



Tenancy Policy

1. **Date of policy:** April 2012
2. **Policy Review date:** Annual
3. **Responsibility:** Director of Operations
4. **Scope of Policy**
 - 4.1 Welwyn Hatfield Community Housing Trust (the managing agent) delivers housing and related services on behalf of Welwyn Hatfield Council (the landlord). This Policy sets out which tenancies Welwyn Hatfield Community Housing Trust, working on behalf of Welwyn Hatfield Council, will offer to new council tenants from 1 July 2013 onwards.
 - 4.2 This Policy sets out how **flexible tenancies will be used**, as provided for by the Localism Act 2011. The Policy includes details of when a flexible tenancy will be granted and when it will be brought to an end.
 - 4.3 This Policy also sets out how other tenancy-related changes will be dealt with, as provided for in the Localism Act 2011. These include changes to the rules about tenancy successions and demotions.

5. References to other Policies

Welwyn Hatfield Council has published an Allocations Policy and an Overcrowding and Underoccupation Strategy. These should be read in conjunction with the Tenancy Policy. A copy of each of these policies can be obtained from Welwyn Hatfield Council's website www.welhat.gov.uk or the Housing Trust's website www.welhat-cht.org.uk. Printed versions of these policies can also be requested by contacting a local housing office at 51 Bridge Road East, Welwyn Garden City or 30-32 Town Centre, Hatfield.

6. Introduction

- 6.1 Welwyn Hatfield Community Housing Trust (the Housing Trust) manages the homes owned by Welwyn Hatfield Council (the Council). All social landlords (including local authorities and housing associations) are required to comply with the provisions set out in the Localism Act 2011. The Act makes provision for social landlords to offer 'fixed term' tenancies (housing associations) or 'flexible' tenancies (local authority landlords). Unlike the previous secure tenancies granted by local authorities, the new flexible tenancies will not offer a home for life and will be granted for a fixed period of time, after which the tenant's circumstances will be reviewed.

- 6.2 Welwyn Hatfield Council has published a Tenancy Strategy which sets out guidance for all social landlords in the borough about the use of flexible tenancies (council owned homes) and fixed term tenancies (housing associations). This Policy complies with the guidance set out in the Tenancy Strategy.
- 6.3 The government has published a new Tenancy Standard. This policy meets the requirements of the Tenancy Standard.
- 6.4 This Policy sets out:
- ▶ Our approach to using flexible tenancies.
 - ▶ The type of information which we will provide to new tenants and housing applicants, to inform them of the new flexible tenancies and the circumstances in which they will be granted.
 - ▶ When we will end a flexible tenancy and the process which will be followed when a flexible tenancy is being ended.
 - ▶ The arrangements for tenants who are transferring to another tenancy (either with the same or another social landlord) and what will happen when a mutual exchange takes place.
 - ▶ Information about tenants' rights to request a review of our decision to grant or end a flexible tenancy.
 - ▶ Details of changes to the way in which we manage successions of tenancy and tenancy demotions, following changes to the law.
- 6.5 The Council's Tenancy Agreement has been reviewed to reflect the changes to the law. The Tenancy Agreement sets out in detail the Housing Trust's/Council's obligations to tenants in relation to all aspects of the tenancy, including arrangements for granting and ending a flexible tenancy.

7. Who this Policy applies to

The new arrangements for creating flexible tenancies will apply only to new tenants. However the Policy should also be read by existing tenants so that they are aware of what will happen if they move to another home whether it is owned by their current landlord (the Council) or another social landlord.

8. What tenancies will we offer new tenants?

From 1 July 2013 most new council tenants will be granted a five-year flexible tenancy. However some tenants will continue to be granted a secure council tenancy. A secure council tenancy will be granted where the property into which they are moving is sheltered accommodation or other accommodation which has been specially designed or adapted to meet a households member's needs, for example a long-term disability. We will publish an up to date list of all the council homes for which a life-time secure tenancy will be given. Tenants will be notified in writing by us of the type of tenancy which they will be given. We will also offer a secure tenancy to tenants who are 'downsizing' from larger to smaller accommodation, where the smaller accommodation has two bedrooms or less.

9. What happens when the five-year term of a flexible tenancy has elapsed?

At the end of the five year term of the tenancy the tenant will either:

- 9.1 Be allowed to stay in their home – where this is the case they will be granted a new five-year flexible tenancy *or*
- 9.2 Be asked to move to a smaller home – where they no longer need the size of home they are living in, for example where children have grown up and left home *or*
- 9.3 Be asked to move out of their home and either rent a home privately or buy a home (this could include buying a home through shared ownership or another form of low cost home ownership).

10. When will tenants find out what will happen at the end of the five-year term?

During the last year of a five-year flexible tenancy a number of things will happen:

10.1 *10-12 months before the end of the five-year term*

We will advise tenants in writing that we are going to review the tenant's household circumstances to identify whether or not their home still meets their needs. A visit may be carried out to the tenant's home to find out more information as part of this process. The tenant will be asked to give the reason/s why they should be able to remain in their home and we will work with the tenant to identify the best possible housing solution for the tenant and their household.

10.2 *No later than 6 months before the end of the five-year term*

We will advise tenants in writing of our decision. The decision may be to:

- ▶ Grant a new five-year tenancy *or*
- ▶ End the flexible tenancy/require the tenants move to smaller socially rented accommodation (subject to availability of smaller accommodation).

Where the decision has been made to end the tenancy we will:

- ▶ Give the reason/s for our decision.
- ▶ Provide information on the tenant's right to request a review of our decision and the date by which the tenant must request the review.
- ▶ Offer the tenant a meeting with a Housing Officer to discuss our decision and other housing options for the tenant. Other options could include low cost home ownership, intermediate/market rent properties owned by a social landlord or private rented properties.
- ▶ Provide a written guide on other housing options.
- ▶ Where a tenant is moving to a smaller home, provide support and assistance, as available at the time of the move.

10.3 *No later than 10 weeks before the end of the five-year term*

- ▶ We will write to the tenant, giving formal notice that the tenancy will end and the earliest date that the tenancy will end.
- ▶ The tenant will be given information on how to seek a review against our decision.
- ▶ We will offer to arrange a meeting between the tenant and their Housing Officer or Housing Options Officer to discuss their future housing options as set out in 10.2 above.

- ▶ Tenants may be referred to outside agencies that will be able to give the tenant professional, specialist advice, based on their individual circumstances. This could include an independent financial advisor or the Citizens Advice Bureau.
- ▶ We will begin court proceedings to end the tenancy.
- ▶ Where a tenant is moving to a smaller home, we will provide support and assistance, as available at the time of the move.

11. **The legal process for ending a flexible tenancy**

- 11.1 We will have to apply to the court to end the tenancy.
- 11.2 The court can only refuse to give possession back to us where we have not followed the correct procedure as set out above, or where the court is of the view that our decision is not lawful.

12. **Where a new tenancy is being granted**

We will make arrangements for the tenant to sign a new five-year Tenancy Agreement.

13. **Where the tenant is required to move to smaller accommodation**

- ▶ We will offer the tenant a meeting if they require it, or written information on the process for applying for smaller accommodation.
- ▶ We will offer to provide help in bidding for another property through its choice based lettings scheme 'Herts Choice Homes'.
- ▶ We will provide assistance in moving. The type of assistance provided will depend upon Housing Trust policy at the time the move takes place.

14. **Under what circumstances will the Housing Trust end a flexible tenancy at the end of the five-year term?**

14.1 Under-occupation of the property

The main reason for ending a flexible tenancy will be where the property is under-occupied. In deciding whether the property is under occupied we will take into account the needs of the household members, local housing need and availability of housing. Generally households will not be able to remain in the property where they have two or more spare bedrooms, however each case will be considered on its own merit. The Housing Trust will discuss the household's requirements with the tenant and assess the size of the property and family composition. The assessment will also consider whether any adaptations or special features to the property are still needed and if so, whether they can be carried out to another (smaller) property.

Note: In the event that a new tenancy is offered in a property where there is one spare bedroom and where the tenant is of working age, they will be advised by their Housing Officer that whilst we will grant a new five-year flexible tenancy, if they are on receipt of Housing Benefit they will, except in extenuating circumstances, be on a reduced benefit rate. This is because of changes to the welfare benefit system introduced by the government. On this basis the tenant may decide to apply to transfer to a smaller home. Where they do so, they may be given a secure tenancy in their new home. (Please refer to point 15.3)

14.2 Breach of tenancy conditions

A flexible tenancy may be ended where there is formal legal action being taken against the tenant by us because they have breached the terms of their tenancy agreement. This will apply only where a Suspended or Full Possession Order has been awarded. In the case of a

Suspended Possession Order (SPO) this can be grounds for ending a flexible tenancy where the terms of the SPO are not being met by the tenant and the Housing Trust's intention is to apply for a Full Possession Order

14.3 Financial circumstances

We may end a flexible tenancy where the applicant has sufficient resources to provide their own accommodation, taking into account current market conditions. This process will include taking into account any special circumstances which the household may have, for example, disability or other support requirements.

In carrying out our assessment we will consider the following:

- ▶ Household income, including benefits and pensions
- ▶ Savings and investments
- ▶ Household size and circumstances
- ▶ Type of property and size needed to meet the household's needs
- ▶ Outstanding debts
- ▶ Ability of the applicant to secure a mortgage

We will look further at a tenant's financial situation where the household's income or savings have reached set levels. These are regularly reviewed and can be viewed on our website.

Where the tenant's income or savings exceed the levels set, but where there are reasons why it would not be possible for the tenant to secure a mortgage for a house purchase, other options may be explored. These include private renting and other home ownership options, such as shared ownership and government backed equity schemes.

A tenant's financial circumstances will be one of the issues discussed with the tenant in the period running up to the end of the flexible tenancy – see point 10 above.

Further information about how we carry out the financial assessment is included in our Housing Allocations Guidelines. Details of how to obtain a copy of these Guidelines are set out at the end of this document.

15. **The exceptions: when we will still grant secure tenancies after 1 July 2013**

After 1 July 2013 some new tenants will still be offered a secure (lifetime) tenancy. These include:

- 15.1 People who are moving into sheltered housing (this includes new tenants and tenants moving from a 'general needs' home or from other sheltered housing). We will publish a list of properties which are eligible.
- 15.2 People moving into a home specially designed/designated for a special needs group, for example, for people with mental health or learning disabilities.
- 15.3 Existing tenants (whether they have a secure or flexible tenancy) who are 'down-sizing' from three bedroom or larger properties into a two or one bedroom property or tenants who are downsizing from a two bedroom to a one bedroom/bedsit property.
- 15.4 Existing tenants who already had a secure tenancy granted before 1 April 2012 and who transfer to another home owned by Welwyn Hatfield, or another council or housing association. **Important note:** This does not apply to tenants granted a secure tenancy

after 1 April 2012. (The date on which the relevant section of the Localism Act comes into force). It also does not apply to tenants who choose to transfer to a housing association home let on affordable rent¹ terms.

- 15.5 Existing tenants who already had a secure tenancy granted before 1 April 2012 and who arrange to move through the mutual exchange scheme.
Important note on transfers and mutual exchanges: The secure tenancy will not be protected where the property which the secure tenant is moving into is let at affordable rent, intermediate rent, market rent, is a mortgage rescue property or a shared ownership lease.
16. **How can a tenant end a tenancy during the fixed-term of a local authority flexible tenancy?**
A tenant must give four weeks' notice in writing to end a flexible tenancy.
17. **How and when can we end a tenancy during the fixed term of a flexible tenancy?**
Where a tenant breaks their tenancy conditions we will use the same legal measures as for secure tenants.
18. **The process for requesting a review of our decision to grant or end a flexible tenancy**
- 18.1 As required by the Localism Act 2011 we have a review process where there has been a challenge to our decisions about flexible tenancies. The law says that decisions which can be challenged are:
1. The length of flexible tenancy granted. This may only be requested where the length of the term does not reflect the provisions of this Tenancy Policy.
 2. Our decision to end a flexible tenancy at the end of the five-year term.
- Tenants have a right to request a review in these cases.
- 18.2 The review process to be followed when a new tenant disagrees with our decision to grant a five-year flexible tenancy
- 18.2.1 The flexible tenancy will start, to ensure that the tenant secures the property which they successfully bid for through the choice based lettings process. Where the tenant refuses to start the tenancy on the basis offered by us, the property will not be held for them and it will be offered to another bidder.
- 18.2.2 The tenant will have 21 days from the date the tenancy is offered to appeal against the type and/or length of the tenancy being offered. The review procedure will then follow the process set out below in 18.3.3 -18.3.11
- 18.3 The following review process is in place for when a tenant disagrees with our decision not to grant another tenancy at the end of the five year flexible tenancy:

¹ 'Affordable rents' were recently introduced by the government to provide more money to build new social housing. Under the affordable rent scheme housing associations can charge up to 80% of the market rent for selected properties to provide this additional income. All new homes built with government grant must be let on affordable rents and all affordable rent properties must be let on a fixed-term basis.

- 18.3.1 The tenant can seek a review after they have been informed in writing of the decision to end the flexible tenancy.
- 18.3.2 The tenant must request the review at least 21 days before the stated end of the tenancy.
- 18.2.3 Welwyn Hatfield Community Housing Trust will carry out the review on behalf of Welwyn Hatfield Council. In the first instance the tenant may request the review either in writing or by attending a meeting with their Housing Officer or other appropriate representative of the Housing Trust's Housing Management Team. The tenant will be encouraged to provide as much information as possible about the reason/s why they are requesting a review.
- 18.3.4. The Housing Officer will refer the case to Head of Housing Management within 24 hours of being informed by the tenant that they wish to appeal. In the absence of the Head of Housing Management the matter will be referred to the Housing Trust's Director of Operations.
- 18.3.5 The review will be carried out by Housing Trust's Head of Housing Management. If the Head of Housing Management is not available to carry out the review, the review will be carried out by the Director of Operations. The person carrying out the review is known as the Reviewing Officer.
- 18.3.6 The tenant will be asked to complete a Review Form, setting out the reasons for requesting the review. If the tenant has already given all their reasons to the Housing Trust (see 18.2.3 above), the tenant will be required to confirm in writing that they do not wish to add any further information.
- 18.3.7 The tenant may make their own written representation or can ask someone else to do it on their behalf. The tenant will be asked to provide the name and address of the person who is requesting the review on their behalf.
- 18.3.8 The tenant will be required to return the completed Review Form within 14 days of receiving it. However this time limit may be extended, at the discretion of the Reviewing Officer.
- 18.3.9 The reviewing officer will complete their review within 56 days from when the appeal was requested. This may be extended where the tenant's 14 day time limit for completing the Review Form has been exceeded. Where this is extended the Reviewing Officer will notify the tenant of this in writing.
- 18.3.10 When the review has been completed the Reviewing Officer will send the tenant a conclusion letter, setting out the outcome of the review and the reason/s why the review is/is not resulting in a change to the original decision.
- 18.3.11 There are no further stages to the review process and where the tenant disagrees with the outcome of the review we will advise the tenant to seek independent legal advice if they wish to pursue the matter further. This should be included in the conclusion letter.

19. How we will provide information about flexible tenancies

- 19.1 The new approach to flexible tenancies will be promoted by the Housing Trust in 'Your Voice', on the Housing Trust's and Council's websites, and through a poster campaign in the Housing Trust's offices at Bridge Road East and Hatfield Town Centre. The Housing Trust's 'Tenancy and Estate Management Service Standard' will be reviewed in consultation with service users, taking into account the new Tenancy Policy and the government's new Tenancy Standard. Tenants will be signposted to the Service Standard and this Policy document. These will be available in an electronic format from the Housing Trust's and Council's website and hard copy versions can be collected from the local area offices and sheltered housing schemes. Where tenants do not have access to the internet, or are unable to collect a hard copy, the Housing Trust will send a copy of the required publication/s by post.
- 19.2 Advertising properties through Herts Choice Homes
Where a property is designated as sheltered or specialist housing and therefore let on a secure tenancy, this will be indicated in Herts Choice Homes. The Housing Trust will keep an updated list of all properties which will be let on a secure tenancy. This list will be made available on its website and a hard copy can be requested from its area housing offices at Welwyn Garden City and Hatfield.
- 19.3 Providing information to new tenants
We will inform all new tenants of the type of tenancy they will be offered before they sign a Tenancy Agreement. This will be in the form of a letter. The Tenancy Agreement will clearly state the duration of the tenancy, together with details of the process for reviewing and ending tenancies, as set out in this policy.
- 19.4 Advice to tenants during their tenancy
Housing staff will be on hand to advise any tenant who is concerned that their tenancy may be ended. Advice will be given on the likelihood of a flexible tenancy not being renewed, on the basis of details of the household size, composition and circumstances at that time.

20. **Other changes to tenancies arising from the Localism Act 2011**

20.1 Succession rules

20.1.1 The Localism Act 2011 has changed the criteria for successions of tenancy. From 1 July 2013 all new Council tenants may only have one succession and this can only be to a spouse or partner. There will be no rights of succession to other family members.

20.1.2 Secure tenancies which began before 1 July 2013 will keep their existing rights to succession.

20.2 Demoted tenancies

20.2.1 What is a demoted tenancy?

Where a secure tenant does not keep to the terms of their Tenancy Agreement because they are engaging in anti-social behaviour, we may apply to the court for the tenancy to be demoted. If the court makes a Demotion Order the tenant is allowed to remain in their home, but they lose security of tenure, for a period specified by the courts. The Demotion Order will set out how the tenant will be expected to behave during the term of the demoted tenancy. Applying for a Demotion Order is only one of many types of court action we can take when a tenant does not keep to the terms of their Tenancy Agreement.

20.2.2 What happens at the end of a demoted tenancy?

If the tenant keeps to the terms of the Demotion Order, at the end of the demotion period the tenancy will either be:

1. Restored to a secure tenancy - where the tenant was a secure tenant before the tenancy was demoted or
2. Restored to a flexible tenancy - where the tenant had a flexible tenancy before the tenancy was demoted

20.2.3 How the demotion period counts towards the five-year term of a flexible tenancy:

When a flexible tenancy is re-instated following the successful completion of the demotion period we will include the demotion period in the overall length of the flexible tenancy. An example of how this works is shown below:

Length of flexible tenancy	= 5 years
Age of flexible tenancy when tenancy is demoted	= 2 years
Length of demoted tenancy (successfully completed)	= 1 year
Time remaining of flexible tenancy after demotion	= 2 years

We will explain this process before, during and at the end of the demotion period and provide written confirmation of this at the beginning and the end of the demotion period.

20.2.4 What happens if the tenant does not keep to the terms of the Demotion Order?

Where the tenant does not keep to the terms of the Demotion Order we will apply to the courts to end the tenancy and evict the tenant.

22. Stakeholder consultation and equality review

This Policy, the new Tenancy Agreement and Service Standard have been approved by Welwyn Hatfield Council's Tenants Panel. It has also been approved by residents who took part in a special consultation sessions. This has given residents the opportunity to review the policy, taking into account equality and diversity issues. The Housing Trust's Tenancy and Neighbourhood Management Service Standard will be reviewed on an annual basis in partnership with tenants. Any issues identified as a result of these processes are reflected in the final version of this Policy and will be taken into account when the Policy is reviewed on an ongoing basis.