

**Westminster City Council Tenancy
Policy
(for the City Council's own housing
stock)**

Updated August 2019

Westminster City Council Tenancy Policy

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1. Introduction

- 1.1 This Tenancy Policy applies to Westminster City Council's own housing stock. A Tenancy Strategy has also been developed to guide all providers of social housing in Westminster in setting policies for their own stock. The Tenancy Policy has had regard to the Tenancy Strategy in the following areas;
- (a) The kinds of tenancy which will be granted
 - (b) The circumstances where a tenancy is granted of a particular kind
 - (c) The lengths of the tenancy term granted
 - (d) The circumstances where a further tenancy will or will not be granted when a tenancy comes to an end.
- 1.2 The Tenancy Policy follows the principles and objectives of the Tenancy Strategy and should be read in conjunction with it. It gives detail on how the new flexible tenure will be implemented in the City Council's own stock. It also sets out the City Council's discretionary succession, assignment and mutual exchange policy and the general policy towards tenancy management for all tenants. It complements and should be read in conjunction with other housing policies and procedures and the Housing Allocation Scheme.
- 1.3 There is a glossary in Section 13 which explains terminology used in this policy and the differences between different types of tenancies.

2. Regulatory requirements

- 2.1 The regulator (the Homes and Communities Agency) has produced a regulatory framework which sets out what registered providers should provide for in their tenancy policies. The City Council has broadly followed the same framework in this Tenancy Policy. Full details of the regulatory framework are at <http://www.homesandcommunities.co.uk/ourwork/regulation>.

3. The types of tenancy that will be granted and tenancy length

- 3.1 **Introductory tenancies**
Most new City Council tenants will be introductory tenants for the first year of their tenancy in line with the City Council's Introductory Tenancy Procedure. All introductory tenants will receive a tenancy agreement setting out the introductory tenancy period and indicating the type of tenancy their tenancy will become at the end of the introductory period, subject to there having been no breach of the tenancy agreement during the introductory tenancy period. All introductory tenants will become flexible or secure tenants provided they comply with the conditions of their introductory tenancies.
- 3.2 Introductory tenancies will not be issued where the tenant is already a secure or assured tenant.

3.3 Flexible tenancies

A flexible tenancy is form of secure tenancy, which is for a fixed term, and was created under the Localism Act 2011. Although it contains many features of a secure tenancy¹, the main difference is that a secure tenancy can only be ended by the landlord if a court order is granted, and the court considers that it would be reasonable to grant possession. With a flexible tenancy, the court must award the landlord possession as long as the fixed term has expired, the correct notices have been served and any review request has been considered.

- 3.4 The majority of new tenancies offered by the City Council will be flexible tenancies, providing the tenant(s) have reached the end of an introductory tenancy without breaching their tenancy conditions. At the end of the introductory tenancy period, the tenancy will become a flexible tenancy unless the Council has gained possession of the dwelling or is in the process of doing so. In some circumstances flexible tenancies may be offered to Non-Priority Households (see 3.8 – 3.10) or secure tenancies will be offered (see 3.11).
- 3.5 The majority of flexible tenancies will be for a term of five years (some may include additional time as explained in 4.7). Five-year flexible tenancies provide a reasonable degree of security, for example for vulnerable people, and for people with children, while enabling the City Council to make the best use of the housing stock for those in need. In some circumstances a flexible tenancy of less than five years may be offered (see 3.8- 3.10).
- 3.6 All flexible tenancies will be subject to review in line with the renewal criteria (see section 4). It should be noted that for non-priority households additional renewal criteria apply (see 4.15). It is expected that in most cases, a new flexible tenancy will be offered at either the same or another address. The City Council will clearly communicate the expectation, that most tenancies will be renewed, and its policy on offering further flexible tenancies. This will help people feel settled in their homes and able to contribute to the community. It will also help people to understand the reasons why, in certain cases, a flexible tenancy at an alternative address may be offered or that a new flexible tenancy may not be offered.
- 3.7 There may be exceptional circumstances which may justify granting a flexible tenancy of less than five years when renewed. Exceptional circumstances might include:
- 3.7.1 ***Where the tenant has not kept to an agreement to correct a breach of the tenancy agreement during the flexible tenancy.*** This will be addressed at the review meeting, and a new flexible tenancy of two rather than five years will be offered where the City Council considers a breach of the agreement warrants a new fixed term of less than five years. The use of shorter tenancies in these circumstances is intended to help reinforce the tenant's responsibilities under the tenancy agreement and to enable any necessary support to be put in place.

¹ For example, a flexible tenant has the right to buy, the right to take in lodgers and the right to be consulted about issues of housing management. A tenant's rights to carry out improvements will, however, be governed by the specific terms of the tenancy agreement.

Examples of where a shorter tenancy may be offered include where:

- The tenant has not kept to a rent arrears agreement for eight weeks, or has been making irregular payments, *or*
- The tenant has received warnings about a breach of the tenancy agreement and there is evidence that the breach is continuing, *or*
- During the flexible tenancy term the tenancy was demoted (and subsequently reinstated), *or*
- There is a combination of these or other breaches of the tenancy agreement.

3.8 Flexible Tenancies for Non-Priority Households

In certain limited circumstances, where the supply of housing stock allows, the Council may offer flexible tenancies to households that would not ordinarily have priority for housing under the City Council's Housing Allocation Scheme. Normally in these cases, the tenancy is offered to address a particular issue or need rather than to provide long term housing. These tenants will not be eligible for Cash to Move payments².

3.9 Examples of when a Flexible Tenancy for Non-Priority Households may be offered are below and the length of the tenancy term will be determined by the Cabinet Member responsible for Housing:

- Where they can help a broader range of low income working households who have few housing opportunities in Westminster to access social housing
- Where they are attached to an employment or training support project
- Where they are intended to provide some transitional housing following a bereavement for discretionary successors, under the discretionary succession policy for flexible tenants (see 7.19).

3.10 Flexible Tenancies for Non-Priority Households may also be used in other circumstances subject to agreement by the Cabinet Member responsible for Housing. The reasons for offering these tenancies and the length of the tenancies may change over time. Their specific use will be agreed by Cabinet Member for Housing through the annual Supply and Allocation of Social Housing Report and then the necessary changes will be made to the Housing Allocation Scheme.

3.11 Secure tenancies

Secure tenancies will be granted to:

- People moving into, or within, community supportive housing (also known as sheltered housing)
- Any existing secure or assured tenant where they choose to move to another social rented home, whether with the same or another landlord, or because they need to move due to redevelopment works (this does not apply where tenants choose to move to accommodation let on Affordable Rent terms)

² These payments are offered as incentives to tenants to move from social housing and free up unit

- Statutory successors to secure tenancies where a new tenancy is offered as they are under occupying the original home (see 7.7 - 7.9)
- A leaseholder of the City Council that is having their home demolished due to regeneration and it has been agreed that they can become a social housing tenant under the Leaseholder Policy for Housing Renewal Areas³
- Joint tenants that have brought their existing secure tenancy to an end through the service of a Notice to Quit (which legally ends the tenancy), and the new property being offered is the right size for their household, or smaller than their previous home as they are downsizing
- Any existing secure or assured tenant that has to move home due to domestic abuse. This would also apply to a sole tenant that had lost their security of tenure by leaving the home due to domestic abuse, or to a joint tenant, where security of tenure had been lost by the tenancy being terminated. In all these circumstances, the City Council would need to be satisfied that the domestic abuse had taken place.

3.12 In the above cases, at the end of any introductory tenancy period, the tenancy will become a secure tenancy unless the Council has gained possession of the dwelling or is in the process of doing so.

4. Tenancy renewal and ending a flexible tenancy

4.1 This section applies to flexible tenancies only.

4.2 The review meeting

A review meeting will be held to consider if a new flexible tenancy should be offered (whether at the same or at another property).

4.3 The City Council will endeavour to arrange the tenancy review meeting at least eight months before the flexible tenancy expires and the tenant will be asked to bring all relevant information to the meeting.

4.4 Tenants can bring any support worker, friend or representative to the review. Tenants must participate in the review and provide any information requested. Every effort will be made to ensure that tenants participate in the review and the City Council will endeavour to work with any support workers of the tenant to ensure they participate. The review meeting will be held in a way that is sensitive to the needs of vulnerable people, which may involve holding meetings in tenants' homes if preferred. The review is intended to be a positive experience for tenants.

4.5 In some circumstances the review meeting can be held without the tenant being present. In these cases the tenant must be living at the property and be unable to participate in the review due to vulnerability or for some other good reason. Instead a support worker, friend or representative of the tenant will attend the review meeting. In any event, this will only occur with the tenant's consent unless there are exceptional circumstances and all reasonable attempts have been taken to get the tenant to engage in the review.

4.6 The review meeting will consider:

- 4.6.1 ***The support and advice needs of the household.*** Advice may be given on a range of matters including signposting to other council services and employment, training or money advice. Referrals may be made to other council services such as Adult or Children's Services. The meeting should also be an opportunity for the tenant to discuss any difficulties they are experiencing in managing their tenancy or to report any nuisance or harassment that may have gone unreported.
- 4.6.2 ***Other housing options and the long-term housing plans of the tenant and their household.*** Advice will be given where appropriate on other housing options the tenant, or members of their household, may be interested in such as; community supportive housing (also known as sheltered accommodation), intermediate housing, the Right to Buy, mutual exchanges, social tenant mobility services and housing in the private rented sector.
- 4.6.3 ***Household composition and under occupation or overcrowding.*** An assessment of the size of property needed will be completed using the City Council's Bedroom Standard, or any equivalent adopted standard, in the Housing Allocation Scheme, to determine if there is under occupation or overcrowding. The household members included in the assessment will be those living with the tenant at the time of the review. People that will be included in the household will be the same as those included in general registrations for housing in the Housing Allocation Scheme. Friends, lodgers and sub tenants living with the tenant will be excluded from the assessment and will not be considered part of the household. Full time students living away from home (i.e. that have left the tenant's home to study) will be included as absent household members if they intend to return to the household when their studies are over. If the property is under occupied, in most cases, an alternative property which meets the tenant's needs will be offered (see 4.8 – 4.9). If there is overcrowding, a further flexible tenancy at the same address will be issued and advice given about making a transfer application, applying for a mutual exchange for a larger property and on any other options, such as space saving solutions.
- 4.6.4 ***Any disabled adaptations that are no longer needed.***
- 4.6.5 ***The way the tenancy has been conducted.*** Any proven breaches of the tenancy agreement and agreements to remedy those breaches will be considered.
- 4.6.6 ***Whether the tenant is in prison.*** The length of the sentence, whether the offence represents a breach of the tenancy agreement and the remaining household occupants will be considered.
- 4.6.7 ***Whether the flexible tenancy was offered to a Non-Priority Household*** (see 3.8 – 3.10)

4.7 Offering a new flexible tenancy

Following the outcome of the review meeting, a new flexible tenancy will be offered to an existing flexible tenant unless any of the circumstances set out in 4.8 - 4.14 apply (and for Non-Priority households 4.15 also applies). Subject to the need for additional time, as explained below, the new flexible tenancy will be for a term of five years unless the circumstances set out in 3.7.1 apply, (in which case a flexible tenancy for a term of two years will be offered). Flexible tenancy reviews will generally be carried out eight months before the expiry of the existing tenancy term and the City Council may offer a new flexible tenancy at the review meeting or at any time before the expiry of the existing tenancy term. Where the new tenancy starts before the expiry of the existing tenancy term the new tenancy will include additional time so that the new tenancy term ends on the Monday of, or after, the relevant anniversary of when the existing term would have ended. For example, if the existing tenancy term is expressed to end on Monday 2 September 2019 but the tenant enters into a new tenancy that commences on Monday 6 May 2019 the new tenancy term will be expressed to end on Monday 2 September 2024 (a fixed term of five years and four months). This is done to encourage the tenant to enter into the new tenancy early whilst ensuring that s/he does not thereby lose any time as a flexible tenant.

4.8 Circumstances where a new flexible tenancy may not be offered at the same property

Where there is under occupation (see 4.6.3), in most cases the tenant will not be offered a new flexible tenancy at the same property and will be offered a property better suited to their needs.

4.9 This policy on under occupation will not be applied inflexibly and it may be appropriate to offer a new flexible tenancy at the same property, for example, where:

- Moving could cause a serious impact on the health of the tenant or another household member
- The property has been adapted for a disabled person and it would be costly and disruptive to reinstate those adaptations at another property
- The tenant is single and is occupying a one-bedroom property and their entitlement is for a studio property
- The household will shortly not be under occupying, for example where dependent children will require separate bedrooms in the immediate future.

4.10 Where the property has been adapted for a disabled person that no longer needs the adaptations or is no longer living in the property (see 4.6.4), in most cases the tenant will be offered a new flexible tenancy at another property better suited to their needs.

4.11 This policy with regard to disabled adaptations should not be applied inflexibly and it may be appropriate to offer a new flexible tenancy at the same property where the impact of moving could have a serious impact on the health of the tenant or another household member.

4.12 Where a new flexible tenancy is not being offered at the same address, the tenant will be offered the opportunity to bid, for a maximum period of six months,

for a flexible tenancy at an alternative property, of the size and type needed. Tenants with rent arrears may be allowed to bid only at the discretion of the relevant officer. The bidding period may be extended if there have been no properties to bid for which meet the tenant's needs. If bidding is unsuccessful, one direct offer of accommodation will be made. Any direct offer will take into account where possible and subject to the availability of properties: the tenants' preferences, support networks and any other relevant considerations.

4.13 Under occupying flexible tenants that are being offered properties at a different address will not be eligible for any Cash Incentive payment relating to under occupation.

4.14 Circumstances where no new flexible tenancy may be offered at any property:

4.14.1 *There has been a serious or persistent breach of the tenancy agreement.* The seriousness of the breach will be at a level where it would be deemed reasonable for the City Council to seek possession of the property. Some examples of persistent breaches include a failure to keep to a rent arrears agreement for a sustained period and causing persistent nuisance or anti-social behaviour (despite repeated warnings in accordance with the City Council's Anti-Social Behaviour Policy). When deciding not to offer a new tenancy at any property, regard will be given to the views of any support agency working with the tenant and their family, the vulnerability of household members and the impact on other household members of not offering any new tenancy. The potential impact which offering another tenancy may have on neighbours and the community will also be considered where the breach of the tenancy agreement relates to nuisance or anti-social behaviour.

4.14.2 *The tenant or member of their household has been convicted of serious housing related anti-social behaviour in another court, and the offence meets the criteria to trigger a mandatory Right of Possession*⁴. The Antisocial Behaviour, Crime and Policing Act 2014 introduced a new absolute ground for possession of secure tenancies where anti-social behaviour or criminality has already been proven in another court. Unlike the discretionary ground for possession there is no need to prove to the court that it is reasonable to grant possession. This power is used selectively for the most serious cases, to expedite the eviction of the most anti-social tenants. Where proceedings have been started using such powers no new flexible tenancy may be offered at any property.

4.14.3 *Exceptional circumstances exist and the tenant has not participated in the review or provided necessary information for the review.* This will only be implemented where it would have been reasonable for the tenant to participate in the review, taking into account if the tenant is vulnerable.

4.14.4 *The tenant is in prison and 4.14.1 does not apply as the offence does not constitute a serious breach of the tenancy agreement.* In these cases the decision not to offer a further tenancy will be made on a case by case basis taking into account; the remaining household occupants, the length of the sentence and any other relevant factors.

4.15 Offering new Flexible Tenancies to Non-Priority Households

Section 3.8 – 3.10 sets out when these types of tenancies may be offered. A further flexible tenancy at the same or another address will generally only be offered in certain circumstances. These are where the tenant has had a change in their circumstances and is assessed through the tenancy review, as having priority for housing under the City Council’s Housing Allocations Scheme, **and:**

4.15.1 The Council determine that they would be unable to manage a private rented tenancy, or they need a wheelchair adapted property, or they are eligible for Community Supportive Housing (sheltered) **and**

4.15.2 None of the criteria set out in 4.14 (4.14.1 - 4.14.4) applies.

4.16 Where 4.15 applies and it has been decided that a new flexible tenancy should be offered to Non-Priority households this will be at the same address unless any of the criteria in 4.8 – 4.13 apply. Subject to the need for additional time (as explained in 4.7) the new tenancy will be for five years unless the circumstances in 3.7.1 apply, (in which case the new tenancy will be for two years). As explained in 4.7 the additional time exists to encourage the tenant to enter into the new tenancy early whilst ensuring that s/he does not thereby lose any time as a flexible tenant.

4.17 General processes around ending flexible tenancies

It is necessary for the City Council to serve legal notices to formally end flexible tenancies, including where a new one is going to be offered. However, these legal notices will be accompanied by information on next steps i.e. if a further flexible tenancy at the same or another address is being offered. If no further tenancy at all is being offered the information will clearly set out:

- That the landlord does not propose to grant a further tenancy on expiry of the term
- Why no further tenancy is being granted
- That the tenant has a right to request a review of the decision and the relevant timescales (see section 5).

4.18 If the tenant does not move out by the last day of the tenancy, a court order will be applied for to end the tenancy.

4.19 A flexible tenancy can be ended during the tenancy term if one of the terms of the tenancy agreement has been broken or there is a statutory ground for possession and a possession order is granted by a court.

4.20 Ending the flexible tenancy by the tenant

Where a tenant wishes to end his/her flexible tenancy he/she must give, at least four weeks written notice to the City Council or such shorter notice as agreed between the tenant and the City Council where the tenancy agreement provides. The tenancy will then come to an end on the date provided.

5. Requests to review decisions about flexible tenancies

5.1 This section applies to flexible tenancies only.

5.2 Requests to review decisions about the length of a flexible tenancy
Following an offer to grant a Flexible Tenancy (or service of notice by the City Council on an introductory tenant confirming that their introductory tenancy is to become a flexible tenancy) a tenant or prospective tenant can request a review of the decision on the basis that the length of flexible tenancy does not accord with the Tenancy Policy.

5.3 Such a request must be made within 21 days of the tenant or prospective tenant receiving the flexible tenancy offer or notice confirming that their introductory tenancy is to become a flexible tenancy. Late review requests may be considered in exceptional circumstances where it was unreasonable for the review request to have been made sooner. Written review requests can also be accepted from advocates, representatives or support workers of the tenant or prospective tenant with their consent.

5.4 The review request must be made in writing. Review requests made by email will be considered written requests. Where tenants, or prospective tenants, make enquiries about reviews by phone, they will be advised how to make a written review request. The request needs to set out why the tenant considers the tenancy length offered does not accord with the Tenancy Policy. It is the City Council's intention that the review will be considered within 21 days unless more information is needed.

5.5 The review request should indicate whether the tenant or prospective tenant wishes the review to be considered at an oral hearing.

5.6 Review without a hearing

Where an oral hearing is not requested the tenant or prospective tenant will be invited in writing to make written representations to support their review request and will be given at least 5 days from the receipt of this letter to provide this.

5.7 Review with an oral hearing

Any oral hearing will be carried out in accordance with the Flexible Tenancies (Review Procedures) Regulations 2012. Where an oral hearing has been requested, the tenant or prospective tenant will be notified in writing of the time and date of the hearing, and the hearing will take place at least five days after the date of receipt of this letter. Regard will be taken to the tenant or prospective tenant's availability to attend the hearing. The tenant or prospective tenant may be accompanied by a representative. Having regard to all the circumstances (including any explanation offered for the absence), an oral hearing may proceed if the tenant or prospective tenant fails to attend.

5.8 If at any time before the day on which the hearing is due to take place the applicant requests a postponement, then the City Council may agree to postpone to a later date.

5.9 Whilst the review is being considered, the tenant or prospective tenant is expected to move into the property with the tenancy term offered. Any necessary amendments to the length of the tenancy will be made retrospectively, subject to the outcome of the appeal.

5.10 *Procedures for the oral hearing*

The hearing will be conducted with the minimal amount of formality and in accordance with any directions given by the person conducting it. At the hearing the applicant may make oral or written representations relevant to the decision under review. The applicant can call persons to give evidence on matters relevant to the decision under review and put questions to any person who gives evidence at the hearing. The person who made the original decision may be able to attend and participate in the hearing.

5.11 *The review outcome*

The review outcome, whether made by way of written representations or at an oral hearing, will be determined by an officer of greater seniority than the person who made the original decision. This officer will have had no involvement in making the original decision.

5.12 The reasons for the decision will be set out clearly in writing. The decision maker can decide to:

- Maintain the original decision
- Offer an alternative flexible tenancy term in line with the Tenancy Policy
- Offer a secure tenancy in line with the Tenancy Policy.

5.13 If the original decision is upheld, the tenant will be informed of how they can challenge the reasonableness of the decision either by making a complaint to the Housing Ombudsman or Local Government Ombudsman, or by obtaining independent housing advice on the legal remedies available to them.

5.14 *Requests to review decisions not to offer a new flexible tenancy at the same or another property*

Following the decision not to offer a new flexible tenancy at the same or another address a review of the decision can be requested. The review will

consider if the decision not to offer a new flexible tenancy has been taken in accordance with the Tenancy Policy.

- 5.15 Such a review request must be made within 21 days of the date of the service of the legal notice indicating that the City Council does not propose to grant another tenancy, at the same or another address, on the expiry of the flexible tenancy. Written review requests can also be accepted from advocates, representatives or support workers of the tenant with their consent. The Localism Act 2011 makes no provision for the acceptance of late reviews. The City Council may in its discretion however retake a decision in exceptional circumstances (see section 10).
- 5.16 The review request must be made in writing and requests made by email will be considered written requests. Where tenants make enquiries about reviews by phone, they will be advised about how to make a written review request. It is the City Council's intention that the review will be considered within 21 days unless more information is needed to make the decision and the information could not reasonably be obtained within the 21 days.
- 5.17 The review request should indicate whether the tenant requires the review to be heard by an oral hearing.
- 5.18 *Review without a hearing***
These will be carried out in the way described in 5.6.
- 5.19 *Review with an oral hearing***
These will be carried out in the way described in 5.7 – 5.9.
- 5.20 *Procedures for the oral hearing***
These will be carried out in the way described in 5.10.
- 5.21 *The review outcome***
The review outcome, whether made by way of written representations or at an oral hearing, will be determined by an officer of greater seniority than the person who made the original decision. This officer will not have been involved in making the original decision.
- 5.22 The reasons for the decision will be set out clearly in writing. The decision maker can decide to:
- Maintain the original decision
 - Offer an alternative flexible tenancy term in line with the Tenancy Policy
 - Offer a secure tenancy in line with the Tenancy Policy.
- 5.23 If the original decision is upheld, the tenant will be informed of how they can challenge the reasonableness of the decision either by making a complaint to the Housing Ombudsman or Local Government Ombudsman, or by obtaining independent housing advice on the legal remedies available to them.

6. Advice and assistance where a further flexible tenancy is not being offered

- 6.1 This section applies to flexible tenancies only.**
- 6.2 The type of advice and assistance given will depend on whether no further flexible tenancy is being offered, or if one is being granted at another property.
- 6.3 If a further flexible tenancy is being offered at another property from the one where the tenant has been living, advice will include general advice on bidding for another property (unless a direct offer is being made), how long it may take before another property is likely to become available and general advice on moving and what needs to be done to prepare for a move. More detailed advice and assistance can be given to suit individual circumstances particularly where tenants are vulnerable.
- 6.4 If no further flexible tenancy is being offered, a joint approach to advice will be taken across the City Council and will include advice on accessing private rented housing. Where there are children in the household Housing and Children's Services at the City Council may need to be involved.

7. Succession, Assignment and Mutual Exchange

- 7.1 This section applies to all tenancies (although the legal framework and discretionary policies for secure and flexible tenancies are set out separately)**
- 7.2 Succession**
When a tenant dies the tenancy can sometimes be passed on to another member of the family and this is known as succession. There are different succession rights in law for different types of tenancies and this is known as statutory succession. Where there is no legal right to succession in some cases a succession may still be granted. This is known as discretionary succession.
- 7.3 The legal succession framework for secure tenancies granted before 1st April 2012.**

The 1985 Housing Act allows for one statutory succession to either:

- The deceased tenant's spouse or civil partner⁵ provided they were residing with the deceased tenant at the time of their death as their only or principal home, or

⁵ A person that was living with the tenant as their husband or wife will be treated as their spouse and a person who was living with the tenant as if they were civil partners will be treated as the tenant's civil partner

- If there is no such spouse or civil partner residing with the tenant, then the tenancy may vest in a member of the deceased tenant's family (see 7.4) who had been residing with the deceased tenant for twelve months prior to the tenant's death as their only or principal home.

The statutory right to succession applies provided the deceased tenant was not himself/herself a successor. A tenant who became a sole tenant from a joint tenancy is deemed to be a successor⁶.

- 7.4 Family members are defined as; spouses, civil partners, parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews and nieces. The law does not allow for joint succession, so if there are a number of potential joint successors they need to choose who will take over the tenancy. If they cannot choose, the landlord is able to do so. Where the successor is not a spouse or civil partner but is a member of the family, and the property is too large for them, they can be granted the secure tenancy of a smaller property which meets their needs.
- 7.5 **The legal succession framework for secure tenancies granted on or after 1st April 2012 and for flexible tenants.** The Localism Act 2011 allows one statutory succession to a spouse or civil partner⁷ of the deceased tenant, who was living with them at the time of the tenant's death as their only or principal home.
- 7.6 Where there is a statutory succession to a flexible tenancy, the tenancy will last until the flexible tenancy ends. The offer of a new flexible tenancy will then be considered in line with the Tenancy Policy (see section 4).
- 7.7 **Statutory succession to a council tenancy**
Any successor will have the same tenancy type as the person who died. Where the property is too big for the statutory successor, and they are not a spouse or a civil partner of the deceased tenant, (see 7.4), the City Council will require the statutory successor to move to an alternative property which meets their needs unless their circumstances are exceptional.
- 7.8 The family members who will be considered part of the successor's household in order to determine the size of the property needed, will be those that formed part of the deceased tenant's household and were living with the tenant at the time of their death.
- 7.9 The size of the property offered will be assessed in line with the City Council's Bedroom Standard, or any equivalent adopted standard set out in the Housing Allocation Scheme. The statutory successor can bid for alternative properties for six months after which if no property is selected a direct offer will be made.

⁶ This may be because one joint tenant died or because a joint tenant assigned the tenancy

⁷ A person that was living with the tenant as their husband or wife will be treated as their spouse and a person who was living with the tenant as if they were civil partners will be treated as the tenant's civil partner

7.10 Discretionary succession

In certain circumstances if the tenant dies and there has already been one statutory succession at the property, the City Council may offer a discretionary succession under the discretionary succession policy. There are different discretionary succession policies for different types of tenancies and these are set out in 7.11 - 7.21 inclusive. Where a discretionary succession is agreed a new tenancy will be granted and this will be offered as a flexible tenancy (following the successful completion of an introductory tenancy) unless one of the circumstances in 3.11 applies. The new flexible tenancy may be at the original home or another property.

7.11 Discretionary succession policy for secure tenancies (this does not apply to flexible tenancies)

7.12 To be eligible the applicant must:

- Be a spouse or civil partner of the deceased secure tenant and have lived with them at the time of their death as their only or principal home for a minimum of **one year**; *or*
- If there is no such spouse or civil partner be a family member defined as; partners (people living together as husband and wife or as civil partners), parents, grandparents, adult children, grandchildren and brothers and sisters who have lived with the deceased secure tenant at the time of their death as their only or principal home for a **minimum of five years**. Other City Council tenancies will be taken into account as long as the applicant had lived with the deceased tenant continuously and as their only or principal home.

7.13 Where there is more than one person living in the household who is eligible for a discretionary succession, the City Council expects the household to decide who should benefit. Provided that person meets the criteria outlined here, the City Council will generally respect this choice. However, the final decision regarding which household member should benefit rests with the City Council.

7.14 The discretionary successor may only include the following people as part of their household:

- Co-habiting partners including married, non-married and same sex partners
- Dependent children normally resident with the main applicant parent
- Adult relatives reasonably expected to reside with the main applicant, who moved into the property at the same time as the discretionary successor and who live in the property as their only home.

7.15 If the discretionary successor is a spouse or civil partner, they will be entitled to remain in the original home. All other discretionary successors will only be able to remain in the original home, if it is of the size and type needed. The size of property needed will be assessed under the City Council's Bedroom Standard, or any equivalent standard set out in the Housing Allocation Scheme. With regards to the type of property needed, a discretionary

successor that has been living in Community Supportive Housing will only be able to remain there if they are eligible for this type of housing in their own right, as set out in the Housing Allocation Scheme, and it is the right size needed. If the discretionary successor is required to move they will be able to bid for an alternative property for six months after which one direct offer will be made. If the offer is refused the City Council will start proceedings to repossess the property.

7.16 Discretionary succession policy for flexible tenancies

7.17 This policy on discretionary succession does not apply to Flexible Tenancies for Non-Priority Households (see 3.8 - 3.10). To be eligible to succeed to the flexible tenancy the applicant must:

7.17.1 Be a spouse or civil partner of the deceased tenant and have lived with them at the time of their death, as their only or principal home, for a **minimum of one year**, or

7.17.2 Be an adult child, brother or sister, or partner (people living together as spouses or civil partners) of the deceased tenant and have lived with them at the time of their death, as their only or principal home for a **minimum of five years**. Other City Council tenancies will be taken into account as long as the applicant had lived with the deceased tenant continuously and as their only or principal home.

and (for both 7.17.1 and 7.17.2)

7.17.3 Have priority to be rehoused under the City Council's Housing Allocation Scheme

7.18 Where the criteria above (7.17.1 -7.17.3) are met, a new flexible tenancy will be offered (following the successful completion of an introductory tenancy). This may be at the original home, or another property, depending on the size and type of property needed. The size of the property will be assessed under the City Council's Bedroom Standard or any equivalent standard set out in the Housing Allocation Scheme. With regards to the type of property needed, a discretionary successor that has been living in Community Supportive Housing will only be able to remain there if they are eligible for this type of housing in their own right, as set out in the Housing Allocation Scheme, and it is the right size needed. If a property, other than the original home is offered, the applicant will be able to bid for a period of six months after which one direct offer will be made. Upon expiry of the flexible tenancy a further flexible tenancy may be offered in line with the Tenancy Policy (see section 4).

7.19 Where the criteria in, 7.17.1 or 7.17.2, are met but the criteria in 7.17.3 is **not** met and there is **no priority** to be rehoused under the Housing Allocation Scheme, the applicant will be made one direct offer of a two-year **Flexible Tenancy for Non-Priority Households**. This is intended in the main to provide the applicant with some transitional short-term housing following a

bereavement, and is in order to help them plan to move. Upon expiry of the two-year flexible tenancy a further tenancy will normally only be granted in accordance with the renewal criteria in 4.15 - 4.16. The property may be the original home or another property depending on the size of property needed which will be assessed under the City Council's Bedroom Standard or any equivalent standard set out in the Housing Allocation Scheme. With regards to the type of property needed, a discretionary successor that has been living in Community Supportive Housing will only be able to remain there if they are eligible for this type of housing in their own right, as set out in the Housing Allocation Scheme, and it is the right size needed.

7.20 Where more than one person is eligible for a discretionary succession, the City Council expects the household to decide who should benefit. Provided that the person meets the criteria outlined here, the City Council will generally respect this choice. However, the final decision regarding which household member should benefit rests with the City Council.

7.21 The discretionary successor may only include the following people as part of their household:

- Co-habiting partners included married, non-married and same sex partners
- Dependent children normally resident with the main applicant parent
- Adult relatives reasonably expected to reside with the main applicant, who moved into the property at the same time as the discretionary successor and who live in the property as their only and principal home.

7.22 Assignment

In certain limited circumstances a secure or flexible tenant can pass on their tenancy to another member of their household during their lifetime. This is known as assignment. An assignment can take place due to statute or as part of the City Council's discretionary policy. Where an assignment takes place all the rights and responsibilities of the tenancy are passed from the original tenant (the 'assignor') to the new tenant (the 'assignee'). The original tenant no longer has any rights or responsibilities whatsoever in relation to the property.

7.23 The legal framework for the assignment of secure and flexible tenancies

The 1985 Housing Act allows secure and flexible tenancies to be assigned to another person in certain limited circumstances, and this is known as a statutory assignment. There are three ways in which a secure or flexible tenancy can be assigned and these are where:

- It is to a potential statutory or discretionary successor
- It relates to a court order
- It is by way of a mutual exchange.

7.24 An assignment to a potential statutory successor

A tenancy can be assigned to a person who could have succeeded to the tenancy in law, if the tenant had died immediately before the assignment. This will be different for secure and flexible tenancies. The circumstances

when this can occur are set out in 7.3 - 7.6. As there can only be one statutory succession in law, a statutory assignment cannot be agreed if the tenant assigning the property was himself/herself a successor. The approach to property size for the proposed assignee will be the same as that set out in 7.7 – 7.9.

7.25 An assignment to a potential discretionary successor

In some circumstances where a statutory assignment is not permitted a discretionary assignment may be agreed with the City Council's consent.

7.26 Discretionary assignment for secure tenants (this does not apply to flexible tenancies)

A discretionary assignment may be agreed where:

- A statutory assignment cannot take place because although all other conditions are met the tenant wishing to assign is already a successor

or

Although all other conditions are met, consent to a statutory assignment has been refused on the basis that it would lead to under occupation of the property

and

- The tenant assigning the tenancy will not remain in the premises afterwards.

7.27 Only certain people may qualify for a discretionary assignment and these are:

- Spouses & civil partners of the secure tenant that have been living with them for at least one year before the assignment request

or

- Partners, parents, grandparents, children, grandchildren, brothers and sisters of the tenant that were living with them for five years before the assignment request.

7.28 Subject to the above criteria being met (in 7.26 and 7.27) a discretionary assignment will only be agreed in exceptional circumstances for example where the tenant enters long-term residential care leaving a family member in occupation.

7.29 If a discretionary assignment is agreed, the new tenancy offered will be a flexible tenancy unless the assignee meets one of the criteria in 3.11. The tenancy may be at the address where the assignee has been living, or another property depending on the size of property needed which will be

assessed under the City Council's Bedroom Standard or any equivalent standard set out in the Housing Allocation Scheme the Allocation Scheme.

- 7.30 To determine the size of property needed only the following family members will be considered part of the discretionary assignee's household:
- Dependent children normally resident with the main applicant parent
 - Co-habiting partners included married, non-married and same sex partners
 - Adult relatives reasonably expected to reside with the main applicant, who moved into the property at the same time as the discretionary assignee and who live in the property as their only and principal home.

7.31 Discretionary assignment for flexible tenants

This policy does not apply to **Flexible Tenancies for Non Priority Households** (see 3.8 - 3.10). In exceptional circumstances where consent for a statutory assignment is refused a discretionary assignment of the flexible tenancy may be agreed where:

- A statutory assignment cannot take place because although all other conditions are met the tenant wishing to assign is already a successor

or

- Although all other conditions are met, consent to the statutory assignment has been refused on the basis that it would lead to under occupation of the property

and

- The tenant assigning the tenancy will not remain in the premises afterwards.

- 7.32 Only certain people may qualify for a discretionary assignment and these are:

- The spouse or civil partner of the tenant who has lived with the assignor at the time of the assignment application as their main home, for a **minimum of one year**

or

- The adult child, brother or sister, or partner (people living together as spouses or civil partners) of the tenant who has lived with the assignor at the time of the assignment application, as their main home for a **minimum of five years**

and (for both of the above)

- **The person in question has priority to be rehoused under the City Council's Housing Allocation Scheme**

7.33 Subject to the above criteria being met, a discretionary assignment of a flexible tenancy will only be agreed in exceptional circumstances. An example of where this may apply is where the tenant enters long-term residential care leaving a family member in occupation.

7.34 If an assignment is agreed a new tenancy will be offered which will be a flexible tenancy unless the assignee meets one of the criteria in 3.11. The tenancy may be at the address where the assignee has been living, or another property depending on the size of property needed. This will be assessed under the City Council's Bedroom Standard or any equivalent standard set out in the Housing Allocation Scheme. To determine the size of property needed the following family members will be considered part of the discretionary assignee's household:

- Co-habiting partners included married, non-married and same sex partners
- Dependent children normally resident with the main applicant parent
- Adult relatives reasonably expected to reside with the main applicant, who moved into the property at the same time as the discretionary assignee and who live in the property as their only and principal home.

7.35 Assignment by way of a court order

Transfers of tenancies can be ordered in some circumstances under the; Family Law Act 1996, Matrimonial and Family Proceedings Act 1984, under Schedule 1 of the Children Act 1989, Matrimonial Causes Act 1973 and Civil Partnership Act 2004.

7.36 Assignment by way of a Mutual Exchange

Council tenants are able to exchange their homes with another council tenant, or another tenant of an approved landlord in specific circumstances and with the City Council's consent. There are different arrangements for exchanges for different tenancies.

7.37 City Council tenants can apply to exchange with tenants of the following approved landlords:

- The City Council
- Another local authority
- The Housing Corporation
- A private registered provider (i.e. a housing association)
- A Charitable Housing Trust.

7.38 Exchanges between secure tenants or between secure and assured tenants

The Housing Act 1985 enables these exchanges by way of assignment (see 7.22 – 7.23), as long as both tenants are tenants of approved landlords (see

7.37). The mutual exchange is a reciprocal agreement between the two tenants and all the rights and responsibilities of the tenancy are transferred.

- 7.39 Consent to exchange may only be withheld by the City Council on statutory grounds detailed in the Housing Act 1985, Schedule 3. These include where:
- The accommodation is larger than is reasonably required by the proposed assignee which will be assessed under the City Council's Bedroom Standard or any equivalent standard set out in the Housing Allocation Scheme.
 - The accommodation is not "reasonably suitable" to meet the needs of the proposed assignee and their family. In assessing suitability the City Council will consider if the proposed assignee would be overcrowded under the Housing Allocation Scheme.
 - The property has design features that are substantially different from those of an ordinary home, and is designed for occupation by a physically disabled person, that would not be living at the property if the assignment took place
 - Certain court orders are in force or legal action is being taken for anti-social behaviour.

7.40 Consent cannot be refused due to rent arrears, however in most cases where there are rent arrears the City Council's consent will be conditional on the rent arrears being cleared before the exchange can go ahead.

7.41 The City Council will comply with the statutory 42 day time limit for processing mutual exchange applications from the date of receiving all the required information.

7.42 Exchanges between two flexible tenancies

The Housing Act 1985 enables flexible tenants to exchange properties by way of assignment as long as both flexible tenants are tenants of approved landlords (see 7.37) and the tenancies have not come to an end. Consent can only be withheld in the circumstances summarised in 7.39 and applications will be dealt with as set out above in 7.41.

7.43 The mutual exchange is a reciprocal agreement between the two tenants and all the rights and responsibilities, and the length of each tenancy are transferred. The flexible tenancy will be renewed in line with the tenancy policy.

7.44 Exchanges between secure tenancies created before 1st April 2012 and flexible or fixed term tenancies⁸

The Localism Act 2011 created a different procedure where tenants of an approved landlord (see 7.37) want to exchange, and one is a secure tenant (created before 1st April 2012) and one is a flexible or fixed term tenant. In these circumstances both tenants can make a written request to their landlords asking for consent to a mutual exchange. Upon exchange each

⁸Some private registered providers or housing associations are offering fixed term tenancies

tenant will surrender their existing tenancy and be offered a new tenancy at each other's property.

7.45 Where agreement is given an existing secure tenant will be given a new secure tenancy and any fixed term or flexible tenant will be given a new flexible tenancy in line with the Tenancy Policy i.e. a tenant will not lose his/her security of tenure as a result of the exchange.

7.46 Consent can only be withheld on one or more grounds set out in Schedule 14 of the Localism Act 2011. The grounds for withholding consent include where:

- The rent has not been paid
- An obligation of the tenancy has been broken
- Possession proceedings are being sought or a possession order has been granted
- The accommodation is larger than is needed or is not suitable for the needs of the proposed tenant which will be assessed under the City Council's Bedroom Standard or any equivalent standard set out in the Housing Allocation Scheme.

7.47 Exchanges between secure tenancies created after 1st April 2012 and flexible or fixed term tenancies

The Housing Act 1985 enables secure tenants with tenancies created after 1st April 2012 to exchange with flexible tenants of approved landlords (see 7.37) by way of an assignment. The mutual exchange is a reciprocal agreement between two tenants and all the rights and responsibilities, and the length of the flexible tenancy are transferred.

7.48 Consent to exchange may only be withheld by the City Council on statutory grounds detailed in the Housing Act 1985, Schedule 3 and summarised above in 7.39. Applications will be dealt with in the same way set out in 7.41.

7.49 Where the above tenants are both City Council tenants, and want to exchange, but decide not to as it would mean the secure tenant would become a flexible tenant and so result in a downgrading of their security of tenure, the City Council may offer both tenants, on a discretionary basis, the option to make a written request to agree to each surrendering their existing tenancy, on the condition that they are offered a new tenancy at each other's property. In these circumstances consent will only be withheld if one of the grounds summarised in 7.39 or 7.46 applies. Where these exchanges are agreed, the secure tenant will be offered a new secure tenancy and the flexible tenant a new flexible tenancy.

7.50 Exchanges between introductory tenants and secure or flexible tenants of the City Council

The law does not allow an introductory tenancy to be assigned by way of mutual exchange. However, if a secure or flexible tenant and an introductory tenant want to exchange, the City Council may offer both tenants, on a discretionary basis, the option to make a written request to agree to each

surrendering their existing tenancy on the condition that they are offered a new tenancy at each other's property. These types of arrangements will be agreed where the exchange makes the best use of the City Council's housing stock and none of the grounds summarised in 7.39 or 7.46 apply. Where this is agreed the new tenancy offered will be of the same type as the previous tenancy

7.51 Rents and exchanges

Where an exchange takes place by way of an assignment the same rent as before will be charged at each property. Where an exchange takes place by one tenancy being ended and a new one being offered, target rent will be charged⁹.

8. Communicating flexible tenancies

8.1 This section applies to all tenancies.

8.2 Flexible tenancies are a big cultural change from a tenancy 'for life'. New flexible tenants will be made aware of these changes when bidding, at sign up and at any opportunities throughout the tenancy. They will also be advised that the City Council expects that in the majority of cases a new flexible tenancy will be offered when their existing tenancy expires. This will help people to feel settled in their homes, which is particularly important to provide stability for vulnerable people and those with families.

8.3 It is important that tenants fully understand when a new flexible tenancy will not be offered, and the reasons for this, so it does not come as a surprise. The terms of the tenancy will be clearly communicated in an accessible way throughout the tenancy, in face to face meetings and in correspondence with the tenant and also through publications and at estate offices.

8.4 Secure tenants will also be made aware of these changes and of the Tenancy Policy so they understand that these changes will generally not affect them.

8.5 Advice and support agencies will be informed about the Tenancy Policy so they are well placed to give advice to their customers.

9. Approach to tenancy management

9.1 This section applies to all tenancies.

9.2 The City Council has over 11,500 social rented properties and is committed to ensuring that tenants are well informed about their rights, responsibilities and how to access services. A wide range of information is available to them

¹² This is in line with the London Mayor's Draft Supplementary Planning Guidance which suggests as a guide that affordable housing costs should not be more than 40% of net income¹².

including; a tenant's handbook, a range of leaflets, information on the website and regular newsletters.

- 9.3 Residents are informed of the issues which affect them and their homes and communities and the City Council works to ensure residents have a proper say in decision making.
- 9.4 The City Council has a statement of Policy and Procedures on Anti-Social Behaviour. Our anti-social behaviour teams work closely with the police and other agencies to ensure that problems are investigated and where appropriate legal action is taken in line with the policy, to protect other residents.
- 9.5 Every effort is made to support tenants to sustain their tenancies and this includes working closely with support workers in some cases and assisting tenants to manage their finances through providing access to benefit, money and debt advice. The City Council also aims to provide tenants with low cost services such as energy and to link tenants to employment and training advice.
- 9.6 New tenants are advised at the outset of what is expected of them throughout their tenancy and early visits are carried out to ensure they have settled into their new home and to provide more detailed information on available services.
- 9.7 Tenants can become vulnerable at any point in their tenancy for a number of reasons such as illness, age or financial difficulties and there are measures are in place to help identify them and link them with support. Both frontline staff and contractors are trained in this area
- 9.8 Ending a tenancy and seeking possession for a breach of tenancy conditions is always a last resort and is only ever considered after all available support has been offered but has been declined or failed. Even once possession is being pursued, support will continue to be offered. Throughout any possession proceedings tenants are clearly advised of the seriousness of the situation and of their legal rights.
- 9.9 Preventing tenancy fraud
The City Council takes tenancy fraud seriously, not only because it can result in the unlawful occupation of council housing, but also because it deprives legitimate applicants of a home and results in them staying in costly temporary accommodation. Robust processes are in place to identify tenancy fraud such as a fraud hotline (www.westminster.gov.uk/report-a-fraud), regular tenancy checks, ensuring tenants understand the responsibilities of their tenancy, raising awareness amongst tenants and the community (through newsletters and articles) and pro-active exercises are carried out such as data matching.
- 9.10 Maintaining direct contact with residents through local estate offices helps to address tenancy fraud as it builds links with tenants and knowledge of people living in council homes.

- 9.11 Full use is made of the range of legal mechanisms available to take action in cases of tenancy fraud such as the use of the Fraud Act (which has criminal penalties and can act as a deterrent) and it is intended to make full use, where appropriate, of the Social Housing Fraud Act 2013 which makes tenancy fraud a criminal offence. Prosecutions under the legislation will be widely publicised.
- 9.12 A partnership approach to tackling tenancy fraud is taken which involves working with other social landlords and other bodies to share good practice and learn from their experiences and to undertake joint exercises where possible.

10. Exceptional circumstances

- 10.1 There may be limited circumstances when the Director responsible for Housing or duly delegated persons, may exercise discretion in relation to the Tenancy Policy due to exceptional circumstances, and will do this by taking into account all the relevant circumstances including the demand for and supply of accommodation and the general housing circumstances within the City of Westminster.

11. Reviewing the Tenancy Policy

- 11.1 This Tenancy Policy will be subject to regular review and any changes will be agreed with the relevant Cabinet Member. Any significant changes will be consulted on and an impact assessment completed.
- 11.2 The full impact of the Tenancy Policy on different groups of people with protected characteristics¹³ under the Equality Act 2010 will not be known until the first tenancies are reviewed. An annual impact assessment on different groups of people will however be carried out using any available information to monitor any impacts.

12. Complaints

- 12.1 Complaints about the Tenancy Policy can be made under the City Council's Complaints Procedure.

13. Glossary

Affordable Rent tenancy

Affordable rent tenancies are normally offered by private registered providers (housing associations) and are normally let for a fixed term. Rents are higher than social rents and can be up to 80% of market rents.

¹³ People have protected characteristics due to their: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and sex. These groups are protected under equalities legislation

Assignor

The person that is transferring, or passing their tenancy, which includes all the rights and responsibilities of that tenancy including the tenancy length to another person.

Assignee

The person to whom the tenancy referred to above is transferred.

Fixed term tenancy

A private registered provider or housing association tenancy that can be let on a fixed term for a minimum of two years.

Flexible tenancy

A local authority tenancy which can be let on a fixed term for a minimum of two years. During the fixed term, the tenancy can only be ended with a court order if one of the obligations of the tenancy agreement is broken, and the local authority would need to prove in court that it was reasonable to repossess the property. At the end of the fixed term the local authority still needs a court order to repossess the property, but the court must grant the order provided the local authority has served the correct notices and has decided not to renew the tenancy in line with its tenancy policy.

Housing Allocation Scheme

The City Council's policy on the allocation of housing for those that have applied and are eligible under the Housing Act 1996. It sets out who is eligible for housing, who can be included on the application and who has priority for housing.

Introductory tenancy

A trial tenancy which is for 12 months prior to a longer tenancy being offered. At the end of the 12 months the introductory tenancy can either become a flexible or a secure tenancy, or the introductory tenancy can be extended for another six months. Introductory tenants have similar rights to secure tenants but the tenancy can be ended much more easily if the terms of the tenancy are broken. A court order is needed to end the tenancy but the landlord does not have to prove good reasons for ending the tenancy and only needs to demonstrate that the proper procedures for taking possession have been followed.

Intermediate housing

Housing for people that cannot afford market housing but do not qualify for social housing. There are different intermediate housing products, which may include low cost home ownership products or discounted rental schemes. The eligibility criteria for intermediate housing products in London is set down by the London Mayor (called First Steps Housing).

Secure tenancy

A tenancy that can only be ended by the landlord by a court order and an order will only be granted by the court if one of the statutory grounds for possession is made out and other statutory tests are met.

Vulnerability

There is no single definition of vulnerability and it is assessed on a case by case basis which involves a holistic view of a tenant's circumstances.

Non-Priority Households – households that would not ordinarily have priority for housing under the Councils Housing Allocation Scheme and the tenancy is offered to address a particular issue or need rather than to provide long term housing.