



# Tenancy Policy

October 2012

## **1 INTRODUCTION**

- 1.1 The Tenancy Policy provides customers and applicants with clear guidelines regarding the Council's approach to offering different types of tenancies. It will set out how different tenancy types will be offered and reviewed and identifies the circumstances when tenancies may not be renewed. The policy will also outline the advice and assistance that will be available to customers whose tenancies are not being renewed and how they can access alternative housing options. The Tenancy Policy will fit with and align to the Council's Tenancy Strategy.
- 1.2 The Localism Act 2011 allowed the Social Housing Regulator to amend the Tenancy Standard from a requirement to "offer and issue the most secure form of tenancy compatible with the purpose of housing and the sustainability of the community" to a new requirement for registered providers to offer tenancies that are "compatible with the purpose of the accommodation, the needs of individuals, the sustainability of the community and the efficient use of their housing stock". This gave the Council the opportunity to review the types of tenancies that are offered ensuring that customers have access to good quality, affordable housing at a time when they need it most.
- 1.3 The Tenancy Policy will help to ensure that customers have the right to a home for as long as they need it. The policy provides a framework whereby customers will receive tenancy reviews that offer tailored housing options advice and assistance at appropriate intervals. This will ensure that housing circumstances do not become a barrier to achieving broader life aspirations. Flexible Fixed Term Tenancies recognise the fact that tenants' circumstances can change and they may no longer need social housing.
- 1.4 This policy will operate in conjunction with the Council's Empty Homes Strategy, Sub-Regional CBL policy, Succession policy, Mutual Exchange and Assignment policy, the Introductory Tenancy Policy and Fixed Term Tenancy procedure.
- 1.5 Where discretionary aspects of the policy exist then close monitoring systems will be in place to ensure that these decisions are made based on the principles of the policy. Decisions will be subject to review ultimately by an Appeals Panel.
- 1.6 The policy was approved in October 2012 and will be effective from 1st April 2013. This will be monitored and reviewed regularly in line with any changes in the economic climate, demand and supply of housing stock and legislation.

## **2 INTRODUCTORY TENANCIES**

- 2.1 Introductory Tenancies will be granted to all new tenants from 1st April 2013. This gives the Council the opportunity to ensure that the conditions of the tenancy are being met in the first 12 months. The majority of introductory tenancies will then go on to be fixed term tenancies for a further 10 years. Those few tenants that may have breached their tenancy during the

introductory period will be offered an extension (up to a maximum of 18 months in total). In cases of serious breaches legal action will be taken to end the tenancy. Where a tenant disagrees with the decision taken then an appeal process can be pursued. More information can be found in Introductory Tenancy Policy and Procedures.

### 3 TENANCY TYPES

- 3.1 The Council is committed to making best use of the housing stock in order to meet customers and future applicant's needs and aspirations and this will include advice into different forms of tenure and home ownership. From April 2013 the Council will offer Flexible Fixed Term Tenancies for 10 years to everyone being offered a new Council tenancy from 1st April 2013. A review process will commence in the 9th year of the tenancy and it is anticipated that everyone would be offered a new tenancy provided they meet the qualifying criteria.
- 3.2 All current tenants will remain as secure 'lifetime' tenants.
- 3.3 After 1st April 2013 the following table highlights the range of tenancies to be offered and who they will be offered to:

**Table 1 Tenancy Types**

<b>Tenancy type</b>	<b>Who will this be offered to?</b>
Secure Tenancy (lifetime tenancy)	<p>Existing SCDC tenants who wish to transfer to another property in the district (i.e. those who held a Secure Tenancy on or before 1<sup>st</sup> April 2012)</p> <p>Tenants with Secure Tenancies transferring from other local authorities (i.e. those who held a Secure Tenancy on or before 1<sup>st</sup> April 2012)</p> <p>Tenants with assured (non shorthold) tenancies transferring to SCDC from other registered social landlords (i.e. those who held an assured tenancy on or before 1<sup>st</sup> April 2012)</p> <p>For those tenants allocated Secure Tenancies after 1<sup>st</sup> April 2012, the Council reserves the right not to offer a further Secure Tenancy for those transferring and may offer a Flexible Fixed Term Tenancy where appropriate. However, in most circumstances a Secure Tenancy will be offered.</p>
Introductory tenancies	New tenants to SCDC who have not previously held a social housing tenancy.

10 year flexible fixed tenancy	<p>New tenants to SCDC who have successfully completed an Introductory Tenancy.</p> <p>Tenants who have completed a 10 year fixed term tenancy and the Council is happy to offer another 10 year Flexible Fixed Term Tenancy</p>
Temporary tenancies (licences)	<p>Applicants have been rehoused temporarily as homeless.</p> <p>Tenants who have to be moved to alternative accommodation whilst major works or improvements are being undertaken in their main residence.</p>

#### **4 RENT LEVELS**

- 4.1 All new tenancies are charged at target rent. There are some exemptions to this, such as some tenants transferring within the Council's housing stock.
- 4.2 The Council may in the future build new homes using funding from the Homes and Communities Agency. Under current HCA policy rents would have to be set as Affordable Rents which could be up to 80% of market rent but likely to be within the Local Housing Allowance for housing benefit purposes.

#### **5 REVIEW**

- 5.1 Following the successful completion of an Introductory Tenancy tenants will be offered a 10 year Flexible Fixed Term Tenancy. Introductory Tenancies will be for a period of 1 year. There will be the potential to extend this for a further 6 months where there are concerns about conduct and breaches of the tenancy. This decision is subject to review please see the Introductory Tenancy Policy and Procedures for further information.
- 5.2 Throughout the tenancy and specifically during the review process all tenants will be supported through the development of a personal future housing plan which will explore future aspirations with the tenant and the housing solutions that will be required to achieve this. This will be completed as part of the settling in visit with the tenant that is completed in the first few weeks of a tenancy. This plan will be reviewed at regular intervals throughout the tenancy.
- 5.3 In the 9th year of a 10 year Flexible Fixed Term Tenancy there will be a review where a household's circumstances will be considered, advice given, and a decision made regarding the family's continuing occupation of their current home. In the majority of cases a new Flexible Fixed Term Tenancy will be offered but not necessarily in the same home.
- 5.4 Six months before the end of the Flexible Fixed Term Tenancy we will serve on the tenant a notice formally stating if we are to offer a further Flexible Fixed Term Tenancy or if we will be requiring possession of the property.
- 5.5 At the end of the fixed term, we will decide what action to take. This could be:

**Table 2 Tenancy Review Options**

<b>Circumstance</b>	<b>Outcome</b>
No change in circumstances	To issue a new Flexible Fixed Term Tenancy on current property
The property is adapted and no one residing at the property requires these adaptations	To assist the tenant to find alternative (and more suitable) accommodation through the Home-Link Choice Based Lettings Scheme or within SCDC housing stock as a Direct Let.  Where a suitable alternative property cannot be found within the 12 month review period a further 10 year Flexible Fixed Term Tenancy will be offered.
The property is under-occupied by more than one bedroom	
There has been a significant deterioration in the tenants or their household's health.	
The property is over-crowded	
Any breach of tenancy or tenancy fraud are identified during the fixed term tenancy review process	Not to offer any other form of tenancy but provide advice and support in finding alternative suitable accommodation in the private sector.
The tenant does not engage in the fixed term tenancy review process	Not to offer any other form of tenancy subject to the appeal process.
The tenant does not accept the terms and conditions of the new fixed term tenancy.	Not to offer any other form of tenancy subject to the appeal process.
If the tenant comes into the legal ownership of another home or property that meets their needs.	Not to offer any other form of tenancy subject to the appeal process.
The Council wishes to take possession back of the home to enable them to effectively manage its property stock, for example asset management i.e. sell the property or carry out major works	To assist the tenant to find alternative (and more suitable) accommodation through the Home-Link Choice Based Lettings Scheme or within SCDC housing stock as a direct let.

<p>The financial circumstances of the tenant and their partner have improved so that other housing options are available such as home ownership or other tenures</p>	<p>Tenants will receive a detailed assessment of their financial circumstances to determine whether a move to another tenure type is possible or whether a further Flexible Fixed Term Tenancy is appropriate. A financial assessment will include consideration of the household composition, including the number of children and any financial commitments and security of employment. We will also consider any special housing requirements related to a disability.</p>
--	---

## 6 ENDING TENANCIES

### 6.1 Ending a Secure Tenancy and Flexible Fixed Term Tenancy prior to its expiry

- If a tenant breaches the terms and conditions of their Secure Tenancy (as set out in Schedule 2 of the Housing Act 1988), possession proceedings will be instigated commencing with serving a Notice of Seeking Possession. If the breach of tenancy continues following serving the Notice, application will be made to the County Court who may grant a possession order to end the tenancy. There is no formal internal appeals process in this instance.

### 6.2 Ending an Introductory Tenancy (i.e. within the first year)

- If an Introductory Tenancy is not conducted properly we will serve a notice requiring possession giving at least 2 months' notice of issuing of possession proceedings. This will be managed in accordance with the Introductory Tenancy Policy and Procedures. A tenant will be able to apply for an Appeal against this decision in accordance with the appeals process.

### 6.3 Tenant wishing to end 10 year Flexible Fixed Term Tenancy prior to expiry

- If a tenant wishes to end their tenancy prior to the fixed term end date they may do so by issuing a formal written offer surrendering their tenancy giving four weeks' notice. If a joint tenancy, the surrender offer must be signed by all joint tenants.

### 6.4 Surrender will be allowed subject to the following circumstances:-

- It is in the best interest of the landlord
- It is in the best interest of the tenant or neighbourhood
- The property condition doesn't breach tenancy conditions
- Rent account is clear

6.5 Where the tenant does not comply with these conditions, the request to surrender may not be accepted.

## **7 APPEAL**

7.1 If a tenant or an applicant disagrees with a decision about their tenancy they can formally request an appeal. The appeal will be heard by a panel that will include officers who were not party to the original decision. The appeal panel will consider the following:

- Granting of fixed terms tenancies including rent levels
- Ending of fixed term tenancies
- End of introductory tenancies

## **8 MUTUAL EXCHANGES**

8.1 All requests for permission to mutual exchange must be made to the landlord.

8.2 Applications for a mutual exchange will be assessed in accordance with the Council's Mutual Exchange Policy.

8.3 Mutual exchanges between tenants usually take place by deed of assignment where each tenant steps into the other's shoes and takes over the other tenant's tenancy type and terms. New tenancies are not signed.

8.4 However, provisions in the Localism Act 2011 cover those circumstances where:

- At least one of the tenants who wishes to transfer has a secure or assured tenancy, which began before 1st April 2012, and
- At least one of the tenants has a Flexible Fixed Term Tenancy

8.5 Such exchanges must be done by surrender and then granting of new tenancies. The new landlord must grant the tenant(s) whose Secure Tenancy predated 1st April 2012 a Secure Tenancy.

8.6 Existing tenants will therefore retain similar security of tenure to that of their original tenancy.

8.7 Regulations provide that these provisions do not apply where an existing secure tenant chooses to exchange with:

- Someone with a Flexible Fixed Term Tenancy of less than 2 years
- Someone with tenancy at an affordable rent.

8.8 Therefore, someone with a pre-April 2012 Secure Tenancy can exchange with any other social tenant and be sure of keeping their existing level of security. If such a tenant wanted to swap with a tenant who pays an affordable rent, there would be no legal guarantee of security in the new tenancy. However, the Council may choose to offer a Secure Tenancy. Tenants of affordable rent

have the same rights to exchange as other tenants. If they exchange with a tenant who is not a pre-April 2012 tenant, then the exchange would happen in the 'normal' way via a deed of assignment.

- 8.9 The Council still has 42 days to make a decision and an exchange can be refused using the grounds are in Schedule 14 of the Localism Act.

## **9 ASSIGNMENTS**

- 9.1 In some circumstances a tenant may assign their tenancy to another person who complies with certain criteria as laid out in their tenancy agreement and within this policy.

- 9.2 Apart from mutual exchanges as detailed above applications for assignment are only permitted by statute in the following limited circumstances:

- where a court has made an order to transfer the tenancy under either:

Matrimonial Causes Act 1973, Section 24;  
Matrimonial and Family Proceedings Act 1984, Section 17(1);  
Paragraph 1 of Schedule 1 to the Children Act 1989;  
Part 2 of Schedule 5 or Paragraph 9(2) or (3) of Schedule 7 to the Civil Partnership Act 2004;

- 9.3 to a potential qualifying successor if the tenancy agreement gives this right. A person who is a potential qualifying successor is identified in the succession clauses in the tenancy agreement and can be agreed in certain circumstances.

## **10 SUCCESSION**

- 10.1 The Localism Act 2011 abolished the statutory right of succession to a Secure Tenancy for family members. Accordingly, succession will be limited to spouses or civil partners. This will not, however, affect existing Council Secure Tenancies. Therefore, those tenancies granted after 1st April 2012 will only have succession rights to spouses or civil partners. The Council will have discretionary powers to grant additional succession rights to family members to ensure there are safeguards in place to protect the vulnerable. These will be considered on an individual basis.

- 10.2 Secure Tenancies (including Flexible Fixed Term Tenancies) cannot be 'gifted' in a will. When a joint tenant with a Secure Tenancy or a Flexible Fixed Term Tenancy dies, then the tenancy shall continue in the remaining joint tenant's name.



- 10.3 When a sole tenant with a Secure Tenancy or Flexible Fixed Term Tenancy dies, nobody is entitled to succeed the tenancy unless an express right is granted by the tenancy agreement. A sole succession right will only be granted in the Council's Flexible Fixed Term Tenancy model to a spouse/partner/civil partner in order to succeed the tenancy.
- 10.4 If a flexible fixed term tenant dies leaving no spouse or civil partner and other persons reside at the property, then notice to seek possession would need to be served upon the deceased's estate and persons unknown in order for the Council to regain possession of the property.
- 10.5 The Council may agree to offer a new Flexible Fixed Term Tenancy to any family member of the deceased; however this is a discretionary option only and not a contractual or statutory right.
- 10.6 Where a secure Council tenant dies, and the tenancy was granted before 1st April 2012 the household left in occupation may have enhanced contractual rights granting qualifying family members the right to succeed the tenancy. In this instance, a further Secure Tenancy must be granted to the qualifying successor.
- 10.7 However, if a family member fails to meet the qualifying contractual criteria, and the Council would be in a position to recover the property by serving a notice to seek possession then we may exercise discretion to offer a Flexible Fixed Term Tenancy following service of the notice.

## **11 RIGHT TO IMPROVE**

- 11.1 Tenants granted a Flexible Fixed Term Tenancy do not have a statutory right to improve their properties or be compensated for those improvements. Discretionary permission may be granted on an individual basis upon request.

## **12 SERVICE STANDARDS**

- 12.1 Our commitments:

- We will be clear and transparent to existing customers, applicants and colleagues regarding the operation of the flexible tenancy regime.
- We will make clear the criteria which will be used when reviewing tenancies and deciding whether to offer a new tenancy. This will form part of the information provided at the time of bidding for properties as well as during the sign up procedure for all new tenants.
- We will publish information about advice and assistance available and ensure that services are accessible.

- We will give our best endeavours working with partners to prevent homelessness, wherever possible, by providing timely advice and interventions. We will promote welfare benefit and independent money advice to customers as well as our in house advice services.

12.2 Clear and detailed information will be given to tenants at sign up on the implications of a flexible fixed term tenancies and the review process. Regular visits will be carried out during the tenancy to ensure tenants are kept fully aware of these implications.

12.3 We will review this Policy in April 2014 to ensure it is fit for purpose and meets our key objectives for the Housing Service.

12.4 Our aim is:

- To make best use of stock (including adapted homes,) in order to ensure that it meets its existing and future tenants' housing needs.
- To achieve high standards of customer care and support for our existing tenants, taking into consideration individual tenant needs.
- To deliver improved flexibilities which will help to improve asset management opportunities i.e. sale of stock to release asset value and provide value for money.
- To deliver a consistent and transparent approach to decision making.
- To support tenants to achieve their 'housing plan/aspirations'.