessment Conference (for Domestic Abuse Cases).

## **Hoarding**

Hoarding behaviour can cause issues with property condition and/or create hazards in and around the home that may cause a health and safety risks to the occupants, visitors to the property, surrounding residents or the fabric and condition of the property. Consequently, it is likely to breach conditions of the tenancy.

Hoarding is commonly defined as:

- The acquisition of, and failure to discard, a large number of possessions that appear to be useless or of limited value
- Living conditions sufficiently cluttered so as to prevent activities for which those spaces were designed.

Hoarding is often recognised as the symptom of a mental health disorder. Compulsive hoarding behaviour is often the manifestation of complex issues or conditions that a tenant may be experiencing.

Compulsive hoarding is highly complex and requires a collaborative and integrated approach. We adopt a co-ordinated multi agency approach as per the Lincolnshire Multi Agency Hoarding Protocol to effectively deal with people who hoard, reducing duplication for both agencies and customers. The Council will take a non-judgemental approach which balances the needs of the individual against the severity of the impact that their hoarding has on them, the property and neighbouring residents.

When seeking to engage with cases of hoarding, we take into consideration safeguarding guidance (Care Act 2014), which sets out the duties for local authorities and outlines how partner organisations, should work in partnership to help protect vulnerable people from abuse or neglect. A safeguarding referral to Children Services will be made where a child lives in a hoarded property. A safeguarding referral to Adult Services will be made where an adult lives in a hoard property, and there is risk of harm concerns around capacity or vulnerability.

We will always try to work with tenants where hoarding occurs, however we will take immediate action where there is a fire or health and safety risk to the home or shared areas. The Council can take injunction and possession proceedings if a tenant's action is considered detrimental to the condition of the property, or a Health and Safety risk. However we will endeavour to work with people and keep them in their homes.

### **Personal property and insurance**

The Council is obliged to obtain buildings insurance for its tenanted properties, but does not obtain insurance which covers the tenant's contents of properties. This means that tenants should obtain insurance covering all their personal belongings and the decorations of the property.

The Council will not be responsible for loss or damage of any personal property unless the damage or loss is caused by the Council's own negligence, so the Council will not be responsible for any damage or loss is caused by the tenant, their household or visitors or a neighbouring tenant.

### **Tenancy fraud**

Social housing is a scarce resource with need exceeding demand. The Council aims to ensure that social housing will be available for those in housing need at the time they need it. The Council will tackle fraudulent applications, unlawful subletting and tenancy misuse promptly and effectively, to ensure its housing stock is used by those with a legitimate housing need.

Housing fraud can lead to increased waiting times for prospective and existing tenants in unsuitable housing, increased disrepair, property damage and lack of health and safety checks due to occupiers being unwilling to report issues in case the fraud is discovered. It is also a drain on the Council's resources as it will have to expend money on investigation and legal enforcement action.

There are a number of different types of housing fraud. The Council will take action where: A tenant has fraudulently obtained a social housing tenancy by misrepresentation of identity or circumstances;

- Engaged in unauthorised subletting, whether subletting the whole of the property to a single household or multiple sublets;
- Where the tenant has ceased to occupy as their only or main home
- Where the tenant has engaged in an unauthorised assignment of the tenancy – mutual exchange or unauthorised transfer of tenancy
- Where the tenant has engaged in 'key selling' – where the tenant leaves the property and passes on the keys in return for a one off lump sum payment or favour
- A successor has falsely claimed succession – retention of a tenancy following the death or vacation of the tenant
- Where a tenant has fraudulently claimed a right to buy.

Where possible, the Council will aim to prevent fraud. However, where this has not been possible, the Council will consider a range of tools to tackle fraud including seeking possession of properties acquired by fraud, seeking unlawful profit orders against those who have profited from social housing fraud and prosecuting (under criminal statutes) those who have committed fraud.

**Last reviewed December 2020**

