

<b>Title:</b>	<b>Tenancy Policy</b>		
<b>Approved by:</b>	Liz Cook - Assistant Director Housing Date – Cabinet March 2021	<b>Issued:</b>	March 2021
<b>Covers:</b>	Neighbourhoods Team Housing Options	<b>Review date:</b>	March 2025 or if legislation changes

## 1. Executive summary

1.1 The aim of the tenancy policy is to ensure that the tenants are clear about the policies relating to tenancy management in the context of affordable rents, fixed term tenancies and succession rights introduced under the Localism Act 2011 and Housing and Planning Act 2016. This policy sets out the approach to tenancy management, tenancy sustainment and the types of tenancy we offer, including:

- The types of tenancies the council will offer
- The circumstances in which tenancies will be granted
- The length of tenancies
- The approach to tenancy management
- The approach to tenancy sustainment
- The approach to tackling tenancy fraud

## 2. Introduction

- 2.1 The [Tenancy Standard](#) issued by the Regulator of Social Housing states that registered providers of social housing shall publish clear and accessible policies which outline their approach to tenancy management, including interventions to sustain tenancies and prevent unnecessary evictions, and tackling tenancy fraud
- 2.2 Under the Localism Act 2011, local authorities with a strategic housing authority are required to have a Tenancy Strategy setting out the issues which registered providers operating in the local area must have regard to when deciding the type of tenancies to offer. The Council's Tenancy Strategy which can be found [here](#).
- 2.3 As a social landlord as well as a strategic housing authority Chesterfield Borough Council's Housing Service must consider and take into account the objectives of the tenancy strategy in its tenancy policy.
- 2.4 The tenancy policy will apply to all the current and prospective tenants of Chesterfield Borough Council.

### **3. Objectives**

- 3.1 The delivery of the approaches set out in the tenancy policy will deliver the Council Plan objectives of 'Improving quality of life for local people' and 'Provide quality housing and improve housing conditions across the Borough'. In setting out the tenancy policy the Council wants to:
- Help those in housing need access a home that meets their needs
  - Help to build sustainable and healthy communities
  - Help to make decisions about who lives where and in what type of tenancy
  - To be the social landlord of choice

### **4. Tenancy types**

- 4.1 The types of tenancy offered by Chesterfield Borough Council's Housing Service meet the requirements of the Council Tenancy Strategy 2020-2025.

#### **Introductory Tenancies**

- 4.2 All new tenants of the Council, apart from those who are existing tenants of another council or a registered provider, are given an Introductory Tenancy. An Introductory Tenancy is a trial period lasting 12 months and provides an opportunity for new tenants to ensure they understand their rights and obligations under the terms of the tenancy agreement and are able to maintain their tenancy satisfactorily. The intention is to prevent unnecessary evictions. If there are no problems during the trial period, then the tenancy automatically becomes a secure tenancy.
- 4.3 Introductory Tenancies do not have all the rights of a secure tenant. Tenants could be evicted more quickly and easily if they break the tenancy agreement. They do not have the right to:
- Exchange with another tenant
  - Improve the property
  - To sublet
  - Take in a lodger
  - The right to buy
- 4.4 Included within the offer of any Introductory Tenancy will be details of the tenancy that will be offered at the successful completion of the 12 months introductory period. Under some circumstances the Introductory Tenancy may be extended to 18 months. This may occur if there are concerns about how the tenancy is being conducted and notice of the intention to increase the introductory period will be given by the 10th month of the tenancy. Where a

tenant has not satisfactorily completed an Introductory Tenancy (for example because of non-payment of rent or anti-social behaviour) a Notice of Possession Proceedings may be served. The tenant has a right to review this decision as set out within the Tenancy Agreement.

### **Secure tenancies**

- 4.5 If the introductory period or the extension period, as applicable, is completed successfully then an introductory tenancy automatically becomes a secure tenancy. A secure tenancy is a lifetime tenancy where a tenant can remain as long as they do not break the rules of the tenancy agreement
- 4.6 The council will also grant a secure tenancy where before the tenancy began the applicant was:
- A secure tenant: or
  - An assured tenant (not an assured shorthold tenant) of social housing where the landlord is a registered social landlord
- 4.7 A secure tenancy gives the tenant security of tenure and the following statutory rights:
- Right to buy (some exceptions apply)
  - Right to repair
  - Right to take in lodgers
  - Right to sublet part of the property with the Council's permission
  - Right to exchange
  - Right to consultation and information

### **Fixed term tenancies**

- 4.8 The Localism Act 2011 gave local authorities the power to be able to offer flexible tenancies for a certain term (i.e. fixed term tenancies) to new social tenants. The Housing and Planning Act 2016 sought to make all social landlord offer all new tenancies as fixed term tenancies (with a small number of exceptions). However, in 2018 the Government stated that it did not intend to enact this part of the legislation therefore the Council can still choose to offer lifetime tenancies. The current Tenancy Strategy 2020-2025 does not seek their use in Chesterfield.
- 4.9 A fixed term tenancy is a secure tenancy for a period of not less than 2 years. The Council's preference is to grant lifetime tenancies.

### **Minors and tenancies**

- 4.10 As a person under the age of 18 years cannot hold a legal tenancy, Housing Services will seek to grant the tenancy to an adult, perhaps a member of the

minor's family or to another adult. This person would hold the tenancy in trust for the minor's benefit until they reach 18.

## **Demoted tenancies**

4.11 A demoted tenancy is a form of tenancy that reduces the tenants' security of tenure and rights for a period of 12 months (effectively the security of tenure is reduced to that of an introductory tenancy). The use of demoted tenancies is done through the Council's anti-social behaviour policies and is an alternative to possession proceedings where a tenant is causing nuisance through antisocial behaviour. The tenant does not automatically lose her/his home and can regain her/his original tenancy and security of tenure after 12 months unless there has been a subsequent breach of the demoted tenancy which may lead to a possession order. The use and application of demoted tenancies is set out in the of anti-social behaviour policy that can be viewed [here](#).

## **5. Managing tenancies**

5.1 We ensure that tenants are aware of their rights and obligations when they sign up for their tenancy. These terms are set out in the tenancy agreement. Chesterfield Borough Council has a series of tenancy management policies outlining its approach to other tenancy issues and management of the housing stock. These are available on request and are published online [here](#).

## **Assignment of tenancy**

5.2 Secure tenants can pass on (assign) their tenancy to another person in the following circumstances:

- By mutual exchange (see section below)
- Under certain court orders
- With the Council's permission to a person who would be qualified to succeed to the tenancy if the tenant died.

5.3 In some circumstances a tenant may assign their tenancy to another person who complies with certain criteria as laid out in their tenancy agreement. Generally, the right to assign is limited to the same people who can succeed a tenancy. However, a joint tenancy is not capable of being assigned to just one of the joint tenants.

5.4 To be eligible both the tenant and the assignee must be living at your tenancy address and it must be your only or main home. Unless the assignee is a husband or wife or civil partner they must be able to prove they have been living with you at your home for at least the past 12 months.

- 5.4 If a tenant assigns their tenancies without permission such as if a mutual exchange takes place without permission of the landlord as defined by the Housing Act 1985, the parties involved will normally be required to leave the properties.
- 5.5 Other assignments – if the consent of the Council is required and the tenant does not obtain the Council's consent, possession proceedings will normally be taken by the Council.

### Mutual exchanges

- 5.6 Secure tenants have the right to exchange their home by assigning the tenancy to another secure tenant of a local authority or a registered social landlord such as a housing association.
- 5.7 In order for a tenant to exchange their home with another tenant they must get our written permission first and the other tenant must get permission from their landlord. Either landlord may attach conditions to the agreement which have to be met before the exchange can take place. These may, for example, be to clear any rent arrears and/or correct any breach of tenancy conditions.
- 5.8 More detail on the Mutual Exchange Policy can be found in **Appendix 1**

### Succession

- 5.9 The right to succession is the right to remain in the property as a tenant when a original tenant has died. The Localism Act 2011 introduced changes to the succession rights of tenants. Those who became tenants after 1st April 2012 have a more limited right to succession (see table 1 below).

**Table 1: Right of Succession**

Tenant before 1 <sup>st</sup> April 2012	Tenant after 1 <sup>st</sup> April 2012
<ul style="list-style-type: none"> <li>• Husbands and wives (spouses) and registered civil partners automatically succeed providing they are living in the property at the time of bereavement and there has not been a previous succession.</li> <li>• If there is no spouse/registered civil partner, another family member (which includes a cohabitee) who has been living with the tenant for at least</li> </ul>	<ul style="list-style-type: none"> <li>• Succession to a Lifetime or Flexible Tenancy entered into after 1 April 2012 only applies to the spouse or civil partner or a cohabitee.</li> <li>• A third person (e.g. son or daughter) cannot then succeed to the tenancy on the death of the tenant</li> </ul>

<p>twelve months may qualify to succeed. However, they may be asked to move if the property is one that they would not qualify for because of its size or type. In these circumstances, alternative accommodation is offered, and they need not move until 6 months after the bereavement.</p> <ul style="list-style-type: none"> <li>• If a couple are not married, then legally the surviving partner has to be treated as a family member, not as a spouse.</li> </ul>	
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- 5.11 For tenants whose tenancies began before 1<sup>st</sup> April 2012 a sole, secure tenant who has not previously succeeded to the tenancy can pass their tenancy to a spouse or civil partner providing that they were living with the tenant when the tenant died. If the tenant has no spouse or civil partner, then certain close members of the family (including a cohabitee) may be able to succeed to the tenancy if they have been living with the tenant for at least twelve months at the date of the death of the tenant. We may ask a successor to move to another home if the home they have succeeded to is larger than they would be eligible for.
- 5.12 As per the Localism Act 2011 for tenants whose tenancies began after the 1<sup>st</sup> April 2012 the statutory right of succession to a secure tenancy for family members has been abolished. As such statutory succession will be limited to spouses, civil partners and those in equivalent relationships.
- 5.13 The Housing and Planning Act 2016 contained further measures to restrict the right to succeed to a secure tenancy to spouses and civil partners and those who live together irrespective of when the tenancy was entered into. However, this part of the Act has not, as of December 2020, been brought into force.

### **Sole to joint tenancy**

- 5.14 There is no right to the granting of a joint tenancy, nor to add a tenant to an existing tenancy.
- 5.15 Once a tenancy has commenced Chesterfield Borough Council will not seek to amend the tenancy from a sole to joint tenancy. If a sole tenancy ends as a result of the tenant's death, normal succession rules will apply.

- 5.16 However, the Council recognises that, in exceptional circumstances, joint tenancies may be granted to protect the occupation rights of vulnerable individuals. The Council will consider these requests on a case by case basis.

### **Joint to sole tenancy**

- 5.17 Joint tenants are responsible individually and together for keeping to the tenancy conditions and making sure that rent and other charges are paid.
- 5.18 Service of a Notice to Quit (NTQ) in writing by one or both of the joint tenants will end a joint tenancy. If a NTQ is received from only one of the joint tenants, the Council will endeavour to contact the other joint tenant who may be absent from the property. The tenant will be advised to seek legal advice regarding the implications of changes to a tenancy.
- 5.19 Where one of the joint tenants may wish to remain in the property the request for a sole tenancy should be considered before the remaining tenant is required to give NTQ.

### **Ending a tenancy**

- 5.20 If you wish to end your tenancy, you must give us a minimum of four full weeks' notice in writing to expire on a Monday.
- 5.21 If you are a joint tenant, any one of you can end the tenancy by giving us four weeks' notice in writing to end on a Monday. This means the whole tenancy ends for all joint tenants. The council will decide if any of the joint tenants can stay in the home.

### **Abandonment of tenancy**

- 5.22 Where, following investigation, it appears to the Council that a tenant has abandoned their property we may serve a Notice to Quit to end the tenancy. When the NTQ expires, we may repossess the property. There may be circumstances when the Council may treat the tenancy as ended by reason of surrender by the tenant (for example the return of keys and/or a notice of termination from the tenant) , in which cases we may resume possession of the property without serving a Notice to Quit and accept the express or implied surrender of the tenancy.

## **6. Tenancy sustainment**

- 6.1 Chesterfield Borough Council will support tenants as much as possible to sustain their tenancies.

- We will offer advice and support when signing tenants up for new tenancies.
- We will ensure that tenants are informed about their tenancy rights and obligations when tenancies are signed for.
- We will offer advice and assistance on financial matters, particularly where tenants may experience difficulty with rent payments. This will include assistance with forms for help with rent costs and financial budgeting.

6.2 If further assistance is required our tenancy sustainment officers will look at the needs of our more vulnerable tenants and either directly or by referring them to another service, help them to:

- Identify what is important to keep their home and understand their responsibilities as a tenant.
- Live peacefully within their neighbourhood and get on with their neighbours
- Manage money; deal with debt including rent arrears and claim benefits.
- Improve health and wellbeing.
- Use local services – doctors, council offices, advice agencies.
- Get support from agencies who specialise in particular needs eg mental ill health, alcohol misuse, young people, teenage parents, or people who have experienced domestic abuse.

## **7. Tenancy fraud**

7.1 Tenancy fraud may include any of the following.

- Attempting to obtain a council property using false documents
- Unlawfully subletting the property as prescribed in the Prevention of Social Housing Fraud Act 2013.

7.2 Chesterfield Borough Council will take appropriate action against any tenant found to be committing tenancy fraud. The Council will consider taking criminal action against tenants who unlawfully sub-let their properties using powers granted under the Prevention of Social Housing Fraud Act 2013. A secure tenant will commit an offence, if in breach of an express or implied term of their tenancy agreement; they sub-let or part with possession of the whole or part of the property and know that the action is in breach of their tenancy agreement.

## **8. Monitoring and review**

8.1 The tenancy policy will cover the period 2021 to 2026 or until there is significant legislative change requiring the policy to be reviewed.

- 8.2 No additional monitoring is proposed. Routine management information produced from Northgate
- 8.3 The Council's [complaints process](#) can be utilised if a tenant does not feel the policy has been correctly applied.

Final draft

## **Appendix 1. Mutual exchange policy**

### **1.0 Definitions**

- 1.1 This Policy has been created to ensure that all applications for a mutual exchange are dealt with fairly and consistently and to ensure that tenants are clear about the rules and processes Chesterfield Borough Council will follow when receiving a request for an exchange.

### **Mutual exchange**

- 1.2 A Mutual Exchange is a right laid down in legislation (Housing Act 1985) and is when two or more tenants 'swap' properties with each other and in doing so, pass on any legal interest in the tenancy. When a mutual exchange takes place, each party involved takes on the original terms of the tenancy agreement of the person they have swapped with. A secure Council tenant has the right to mutually exchange homes with another Council or registered social landlord tenant anywhere in the United Kingdom subject to certain terms set out in the Housing Act 1985.

### **Secure tenants**

- 1.3 Secure tenants were created by the Housing Act 1985. Under Section 92 of the Act, secure tenants have the following rights subject to approval:

#### Section 92 – Assignments by way of Exchange

- (1) It is a term of every secure tenancy that the tenant may, with written consent of the landlord, assign the tenancy to another secure tenant or to an assured tenant (in the case of an assured tenant, the landlord must be a Registered Social Landlord).
- (2) Consent will not be withheld except on one or more of the grounds set out in the Act, and if withheld otherwise than on one of those grounds will be treated as given.
- (3) The landlord may not rely on any of the grounds set out in the Act unless he has, within 42 days of the tenant's application for consent, specified in writing to the tenant the ground for refusal and reasons for it.
- (4) Where rent lawfully due from the tenant has not been paid or an obligation of the tenancy has been broken or not performed, the consent required may be given subject to a condition requiring the tenant to pay the outstanding rent, remedy the breach or perform the obligation.

## **2.0 Implications of a mutual exchange**

### **Secure and assured tenancies**

- 2.1 When applying to exchange all applicants are advised to check the type of tenancy they will be receiving. Most registered social landlords offer assured tenancies whereas local authorities offer secure tenancies. The type of tenancy may place certain restrictions on certain entitlements; therefore the Council advises all tenants to check these details prior to exchange.

### **Succession rights**

- 2.2 If a person receives a tenancy by way of succession - whether that is following the death of a tenant or assignment - and later moves under mutual exchange, their status as a successor still stands and the tenancy therefore cannot be succeeded to again.

### **Tenants Incentive Scheme, Decorating Vouchers and Removal Costs**

- 2.3 Tenants moving by way of mutual exchange do not qualify for decorating vouchers and are responsible for their own removal costs and incidental expenses.

### **Property improvements**

- 2.4 If a tenant wishes to swap homes with a tenant who has made major alterations to their property, the tenant should seek to confirm with the landlord that approval for the work was granted, and if any particular conditions apply. Once the exchange has completed the incoming tenant may be responsible for maintaining the alteration and for putting right any future defects should they occur.

## **3.0 Policy**

- 3.1 Tenants interested in a mutual exchange can seek an exchange by registering with Homeswapper at [www.homeswapper.co.uk](http://www.homeswapper.co.uk) and help and advice is available from [On the Move](#).
- 3.2 Eligible tenants can exchange with other eligible tenants anywhere within the United Kingdom. Applicants can only move to a property that has up to one bedroom above their needs. Applicants are also restricted from moving into a property that would be too small to meet the needs of their household.
- 3.3 The Council advises that all those taking part in a mutual exchange should visit the property before agreeing to the exchange. Tenants who exchange must accept the property in its present state and any damage caused by the outgoing tenant becomes the responsibility of the incoming tenant and will need to be repaired at their expense. The Council will only carry out repairs for which it is responsible and are specified in the Tenant's Handbook.

- 3.4 When an exchange has been agreed they must contact their landlord for permission to carry out the exchange. CBC tenants are required to complete and return a mutual exchange form. If the tenancy is a joint tenancy, both parties need to sign the form.
- 3.5 Housing Services has a maximum of 6 weeks (42 calendar days) in which to agree or refuse the exchange. During that time an inspection of the property will be carried out and will inform the tenant of repairs that are the tenant's responsibility. If the Council fails to make a decision on the application within 42 days, then the exchange will be automatically entered into.
- 3.6 Housing Services will confirm in writing if the exchange can take place. All parties must receive written permission from their landlord before the exchange can progress.
- 3.7 Mutual exchanges between secure and assured tenants exchange via a Deed of Assignment where each tenant takes over the other tenant's tenancy type and terms. New Tenancy Agreements are not signed. Once the exchange has been agreed, the parties receiving a tenancy from CBC must arrange an appointment to sign the Deed of Assignment. After this the move can take place.
- 3.8 Tenants must not move home without the permission of all the landlords involved and before the Deed of Assignment has been signed.
- 3.10 If certain conditions are met then the landlords must grant any existing secure or assured tenant an assured tenancy (if a housing association) or secure tenancy (if local authority) existing tenants security of tenure will not be downgraded as a result of the exchange. However, the protection only applies to tenure and not the level of rent they pay.

## **4. Eligibility**

- 4.1 In order to participate in a mutual exchange, persons must be social housing tenants of a local authority or a registered social landlord and must hold either a secure or assured tenancy.
- 4.2 In addition, the Council will normally only allow tenants to exchange where they have fully complied with the tenancy conditions, do not have any outstanding rent arrears and the property is in a good state of repair.

## **5. Grounds for refusal**

- 5.1 The grounds for refusal are set out in schedule 3 of the Housing Act 1985 (a copy of these can be found on the Council's website).
- 5.2 If Housing Services refuse an application for a mutual exchange the Council must, by law, write to the outgoing and incoming tenant within 42 days to inform

them of them of the Council's decision. Only the tenant that has caused the refusal will be advised of the reasons why.

- 5.3 We will advise the tenant if their application could be considered at a later date and will provide details of what the tenant or other party needs to do in order for their application to be considered. This could include, for example, paying off arrears, reinstating the property back to a reasonable standard and ensuring that improvements are in good repair. We may also ask the tenant to remove any home improvements that are beyond repair.

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## Appendix 2 - Glossary

**Affordable rent** – Rented housing provided by Local Authorities and Private Registered Providers of social housing to households that are eligible for social rented housing. Affordable rent is subject to rent controls that require a rent of no more than 80% of the local market rent.

**Demoted tenancy** – A demoted tenancy is a form of tenancy that reduces the tenants' security of tenure and rights for a period of 12-18 months. Moving a tenant onto a demoted tenancy presents social landlords with an alternative to possession proceedings where a tenant is causing nuisance through antisocial behaviour. Provided there are no subsequent problems, the tenant does not lose her/his home and can regain her/his original tenancy and security of tenure after 12 to 18 months.

**Fixed term tenancy / Flexible tenancy** – A tenancy which runs for a fixed period of time and is reviewed, and either a new fixed term tenancy granted or terminated, at the end of the fixed term.

**Implied surrender** - when the landlord and tenants conduct is inconsistent with an intention to continue with the tenancy.

**Introductory Tenancy** - An introductory tenancy is a probationary or trial tenancy granted to a new tenant that allows the local authority landlord to decide if they are a good tenant.

**Notice of possession proceedings** – A serving of a s128 notice on an introductory tenant that a landlord must serve before applying to the court for a possession order

**Notice to quit** - A formal legal notice terminating a tenancy.

**Secure tenancy** – A secure tenancy means the tenant can keep their home for as long as they want, unless there is a legal reason for the landlord to repossess the home.

**Tenancy strategy** – A document which, under the Localism Act, all local housing authorities are required to produce, setting out the matters to which Registered Providers have regard to in formulating tenancy policies.

**Tenancy policy** – A policy which, under the Regulatory Framework, Registered Providers are required to have in place showing various information, including: the types of tenancy they will grant, the length of any fixed terms, circumstances in which fixed term will / will not be renewed.

**Tenancy in trust** – Where a trustee holds the legal title to the tenancy on behalf of a minor (under 18 years of age). The tenancy has been granted to a third party, a 'trustee' such as an older relative, friend or social worker, and held on trust for the minor until they reach the age of 18.