

**Mid Devon District Council**

**Tenancy Policy**

Policy Number: HSG v3.5

**August 2015**

## Version Control Sheet

*Title:* Tenancy Policy

*Purpose:* To review the Policy in accordance with good practice, regulatory framework requirements and any changes in legislation.

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*Consultation* **This document was sent out for consultation to the following:**

Cabinet Member

Staff

Tenants Together

Management Team

PDG Decent & Affordable Homes

### Document History

This document obtained the following approvals.

<b>Title</b>	<b>Date</b>	<b>Version Approved</b>
Cabinet Member	<b>05/2015</b>	<b>3.5</b>
Tenants Together	<b>11/06/2015</b>	<b>3.5</b>
Management Team	<b>28/07/2015</b>	<b>3.5</b>
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Cabinet	<b>27/8/15</b>	<b>3.5</b>

## **1. Introduction**

This policy statement outlines the approach of Mid Devon District Council's (MDDC), Housing Service to fulfilling the requirements of the Localism Act (2011) and the requirements of the Regulator, the Homes Communities Agency (HCA) for Registered Providers (RPs) to have a tenancy policy.

The aim of the policy is to enable the Housing Service to make the best use of available social housing stock. This will include reducing overcrowding, tackling under-occupation and making best use of adapted housing for those with a disability. This will support the development of sustainable communities in the District.

## **2. Scope**

This policy describes the different types of tenancies the Housing Service uses when letting properties and the circumstances when they may use them. In particular, it explains when they might use a fixed term rather than a lifetime tenancy. It clarifies how a tenant or prospective tenant may appeal against a decision made about the type of tenancy offered.

It acknowledges that housing applicants may be vulnerable at the point when they are being allocated a new home and that this must influence the decision relating to the tenancy type they will be offered. It states that advice and assistance will be made available to help tenants to manage their tenancies. This policy should be read in conjunction with the related documents stated below.

## **3. Related Documents**

- a. Tenancy Strategy
- b. Tenancy Agreement
- c. Allocations Policy
- d. Devon Home Choice Scheme
- e. Policy relating to successions and assignments
- f. Compliments, Comments and Complaints Procedures

## **4. Types of tenancies and length of terms**

**4.1** In the majority of cases MDDC will offer new tenants an Introductory Tenancy for an initial trial period of 12 months. If for any reason it is not appropriate to grant an Introductory Tenancy then in exceptional circumstances MDDC can decide to grant a Secure Tenancy or a Flexible Tenancy.

**4.2** A Flexible Tenancy will be for a fixed term of 5 years unless there are exceptional Circumstances, in which case the fixed term offered may be 2 years; this will be determined by the Service Manager.

## **5. Introductory tenancy**

**5.1.** An Introductory Tenancy will be granted in the form of MDDC's Introductory Tenancy Agreement current as at the date of the grant. In the majority of cases prior to

granting an Introductory Tenancy, MDDC will indicate that at the end of the Introductory Tenancy, a Flexible Tenancy will be granted for either a 2 or 5 year fixed term.

- 5.2** An Introductory tenancy will not be granted by MDDC where a tenant (or if joint tenants; at least one tenant) has immediately, prior to a tenancy being granted, been either a secure tenant or an assured (but not an assured short hold) tenant of a RP.
- 5.3** Introductory tenants enjoy the majority of rights held by secure tenants however they do not have the right to:-
- Exchange their property with another tenant
  - Transfer the tenancy (other than in accordance with a court order).
  - Make improvements (unless there is a health and safety need)
  - Take in lodgers or sublet or part with possession of the property
  - Buy their home (although the period of the Introductory Tenancy may count towards the qualification period of the Right to Buy)
- 5.4** This type of tenancy enables MDDC to closely monitor the first year 'trial period'. If this is not satisfactory and the tenancy is breached, for reasons including anti-social behaviour and other serious breaches by the tenant, a visitor or a member of their household. Based on MDDC investigation process, a decision can be made to extend the Introductory Tenancy for a period of 6 months or terminate the Introductory Tenancy.
- 5.5** If MDDC decides to extend or terminate the Introductory Tenancy, MDDC will give a notice of this decision in writing explaining the basis for its decision. Unless MDDC has given notice of its decision to extend or terminate the Introductory Tenancy then MDDC will grant a Flexible Tenancy (or, in some circumstances, a Secure Tenancy).

## **6. Flexible tenancy**

- 6.1** A Flexible Tenancy will generally be for a fixed term of 5 years, however in exceptional circumstances MDDC may decide that the term should be for 2 years.
- 6.2** The following are examples of exceptional circumstances where a 2 year tenancy may be offered:-
- Where the tenancy is offered as part of a specific scheme or programme where a shorter tenancy term might be appropriate; or
  - In circumstances that are determined by a Service Manager of MDDC as being exceptional, for example where a tenant has a history of anti-social behaviour, non-payment of rent or there is a change in household profile, income or circumstances or if the accommodation is sheltered housing with two or more bedrooms.
- 6.3** A Flexible Tenancy will be granted in the form of MDDC's Flexible Tenancy Agreement current as at the date of the grant. Flexible Tenants enjoy the majority of rights held by secure tenants however they do not have the right to:-
- Make improvements (unless there is a health and safety need)
  - Sublet or part with possession of the property

## **7. Secure tenancy**

**7.1** Where MDDC decides to offer a periodic secure tenancy it will be in the form of MDDC's Secure Tenancy Agreement current as at the date of the grant. Any Secure Tenancy granted by MDDC will be governed by the Housing Act 1985 (as amended).

## **8. Demoted tenancy**

**8.1** Where there have been incidents of anti-social behaviour, MDDC may apply to court to obtain a demoted tenancy. Demoted tenancies usually last for one year.

**8.2** Where a secure tenancy has been demoted and the demotion period completed successfully; the demoted tenancy will automatically revert to a secure tenancy.

**8.3** Where a flexible tenancy has been demoted and the demotion period completed successfully. A notice will be served on the tenant prior to the end of the demotion period, informing them that the tenancy is to be a Flexible Tenancy. This will specify the length of the fixed term and other express terms of the tenancy.

## **9. Affordable rents**

**9.1** All tenancies on new build schemes will be offered at affordable rents which are 80% of market rent. Existing stock is let so that a social rent is payable.

## **10. Tenancy changes**

**10.1** Sole tenants may request to have a joint tenancy so they share their tenancy with another person. This results in the sole tenancy being terminated and a new joint tenancy created. MDDC will exercise discretion in granting a joint tenancy.

**10.2** Where a new joint tenancy is created, both tenants will be given advice on what they can expect from MDDC as the landlord and what is expected from them when conducting their tenancy.

**10.3** The sole tenant will be advised to seek independent legal advice before giving up their sole tenancy. If the sole tenant is in breach of any of the conditions of their current tenancy, the application will be refused.

**10.4** A joint tenancy will end at the expiry of a valid Notice to Quit (NTQ) in writing from one or both tenants. If an NTQ is received from only one of the tenants, MDDC will take all reasonable steps to inform the other tenant of the effects of the first tenant's action and ask all parties involved in the joint tenancy to agree to sign the NTQ if this is possible.

**10.5** If one member of the tenancy requests to stay in the property as a sole tenant, following the receipt of an NTQ signed by all tenants. MDDC will review this in line with their Allocations Policy and the provisions of the Devon Home Choice Scheme as this would result in the creation of a new sole tenancy.

## **11. Assignment to a qualifying successor**

**11.1** In certain circumstances, tenants may have the right to assign their tenancy to another person who would be entitled to succeed on a tenant's death. This request must be put in writing and comply with the conditions of the tenancy agreement. There can only be one assignment by law and that can only be made to a person who would qualify as a successor to the tenancy.

## **12. End of flexible tenancy fixed term**

**12.1** Before the end of the fixed term of the Flexible Tenancy, MDDC will, further to any other reviews which it has carried out will review the tenant's household circumstances. They will also discuss their housing options with them so that MDDC can decide:-

- Whether another tenancy should be offered for the same property or at a different property
- What length of tenancy should be offered
- What rent level should be offered
- Specific tenancy terms which are included in any new tenancy agreement.

**12.2** MDDC will notify the tenant of its decision in writing not less than 6 months prior to the end of the fixed term of the Flexible Tenancy. In making its decision MDDC may take into account the points raised below under 12.3-12.10.

**12.3 Household profile** - Will be considered, when a change or anticipated change in household profile warrants a move to alternative accommodation or is thought to warrant such a move in the near future (for example the property is over or under occupied or does not match the tenant's need).

**12.4 Tackling under occupation** - It is recognised that a large number of family properties, particularly three bedroom properties are under occupied. Tenants are encouraged to apply for the downsizing scheme (where budgets are available) which provides financial assistance to people who move to a smaller property and so free up a family sized property. Priority is given to tenants wishing to downsize on Devon Home Choice.

**12.5 Income and savings** - It is recognised that household incomes and savings may change during the term of a flexible tenancy. Where there is sufficient declared income and savings or disposable assets to be able to afford to buy private housing or there is an opportunity to purchase the property they are living in, or another suitable property, outright or on a shared ownership/equity basis, then a new tenancy will not be offered.

**12.6 Adapted properties** - Where a tenant is living in a property which has been built or adapted for a person with a disability. If the tenant or their household no longer need that type of home, we may take steps through the Courts to end the tenancy. We will try as far as possible to offer the tenant and/or their household alternative accommodation.

Tenants on a Flexible Tenancy living in a property which has been built or adapted for a person with a disability will only be renewed if there is still a requirement within the household for that kind of property and they meet the relevant conditions.

- 12.7 Stock disposal/refurbishment** - Where it would be too costly to bring the property up to modern standards or it is surplus to requirements but the tenant meets the criteria to be offered a new tenancy, they will be offered an alternative property that meets their household needs.
- 12.8 Mixed communities** - In order to be consistent with a local lettings policy or to create an appropriate balance of tenure on an estate/development or in a locality, it may not be appropriate to renew the tenancy.
- 12.9 Tenancy conduct** - The conduct of the Flexible Tenancy will be taken into account when the tenancy is reviewed. The tenancy may not be renewed where there is evidence of a significant breach in the terms of the tenancy, for example, possession proceedings based on anti-social behaviour of the tenant and/or the household during the tenancy or non-payment of rent. However, where the breach has been remedied satisfactorily, or is in the process of being remedied, this will be taken into account. Any other specific matters drawn to the attention of MDDC by the tenant or relevant to the making of the decision will be taken into consideration as part of the review process.
- 12.10 Rent arrears** - When a Flexible Tenancy is reviewed the status of the tenants rent account will be considered. A new tenancy will not be granted where there are high levels of rent arrears. Exceptions will be made in the following cases:
- Where the tenant is in receipt of the housing cost element of any benefit and can prove that any amounts will be backdated; or
  - Tenants with low rent arrears or those who have made an agreement to pay by instalments and have maintained the arrangement.

### **13. Tenancy not renewed**

- 13.1** If MDDC decides not to renew a Flexible Tenancy at the end of the fixed term. It will notify the tenant of the reason it has made this decision and inform the tenant of their right to request a review of the decision and the timescale for this. If no new Flexible Tenancy is granted and the tenant refuses to vacate at the end of the fixed term MDDC can take legal steps to obtain a possession order from the court.

### **14. Review of tenancy fixed term**

- 14.1** An Introductory Tenant is entitled to request a review of MDDC's decision to extend or to terminate the Introductory Tenancy. A tenant of a Flexible Tenancy is entitled to request a review of MDDC's decision:-
- To grant a fixed term Flexible Tenancy;
  - Not to renew the Flexible Tenancy;
  - To renew the Flexible Tenancy but for a different term, upon different tenancy terms or to renew in relation to a different property.

In all cases a request for a review must:-

- Be made in writing within 21 days of the date of service of the notice from MDDC of its decision
- State if an oral hearing is required.

**14.2** A Senior Council officer who has not been involved in the decision which is being challenged will carry out the review. If an oral hearing has been requested MDDC will set up a panel to hear the review. MDDC will inform the tenant of the date, time and place of this hearing at least five working days prior to the panel hearing. At any hearing the tenant will be entitled to put forward any evidence which they consider is relevant and may ask to be represented by a third party.

## **15. Exceptional circumstances**

**15.1** There will be exceptional circumstances where the Housing Service may use its discretion to renew a tenancy where the normal criteria will not be met. This may be circumstances where non-renewal may result in severe financial hardship or have an adverse effect on the welfare of the tenant and their household. In such circumstances an exemption to this policy can be made by the Housing Service's Manager. Such circumstances may include:

- Welfare concerns which suggest that a house move would worsen mental illness, cause long-term stress, or create some other significant welfare need.
- There is a need for the household to remain in the same location and suitable alternative accommodation is not available locally.
- The property has had to be adapted to meet the needs of the tenant or their household and this work would have to be duplicated in a new property.

**15.2** Before a decision is made as to whether or not to renew a tenancy, the Housing Service will liaise with other agencies, as appropriate, including Social Services, Health Services or the Probation Service.

## **16. Options available to tenants**

**16.1** A range of options might be offered to a tenant at the end of a Flexible Tenancy: This will depend on the outcome of the tenant's review when determining whether or not a new tenancy will be offered. If a new tenancy is to be granted, tenants may be offered the following:-

- A lifetime tenancy
- A further Flexible Tenancy of the same period
- A further Flexible Tenancy for a different period (a minimum of two years)
- A tenancy with a different rent (social or affordable)
- A tenancy at a different property.

**16.2** However, MDDC's ability to offer alternative accommodation will be determined by the availability in the preferred location. In addition to the above, all flexible tenants will be offered advice and guidance on future housing options. This will be done when the tenancy is reviewed, at least six months before the expiry of the tenancy. Officers in the Neighbourhood teams will liaise with the Housing Options Team to offer housing advice to prevent homelessness.

## **17. Special provisions relating to vulnerable households**

**17.1** Assistance will be provided to tenants and households who have language and literacy difficulties and those with special needs. This Tenancy Policy can be provided in other formats, such as large print and audio tape by contacting MDDC on 01884 255255. Where required home visits can be arranged.

**17.2** In making decisions in relation to the grant, renewal, extension and termination of Tenancies, MDDC will ensure that, as far as is possible, it takes into account the circumstances of the tenant and their household. In particular MDDC will:-

- Consider any special circumstances and needs of those households who are vulnerable, for example, because of age, disability, or illness which have been notified to MDDC
- Make such reasonable enquiries as are necessary of the tenant to ensure that the needs and circumstances of the household are known.

**17.3** MDDC will, where possible, place certain preferences on its available housing to ensure that the most suitable applicant and household is considered for the accommodation taking into account its size, locality, facilities, adaptations, any local connection of the household, and any medical, age related or other need.

**17.4** MDDC will, if possible, offer suitable alternative accommodation when it becomes available to a vulnerable successor tenant if as a result of the succession the successor tenant will be in a property which is unsuitable for their needs.

## **18. Advice and assistance**

**18.1** MDDC and its partner agencies, either directly or through other agencies, will aim to provide support services to the tenant and their household in the event of them being required to find alternative accommodation. Support will include:-

- Housing and tenancy advice; and
- Referrals to other agencies or services for non-housing support such as emotional support, advocacy and counselling services.

## **19. Policy on discretionary succession rights**

**19.1** MDDC has a range of tenancy agreements which set out the rules for the granting of successions. In all cases these comply with statutory requirements. A separate policy relating to successions and assignments is also available which sets out the succession rights for tenants depending on the type of tenancy offered and when it was granted. It is our policy not to grant additional discretionary succession rights.

## **20. Approach to tenancy management**

**20.1 Tenancy Agreements** - Our tenancy agreements will be written in plain English. They will set out the rights and obligations of both the tenant and the landlord. Tenants will be given a copy of the tenancy agreement at the start of the tenancy and the terms will be explained to them at the sign up meeting.

**20.2 Tenancy fraud** - MDDC is committed to tackling tenancy fraud and will take action to take possession of a property where it has been obtained by the making of a false or misleading statement. Steps are taken to prevent and reduce cases of tenancy fraud and these include:-

- When a property is offered, the prospective tenant will be asked to provide photo identification, such as a passport or driver's licence
- Where no photo identification is available the prospective tenant will be asked to provide two passport photos signed by a professional who has known that person for the past 2 years.
- Staff will carry out regular tenancy home checks where identification is requested to make sure the right person is living at the property
- Staff will follow up any reports of unoccupied properties or sub-letting of properties and take the appropriate action to investigate
- Tenants are encouraged to report tenancy fraud confidentially
- Working in partnership with other agencies where tenancy fraud is being investigated.

**20.3 Mutual exchange** - MDDC understands that there may be many reasons as to why a household may need to move, these include the need to move closer to other family members or for work reasons. In some cases, the pressures of supply versus demand in terms of social housing mean that it could take many years for suitable alternative accommodation to become available.

MDDC is committed to the promotion of mutual exchanges as a housing option for tenants who wish to move. This includes encouraging tenants to use the national HomeSwapper website to find a suitable exchange partner and giving advice on other ways of finding people who may be looking to exchange homes.

**20.4 Transfers** - Existing MDDC tenants and those of other RPs may be eligible to be considered to transfer to another property. This may encourage tenants to move to properties that are suitable for their needs as well as helping people to move closer to work or family commitments. The type of tenancy offered will be dealt with in line with MDDC's Allocations Policy, Tenancy Policy and the Devon Home Choice Scheme.

**20.5 Supporting tenancies** - MDDC is committed to helping tenants maintain their tenancy and offers support in a number of ways to prevent breaches of any of the terms and conditions of the tenancy agreement. This will include endeavouring to prevent them falling into rent arrears or carrying out acts of anti-social behaviour. Tenants will be supported in the following ways:-

- All tenants will be given information about how to conduct their tenancy at the sign up stage. This will ensure the tenant understands the terms and conditions of the tenancy agreement including methods and frequencies for paying their rent on time, how to access benefits and report repairs whilst highlighting opportunities to get involved
- New tenants will be visited at home approximately six weeks after their tenancy commenced to check that everything is going well for them. Checks

will be carried out to ensure they are paying their rent regularly, that benefits have been applied for and that there are no breaches of tenancy

- Tenants will be made aware of their obligations to pay charges and clear outstanding debts on time. There will be a focus on preventing arrears, providing regular information about rent accounts and offering affordable debt management arrangements
- Staff will make early contact with anyone who may be breaching their tenancy, to allow them to understand what could happen if they continue with their actions and offer appropriate support to help them keep their home
- Tenants will be signposted to specialist support agencies if the tenant requires support and advice to help them to maintain their tenancy
- MDDC will engage with working age tenants who have been affected by welfare reform changes by providing information, support and advice about housing options and maximising their income
- Housing Community Support Officers are available to offer assistance if a tenant needs some additional support to sustain their tenancy
- All rent arrears letters sent out provide details about where the tenant can seek independent advice
- Where there are issues of neighbour nuisance or conflict the full range of powers and tools available to tackle anti-social behaviour will be used.

## **21. Complaints**

- 21.1** MDDC will deal with any complaints about its service in accordance with its Complaints Procedure, details of which are available on MDDC website at [www.middevon.gov.uk](http://www.middevon.gov.uk) or available by telephone on 01884 255255.

## **22. References**

- Localism Act 2011
- Housing Act 1985
- HCA Regulatory Framework for Social Housing

## **23. Equality and Diversity**

- 23.1** The Housing Service will tailor their services to meet the diverse needs of individuals. They will foster good relations with people when providing their services to eliminate discrimination and promote equality of opportunity.

## **24. Review**

- 24.1** This Policy has been written in line with good practice, regulatory requirements and current relevant legislation. Unless there are any changes to such regulatory requirements or legislation beforehand, the next review of this Policy is due June 2019 and every four years thereafter.