

HOUSING MANAGEMENT ADVISORY BOARD

Report of the Head of Landlord Services

Item 6 Tenancy Policy

Purpose of Report

To consult the Board on the draft Tenancy Policy 2021-2025.

Recommendation

That the Board review and comment on the draft updated Tenancy Policy (and Equality Impact Assessment) attached at Appendix 1 prior to its likely progression to Cabinet.

1. Background

On 6th June 2013 Cabinet approved the Council's current Tenancy Policy. The Tenancy Policy, which is due for update, must have regard to the Council's Tenancy Strategy.

On 17th January 2019 (Minute 76) Cabinet approved the Tenancy Strategy 2019-2024. The Strategy set out the strategic position of the Council with regards to the use of, review of, and ending of fixed term tenancies, mutual exchanges, and succession rights.

2. Regulatory Standards for Social Housing Tenancies

The Home Standard (Regulator of Social Housing 2015) sets out a required outcome as follows:

Registered providers shall offer tenancies or terms of occupation which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock.

There are specific expectations that:

Registered providers 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, and set out:

- (a) *The type of tenancies they will grant.*
- (b) *Where they grant tenancies for a fixed term, the length of those terms.*
- (c) *The circumstances in which they will grant tenancies of a particular type.*

- (d) *Any exceptional circumstances in which they will grant fixed term tenancies for a term of less than five years in general needs housing following any probationary period.*
- (e) *The circumstances in which they may or may not grant another tenancy on the expiry of the fixed term, in the same property or in a different property.*
- (f) *The way in which a tenant or prospective tenant may appeal against or complain about the length of fixed term tenancy offered and the type of tenancy offered, and against a decision not to grant another tenancy on the expiry of the fixed term.*
- (g) *Their policy on taking into account the needs of those households who are vulnerable by reason of age, disability or illness, and households with children, including through the provision of tenancies which provide a reasonable degree of stability.*
- (h) *The advice and assistance they will give to tenants on finding alternative accommodation in the event that they decide not to grant another tenancy.*
- (i) *Their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members.*

Further expectations can be found at Appendix 2. The draft updated Tenancy Policy addresses these expectations supporting compliance with the Home Standard.

3. Summary of Notable Policy Areas and Changes

3.1 Discretionary Succession Rights

No significant change is planned to this aspect of the policy. Prior to the Localism Act 2011 a wide range of family members were able to succeed to a tenancy on the death of a secure tenant, include spouses, partners, civil partners, parents, grandparents, children, grandchildren, aunts, uncles, siblings, nieces, nephews including step relations, illegitimate children, and adopted children.

Under the Localism Act, for new secure tenancies created on or after 1st April 2012 only spouses or civil partners and people living together as spouse or civil partner have a legal right to succeed, however the Council can make express provision through its tenancy policy to expand the group of individuals that can succeed, and the Council's existing Tenancy Policy (2013) provides succession rights which reflect the position pre-1st April 2012 as far as is practicable. No change to this position is proposed. The position would remain that succession can only happen once, and where discretionary succession rights are conferred, successors must have occupied the property for at least twelve months before the death of the tenant.

This approach will support:

- a) Consistency in the approach to succession for pre and post April 2012 tenancies as far as legally possible.

- b) The meeting of the needs of vulnerable household members; for example, adult disabled children, by providing a succession right.
- c) Reduction in void loss and costs associated with re-housing family members that do not under occupy the property.

Potentially rights could be extended further to include non-family members however this would not be in line with the Council's Tenancy Strategy (2019-22) which states that given the level of housing need in the Borough, the Council will not support significant extension to the right to succeed.

Furthermore, the Council has a statutory duty to set out its policy on granting discretionary succession rights, taking into account of the needs of vulnerable household members, and point b (above) is a component of the Council's offer in that respect, along with the provision of advice and support.

There are likely other reasonably foreseeable, although likely very exceptional cases involving vulnerable household members. A carer may have given up their home to care for the deceased person, or perhaps there is someone who has accepted responsibility for any dependants of the tenant and needs to live with them to do so.

If the household member is deemed eligible and qualifies for an allocation of accommodation under the Council's Housing Allocation Policy, they would be able to join the Housing Register. Whilst there is no automatic right of an allocation to the property in question or any other property inferred, the Council will consider the individual circumstances of each case and will seek to make the best use of its available social housing stock.

3.2 Succession and Under-Occupation

The law provides a mechanism to support the Council to make the best use of its stock. If the successor is not a spouse or civil partner, and the property is under-occupied then, where reasonable to do so, the Council can seek possession of the dwelling under Ground 15A of the Housing Act, considering:

- (a) *the age of the tenant,*
- (b) *the period (if any) during which the tenant has occupied the dwelling-house as the tenant's only or principal home, and*
- (c) *any financial or other support given by the tenant to the previous tenant.*

This activity forms part of the Council's existing approach, and no change to this position is set out. Where possession is sought on Ground 15A or where there is no right to succession the Council will provide housing options advice and assistance to household members.

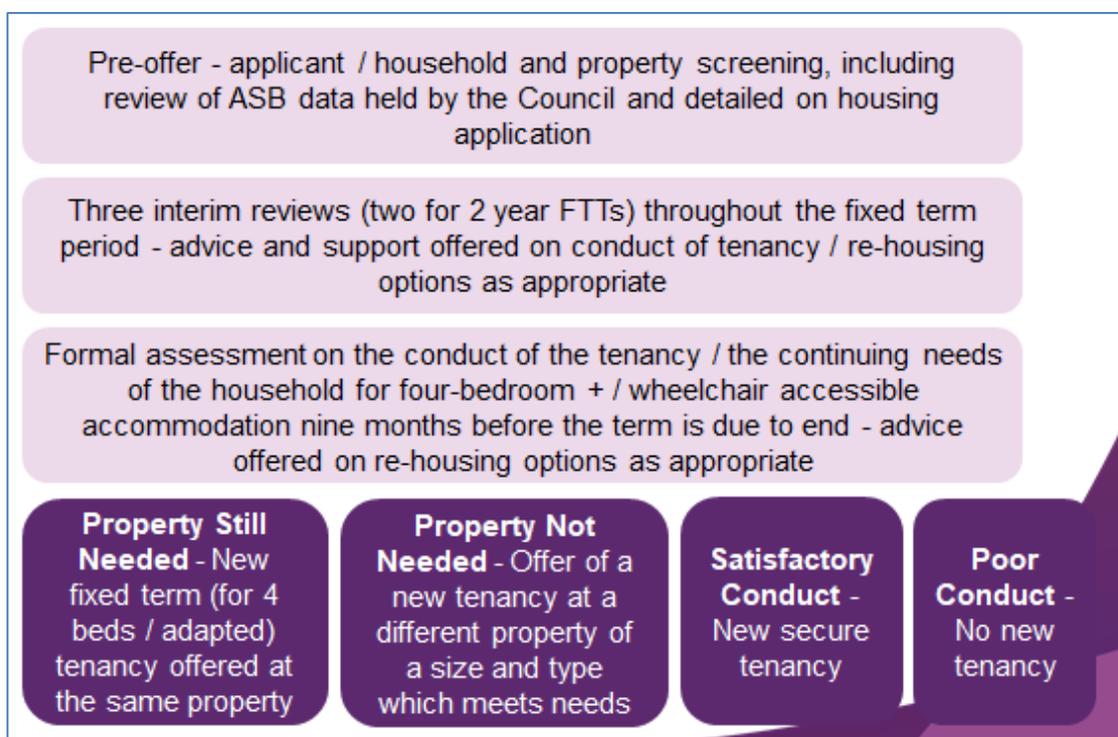
3.3 Flexible Tenancies

The new policy introduces the targeted use of fixed-term tenancies to support the prevention of anti-social behaviour and make best use of the Council's housing stock.

Under this model prospective tenants with a history of serious ASB will be offered a fixed term tenancy of two years, which would commence following the initial 12 (or 18) month introductory tenancy period. Before the end of the fixed term tenancy period, the conduct of the tenancy would be reviewed and if there has been a serious breach of tenancy the tenancy will not be renewed. If the conduct has been satisfactory then a secure tenancy will be offered.

Prospective tenants of high demand general needs 4 bed plus (130 properties in the stock) and wheelchair accessible properties (53 properties in the stock) will be offered 10-year fixed term tenancies in addition to the introductory tenancy period. If the property becomes under-occupied or the adaptation is no longer needed, then the tenant/s would be supported to move, and the tenancy will not be renewed at the end of the period.

The high-level process is set out below.



If tenants do not comply with the process, no new tenancy will be issued.

3.3.1 Vulnerable households

The individual circumstances of each case will be considered when deciding whether to grant a new tenancy at the same address. Factors including age, disability or illness will be taken into account, along with consideration in respect of:

- Care, support, and health needs of the tenant including access to local support networks, family members and services which the tenant reasonably relies upon.
- Whether a move would require any children permanently residing in the property to change school.

- Where someone in the household is in work or training which a move would put at risk if the only available options made travel too difficult.
- Significant mitigating factors contributing to the tenant being unable to comply with the requirements of the policy.

3.3.2 Offers of Accommodation

Give the aim is to make best use of stock, there will be a mechanism in place to award tenants a sufficient degree of priority on the housing register to facilitate a move.

- If at review visit (or at any other time in the tenancy), it is identified that a 4+ bed / adapted property no longer meets needs the tenant asked to complete a housing application and start bidding. They will be given band 2 priority.
- If the tenant is in year 9 and the property no longer meets needs, suitable properties will be matched to tenants by the Allocations Team.
- A moving package will be offered - to support tenants to both move and engage with the process.

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Charnwood Borough Council

Landlord Services

TENANCY POLICY

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PART A: INTRODUCTION, OBJECTIVES AND SCOPE

1. Introduction and executive summary

- 1.1 The council owns approximately 5,500 homes. The basis of the contractual relationship between the council and the tenant is a tenancy agreement. The tenancy agreement creates a legal relationship between the two parties – a tenancy. The tenancy created has its legal foundation in statute.
- 1.2 There are a number of different types of tenancy that the council has the power to create.
- 1.3 This policy sets out the council's position with respect to the following elements:
- (i) The type of tenancy offered to a new Charnwood Borough Council tenant and the criteria taken into account when deciding which type of tenancy to offer;
 - (ii) Changes to the type of tenancy made to an existing tenant and the criteria taken into account when deciding to change the tenancy type for an existing tenant;
 - (iii) Circumstances where an introductory tenancy will be extended by an additional six months;
 - (iv) Circumstances where a flexible tenancy will be renewed and where it will not be renewed;
 - (v) The granting of succession rights;
 - (vi) The granting of joint tenancies to existing sole tenants and the circumstances in which joint tenancies will be granted;
 - (vii) The changing of a joint tenancy into a sole tenancy;
 - (viii) The process by which mutual exchanges are carried out.

2. Objectives of this policy

The objectives of this policy are:

- to grant the correct tenancy in compliance with the law;
- to grant tenancies in accordance with the Home Standard, our tenancy strategy and allocations policy and in order to make best use of the council's stock of homes;
- to prevent anti-social behaviour;
- to grant the most appropriate tenancy where discretion exists;
- to grant tenancies and successions, where discretion exists, without discrimination as to anyone's protected characteristics;
- to enable tenants to carry out mutual exchanges in accordance with statutory requirements and powers;
- to enable rigorous operational procedures to be created, where required, in order to implement this policy.

3. Scope of this policy

This policy applies to everyone who is eligible to be housed by us, including those already holding council tenancies.

PART B: POLICY STATEMENTS

4. New tenants

- 4.1 We will provide all tenants and licensees with a written statement of the terms and conditions of their tenancy or licence.
- 4.2 Other than for variations in rent and service charge, we will consult existing introductory, secure and flexible tenants in accordance with S.103 of the Housing Act 1985 if we wish to change the terms and conditions of their tenancy.
- 4.3 Subject to the exceptions set out below we will offer a **periodic secure tenancy** as defined by the Housing Act 1985 (as amended) to prospective tenants. This tenancy is not time-limited and may only be terminated on the grounds set out in the relevant legislation and if judged reasonable by the court.
- 4.4 The exceptions to 4.1 above are as follows:

- (i) With the exception of tenants transferring within the council or from another registered provider, who are already secure or assured tenants and where there is no break in the tenancy, all new tenants, other than those covered by subsequent exceptions below, will be offered a **periodic introductory tenancy**. An introductory tenant does not enjoy certain rights¹ that a secure tenant has, such as the right to buy, the right to exchange or the right to take in lodgers. An introductory tenancy will last for twelve months unless extended for an additional six months. An introductory tenant will have the right to a review of the decision to extend their introductory tenancy. At the end of the twelve or eighteen-month period it will automatically convert to a full secure tenancy unless possession proceedings have begun or unless it will be a flexible tenancy as defined in 4.4 (iii) below. Because the court has no discretion in determining whether or not to grant a possession order if one is applied for, an introductory tenant has the right to a review of a decision to terminate their tenancy². Operational procedures will provide for a suitable appeals/review process that will enable the tenant to challenge a decision to terminate or extend their introductory tenancy.
- (ii) Because minors have a limited capacity to enter into a legally-binding contract we will grant suitably-amended agreements to people between the ages of sixteen and eighteen that provide the most appropriate mechanism, including requiring a guarantor, to safeguard the council's position to enforce its licence conditions and for the minor to exercise their statutory rights;
- (iii) Subject to 4.4 (i) and (ii) above and after serving written notice that it will be such, we will grant an **introductory tenancy that will become a flexible secure tenancy** of two years' duration once the initial introductory period has expired to those who have a history of serious anti-social behaviour and serious criminal convictions that would constitute a breach of tenancy conditions;
- (iv) Subject to 4.4 (i) and (ii) above and after serving written notice that it will be such, we will grant an **introductory tenancy that will become a flexible tenancy** of ten years' duration where:
- the property to be offered has four or more bedrooms; or
 - the property to be offered is wheelchair accessible. This will not apply to housing designated as sheltered.
- (v) If the prospective new tenant has terminated a secure or assured tenancy because of their fleeing domestic abuse we will grant an introductory or secure tenancy and **not** a flexible tenancy even if the criteria for granting a flexible tenancy as set out in 4.4 (iii) and (iv) above apply.

¹ Housing Act 1996 as amended

² By service of a notice of possession proceedings

- (vi) We will grant **licences** for lettings where there is not exclusive possession of a dwelling or part of a dwelling;
- (vii) We will grant **non-secure tenancies or licences** when letting property in respect of our discharging our homelessness or homelessness prevention duties;
- (viii) We will grant **licences** or other appropriate forms of occupation agreements of dwellings into which an existing tenant moves temporarily because they cannot remain in their permanent home for reasons including:
 - (a) planned major repairs or improvements; or
 - (b) fire, flood, storm or similar events.

5. Existing tenancies

- 5.1 We will provide all new tenants with a written tenancy agreement. This sets out the rights and obligations of both the council as landlord and the tenant.
- 5.2 We will, where requested or the need identified, provide alternative formats of the tenancy agreement. Examples of this include but are not restricted to, audio versions, translations into foreign languages, pictorially-based agreements or large-print versions.
- 5.2 Other than in the circumstances listed below and an introductory tenancy automatically becoming a secure tenancy after the expiry of its initial or extended term, all tenancies or licences will remain as granted unless terminated by the tenant or licensee or by us through an appropriate legal process. Exceptions to this will be:
 - (i) We may **extend an introductory tenancy** in the following circumstances:
 - Where there are or have been persistent rent arrears on the account for a significant period during the introductory tenancy and where agreements to clear have either not been made or have failed on one or more occasions;
 - Where there have accumulated significant rent arrears even if an agreement to clear has been made and is being adhered to;
 - Where a notice of possession proceedings has been served but no possession proceedings have actually been started;

- Where there have been any other significant or persistent breaches of tenancy, including (but not restricted to) anti-social behaviour, harassment and failure to grant access

In such cases the introductory tenancy will be extended by six months. Unless terminated earlier or where possession proceedings have begun, once this six-month term expires the tenancy will automatically become a secure tenancy.

- (ii) As an alternative to eviction we may apply for a secure tenant to be given a **demoted tenancy** through a demotion order granted by the court on the grounds of anti-social behaviour or using the premises for unlawful purposes. A demoted tenancy is effectively an introductory tenancy, with similarly-restricted rights and mandatory possession powers and which will revert automatically to a secure tenancy after twelve months unless terminated or rescinded by an order of the court;
- (iii) We may grant a **family intervention tenancy** under S.297 of the Housing and Regeneration Act 2008 (as amended) if a secure or introductory tenant agrees to it. This will follow breaches of tenancy through anti-social behaviour where the tenant is likely to be evicted. Family intervention tenancies will only be offered if the tenant is to be transferred to alternative dispersed or purpose-built accommodation and will last normally for two years or less. We may terminate a family intervention tenancy through offering an introductory tenancy back into 'mainstream' housing or by serving notice to quit after having served notice of intent and having fulfilled our obligations to offer a review process of that notice of intent to terminate the tenancy;
- (iv) We will grant an **introductory or an introductory flexible tenancy** to someone who has been housed temporarily by us under homelessness legislation and who has been offered a permanent home as a result of their status as having been determined as unintentionally homeless.

6. Flexible tenancy agreements

6.1 Our flexible tenancy agreement will be compliant with all applicable statutory, legal and regulatory requirements, including provisions for:

- length of the flexible tenancy;
- terms for setting the rent, which will be in line with our rent-setting policy for standard introductory and secure tenancies, including terms for the annual review of the rent charged;
- terms allowing for the flexible tenant to terminate the tenancy unilaterally by giving four weeks' notice in writing;

- terms allowing for forfeiture of the flexible tenancy before the end of its term;
- terms allowing for our being able to seek possession of the property on the normal statutory possession process that applies to introductory and secure tenancies and that all relevant and statutory grounds can be relied upon before the fixed term expires.

6.2 Subject to specific terms referred to in 6.1 above, all other terms of a flexible tenancy will be identical to our standard introductory and secure tenancy agreement.

7. Grants, reviews, renewals and non-renewals of flexible secure tenancies

7.1 The recommendation to grant a flexible tenancy will arise as a result of rigorous enquiries as to the tenancy history of the applicant both in respect of former council tenancies and former tenancies with other landlords. If those enquiries conclude that any of the criteria set out in 4.4 (iii) and (iv) above are satisfied, a introductory flexible tenancy will be offered.

7.2 If a flexible tenancy is to be offered it will be accompanied by an offer letter than states explicitly that a flexible tenancy is to be given once the initial introductory tenancy has expired, together with the two or ten-year length of that tenancy and the terms of that flexible tenancy³.

7.3 In terms of flexible tenancies granted under 4.4 (iii) above [serious ASB; criminal convictions] a review of the conduct of the flexible tenancy must be made no later than nine months before the expiry of the flexible tenancy. Options will be to:

- (i) renew the tenancy with a further flexible tenancy, which may be a further two-year term or, if the officer is satisfied that the tenant's conduct has been such, a further flexible tenancy of five years' duration;
- (ii) offer a full secure tenancy;
- (iii) not renew the tenancy and terminate it if serious ASB has occurred during the term of the flexible tenancy agreement and possession is considered to be appropriate.

7.4 In terms of flexible tenancies granted under 4.4 (iv) above a review of the flexible tenancy must be made no later than nine months before the expiry of the flexible tenancy. That review will address the continuing need of the tenant and or his or her household to occupy the property for the reasons why they were housed in that property originally, be that the continuing need for four (or more) bedrooms or the wheelchair-adapted property. Options will be to:

³ S.137A Housing Act 1996

- (i) renew the tenancy with a further flexible tenancy, of a further ten-year term;
- (ii) not renew the tenancy and terminate it but only if and when an offer of suitable alternative accommodation is made.

7.4 If tenants do not comply with the Council's fixed term tenancy review process, notice will be served of our intention not to renew the tenancy.

7.5 The individual circumstances of each case will be considered when making a decision to not grant a new tenancy at the same address. Factors including age, disability or illness will be taken into account, along with consideration in respect of:

- Care, support and health needs of the tenant including access to local support networks, family members and services which the tenant reasonably relies upon.
- Whether a move would require any children permanently residing in the property to change school.
- Where someone in the household is in work or training which a move would put at risk if the only available options made travel too difficult.
- Significant mitigating factors contributing to the tenant being unable to comply with the requirements of the policy.

7.6 If the decision is to not renew the tenancy we will give at least six months' notice to the tenant of our intention not to renew the tenancy. We will inform the tenant of their right to appeal against the decision not to renew and to request a review of that decision. Such appeals have to be made within twenty-one days of serving the notice not to renew. If the decision not to renew is upheld by any review or if no review is requested, no less than two months' notice will be given to terminate the tenancy, such notice to be served on or before the expiry date of the tenancy. Where a flexible tenancy ends and a decision has been made not to grant another tenancy, the council's housing needs team will provide advice and assistance⁴

7.7 Where the property has been let on a flexible basis due to it comprising four (or more) beds or more / being wheelchair-adapted and the Council has decided not to renew the tenancy due to it not meeting needs, or the property no longer meets needs prior to that, the Council will provide reasonable support to the tenant to move to an alternative property. Subject to a completed housing application, the tenant will be provided an appropriate level of priority on the Council's transfer list, and where appropriate, will be direct matched to accommodation that better meets needs.

⁴ Part C: Other provisions, section 12: Advice and support.

- 7.7 If notice is served to terminate a flexible tenancy we will apply to the court for a possession order. A court must make such an order provided we have complied with all requirements set out in legislation and regulation.
- 7.8 Specific procedures will be developed in order to manage flexible tenancies as set out in 4.4 (iii), (iv) and all preceding paragraphs in this section [6].

8. Succession

8.1 Succession rights exist for secure, introductory, flexible and demoted tenants only but the legal framework surrounding succession differs dependent upon whether the tenancy was granted before 1 April 2012 or after. References below to 'statutory succession' mean succession rights that are enshrined in the Housing Acts 1985 and 1996 as amended.

8.2 Anyone succeeding to a tenancy will take on that same tenancy, for example, someone succeeding to a deceased person who held an introductory tenancy will succeed as an introductory tenant.

8.3 Tenancies granted before 1 April 2012:

8.3.1 A person has the legal (statutory) right to succeed to a tenancy if, upon the tenant's death:

- (a) the deceased tenant was not a successor himself/herself; and
- (b) he/she was living in the property as his/her sole or main home at the time of the tenant's death and was the tenant's spouse or civil partner; or
- (c) he/she had been living in the property for twelve months or more immediately prior to the tenant's death and was:
 - a person living with the deceased tenant as if they were spouses or civil partners;
 - children;
 - a parent or grandparent;
 - a grandchild;
 - a niece or nephew;
 - an aunt or uncle;
 - a brother or sister;
 - step-relations and half-relations of the above;
 - illegitimate children and adopted children

8.3.2 If a succession is granted and the qualifying person is not a spouse or civil partner and is under-occupying the property we will offer suitable alternative property and seek re-possession of the deceased tenant's property on ground 15A of schedule 2 of the Housing Act 1985.

8.4 Tenancies created on or after 1 April 2012:

8.4.1 A person has the legal (statutory) right to succeed to a tenancy if, upon the tenant's death:

- (a) the deceased tenant was not a successor himself/herself; and
- (b) he/she was living in the property as his/her sole or main home at the time of the tenant's death and was the tenant's spouse or civil partner or was living with the deceased tenant as if they were spouses or civil partners;

8.4.2 We will also confer succession rights also to someone who had been living in the property for twelve months or more immediately prior to the tenant's death and was:

- a parent or grandparent;
- children;
- a grandchild;
- a niece or nephew;
- an aunt or uncle;
- a brother or sister;
- step-relations and half-relations of the above;
- illegitimate children and adopted children

8.4.3 If a succession is granted and the qualifying person is not a spouse or civil partner or not living together as spouses or civil partners and are under-occupying the property we will offer suitable alternative property and seek re-possession of the deceased tenant's property on ground 15A of schedule 2 of the Housing Act 1985.

8.5 For all tenancies

8.5.1 A successor will succeed to the same type of tenancy that the deceased tenant held.

8.5.2 If the successor is under eighteen years of age, the successor tenancy will be in accordance with section 4.2 (ii) above.

8.5.3 Where there is more than one qualifying person to succeed, statutory succession rights under 8.3 and 8.4 above will take precedence; but, otherwise, qualifying persons must agree among themselves who is to succeed: there will be no joint succession. If the qualifying persons are unable to agree, we will choose the successor.

8.5.4 Where succession does not exist or where non-statutory succession exists but the successor and his or her household would be under occupying the property, if the household member is deemed eligible and qualifies for an allocation of accommodation under the council's housing allocations policy he or she would be able to join the housing register. While there is no automatic

right of an allocation to the property in question or any other property implied, the council will consider the individual circumstances of each case, including the needs of household members who are vulnerable by reason of age, disability or illness, and households with children and will seek to make the best use of its available social housing stock.

9. Joint tenancies

9.1 We will grant joint tenancies if the person wishing to become the joint tenant is the sole tenant's spouse or civil partner or is living with the tenant as if they were spouses or civil partners **and** provided that they are living in the property as their sole or main residence at the time of applying **and** that they would qualify for housing under our allocations policy were they to apply in their sole name.

9.2 We will refuse to grant joint tenancies to existing sole tenants if:

- the would-be joint tenant has not been living with the sole tenant in the property as their sole or main residence for a period of less than twelve months immediately prior to the request;
- the existing tenant has an undischarged possession order;
- the existing tenant is an introductory, demoted non-secure or family intervention tenant;
- the existing tenant has a live notice of seeking possession in force or a notice to quit in force or expired;
- the applicant holds a tenancy of another property;
- the existing or applying tenant has been convicted of an offence that constitutes a breach of their tenancy.

9.3 We may refuse to grant joint tenancies to existing sole tenants if :

- there is sufficient doubt about the relationship being genuine;
- the applicant is an owner occupier;
- there are outstanding rent arrears;
- there are other existing breaches of tenancy, such as anti-social behaviour, but where no legal action has been undertaken;
- there is a limiting covenant on the tenancy, for example, where the sole tenant has signed a declaration to give up an adapted property when it was no longer needed;

- if the applicant is someone from whom the sole tenant had previously suffered or fled domestic abuse or with whom the sole tenant had a previous joint tenancy dissolved by a 'McGrady'⁵ notice.

9.4 In all cases, the granting of a joint tenancy will be by way of granting an entirely new tenancy. If the existing sole tenant holds a flexible tenancy the new joint tenancy granted will also be a flexible tenancy with its expiry date identical to the existing sole flexible tenancy.

10. Sole tenancies from joint tenancies

10.1 If one party to a joint tenancy dies, that tenancy will be subject to succession rules as laid out in section 6. If the surviving joint tenant has statutory or discretionary succession rights, the joint tenancy will become a sole tenancy through succession.

10.2 If one party to a joint tenancy wishes to renounce their interest in the tenancy they may do so provided that the other party to the joint tenancy is in agreement. Our agreement as landlord will also be required.

10.3 All joint to sole tenancies will be by way of an assignment of the existing tenancy from joint names to the remaining tenant's sole name. This can be done either through a deed of assignment or a deed of release. Both parties must sign the deed.

10.4 We will refuse to agree to an assignment under this section if:

- we believe that it is not in the remaining tenant's interest to become a sole tenant;
- there is an undischarged possession order in both joint tenants' names;
- we believe that the remaining tenant is being coerced into agreeing to become a sole tenant against their will;
- if the departing tenant is being coerced against their will into renouncing their interest in the joint tenancy by the remaining tenant or some other person.

11. Mutual exchanges

11.1 A mutual exchange takes place when two, or more tenants swap their homes.

⁵ A 'McGrady notice is a notice to quit/tenancy termination notice' that has been served by one party to a joint tenancy but which has the effect of binding both joint tenants to terminate the tenancy. *Greenwich LBC v McGrady* 1982

- 11.2 When a mutual exchange takes place between two or more secure or assured tenants no new tenancies are created. The parties involved take an assignment of the existing tenancies.
- 11.3 When a mutual exchange takes place between a secure or assured tenant whose tenancy was granted before 1 April 2012 and a tenant holding a fixed-term or flexible tenancy or an assured shorthold tenancy the mutual exchange has to be carried out by surrender and granting of new tenancies so that the secure or assured tenant retains a 'lifetime' tenancy. If the incoming tenant is an existing flexible tenant then we will grant either a secure or a flexible tenancy in accordance with section 4.4 (iii) & (iv) of this policy.
- 11.4 When a mutual exchange takes place between a secure or assured tenant whose tenancy was granted on or after 1 April 2012 and a tenant holding a fixed-term or flexible tenancy the mutual exchange will be carried out by assignment and the secure or assured tenant will inherit a flexible, fixed-term tenancy.
- 11.5 Eligibility to carry out a mutual exchange is determined and governed by section 92 and schedule 3 of the Housing Act 1985.
- 11.6 If one of our tenants is eligible to do a mutual exchange they may exchange with any other secure tenant, an assured tenant or a flexible tenant of a registered social landlord (for example a housing association, a housing trust which is a charity or a private registered provider of social housing)
- 11.7 If we receive an application from one of our tenants to carry out a mutual exchange we will let them know whether or not they are eligible to exchange no later than 42 days after the date of the tenant's application. This may be a conditional decision . During that time we will have:
- undertaken an inspection of the condition of our property and carried out gas and electrical safety checks;
 - provided a reference of our tenant to their would-be new landlord;
 - received a reference for the incoming tenant.
- 11.8 The following tenants do not have the right to do a mutual exchange:
- Introductory tenants;
 - Non-secure tenants;
 - Demoted tenants;
 - Family intervention tenants;
 - Licensees.

11.9 For mutual exchanges carried out by assignment (i.e. exchanges not involving a secure tenancy granted before 1 April 2012 and a flexible tenancy), we may refuse to allow a mutual exchange⁶ to take place if any of the exchanging tenants:

- have an undischarged possession order;
- are subject to possession or demotion or injunction proceedings, including having served on them a notice of seeking possession on both absolute or discretionary grounds;
- our property/properties is/are subject to a closure order;
- have an injunction against anti-social behaviour in place

11.10 We may also refuse to allow a mutual exchange³ to take place if:

- the size of our property is larger by more than one bedroom than the needs are of the incoming tenant;
- the size of our property is such that the incoming tenants will be overcrowding it and would not be offered the property were they to have applied for housing through our allocations policy;
- the property has been adapted significantly to make it suitable for occupation by a physically disabled person and if the exchange were to take place those adaptations would no longer be required;
- the property is designated sheltered or supported accommodation or is let to people with special needs or and if the exchange were to take place there would be no-one living in the property who fulfilled the criteria to live there.

11.11 If someone is eligible to do a mutual exchange but is in breach of his or her tenancy, including being in rent arrears but without there having been any legal action begun, we may delay the date of assignment until that breach has been remedied.

11.12 For mutual exchanges involving a secure tenancy granted before 1 April 2012 and a flexible tenancy we will only refuse consent on one or more of the grounds set out in schedule 14 of the Localism Act 2011, which includes all grounds set out in schedule 3 of the Housing Act 1985, plus if:

- the tenant is in rent arrears; or
- the tenant is otherwise in breach of any term of the tenancy.

⁶ Sch 3 Housing Act 1985

11.13 We will subscribe to an internet-based mutual exchange service allowing a tenant to:

- register an interest in arranging a mutual exchange through the service without paying a fee;
- enter their current property details and their requirements for the exchange they wish to have;
- to be provided with the details of those properties matched to their requirements.

PART C: OTHER PROVISIONS

12. Advice and support

We recognise that many of our tenants are vulnerable and could be disadvantaged in exercising their rights under this policy.

We will offer advice and support to tenants if requested and/or if support needs are identified by us or we will direct them to other organisations for more specialised advice if we are not in a position to offer it. The Council has a distinct Tenancy Support Policy.

13. Tenancy fraud

13.1 Charnwood Borough Council has a limited number of homes that are available to let and all lettings are prioritised according to housing need and the council's duty to house certain vulnerable members of society (for example, children).

13.2 The council has an active involvement in the National Fraud Initiative and is committed to preventing, detecting and investigating all types of fraud. Tenancy fraud deprives families of homes and we will take action where fraud is found.

13.3 Tenancy fraud includes:

- Subletting a property without the landlord's permission for personal gain;
- Providing false information on your application for housing, for example:
- Claiming to have children when you don't;
- Claiming to be homeless when you already own a property.

13.4 The council responds swiftly to all reports of unoccupied/abandoned and sublet properties. We encourage staff and tenants to report any suspected incidents of tenancy fraud and we work jointly with housing benefit and DWP fraud investigators as necessary. We take copies of photographic identification (for example, a passport or driving licence) of all homeseekers. Where photographic identification is not available, we may take a photograph of each new tenant(s) as part of our lettings process.

13.5 If tenants are found to be committing housing fraud, they could:

- lose their tenancy;
- lose their right to council housing in the future;
- be fined or sent to prison depending on how serious the fraud is.

13.6 The Council will seek to prevent the loss of its stock from fraudulent Right to Buy applications through a series of rigorous checks.

14. Training

14.1 Suitable training on this policy will be given to members of staff whose job either directly or indirectly is affected by this policy.

14.2 Refresher training on this policy at appropriate intervals will also be given or if the policy is changed materially.

15. Equality and diversity

We aim to ensure that all our policies are fair and transparent and have been impact-assessed according to our procedures and in accordance with legal requirements.

16. Responsibility

The relevant head of service is responsible for the effective implementation of this policy and may delegate amendments to it arising out of changes in legislation or regulation to the head of landlord services.

17. Monitoring and review

This policy will be reviewed every four years or sooner if required through legislative or regulatory changes.

18. Other external and internal influences on this policy

18.1 This policy has been written and should be implemented in conjunction with the following documents:

- Conditions of Tenancy
- Tenancy strategy;
- Allocations policy;
- Tenancy Support Policy
- Adaptations policy;
- Housing income and financial inclusion policy;
- Anti-social behaviour policy;
- Equality and diversity policy;

18.2 This policy has been written and should be implemented in conjunction with the following Acts including, but not limited to:

- Housing Act 1985;
- Housing Act 1996;
- Localism Act 2011;
- Anti-Social Behaviour Act 2003;
- Anti-Social Behaviour, Crime and Policing Act 2014
- Civil Partnership Act 2004
- Housing and Regeneration Act 2004;
- Housing and Planning Act 2016;
- Equality Act 2010;
- Homelessness Act 2002;
- Homelessness Reduction Act 2017.

19. Policy summary

In addition to this policy being publicly available we will also produce a summary of it in an easy-to-read format.

Charnwood Borough Council

DRAFT

Equality impact assessment 'Knowing the needs of your customers and employees'

Background

An equality impact assessment is an improvement tool. It will assist you in ensuring that you have thought about the needs and impacts of your service/policy/function in relation to the protected characteristics. It enables a systematic approach to identifying and recording gaps and actions.

Legislation- equality duty

As a local authority that provides services to the public Charnwood Borough council has a legal responsibility to ensure that we can demonstrate having paid due regard to the need to:

- Eliminate discrimination, harassment and victimisation
- Advance equality of opportunity
- Foster good relations

For the following protected characteristics:

1. Age
2. Disability
3. Gender reassignment
4. Marriage and civil partnership
5. Pregnancy and maternity
6. Race
7. Religion and belief
8. Sex
9. Sexual orientation

What is prohibited?

1. Direct discrimination
2. Indirect discrimination
3. Harassment
4. Victimisation
5. Discrimination by association
6. Discrimination by perception
7. Pregnancy and maternity discrimination
8. Discrimination arising from disability
9. Failing to make reasonable adjustments

Step 1 – Introductory information

Title of the policy	Tenancy policy
Name of lead officer and others undertaking this assessment	Andrew Staton and Peter Oliver
Date EIA started	April 2019
Date EIA completed	

Step 2 – Overview of policy/function being assessed:

Outline: What is the purpose of this policy? (Specify aims and objectives)
<p>The objectives of this policy are:</p> <ul style="list-style-type: none">• to grant the correct tenancy in compliance with the law;• to grant tenancies in accordance with the Home Standard, our tenancy strategy and allocations policy and in order to make best use of the council's stock of homes;• to prevent anti-social behaviour;• to grant the most appropriate tenancy where discretion exists;• to grant tenancies and successions, where discretion exists, without discrimination as to anyone's protected characteristics;• to enable tenants to carry out mutual exchanges in accordance with statutory requirements and powers;• to enable rigorous operational procedures to be created, where required, in order to implement this policy.
What specific group/s is the policy designed to affect and what is the intended change or outcome for them?
<p>All current and future tenants of council-owned dwellings. The substantive changes to the existing policy position are as follows:</p> <p>Prospective tenants with a history of ASB will be offered a flexible tenancy of 2 years and will be subject to an enhanced tenancy management regime designed to support them in their tenancy and providing the Council with an opportunity to not issue a new tenancy at the end of the fixed term tenancy period.</p> <p>Prospective tenants of 4 bed + / wheelchair accessible properties will be offered 10 year tenancies and will be supported to move to alternative accommodation if they no longer need the property. It is expected that housing need for 4 bed + / wheelchair accessible properties will be met faster. The Council will be provided with an opportunity to not issue a new tenancy at</p>

the same property at the end of the fixed term tenancy period.

Which groups have been consulted as part of the creation or review of the policy?

Charnwood Housing Residents Forum (CHRF)
The Housing Management Advisory Board will be consulted.

■ Step 3 – What we already know and where there are gaps



List any existing information/data do you have/monitor about different diverse groups in relation to this policy? Such as in relation to age, disability, gender reassignment, marriage and civil partnership, pregnancy & maternity, race, religion or belief, sex, sexual orientation etc.

Data/information such as:

- Consultation
- Previous equality impact assessments
- Demographic information
- Anecdotal and other evidence

A range of diversity information is available from our records and held in QL (our housing management system) for all those customers receiving or potentially receiving [applicants] housing management services. This includes information on age, gender, ethnicity, sexual orientation, and disability. The range of information is limited in relation to certain characteristics (e.g. sexual orientation). Lettings and property type information is available.

What does this information / data tell you about diverse group? If you do not hold or have access to any data/information on diverse groups, what do you need to begin collating / monitoring? (Please list)

This information enables support to be directed to the most vulnerable tenants, and also shape our services to meet the needs of vulnerable people across a range of diverse groups. Where disability is involved it can also assist in ensuring that suitable accommodation is offered, which can include a wheelchair accessible property.

Step 4 – Do we need to seek the views of others? If so, who?

In light of the answers you have given in step 2, do you need to consult specific groups to identify needs / issues? If not please explain why.

Staff in landlord and strategic housing services teams have been consulted.
Tenants have been consulted at the Charnwood Housing Residents' Forum.
The Housing Management Advisory Board will be consulted.

Step 5 – Assessing the impact

In light of any data/consultation/information and your own knowledge and awareness, please identify whether the policy has a positive or negative impact on the individuals or community groups (including what barriers these individuals or groups may face) who identify with any 'protected characteristics' and provide an explanation for your decision (please refer to the general duties on the front page).

	Comments
Age	<p>Minors cannot enter into a legally-binding contract and so have to be granted tenancies that are different from standard introductory or secure tenancies. The policy aims to reduce the impact of this unavoidable difference by bestowing the same rights and responsibilities as the law will allow while protecting the minor's contractual status by, for example, appointing a guarantor or trustee to the tenancy.</p> <p>Households that need large accommodation i.e. 4 bed plus, and as such are likely to have children present, will be offered a ten-year fixed term tenancy, which whilst providing a reasonable degree of stability is a less favourable term than currently offered. If the tenant does need to move due to the property, no longer meeting needs they will be supported to do so.</p> <p>Households on the housing waiting list that need 4 bed plus properties will benefit as properties meeting their needs are expected to become available more quickly than they otherwise would have done.</p>
Disability (Physical, visual, hearing, learning disabilities, mental health)	<p>The policy is, by its very nature, detailed and, in parts, quite legalistic. To mitigate the problems that some people might have in understanding fully the policy's terms, a much simpler, easy-to-read summary will be made available as an additional document.</p> <p>The policy will be available in other accessible formats, such as in large print or in other languages, upon request.</p> <p>Prospective tenants that need a wheelchair accessible property will be offered a 10 year fixed term tenancy, which whilst providing a reasonable degree of stability is a less favourable term than currently offered. If the tenant does need to move due to the property no longer meeting needs then they will be supported to do so. Households on the housing waiting list that need wheelchair accessible properties will benefit as properties meeting their needs are expected to become available more quickly than they otherwise would have done.</p>

Gender reassignment (Transgender)	There will be no adverse effect from this policy on this protected group
Race	There will be no adverse effect from this policy on this protected group
Religion or belief (Includes no belief)	There will be no adverse effect from this policy on this protected group
Sex	There will be no adverse effect from this policy on this protected group
Sexual orientation	There will be no adverse effect from this policy on this protected group
Other protected groups (pregnancy & maternity, marriage & civil partnership)	There will be no adverse effect from this policy on this protected group
Other socially excluded groups (carers, low literacy, priority neighbourhoods, health inequalities, rural isolation, asylum seeker and refugee communities etc.)	There will be no adverse effect from this policy on this protected group

Where there are potential barriers, negative impacts identified and/ or barriers or impacts are unknown, please outline how you propose to minimise all negative impact or discrimination.

Please note:

- If you have identified adverse impact or discrimination that is illegal, you are required to take action to remedy this immediately.
- Additionally, if you have identified adverse impact that is justifiable or legitimate, you will need to consider what actions can be taken to mitigate its effect on those groups of people.

No adverse impact from this policy is illegal.

Households that need high demand accommodation (4 bed plus / wheelchair accessible) will be offered a ten-year fixed term tenancy, which whilst providing a reasonable degree of stability, is a less favourable term than currently offered, If the tenant does need to move due to the property no longer meeting needs then they will be supported to do so. The circumstances of each case will be considered when taking a decision not to issue a new tenancy at the same address. Household vulnerability will be considered.

Where a wheelchair adapted property has been let and there is a continuing need for the adaptation and the property still meets needs, then (presuming the property has not been let on a 2 year basis due to a history of serious ASB and conduct has not been acceptable) on expiry of the initial 10 year fixed term tenancy a new tenancy will be issued at the same property; therefore needs will be met.

Help and support will be provided to tenants who need to move.

Households on the housing waiting list that need these very high demand properties will benefit as properties are expected to become available more quickly than they otherwise would have

done.
Summarise your findings and give an overview as to whether the policy will meet Charnwood Borough council's responsibilities in relation to equality and diversity (please refer to the general duties on the front page).
<p>The policy meets the Council's responsibilities in relation to equality and diversity.</p> <p>Large households and those needing wheelchair accessible accommodation will receive a ten-year fixed term tenancy rather than a lifetime tenancy. The issue of a ten-year tenancy is a less favourable term than currently offered and therefore some negative impact arises, however the length of the tenancy does provide a reasonable degree of stability. The package of support for households that need to move and consideration around household vulnerability will mitigate the potential adverse impact on affected groups. The need for a wheelchair accessible property will continue to be met where justified.</p> <p>Resources will be targeted where they are needed, with the objective of meeting the needs of large households and those that need wheelchair accessible accommodation more quickly. The approach is therefore justifiable.</p>

Step 6- Monitoring, evaluation and review

Are there processes in place to review the findings of this assessment and make appropriate changes? In particular, how will you monitor potential barriers and any positive/ negative impact?
The monitoring of the granting of tenancies in compliance with this policy will be the responsibility of the appropriate team leaders and will be subject to the internal audit processes of the council. Outcomes will be recorded and monitored.
How will the recommendations of this assessment be built into wider planning and review processes? e.g. policy reviews, annual plans and use of performance management systems.
No recommendations have been identified in this assessment.

Step 7- Action plan

<p>Please include any identified concerns/actions/problems in this action plan: The problems etc identified should inform your service plan and, if appropriate, your consultation plan</p>			
Reference number	Action	Responsible officer	Target date
	No actions have been identified in this assessment		

■ **Step 8- Who needs to know about the outcomes of this assessment and how will they be informed?**

	Who needs to know (Please tick)	How they will be informed (we have a legal duty to publish EIA's)
Employees	✓	Team meetings
Tenants	✓	Publication on the council's website and/or tenants magazine
Partners and stakeholders	✓	Publication on the council's website
Others	✓	Future and potential tenants through publication on the council's website.
To ensure ease of access, what other communication needs/concerns are there?		None identified.

Step 9- Conclusion (to be completed and signed by the

Please delete as appropriate
I agree / disagree with this assessment
If <i>disagree</i>, state action/s required, reasons and details of who is to carry them out with timescales:
Signed
Date:

Appendix 2 - Home Standard - Further Additional Expectations

- Registered providers must grant general needs tenants a periodic secure or assured (excluding periodic assured shorthold) tenancy, or a tenancy for a minimum fixed term of five years, or exceptionally, a tenancy for a minimum fixed term of no less than two years, in addition to any probationary tenancy period.
- Before a fixed term tenancy ends, registered providers shall provide notice in writing to the tenant stating either that they propose to grant another tenancy on the expiry of the existing fixed term or that they propose to end the tenancy.
- Where registered providers use probationary tenancies, these shall be for a maximum of 12 months, or a maximum of 18 months where reasons for extending the probationary period have been given and where the tenant has the opportunity to request a review.
- Where registered providers choose to let homes on fixed term tenancies (including under Affordable Rent terms), they shall offer reasonable advice and assistance to those tenants where that tenancy ends.
- Registered providers shall make sure that the home continues to be occupied by the tenant they let the home to in accordance with the requirements of the relevant tenancy agreement, for the duration of the tenancy, allowing for regulatory requirements about participation in mutual exchange schemes.
- Registered providers shall develop and provide services that will support tenants to maintain their tenancy and prevent unnecessary evictions.
- Registered providers shall grant those who were social housing tenants on the day on which section 154 of the Localism Act 2011 comes into force, and have remained social housing tenants since that date, a tenancy with no less security where they choose to move to another social rented home, whether with the same or another landlord. (This requirement does not apply where tenants choose to move to accommodation let on Affordable Rent terms).
- Registered providers shall grant tenants who have been moved into alternative accommodation during any redevelopment or other works a tenancy with no less security of tenure on their return to settled accommodation.