

**PROTOCOL AND PROCEDURE**

<b>Terms of Reference</b>	<p>To determine appeals from any decision of the Director of Housing and Regeneration taken under powers delegated to him on housing matters by resolution or decision of the Council or any competent body or Executive member or under the Constitution. Primarily any decisions to issue a notice of seeking possession or to take any subsequent steps in the County Court and to review his decisions to extend the trial period of or determine (as the case may be) introductory tenancies pursuant to requests made under the provisions of section 125B or 129 of the Housing Act 1996 respectively.</p> <p>To also review decisions to seek possession of dwelling-houses on the absolute ground for anti-social behaviour as required by section 85ZA of the Housing Act 1985 and to review decisions to seek possessions of dwelling-houses following a Demoted Tenancy under section 82A Housing Act 1985.</p>
<b>Composition</b>	The Appeals Panel shall consist of a minimum of 3 members which shall be made up from those members appointed to the Panel by the Council.
<b>Meetings</b>	Meetings of the Appeals Panel shall be called as and when required so as to determine appeals and/or review requests within statutory or the Council's own laid down time limits
<b>Independence</b>	<p>No member shall sit on the Appeals Panel where he/she has had some direct personal involvement in a matter to be determined</p> <p>In particular, in accordance with the Allocation of Housing (Procedure) Regulations 1997, no member shall sit on the Appeals Panel in respect of an appeal against an allocation decision, when either:</p> <ul style="list-style-type: none"> <li>(a) the unit of housing accommodation concerned is situated in his/her electoral ward; or</li> <li>(b) the person subject to the decision has their sole or main residence in the member's ward</li> </ul>

**RIGHT OF APPEAL/REVIEW****1. Decisions which may be reviewed or appealed**

- 1 (a) Any decision on housing matters made by the Director of Housing and Regeneration, or his officers, in exercise of delegated powers conferred under the Constitution or by resolution or decision of the Council or any competent body or Executive member

**2. Method and Time Limits for Appeal/Review Request**

- 2 (a) **EXCEPT** for a review request made under paragraph 2 (b) below, a person wishing to exercise the right of appeal or review request **MUST** do so in writing within 14 days of receipt of the decision from the Director of Housing and Regeneration
- 2 (b) **A request for a review of the landlord's decision**
- to extend a trial period of or
  - to seek an order for possession of a dwelling-house let under an introductory tenancy or under a demoted tenancy must be made before the end of the period of 14 days beginning with the day on which either the notice of extension or proceedings is served.

- to seek possession on the absolute ground for anti-social behaviour must be made before the end of 7 days beginning with the day on which the notice is served.

2 (c) For the purpose of determining the date of receipt of any written decision or appeal or review request any communication:

- (i) sent by 1st class post shall be deemed received the second day after it was posted,
- (ii) sent by 2nd class post shall be deemed received the fourth day after it was posted,
- (iii) delivered to or left at the address on the communication shall be deemed received the day after it was delivered or left at the address,
- (iv) sent by fax shall be deemed received on that day if transmitted before 4pm or otherwise on the day after the day upon which it was transmitted
- (v) sent by other electronic method shall be deemed received the day after the day on which it was transmitted.

### 3. ***Receipt of Appeal/Review Request***

3 (a) Upon receipt, the Director of Housing and Regeneration shall arrange for the appeal/review request to be referred to the Housing Appeals Panel for determination.

### 4. **Determination Date**

4 (a) Requests for review of a decision

- (i) to seek an order for possession of a dwelling-house let under an introductory tenancy or a demoted tenancy shall be carried out and the tenant notified before the date specified in the notice of proceedings as the date after which possession proceedings may be begun and
- (ii) to extend the trial period of an introductory tenancy shall be carried out and the tenant notified before the original expiry date of the trial period.
- (iii) to seek possession on the absolute ground for anti-social behaviour shall be carried out and the tenant notified before the date specified in the notice under section 83ZA of the Housing Act 1985 as the day after which proceedings for possession of the dwelling-house may be begun.

4 (b) Following receipt of a request for a review hearing the Appellant will be notified of the time, date and place of the hearing no less than 5 days after the receipt of the review request.

4 (c) All review hearings will be heard by the panel within 6 weeks of the date of receipt of the review request unless an adjournment has been granted.

### 5. **Procedure**

5 (a) The procedure contained within the Introductory Tenants (Review) Regulations 1997 or the Introductory Tenancies (Review of Decisions to Extend a Trial Period) (England) Regulations 2006 or The Absolute Ground for Possession for Anti-social Behaviour ( Review Procedure ) ( England ) Regulations 2014 (as appropriate) shall be followed in respect of any review conducted into a decision by the Director of Housing and Regeneration to seek an order for possession of a dwelling-house let under, an introductory tenancy or a demoted tenancy, or to extend a trial period of an introductory tenancy or to seek possession of a dwelling-house on the absolute ground for anti-social behaviour and the remaining paragraphs hereof shall not apply except in so far as they are consistent with those Regulations

5 (b) In respect of all other decisions, including all tenancy matters, housing applications, discretionary renovation grant matters and other operational decisions, the procedure for dealing with appeals will be as follows:

- (i) an officer will be appointed to review the decision who will have had no prior involvement in the matter
  - (ii) the Appellant will be given a written explanation of the decision taken within 15 working days
  - (iii) if the Appellant remains dissatisfied with the decision he/she will have the right to appeal to the Housing Appeals Panel and will be notified of that right with the written explanation
  - (iv) for the purpose of paragraph 2 (a) above the period of 28 days shall be calculated from the date of receipt of the written explanation
- 5 (c) (i) There shall be a presumption that all appeals or review requests shall be by way of an oral hearing (the provisions within the aforementioned Regulations notwithstanding) **UNLESS** the appellant informs the Director of Housing and Regeneration that he/she wishes the matter to be determined by way of written representations
- (ii) Such notice **MUST** be given by the Appellant in writing when submitting his/her appeal/review request

## 6. **Appeals/Reviews by written representations**

- 6 (a) **Where the appeal/review request is by way of written representations the Housing Appeals Panel shall consider all properly submitted representations and the appellant shall be notified by the Council of the date by which such representations must be received which cannot be earlier than 5 clear days after receipt of such notification**
- 6 (b) When any appeal or review request is dealt with by written representations the Appellant will receive a copy of the written representations to be submitted by the Director of Housing and Regeneration with the notice of hearing as provided for in paragraph 8 below. The Appellant will also be invited to submit supplementary written representations for consideration by the Housing Appeals Panel. Written representations must be received 5 working days before the appeal date.

## 7. **The Hearings**

- 7 (a) The Housing Appeals Panel shall follow the procedure set out in the Appendix hereto and the Appellant has the right to:-
- (i) be heard, to be accompanied and may be represented by another person whether that person is professionally qualified or not and for the purpose of the appeal proceedings any representative shall have the same rights and powers as the Appellant given in paragraphs 7 (ii) – (v) below
  - (ii) call persons to give evidence
  - (iii) put questions to any person who gives evidence at the hearing; and
  - (iv) Make representations in writing
  - (v) To assist you during the hearing a translator may be appointed

Director of Housing and Regeneration will be represented during the review by a duly Authorised Officer and where possible this should be the Housing Officer for the Appellant.

A Clerk will be present throughout the hearing and the decision making process. The Clerk will be a member of Legal or Democratic Services and will give legal advice to the Panel. The Clerk will record the decision of the Panel and notify the Appellant of the decision in writing.

## 8. **Notice of Hearings**

- 8 (a) The Council shall give an Appellant written notice of the date, time and place of the meeting of the Housing Appeals Panel that shall determine his/her appeal/review request
- 8 (b) The date for the Appeal will be sent to the Appellant no more than 5 days after receipt of the appeal/review request
- 8 (c) If no, or inadequate, notice of the date of the meeting is given the matter may only proceed with the consent of the Appellant or his/her representative

9. **Absence of Appellant/Tenant**

- 9 (a) Where an Appellant requests an oral hearing and fails to appear, the Housing Appeals Panel, being satisfied proper notice has been given, may, having regard to all the circumstances including any explanation offered for the absence, proceed with the hearing notwithstanding his/her absence or adjourn the hearing or give such directions as to the further conduct of the appeal/review request as it may think proper

10. **Postponement of Hearing**

- 10 (a) The Appellant may apply to the Housing Appeals Panel requesting a postponement of the hearing, any such request will be considered by the Clerk to the panel in consultation with the Chair. The application may be granted or refused but reasons must be given in writing for any refusal. Any postponement will not be granted for longer than 14 days.

10 (b) The Director of Housing and Regeneration or an Authorised Officer may apply to the Housing Appeals Panel requesting a postponement of the hearing, any such request will be considered by the Clerk to the panel in consultation with the Chair. Such a request will only be granted where it is considered that there will be no prejudice to the Appellant and a postponement will not be granted for more than 14 days. Once a postponement under this subsection has been granted the Appellant must be notified in writing within 3 days. Requests for postponement of a hearing made by an Authorised Officer will not be considered if they are simply that the Applicant's Housing Officer is not available on the date of the Panel as it would be expected that another Housing Officer could take conduct of the Appeal.

10 (c) a review hearing can only be postponed once unless exceptional circumstances have been presented to the Clerk and the Chair.

10 (d) Where no request for a postponement has been made but information has come to light that could lead to an application for a postponement the Clerk, in consultation with the Chair, may consider a postponement.

11. **Adjournment of Hearing**

- 11 (a) The Housing Appeals Panel may, at any time, adjourn the hearing of any appeal/review request on the application of either party
- 11 (b) If a matter is adjourned part heard the authority will, wherever possible endeavour to reconvene the same panel to sit on the reconvened panel. This will ensure that the reconvened panel is quicker and that evidence already given does not have to be repeated. Where the same panel cannot be reconvened for whatever reason the Clerk to the panel will summarise the evidence already heard by the panel at the previous hearing.
- 11 (c) In the case of a review of a decision to seek possession on Absolute Grounds for anti-social behaviour, where the hearing is adjourned for more than one day, the Housing Appeals Panel must specify a date on which the hearing is to be resumed by sending a notice in writing to that effect to the Appellant and any other person whose attendance is required at the resumed hearing

## 12. The Decision

12(a) The Housing Appeals Panel after considering the written representations and/or the evidence may:

1. Uphold the Director of Housing and Regeneration decision to serve Notice of Proceedings on the Tenant and authorise court proceedings for possession of the dwelling-house.
2. Uphold the Director of Housing and Regeneration decision to serve Notice of Proceedings on the Tenant but to stay the application for possession to the court pending a further review of the case by the Panel.
3. Uphold the Director of Housing and Regeneration decision to serve Notice of Proceedings on the Tenant but to stay the application for possession to the court pending monitoring by officers of a consistent and acceptable pattern of payment of the rent arrears.
4. Extend the period of the introductory tenancy by six months and either options 2 or 3 above apply.
5. N.B this is only an option if the Appeal hearing is at least eight weeks before the twelve month introductory tenancy period ends.
6. Rescind the Notice of Proceedings.

12(b) The Council will notify the Appellant in writing of the Housing Appeal Panel's decision, including (where appropriate) the reasons for reaching that decision, within 7 working days of the date the decision is made. The decision letter will include a copy of the decision notice signed by the Chair or Vice Chair of the Panel.

## 13. Procedure for Oral Hearings

- (a) The Chair will introduce himself/herself and state the nature of the matter to be considered.
- (b) The Chair will then introduce the other members of the Appeals Panel, the Clerk, the officers present to advise the Panel and any witnesses.
- (c) The Chair will confirm that none of the members sitting on the Appeals Panel were involved in the decision the subject of appeal/review.
- (d) The Chair will take the details of the authority's representative and the appellant's representative (if any) who will both state their name and position and the names and positions of any witnesses they intend to call.
- (e) The Chair will ask the officers to confirm whether or not the requisite notice has been given to the appellant of the date, time and place of the hearing.

If the requisite notice has not been given the Chair will enquire of the appellant or his/her representative whether it is agreed that the hearing proceed.

If it is not agreed, the hearing will be adjourned to a future suitable date.

- (f) If there is no appearance by the appellant the Appeals Panel shall, on being satisfied proper notice has been given, and having regard to all the circumstances including any explanation offered for the absence, decide whether the hearing shall proceed notwithstanding the appellant's absence, or give such directions with a view to the conduct of the appeal/review request as it may think proper.
- (g) Witnesses shall be present from the start of the hearing **ONLY** if **BOTH** parties agree and the Chair retains the right to request that witnesses give their evidence without the other witnesses being present even when both parties are in agreement. The Authority's representative and the Appellant and his/her representative will be present throughout the presentation of the case.

- (h) The Chair will then outline the procedure for the hearing, which shall be as follows:
  - (a) The authority's representative summarises his/her case.
  - (b) The authority's representative may then call witnesses to give evidence. (Hearsay evidence of witnesses is admissible although direct evidence shall carry more weight).

Where witnesses are called each in turn:-

- (i) gives evidence;
  - (ii) may be questioned by the Appellant or the Appellant's representative;
  - (iii) may be questioned by members of the Appeals Panel;
  - (iv) may, if necessary, be re-questioned by the authority's representative.
- (c) The Appellant or the Appellant's representative summarises his/her case.
- (d) The Appellant or the Appellant's representative may then call witnesses to give evidence which may include the Appellant. Each witness in turn:-
  - (i) gives evidence;
  - (ii) may be questioned by the authority's representative;
  - (iii) may be questioned by members of the Appeals Panel;
  - (iv) may, if necessary, be re-questioned by the Appellant or the Appellant's representative.
- (e) Upon completion of all or any oral evidence from the Appellant and/or the Appellant's witnesses the Appellant or the Appellant's representative may submit any written representations
- (f) On completion of the evidence each party will be given the opportunity of summing up his/her case; firstly the authority's representative, secondly the Appellant or the Appellant's representative.
- (g) Members of the Appeals Panel may ask the parties or any witness for any additional information or clarification required.
- (h) The Chair should ask the Housing Officer for their recommendation in each case. The Appellant will then be afforded the opportunity to express their views on this recommendation and make their own request of the Panel.
- (I) The Chair will then
  - (i) advise the parties that the Appeals Panel will consider its decision;
  - (ii) advise the appellant that he/she will be notified of the Appeals Panel's decision in writing, and, where appropriate, the reasons for the decision;
  - (iii) advise the appellant he/she will receive the notification within 7 working days;
  - (iv) invite the parties, their representatives and witnesses to withdraw.
- (j) The Appeals Panel will consider its decision. The decision of the majority of the Appeals Panel shall be the decision of the Panel, and where the Panel consists of an even number, the Chair shall have a second or casting vote.
- (k) It is at the discretion of the Chair of the Appeals Panel to announce the Appeals Panel's decision together, where appropriate with the reasons, for the decision. Where the Chair of the Appeals Panel chooses the Appellant will not be notified on the day but will receive notification in writing from the Clerk to the Panel.
- (l) A written record of the Appeals Panel's decision including a statement of the reasons for its decision signed by the Chair shall be retained by the Authority.
- (m) The appellant will be notified of the Appeals Panel's decision by written notice given by the Chief Executive, under the hand of the Clerk to the Panel. This will be given as soon as possible after the hearing and, in any event, to reach the Appellant within 7 working days.

- (n) Where the decision of the Panel is to uphold the decision of the Director of Housing and Regeneration but stay the proceedings pending a further review or monitoring by Officers the further review should (where possible) be conducted by the same Panel. The Panel should restrict themselves to only considering new evidence (things that have happened since the first review) presented by the Appellant or the Authorised Officer as all pertinent evidence should have been presented at the first review hearing. Evidence that pre-dates the panel's decision for a review hearing will only be heard under exceptional circumstances. Evidence already heard should not be reheard except where 11b applies.

#### **14. POINTS TO NOTE RELATING TO HEARINGS**

- (a) Members must remain throughout all of the hearing.
- (b) Members must confine themselves to questions and **NOT** embark on discussions upon the merits or otherwise of the application or evidence until they consider their decision.
- (c) An Appellant may apply to the Appeals Panel requesting a postponement of the hearing and the Appeals Panel may grant or refuse the application as it sees fit.
- (d)
  - (i) A hearing may be adjourned by the Appeals Panel at any time during the hearing on the application of the Appellant, his/her representative or at the motion of the Appeals Panel. If a hearing is adjourned part heard and after the adjournment the persons constituting the Appeals Panel differ from those appearing at the first hearing, proceedings shall be by way of a complete rehearing.
  - (ii) Where the Appeal is quorate any hearing may, with the consent of the Appellant or his/her representative but not otherwise, be proceeded with in the absence of one of the persons who is to determine the review providing that there are still 3 members of the Panel and at least one of them is the Chair or Vice Chair.