

## Housing Right to Review Policy

### Version control

Avoid referring to printed versions of this document. Printed versions may be out of date.

<b>Owner/responsibility for compliance</b>		Head of Housing Customer Services	
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1.1	11 Sept 2024	Cabinet	New policy

## 1 Introduction

- 1.1 This policy is to support the Council in its function as a landlord to provide effective housing management.
- 1.2 The decision to serve a notice to terminate a tenancy is not something Swindon Borough Council ('the Council'), as a social landlord, takes lightly.
- 1.3 However, if the decision is made to serve a notice the tenant has, in certain circumstances, a statutory right to ask the Council to reconsider its decision to serve the notice ('Right to Review').
- 1.4 This policy sets out how the Council will determine such applications made by tenants and replaces any previous policy on this topic.
- 1.5 This policy also covers the Right to Review process in relation to disputes over the length (term) of a flexible tenancy.

## 2 Aims/objectives

- 2.1 There are three situations that give rise to a tenant, on whom a notice has been served, having a right to request a review of the decision to serve the notice.
- 2.2 The aim of this policy is to enable tenants to understand and act on these rights.
- 2.3 The three situations are:
  - Absolute Ground for Possession for anti-social behaviour (ASB).
  - Introductory tenancies.
  - Flexible tenancies.

### **3 Scope**

- 3.1 This policy applies to tenants on whom a notice has been served in the circumstances listed in 2.3.

### **4 Absolute Ground for Possession for ASB**

- 4.1 A Right to Review arises when the Council has served a Notice of Seeking Possession under section 83ZA of the Housing Act 1985 relying on one (or more) of the absolute grounds for possession for ASB as contained within section 84A of the Housing Act 1985 ('an ASB NoSP').
- 4.2 The Right to Review process is governed by section 85ZA of the Housing Act 1985 and the Absolute Ground for Possession for Anti-social Behaviour (Review Procedure) (England) Regulations 2014. This policy sets out the Council's interpretation of these provisions but does not constitute advice. A tenant served with a notice may wish to seek independent advice.
- 4.3 The Right to Review does not apply to notices that only cite grounds contained within Schedule 2 of the Housing Act 1985, nor does it apply to grounds contained within Schedule 2 that are contained in a notice under section 84A.

#### **Deadline for making a request**

- 4.4 A tenant requesting a review must do so by giving a notice, containing the relevant prescribed information, to the Council no later than 7 days after they were served with the Notice of Seeking Possession.
- 4.5 The Council is not permitted to extend this deadline or accept requests that do not comply with the prescribed requirements. Please also note that the deadline is 7 days (as opposed to 7 working days).
- 4.6 In calculating the date on which the request was received, the Council will apply the following:
- Where a request is made and sent to the Council by first class post it will be deemed to have been received by the Council on the 2<sup>nd</sup> working day after it was posted.
  - Requests made by leaving the request at the Council's offices (Wat Tyler House or the Civic Offices only) will be deemed to have been received by the Council that day.
  - Requests made by electronic methods (i.e. email) will be deemed to have been received by the Council on the day they were sent.

#### **Contents of a request**

- 4.7 A request for review must be in writing, and include:
- The applicant's name and address.
  - A description of the original decision in respect of which the review is sought (to include the date on which the decision was made).
  - A statement of the grounds on which the review is sought.

- Whether the applicant is willing to accept communication relating to the review via email, and if so, an email address to which such communication can be sent.
- 4.8 Where a request does not contain any of the above information it will be deemed as defective and the Council will not take any further action. The only caveat to this is the requirement relating to a request for an oral hearing; if a request is silent on this point the Council will accept the request and proceed on the basis that an oral hearing has been declined.
- 4.9 If the tenant wishes to have an oral hearing the request should also:
- Set out whether any reasonable adjustments are required so as to enable the tenant to participate in the hearing.
  - List any dates within a 4-week period during which the tenant (or their representative or any witnesses) will be unavailable to attend a hearing.
  - Set out whether the tenant will be represented/accompanied by any person.
  - Set out whether the tenant intends to call any witnesses to speak or make representations on their behalf, and if so, the number of witnesses.
  - Set out whether any persons attending with the tenant require any reasonable adjustments so as to facilitate their involvement in the hearing.
  - Provide copies of any documents or other information on which the tenant will be relying/referring to.

## **5 Introductory tenancies**

- 5.1 A Right to Review arises when the Council has served a Notice of Seeking Possession, during the term of an introductory tenancy, under section 128 of the Housing Act 1996 ('an Introductory NoSP').
- 5.2 The Right to Review process, following the service of a Notice of Seeking Possession, is governed by section 129 of the Housing Act 1996 and the Introductory Tenants (Review) Regulations 1997.
- 5.3 The Right to Review process, following the service of an Extension Notice, is governed by section 125B of the Housing Act 1996 and the Introductory Tenancies (Review of Decisions to Extend a Trial Period) (England) Regulations 2006.
- 5.4 This policy sets out the Council's interpretation of these provisions but does not constitute advice. A tenant served with a notice may wish to seek independent advice.

### **Deadline for making a request**

- 5.5 A tenant requesting a review must do so by giving a notice, containing the relevant prescribed information, to the Council no later than 14 days after they were served with the Notice of Seeking Possession.
- 5.6 The Council is not permitted to extend this deadline or accept requests that do not comply with the prescribed requirements. Please also note that the deadline is 14 days (as opposed to 14 working days).

5.7 In calculating the date on which the request was received, the Council will apply the following:

- Where a request is made and sent to the Council by first class post it will be deemed to have been received by the Council on the 2<sup>nd</sup> working day after it was posted.
- Requests made by leaving the request at the Council's offices (Wat Tyler House or the Civic Offices only) will be deemed to have been received by the Council that day.
- Requests made by electronic methods (i.e. email) will be deemed to have been received by the Council on the day they were sent.

**Contents of a request – review of a Notice of Seeking Possession (Introductory Tenancies)**

5.8 A request for review must be in writing, and should include:

- The applicant's name and address.
- A description of the original decision in respect of which the review is sought (to include the date on which the decision was made).
- A statement of the grounds on which the review is sought.
- Whether the applicant is willing to accept communication relating to the review via email, and if so, an email address to which such communication can be sent.
- Whether the applicant requires an oral hearing.

5.9 The tenant may, within 14 days of service of the Notice of Seeking Possession, request an oral hearing even if such a request is not contained within the above-mentioned request.

5.10 If the tenant wishes to have an oral hearing the request should also:

- Set out whether any reasonable adjustments are required so as to enable the tenant to participate in the hearing.
- List any dates within a 4-week period during which the tenant (or their representative or any witnesses) will be unavailable to attend a hearing.
- Set out whether the tenant will be represented/accompanied by any person.
- Set out whether the tenant intends to call any witnesses to speak or make representations on their behalf, and if so, the number of witnesses.
- Set out whether any persons attending with the tenant require any reasonable adjustments so as to facilitate their involvement in the hearing.
- Provide copies of any documents or other information on which the tenant will be relying/referring to.

**Contents of a request – Review of an Extension Notice (Introductory Tenancies).**

5.11 A request for a review must be made within the prescribed period (i.e. within 14 days of service of the Extension Notice). The legislation does not require the request to be in writing however the Council would recommend that such a request in made in writing.

- 5.12 It would be beneficial for all parties if the review request contained:
- The applicant's name and address.
  - A description of the original decision in respect of which the review is sought (to include the date on which the decision was made).
  - A statement of the grounds on which the review is sought.
  - Whether the applicant is willing to accept communication relating to the review via email, and if so, an email address to which such communication can be sent.
  - Whether the applicant requires an oral hearing.
- 5.13 An oral hearing may be requested at any point during the prescribed period (i.e. within 14 days of service of the Extension Notice). If an oral hearing is not requested the review will be conducted without any such hearing.
- 5.14 If the tenant wishes to have an oral hearing it would be helpful if the request could also:
- Set out whether any reasonable adjustments are required so as to enable the tenant to participate in the hearing.
  - List any dates within a 4-week period during which the tenant (or their representative or any witnesses) will be unavailable to attend a hearing.
  - Set out whether the tenant will be represented/accompanied by any person.
  - Set out whether the tenant intends to call any witnesses to speak or make representations on their behalf, and if so, the number of witnesses.
  - Set out whether any persons attending with the tenant require any reasonable adjustments so as to facilitate their involvement in the hearing.
  - Provide copies of any documents or other information on which the tenant will be relying/referring to.

## **6 Flexible Tenancies**

- 6.1 A Right to Review arises when the Council has served a notice, under section 107D(3) of the Housing Act 1985, giving at least 6 months' notice that the Council does not propose to grant another tenancy on the expiry of the flexible tenancy and providing its reasons for that decision.
- 6.2 A Right to Review also arises when there is a dispute, in accordance with section 107B of the Housing Act 1985, relating to the proposed length (term) of a flexible tenancy.
- 6.3 The Right to Review process is governed by sections 107B and 107E of the Housing Act 1985 and the Flexible Tenancies (Review Procedures) Regulations 2012. This policy sets out the Council's interpretation of these provisions but does not constitute advice. A tenant served with a notice may wish to seek independent advice.

### **Deadline for making a request**

- 6.4 A tenant requesting a review under section 107B of the Housing Act 1985 must do so by giving a notice, containing the relevant prescribed information, to the Council no later than 21 days after they were served with the offer notice. The Council can, at its discretion, extend this deadline. Any such extension must be made in writing.

- 6.5 A tenant requesting a review following a notice under section 107D(3) of the Housing Act 1985 must do so by giving a notice, containing the relevant prescribed information, to the Council no later than 21 days after they were served with the notice. The Council is not permitted to extend this deadline or accept requests that do not comply with the prescribed requirements.
- 6.6 Please also note that all deadlines refer to 'days' (as opposed 'working days').
- 6.7 In calculating the date on which the request was received, the Council will apply the following:
- Where a request is made and sent to the Council by first class post it will be deemed to have been received by the Council on the 2<sup>nd</sup> working day after it was posted.
  - Requests made by leaving the request at the Council's offices (Wat Tyler House or the Civic Offices only) will be deemed to have been received by the Council that day.
  - Requests made by electronic methods (i.e. email) will be deemed to have been received by the Council on the day they were sent.

#### **Contents of a request**

- 6.8 A request for review must be in writing, and should include:
- The applicant's name and address.
  - A description of the original decision in respect of which the review is sought (to include the date on which the decision was made).
  - A statement of the grounds on which the review is sought (in the case of a request to review a notice under section 107D(3) of the Housing Act 1985).
  - A statement of the reasons why, in the applicant's opinion, the length of the tenancy does not accord with a policy of the Council as to the length of the terms of the flexible tenancies it grants (only in requests made under section 107B of the Housing Act 1985).
  - Whether the applicant requires an oral hearing.
  - Whether the applicant is willing to accept communication relating to the review via email, and if so, an email address to which such communication can be sent.
- 6.9 Where a request does not contain any or all of the above information it will be deemed as defective and the Council will not take any further action. The only caveat to this is the requirement relating to a request for an oral hearing; if a request is silent on this point the Council will accept the request and proceed on the basis that an oral hearing has been declined.
- 6.10 If the tenant wishes to have an oral hearing it would be helpful if the request could also:
- Set out whether any reasonable adjustments are required so as to enable the tenant to participate in the hearing.
  - List any dates within a 4-week period during which the tenant (or their representative or any witnesses) will be unavailable to attend a hearing.
  - Set out whether the tenant will be represented/accompanied by any person.

- Set out whether the tenant intends to call any witnesses to speak or make representations on their behalf, and if so, the number of witnesses.
- Set out whether any persons attending with the tenant require any reasonable adjustments so as to facilitate their involvement in the hearing.
- Provide copies of any documents or other information on which the tenant will be relying/referring to.

## **7 The decision**

- 7.1 The decision maker will, in a majority of cases, be an officer of the Council. The decision maker will be senior to the officer who made the decision being reviewed and will not have been involved in the making of the original decision. The decision maker may be from any department from within the Council provided they are senior to the officer who made the decision being reviewed and have not been involved in the making of the original decision.
- 7.2 The Council can appoint an external, independent, decision maker.
- 7.3 In a majority of cases the decision maker has two options available to them:
- Uphold (i.e. confirm) the original decision.
  - Set aside (i.e. cancel) the original decision.
- 7.4 Where the original decision was a decision to serve a notice citing more than one of the absolute grounds of possession for anti-social behaviour, the decision maker may:
- Uphold the original decision in its entirety.
  - Uphold the original decision in part (i.e. uphold one or more grounds on which the notice was served whilst setting aside one or more of the other grounds).
  - Set aside the original decision in its entirety.
- 7.5 Where the original decision was a decision to serve a notice citing one (or more) of the absolute grounds of possession for anti-social behaviour along with grounds contained in schedule 2 of the Housing Act 1985 (i.e. rent arrears), the decision maker has no power to review any of the grounds from schedule 2 that were cited in the notice.
- 7.6 A notice of the decision maker's decision will be served on the tenant. Where the decision has been made to uphold the original decision (whether in full or in part) this notice will include the reasons for this decision.
- 7.7 Decisions (and reasons if applicable) must be served:
- In relation to Notices of Seeking Possession, before the date as stated on the notice before which Court proceedings could not be commenced.
  - In relation to an Extension Notice, before the date on which the introductory tenancy was due to determine (terminate).
  - In relation to decisions relating to the length of a flexible tenancy there is no statutory time during which the decision (and, if applicable, reasons) must be

served however the Council will endeavour to provide the decision as soon as reasonably practicable.

## **8 Monitoring and review**

- 8.1 This policy will be reviewed every two years or sooner if legislation or regulations change.