



### Flexible Tenancy Review Procedure

Effective from: December 2017  
Next review date: December 2019

#### 1. Introduction

The review and decision at the end of a flexible tenancy should not present any surprises for the tenant or the Council. It should not be used to compensate for a failure to manage issues which have arisen during the course of the tenancy but not been addressed.

#### 2. Possession and flexible tenancies

The expiry of the flexible tenancy presents an opportunity for Welwyn Hatfield Borough Council to obtain possession, without having to prove grounds at a hearing. In order to ensure we are compliant with the notice requirements, the review must be complete and the relevant notice served no later than six months before the expiry date of the tenancy. We will serve six-month notices on all flexible term tenants, even if we are minded to offer a further tenancy at the same property. This enables us to seek possession at the end of the fixed term, should there be a tenancy breach after the flexible tenancy review decision has been made. We will always explain why we are serving the notice, what we are minded to do and what we expect of tenants during the last 6 months of their flexible tenancy. The two-month notice will only be served where we are requiring the tenant to move or are ending the tenancy.

#### 3. What are the outcomes when the tenancy is reviewed?

There are three possible outcomes at the end of the five year term, either the tenant will:

1. Be allowed to stay in their home – where this is the case they will be granted a new five-year flexible tenancy  
Or
2. Be asked to move to a smaller home – where this is the case, they will be offered a five year flexible tenancy at a new property  
Or
3. Be asked to move out of their home and find alternative accommodation via low cost home ownership, intermediate/market rent properties from a social landlord, or private rented properties.

#### 4. What date does the fixed term end?

The flexible tenancy is for a term of five years. As we only work on whole weeks in our current business processes, this means all tenancies need to end on a Sunday and cannot end mid-week.

For example, if a tenancy started on the Monday of week 37, this means that in five years' time the tenancy will end on the Sunday of week 36.

#### 5. 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, the sequence of events is:

##### **Nine 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

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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.

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

We will advise tenants in writing of our decision in ALL cases. No matter what the decision we will serve a six month notice. In each case the wording of the letter that forms the notice will say that the Council is "minded" to make a certain decision. This will ensure that if the tenant's circumstance change substantially after the initial review, the Council can make an alternate decision before the two-month notice needs to be served.

### **Where a new tenancy is being granted**

- ◇ We will make an offer of a new tenancy nearer to the end of the fixed term, this will be a new five year agreement

### **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 by granting Panel Band A being given to the tenants housing needs register application.

### **Two year flexible tenancies**

- ◇ Where the tenant is required to move to smaller accommodation but has been unable to find a suitable new home, the Council may offer a flexible tenancy for a term of two years during which time the tenant would be expected to move. This tenancy will be subject to a review in the last year of the term following this policy. At the end of the two year term, if the tenant has not moved to suitable alternative accommodation, the tenancy will be ended.

### **Where the decision is to end the tenancy**

- ◇ 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 Neighbourhood 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.

### **Where the tenant is required to move to smaller accommodation OR where the decision is to end the tenancy: 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. This is the two-month notice.
- ◇ 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 Neighbourhood Officer or Housing Options Officer to discuss their future housing options as outlined 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.
- ◇ Where a tenant is moving to a smaller home, we will provide support and assistance, as available at the time of the move.

### 6. The legal process for ending a flexible tenancy

We will have to apply to the court to end the tenancy. We can only start this process when the five year term ends. 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.

### 7. How will we make our decision on ending a flexible tenancy at the end of the term

#### 7a. Under-occupation of the property

The property is under occupied by two or more bedrooms.

OR

The property is adapted and the family member who required that adaptation no longer lives there.

We will take the opportunity to remind all tenants that if they are under-occupied they may be subject to the spare room subsidy (bedroom tax).

#### 7b. Breach of tenancy conditions

A breach of the tenancy where formal legal action is underway or being considered.

OR

Cases where a court order has already been obtained and either suspended or adjourned on terms whether or not that order has been breached.

OR

Where a full possession order has been obtained but not yet enforced.

#### 7c. 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. 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.

Further information about how we carry out the financial assessment is included in our Housing Allocations Guidelines.

### Appendix 1: The tenant's right to seek a review of our decision

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.

#### **The review process to be followed when a new tenant disagrees with our decision to grant a five-year flexible tenancy**

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.

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.

#### **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:**

The tenant can seek a review after they have been informed in writing of the decision to end the flexible tenancy.

The tenant must request the review at least 21 days before the stated end of the tenancy.

In the first instance the tenant may request the review either in writing or by attending a meeting with their Neighbourhood Officer or other appropriate representative of the council's Neighbourhood Team. The tenant will be encouraged to provide as much information as possible about the reason/s why they are requesting a review.

The Neighbourhood Officer will refer the case to Senior Housing Manager within 24 hours of being informed by the tenant that they wish to appeal. In the absence of the Senior Housing Manager the matter will be referred to the Head of Housing Operations

The review will be carried out by Senior Housing Manager. If the Senior Housing Manager is not available to carry out the review, the review will be carried out by the Head of Housing Operations. The person carrying out the review is known as the Reviewing Officer.

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 council (see 18.2.3 above), the tenant will be required to confirm in writing that they do not wish to add any further information.

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.

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.

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

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Form has been exceeded. Where this is extended the Reviewing Officer will notify the tenant of this in writing.

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. 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.

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### Appendix 2 – Assessment of Financial Resources (from Housing Allocations Guideline 2017)

In making a decision about whether an applicant has sufficient resources to find their own accommodation we will consider the following:

- ◇ Household income, including benefits and pensions.
- ◇ Savings and investments, including any equity in property currently owned in the UK or abroad.
- ◇ Household size and circumstances.
- ◇ Property needed, according to size and type and whether the applicant needs supported or adapted accommodation.
- ◇ Outstanding debts or financial commitments.
- ◇ Ability of the applicant to secure a mortgage, taking into account his or her age.

We will look in detail at applicants with trigger points relating to income level, savings, investments or equity as set out in the table below:

Household Type	Income	Savings/Equity
Single person	35,000	30,000
Couple	40,000	30,000
Two bed need	60,000	40,000
Three bed need	75,000	40,000
Four bed need	105,000	50,000

If an applicant has met a trigger point we will consider their ability to secure their own housing in the private sector by way of a mortgage in relation to their individual property requirements. For example, we would assume that applicants with dependent children would need a house.

We will assess the ability of the applicant to buy accommodation, against average property prices in the area (reviewed every three months). Recognizing that certain types of property are likely to be more expensive, we will take account of special circumstances of the applicant; for example, if they need a property suitable for a wheelchair or they require support, such as sheltered housing.

**Median property prices in the Borough.** Source: [www.home.co.uk](http://www.home.co.uk) (07.02.2017)

Property Size	WGC	Hatfield
1 bed	200,000	200,000
2 bed house	300,000	300,000
3 bed house	400,000	380,000
4 bed house	600,000	512,500

#### Formula

In assessing the ability of an applicant to secure a mortgage we will use the following formula, based on the applicant's ability to secure a 25 year mortgage:

Savings + 2.5 x joint income OR Savings + 3 x main income, plus 1 x second income

#### Notional Allowances against Savings/Income

We will make a notional reduction of £5,000 from savings to set against costs associated with purchasing a property.

We will also take into account (against income) any reasonable long term financial commitments. This could include the following:

- ◇ Car Loan
- ◇ Long term child care costs

- ◇ Maintenance costs.

### **Applicants unable to secure a mortgage**

Some applicants may not be able to secure a mortgage for one of the following reasons:

- ◇ County court judgement
- ◇ Poor credit history
- ◇ Existing home ownership

***In such cases, we would consider the applicant's ability to rent in the private sector on the basis of their income and savings etc.***

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### Appendix 3 – Recording and monitoring the Flexible Tenancy Review processes

#### Being alerted to carry out a review

A report will be run daily to remind each NHO of any reviews required on their patch, where a review has been carried out, the tenancy will cease to appear on the list

The alert will be sent when the tenancy is 1520 days old (4 years and two months) and where there is no arrears action OUT1 or OUT2 or OUT3 present.

#### Generating the advice letter for the tenant

These will be generated via an arrears action with an editable letter to be sent to the tenant along with a review form to be completed by the Neighbourhood Officer.

This action will be action FTTR

#### Recording the outcome of a review

These will be recorded as an arrears action, there are three possible outcomes:

Outcome 1 – offer a new tenancy at the same property (arrears action code OUT1)

Outcome 2 – offer a new tenancy at a different property (arrears action code OUT2)

Outcome 3 – end the tenancy and seek possession (arrears action code OUT3)

These will generate editable letters which will form the 6-month notice to be sent or hand delivered to the tenant.

#### Monitoring to ensure the reviews are completed in good time

A report will be run daily to show any reviews not carried out within 28 days of the first alert and within 56 days of the first alert. This report will be sent to each NHO and to team leaders.

This report will be sent when the tenancy is 1548 days old and there is no arrears action OUT1 or OUT2 or OUT3, and again when the tenancy is 1576 days old and there is no arrears action OUT1 or OUT2 or OUT3.

#### Reminder to send S107D notice

Where outcome 2 or 3 has occurred, a report will be run daily to remind each NHO of any S107D notices that need to be served on their patch. Where a S107D notice has been served, the tenancy will cease to appear on the list.

This report will be sent when the tenancy is 1735 days old and there is no arrears action 1072 or 1073.

#### Section 107D notice

This will be recorded as an arrears action and will generate this document as an editable letter to be sent or delivered to the tenant.

This will use arrears action code 1072 for this notice based on outcome 2 and arrears action code 1073 for this notice based on outcome 3.

#### Reminder to carry out pre-offer processes

Where outcome 1 or 2 has occurred, a report will be run daily to remind each NHO of any Right-to-Rent checks that need to be carried out on their patch. Where a Right-to-Rent check has been completed the tenancy will cease to appear on the list.

This report will be sent when the tenancy is 1795 days old and there is not arrears action RTRC.

#### Right-to-Rent checks completed

This will be record by an arrears action to allow monitoring of compete and incomplete cases to be monitored.

This will use arrears action code RTRC.



### **Making an offer**

This will be recorded as an arrears action and will generate an editable letter to include the details of the offer. There will be a different letter for offers for Outcome 1 and 2.

This will use arrears action code OFF1 for an offer of a tenancy at the same address (Outcome 1) and arrears action code OFF2 for an offer of a tenancy at a different address (Outcome 2).

### **Ending the existing tenancy**

This will use the existing void notice process, with a void reason selected from:

- ◇ FTR end outcome 1
- ◇ FTR end outcome 2
- ◇ FTR end outcome 3

The property should then be voided down in the usual way.

### **Starting the new flexible tenancy**

This will require a memo to Rents Admin to create a new tenancy record with a new start date, so that the next fixed term tenancy can be monitored for its review in due course.

### **New flexible tenancies**

A report of all flexible tenancies granted will be produced weekly to show all “renewal” type cases.

This report will include all tenancies with code FV and will show the void reason for ending the previous tenancy so that reviewed tenancies can be easily identified.

### **Master report**

A master report will be generated weekly to show all the activities that are due or completed on a fixed term tenancy to provide an overview of caseload.

This report will show all FV tenancies with the date of every arrears action code through the sequence of actions.

### Appendix 4 – Orchard User Guide

#### 3.1 Adding an arrears action to record an activity in the fixed term tenancy review process

Arrears Action Code	Description	Comments
FTTR	Advice letter	To be sent before review is carried out
OUT1	Outcome 1 – new tenancy same address	To record outcome 1 & generate a letter along with the 6-month notice document
OUT2	Outcome 2 – new tenancy different address	To record outcome 2 & generate a letter along with the 6-month notice document
OUT3	Outcome 3 – end tenancy, seek possession	To record outcome 3 & generate a letter along with the 6-month notice document
1072	Section 107D notice for Outcome 2	To generate the Section 107D notice which is served for outcome 2
1073	Section 107D Notice for Outcome 3	To generate the Section 107D notice which is served for outcome 3
RTRC	Right to Rent checks completed	To confirm that all household members over 18 have acceptable immigration status
OFF1	Offer of tenancy at same address	To generate an offer letter for the same address
OFF2	Offer of tenancy at different address	To generate an offer letter for an alternate address

- ◇ Add the arrears action in the usual way
- ◇ Then, **Next**

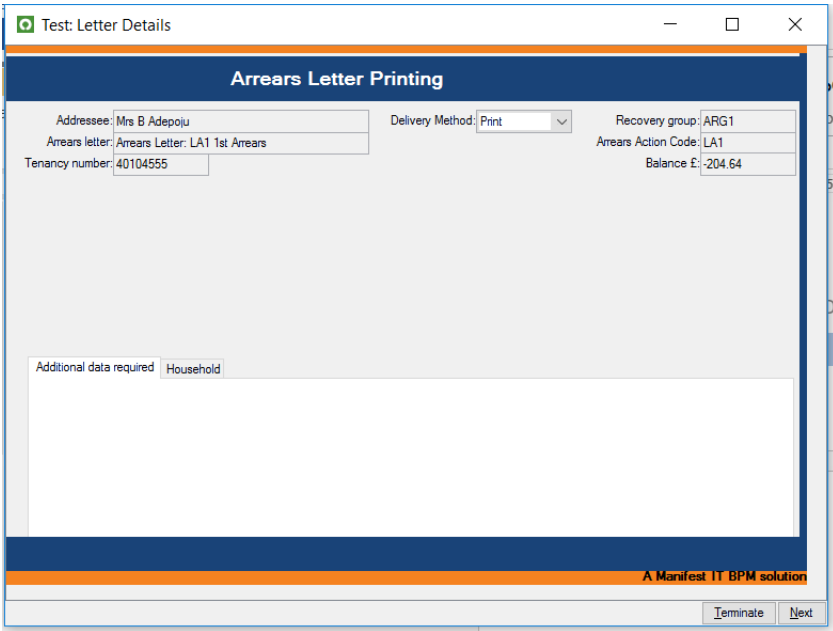
**Add Arrears Action**

Last Highest Action: CLR	Cleared account	Note: <div style="border: 1px solid #ccc; height: 80px; width: 100%;"></div>
* Arrears Action: FTTR	Flexible Tenancy Review letter	
Arrears Action Type: G	General (ie. letters)	
* Action Date: 08/08/2017	Submit To Print?: <input type="checkbox"/>	
New Highest Action: FTTR	Flexible Tenancy Review letter	Add Additional Notes?: <input type="checkbox"/>

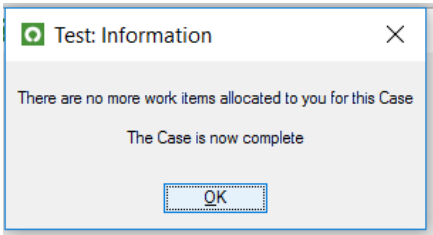
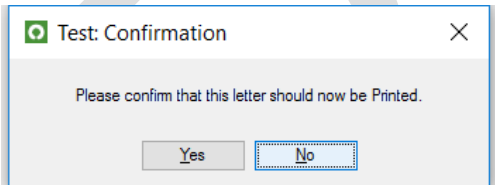
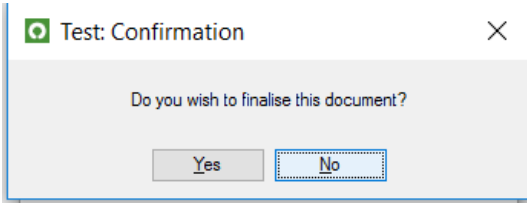
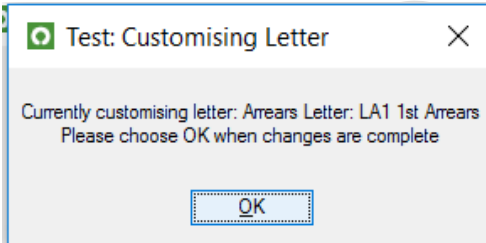
#### 3.2 Editable arrears letters

When you add an arrears action that generates a letter, the letter will appear on screen as an editable word document. You must insert the relevant information into the letter before printing. The letter will save to the Documents tab in the first instance.

This form will pop open



- ◇ Click Next
- ◇ You will see the icon for MSWord start to flash or change colour along the task bar
- ◇ Click on this icon, and then click again (do NOT double-click)
- ◇ This will open the letter in editable mode for you to type in relevant information
- ◇ ONLY when you have typed in all the information you need, you can go back to Orchard and click OK or Yes on each of these the messages as they appear:



Your letter will be sent to the printer as a "follow-me" letter as it has not come from Orchard letter merge.

**3.3 Reports**

Each NHO will receive a report by email in Excel format listing any tenancies where action is required. Team leaders will receive a similar list for any tenancy where an activity has not been completed in a suitable timeframe.

[INSERT SCREEN SHOTS OF SAMPLE REPORTS]