

# **DARTFORD**

## BOROUGH COUNCIL

# DEMOTED TENANCY POLICY

2013

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## 1. Introduction

- 1.1. Dartford Borough Council's Corporate Plan aims to make Dartford 'the place of choice' where people choose to live, to work and enjoy their leisure time. This vision can sometimes be challenged by the onset of anti-social behaviour (ASB), which although often caused by only a minority of people, is serious enough to affect the peaceful enjoyment of a local area.
- 1.2. The legal definition of anti-social behaviour is to act in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the complainant.<sup>1</sup>
- 1.3. The Anti-social Behaviour – Statement of Housing Landlord's Policy (March 2005, updated April 2013) states that categories of anti-social behaviour include, but are not limited to the following and apply to all members of a tenant's household:
  - Using or threatening to use violence
  - Intimidation
  - Criminal activity including damage to property
  - Noisy and rowdy behaviour
  - Writing threatening, abusive or insulting graffiti
  - Litter and rubbish dumping
  - Uncontrolled pets
  - Selling and using drugs
  - Nuisance from vehicles including parking and abandonment
  - Other conduct likely to cause harassment, alarm or distress
- 1.4. This Policy has been drafted in line with Part 2 of the Anti-social Behaviour Act 2003 which gives social landlords various responsibilities and powers to deal with this type of behaviour. One such power includes the right to apply for a demotion order to end a secure tenancy and replace it with a demoted form of tenancy.
- 1.5. This Policy document sets out the Council's approach to demoted tenancies and contains the following:
  - Aims of Dartford Borough Council's Demoted Tenancy Policy
  - An overview of demoted tenancies
  - Rights of a demoted tenant
  - Procedures to obtain demotion orders
  - Ending demoted tenancies
  - The right to review the decision to end a demoted tenancy
  - Monitoring and review

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<sup>1</sup> Section 1 (1) of the Crime and Disorder Act 1998, HMSO

## **2. Aims of Dartford Borough Council's Demoted Tenancy Policy**

- 2.1. Dartford Borough Council's Demoted Tenancy Policy aims to:
- Encourage and support tenant's awareness of their obligations and responsibilities as detailed in the current **secure** Tenancy Agreement and to make clear that breaches of the Agreement may result in a demotion order being sought by the Council
  - Provide a procedure that outlines how the Council can apply for a demotion order and how to end a demoted tenancy to ensure that cases are not dismissed from court because applications have been incorrectly issued
  - Offer an alternative option to requests for possession orders in cases of anti-social behaviour
  - Administer the use of demotion orders in a fair and consistent manner
  - Contribute towards promoting safe and sustainable communities within the Borough

## **3. Anti-social behaviour procedure**

- 3.1. Tenants are required by law to meet the tenancy conditions as set out in the Tenancy Agreement. Tenants must therefore meet their community responsibilities and not:
- Allow anything to be done in The Property which may be or become a nuisance, annoyance or inconvenience to any person living in, visiting, or otherwise engaged in lawful activity, both at The Property, on surrounding land, in communal areas, and in the neighbourhood around The Property
  - Commit, or allow members of their household or invited visitors to commit, any form of harassment on the ground of race, colour, religion, sex, sexual orientation or disability which may cause nuisance or offence to other tenants, neighbours, or any person visiting the area
  - Use or threaten violence against any other person living in The Property so that they are forced to leave by reason of The Tenant's violence or fear of such violence
  - Use The Property, or any communal area, for any illegal activity

The Council will take action where a tenant does not meet their community responsibilities.

- 3.2. It is the responsibility of Housing Officers to ensure that the correct procedures on anti-social behaviour are followed for incidences involving tenants of the Council.
- 3.3. All complaints will be treated seriously and dealt with objectively and sympathetically whilst maintaining confidentiality. When a complaint is made it will be reported to a Housing Officer who will categorise the complaint into neighbour dispute, neighbour nuisance or harassment. The Housing Officer

will then make an assessment of the seriousness of the complaint. With serious cases involving nuisance or harassment, an interview will be arranged within one working day. For minor or routine problems an interview will be arranged within ten working days, or action will be taken over the telephone. If an interview takes place with the complainant, a report will be completed. From this an action plan will be produced giving details on the procedure to be followed to investigate the complaint.

- 3.4. If it is suspected that a vulnerable person is involved in anti-social behaviour, the agencies involved in providing care and support to that person will be contacted.
- 3.5. The Council will use various measures to resolve anti-social behaviour by giving the perpetrator the opportunity, wherever possible, to sustain their tenancy (see Section 3.6 to 3.12).

### **3.6. Measures to be taken to help tenants sustain their tenancy**

- 3.6.1. The Council will encourage tenants to seek assistance with a Mediation Service. This is a free service to tenants that helps to resolve disputes and works independently of other agencies such as the Police and Social Services.
- 3.6.2. Section 13 of the Anti-social Behaviour Act 2003 gives the Council the power to apply to the County Court for injunctions to prohibit a person from engaging in the behaviour detailed in the injunction.
- 3.6.3. The Council can facilitate a management transfer where a tenant needs to move due to exceptional circumstances not covered under the Council's Allocations Policy. A Senior Officer may authorise an offer of accommodation outside of the Allocations Policy where a written recommendation is received from the Police or Social Services to transfer a household because of domestic violence, severe harassment, or for households placed under the witness protection programme, where the Council's housing management policy has not resolved the problem, rendering a transfer the only option.
- 3.6.4. In any case of persistent anti-social behaviour there are further tools available that include Acceptable Behaviour Contracts (ABC). An ABC is a voluntary written contract made between the person involved in anti-social behaviour and the agency involved that will be either the Council or the police or both. The contract specifies a list of anti-social acts in which the person has been involved and which they agree not to continue. If this agreement is breached it could then lead to more serious action such as an ASBO or possession proceedings.
- 3.6.5. In serious cases households may also be referred to the Anti-social Behaviour Group. This group was formed under the Community Safety Partnership and is made up of representatives from Dartford Borough Council, North Kent Police, Kent County Council (KCC) Social Services, KCC Youth and Community, KCC Education and KCC Youth Offending Service. The Anti-social Behaviour Group can co-ordinate the work of key agencies to ensure that the most effective and sustainable outcomes can be achieved.

- 3.6.6. In the most severe cases when it is clear that the Council or partner agencies cannot work with a tenant to improve their behaviour and if all other measures have failed, the Council may instigate possession proceedings to evict a tenant. It will be made clear to the tenant concerned that if they are evicted because of their anti-social behaviour, they will be “intentionally homeless” and the Council may not necessarily have a duty to re-house them.

## 4. An overview of demoted tenancies

- 4.1. The Council can apply for a demotion order under Sections 14 and 15 of the Anti-social Behaviour Act 2003.
- 4.2. Because a demoted tenancy is no longer secure it has fewer rights. The overall objective is to provide a clear linkage between the enjoyment of the benefits and rights of security, and responsible behaviour.
- 4.3. The rights that a demoted tenancy holds bear similarities with introductory tenancies, which were implemented by the Council in April 2005. Should subsequent court action be required because of further anti-social behaviour, the Council does not have to prove reasonableness when applying for possession. **The court has a duty to grant mandatory possession.** A review of the right to bring proceedings can only be requested at the time serving the Notice of Possession Proceedings.
- 4.4. Any arrears of rent payable at the termination of the secure tenancy become payable under the demoted tenancy. Once the tenancy is demoted it can be ended for reasons other than further incidences of anti-social behaviour, for example rent arrears or any other breach of the Tenancy Agreement.
- 4.5. Demotion is an alternative option to requests for possession orders. It is considered appropriate for more low-level forms of anti-social behaviour where possession proceedings are not deemed appropriate. Demotion orders therefore serve as a last chance incentive for the perpetrator to improve his/her behaviour before possession proceedings are taken.
- 4.6. Once a demotion order is granted the tenancy will last for a period of 12 months (demotion period) unless possession proceedings are started. If the behaviour of a demoted tenant has noticeably improved and is considered satisfactory after the 12 month period, then the demoted tenancy ends and reverts back to a secure lifetime tenancy.

## 5. Rights of a demoted tenant

5.1. Demoted tenants have fewer rights than secure tenants. The table below shows the main differences in rights:

<b>Tenancy Right</b>	<b>Secure tenant</b>	<b>Demoted tenancy</b>
<i>Right to succession of spouse, civil partner or partner or family member subject to certain criteria.</i>	Yes	Succession rights are limited in that a tenant's spouse or partner will, like other members of a tenant's family, have to satisfy a 12 months residence requirement
<i>Right to assign</i>	Yes	Assignments are limited to circumstances that arise in family proceedings
<i>Right to buy</i>	Yes	No (time spent as such a tenant will not count for discount purposes)
<i>Right to mutual exchange</i>	Yes	<b>No</b>
<i>Right to repair</i>	Yes	Yes
<i>Right to take in lodgers</i>	Yes	<b>No</b>
<i>Right to be consulted on housing management issues</i>	Yes	Yes

5.2. Under a demoted tenancy, the following terms will remain the same as a secure tenancy:

- The parties to the tenancy agreement
- The period of the tenancy (weekly)
- The amount of rent
- The date the rent is payable (Monday in advance)
- Any arrears of rent payable
- Any rent paid in advance is carried over
- Any other terms that are notified to the tenant

## 6. Procedure to obtain a demotion order

- 6.1. The Council may seek a demotion order if instances of anti-social behaviour occur (as detailed in Section 3.1).
- 6.2. The Council will gather evidence to support the claim that conditions of the Tenancy Agreement have been breached and will keep a log of this.
- 6.3. If a tenant has been approached by a Housing Officer regarding a complaint of anti-social behaviour on at least two occasions and the behaviour has not

improved, then an application for a demotion order will be considered as the next course of action alongside all other powers available to the Council (as detailed in Sections 3.6 to 3.12).

**6.4.** Careful assessment will be made to the suitability of demotion and the following factors will be taken into account when deciding on the appropriate course of action:

- The number of incidents reported
- The seriousness of the incidents
- The actions taken to resolve the issues such as agreements made and whether they have been broken
- Evidence which supports the complaints (this could be for example direct witness statements, hearsay evidence, CCTV footage, letters of complaint and Abatement Notices for noise)
- Any involvement with other agencies in terms of referrals, for example to social services, education, Youth Offending Service or the Anti-social Behaviour Group

**6.5.** Housing Services will liaise with the Community Safety Unit to advise of cases where demotion is being considered. However, the ultimate decision to apply for a demotion order will remain with the Council as the landlord.

**6.6.** Prior warning of the action that is being considered will be given to the perpetrator of the anti-social behaviour with a full explanation of the consequences of this if it goes ahead. If no acceptable agreement is reached or the behaviour continues then, if suitable, an application for a demotion order will be submitted without further warning.

**6.7.** For a demotion order to be instigated the following grounds from the Housing Act 1996 must be evidenced:

- a) that the tenant or a person residing or visiting the dwelling-house has engaged or has threatened to engage in conduct to which section 153A or 153B of the Housing Act 1996 (anti-social behaviour or the use of premises for unlawful purposes) applies, and
- b) that it is reasonable to make the order.

**6.8.** Section 153A of the Housing Act 1996 applies to conduct which is capable of causing nuisance or annoyance to any person and directly or indirectly relates to or affects the housing management function of the landlord. Section 153B of the Housing Act 1996 applies to when the tenant has used or threatened to use their property for an unlawful purpose. Illegal activity could include drug dealing, the running of a brothel or harbouring stolen goods.

**6.9. Serving a Notice before Proceedings for a Demotion Order**

6.9.1. A 'Demoted Tenancy Report' will be signed by a Housing Manager to authorise the decision to proceed with the application for a demotion order.



- 6.9.2. When this has been done a 'Notice before Proceedings for a Demotion Order' will be served on the tenant (Section 83 of the Housing Act 1985) which gives at least 28 days notice of the Council's intention to seek a demotion order.
- 6.9.3. It is possible for the Council to apply for a demotion order alongside other measures including injunctions and civil orders such as Anti Social Behaviour Orders (ASBO's) (see Section 3.11). These other measures will be considered if appropriate and depending on the seriousness of the case.
- 6.9.4. The notice period of the Notice before Proceedings for a Demotion Order must expire before application to demote the tenancy is lodged at the court. There are two main circumstances when a demotion order will be applied for: as a stand-alone remedy or as an alternative to seeking a possession order. The type of application that will be submitted depends on the situation and level of anti-social behaviour.

#### **6.10. Procedure for a stand-alone remedy**

- 6.10.1. A stand-alone remedy is used if the anti-social behaviour is such that it is likely that:
- The Council can work with the tenant to improve the situation
  - Where, if the situation is left unchecked, the behaviour could escalate
  - lower-level incidences of anti-social behaviour will occur
  - Possession proceedings are not deemed appropriate
- 6.10.2. The process for applying for a stand-alone claim is outlined in Part 65 of the Civil Procedure Rules.
- 6.10.3. The forms that will be completed by the Council for a stand-alone case and submitted to the County Court for the district, in which the property to which the claim relates to is situated, are:
- Form N6 - Claim form for demotion of tenancy
  - Form N122 – Particulars of claim for demotion order
- 6.10.4. At the court hearing date there will be two possible outcomes of the claim:
- Grant a demotion order
  - Refuse to grant a demotion order

#### **6.11. Procedure for a demotion order as an alternative to seeking a Possession Order**

- 6.11.1. Seeking a demotion order as an alternative to seeking a possession order means that the Council will apply for a demotion order at the same time as a possession order. It will then be up to the court to decide which solution is the most suitable in the circumstances, based upon the evidence brought forward.
- 6.11.2. The level of anti-social behaviour would be more serious than in stand-alone cases as the court does have the option to decide it is serious enough to grant possession.

- 6.11.3. The process for applying for a demotion order as an alternative to seeking a possession order is outlined in Part 55 of the Civil Procedure Rules.
- 6.11.4. The claim will be made by the Council at the County Court of the district in which the property to which the claim relates to is situated. The forms that will be completed by the Council are:
- Form N5 – Claim form for possession of property
  - Form N119 – Particulars of claim for demotion order
- 6.11.5. A copy of Form 7A which provides notes, and also the defence Form N11R, which gives explanation and guidance on the effects of demotion, will be given to the defendant.
- 6.11.6. At the court hearing date there will be 4 possible outcomes of the claim, as listed below:
- If the court is satisfied that the grounds of the Tenancy Agreement have been breached and possession is the most suitable outcome then either a suspended or outright order will be granted
  - If possession is not the most appropriate outcome and a demotion order would be more suitable then this will be granted
  - The proceedings could be adjourned if the court feels that further consideration is required based on the need to receive additional evidence
  - The court could refuse to grant an outright/suspended possession order or a demotion order

## **6.12. When the court reaches a decision**

When the court reaches a decision, the outcome will be confirmed immediately in writing to the tenant concerned. If a demotion order is granted then a statement of the terms of the demoted tenancy will be provided to the tenant with information about the demoted tenancy.

# **7. Ending demoted tenancies**

## **7.1. When a demoted tenancy can be ended.**

There are five reasons why a demoted tenancy can end:

### **1. *When the 12 month demotion period elapses and the demoted tenancy is converted back to a secure tenancy.***

A secure tenancy will be offered provided there have been no further incidences of anti-social behaviour or any other breach of the Tenancy Agreement. The Housing Officer will monitor the demoted tenancy throughout the demotion period. If the Council is satisfied, the tenant will receive confirmation in writing of the conversion to a secure tenancy on the 12 month anniversary of the demotion order.

**2. *When applying for possession of the property.***

This will be in cases where the demotion order has been breached and it is clear that the tenant will not resolve the breaches of the Tenancy Agreement. **Possession proceedings will not be restricted to incidences of anti-social behaviour and illegal activity. Possession will be applied for other conduct such as rent arrears or any other breach of the Tenancy Agreement.**

**3. *If the landlord is no longer a local housing authority or housing action trust.***

**4. *If the tenant or joint tenants no longer occupy the property as their only or principle home.***

**5. *If the tenant dies and no one is entitled to succeed the tenancy.***

**7.2. Applying for possession of the property when the demotion order has been breached**

7.2.1. If the decision is reached to apply for possession of the property, a Notice of Possession Proceedings will be served on the tenant. The statutory process for following this course of action is contained in sections 143 D – F in Chapter 1A of Part 5 of the Housing Act 1996.

7.2.2. The Notice will:

- State that the court will be asked to make an order for the possession of the property
- Set out the reasons for the decision to apply for the order
- Specify the date after which proceedings for the possession of the property may be begun, which is no less than 28 days after the service of the Notice
- Inform of the right to request a review of the decision to terminate the tenancy and when this request must be made by
- Advise that if help or advice about the Notice is required it should be taken immediately to a Citizen's Advice Bureau, housing aid centre, law centre or solicitor

7.2.2. Three copies of the Notice will be produced, one for the tenant that the application is made against, one for the tenancy file and one for the court for when an application will eventually be made for possession. The Notice will also contain a leaflet explaining the review procedure and a review request form.

7.2.3. No court proceedings can be issued until the Notice expires.

7.2.4. Serving a Notice will extend the period of the demoted tenancy.

## **8. The right to review a decision to end a demoted tenancy**

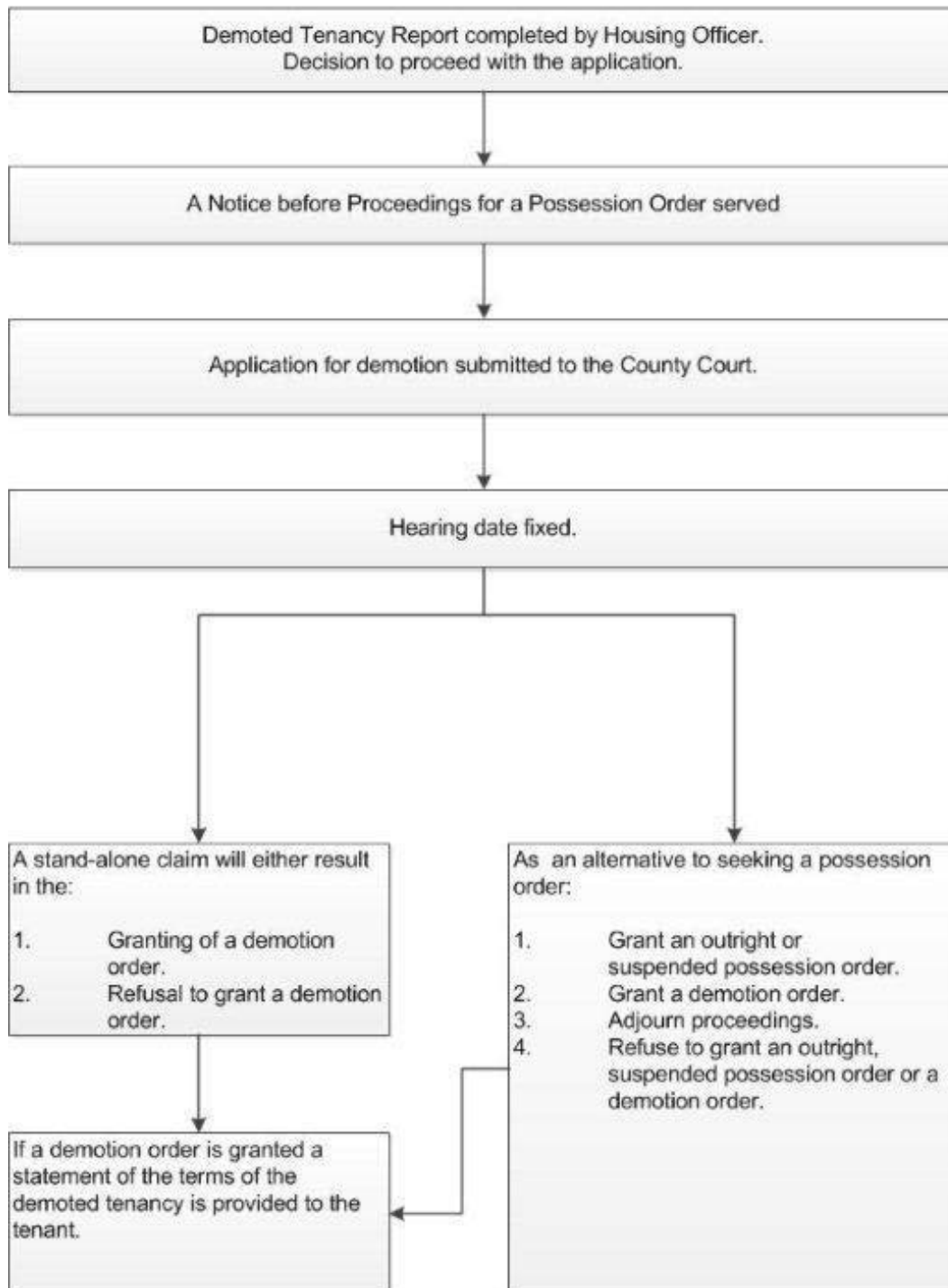
- 8.1. If a Notice of Possession Proceedings is served the tenant has a right to an internal review of the Council's decision to serve the Notice as contained in Section 143F, subsection 5 of the Housing Act 1996. The regulations governing the review procedure are in Demoted Tenants (Review) Regulations 2004 – Statutory Instrument 2004 No. 1679.
- 8.2. A review must be requested within 14 days of the service of the Notice. This 14 day period includes non-working days. Verbal requests for a review will be accepted as well as requests in writing. If the request for a review has not been received one week after the service of the Notice and the demoted tenant is vulnerable, a home visit will be made to remind the tenant of the deadline and the consequences of not requesting a review. Any agency involved in providing care and support to the person concerned will be contacted. If no request is made then the case will proceed to court upon expiry of the Notice.
- 8.3. The review will take place before the expiry date indicated on the Notice. Proceedings cannot commence if a review remains outstanding.
- 8.4. The review will be carried out by an Officer not involved in the case and senior to the Housing Officer who made the decision to serve the Notice.
- 8.5. The review can either be by way of an oral hearing or in writing. If a tenant would like an oral hearing then this must be requested at the time of the request for the review.
- 8.6. When a request for a review is received, the Housing Officer will contact the Officer conducting the review (Review Officer) with details of the case by completing a form called 'Notification of Details of a Request to Review the Decision to Terminate a Demoted Tenancy'.
- 8.7. The Housing Officer will then complete a Review Report that provides details of the case, which will be presented to the Review Officer as evidence.
- 8.8. The Review Officer will respond to the Housing Officer with the time, date and place of the review not more than 5 days after the receipt of the review request. Upon confirmation of this the Housing Officer will write to the demoted tenant with the date, time and place of the review including copies of any evidence that will be presented. The demoted tenant will receive no less than 5 days notice of the date of the review and copies of the evidence.
- 8.9. A demoted tenant has the right to make written representations. However, these must be received by no less than 2 clear days of the review and the Council will consider any such representations received by this date.
- 8.10. At an oral review hearing a demoted tenant has the right to be:
  - Heard
  - Accompanied or represented (whether professionally qualified or not)
  - Call persons to give evidence
  - Put questions to anyone who gives evidence
- 8.11. A demoted tenant can ask for the review to be postponed, however, it is up to the Review Officer as to whether to grant or refuse this request. If the hearing is postponed the Council will give reasonable notice of the date, time and place of the postponed hearing.

- 8.12. The Review Officer has the power to adjourn the case to another date and will give reasonable notice of the date, time and place of the adjourned hearing.
- 8.13. If a demoted tenant or their representative does not attend the hearing the Review Officer can proceed or give such directions to the conduct of the review as the Review Officer considers appropriate.
- 8.14. The role of the Review Officer is to:
- Ensure all of the evidence is provided in a clear manner which enables the facts to be established
  - Ensure the Notice has been correctly served and is appropriate based on the evidence provided and the seriousness and persistency of the breach of the demoted tenancy conditions
  - Check that steps have been taken to resolve the breach (unless it is deemed so serious it could not be resolved) and that agreements have been broken
  - Ensure that where counter-allegations have been made these have been investigated and dealt with appropriately
  - Be satisfied that the evidence proves 'on the balance of probabilities' that the demoted tenant is in breach of the Tenancy Agreement
- 8.15. The Review Officer will set down rules of conduct at the start of each verbal hearing which everyone must comply with.
- 8.16. The Review Officer will receive evidence from the Housing Officer responsible for the case. Evidence from other parties may also be provided where it is relevant. This may be provided as hearsay evidence if it is not appropriate to identify complainants.
- 8.17. If the Review Officer decides that the original decision to serve the Notice was incorrect, the demoted tenancy will be allowed to continue as if no Notice had been served. If the Review Officer upholds the original decision to serve the Notice, two possible courses of action can take place:
- The matter proceeds to court for eviction. If this course of action is taken an outright order will be granted providing the correct legal proceedings have been followed. There is no right of appeal
  - An agreement is reached where the Review Officer is satisfied that the demoted tenant can and will comply with it
- 8.18. The result of the review will be confirmed in writing within two days of the hearing and it will also detail the reasons for the outcome.
- 8.19. Notes of the review will be taken by the Review Officer and kept on the tenancy file.

## **9. Monitoring and review**

- 9.1. The Council will monitor the use of demoted tenancies to measure the extent they have contributed towards greater tenancy sustainment rather than possession of property and to assess the impact of the policy in terms of reducing anti-social behaviour.
- 9.2. Monitoring records will be kept on the following:
- Number of Notice before Proceedings for a Demotion Order that have been served
  - Number of Demotion Orders granted
  - Number of Notice of Possession Proceedings that have been served
  - Number of demoted tenancy reviews following service of a Notice of Possession Proceedings and their outcomes
  - Number of evictions granted following a review where the outcome was to uphold the decision to terminate the tenancy
  - Number of anti-social behaviour incidents reported
- 9.3. The Council will regularly review its demoted tenancy procedures as part of its aim to continuously improve the services it provides.

**Flowchart showing steps taken to demote a tenancy**



**Flowchart showing steps to end a demoted tenancy because of further breaches**

