

## **Briefing Note for Occupancy Arrangements covering accommodation provided on behalf of the Local Authority pending homelessness decisions**

In carrying out their responsibilities under the Housing Act 1996, in respect of the provision of accommodation for Homeless persons Local Authorities may enter into arrangements with Registered Social Landlords to provide the accommodation required.

The provision of accommodation falls into two distinct and separate areas. First there is the duty to secure accommodation to a person presenting as homeless whilst the Local Authority makes enquiries as to the Applicants eligibility for accommodation. Any accommodation provided during this period is not ~~an~~ accommodation provided as residence~~+~~

Accordingly, Licences can be used for accommodation provided during this period. Case Law has established that such Licences do not come within the the provisions of the Protection from Eviction Act 1977. Accordingly, Possession can be obtained without redress to the Court for an Order. The Case Law does not make clear when the ~~an~~excluded Licence~~+~~status ends. It is clear that it exists until the Local Authority has made its decision on eligibility and communicated this to the Applicant.

It is believed that this status would remain pending the determination of any review Application by an Applicant or where no review is applied for the end of the period in which it could be made.

If an Applicant is unsuccessful and the review period (or review if one has taken place) has gone by the Licence can be ended by the giving of

reasonable notice and strictly if the Licensee does not vacate the Landlord may enter and change the locks. However, as a matter of caution in circumstances where the Licensee refuses to leave I would suggest that Possession be brought. (These can be summary proceedings).

Where the Local Authority make a decision favourable to the Applicant the excluded nature of the Licence comes to an end and should the Applicant remain in the accommodation provided by the Registered Social Landlord then the occupancy arrangement needs to change. At this point I would recommend the ending of the Licence by reasonable notice and its replacement with a Non-Secure Tenancy. This is a Contractual Tenancy that can be ended by the service of a Notice to Quit.

It must be borne in mind, however, that such a Tenancy will automatically convert to an Assured Tenancy after 12 months has elapsed (beginning with the date on which the Applicant was notified of the Local Authority's decision). Given that the default Tenancy is an Assured Shorthold Tenancy this could be ended with an Application to the Court following the service of a Notice under Section 21 of the Housing Act 1988.

Although the Case Law does not cover all eventualities in summary I would recommend that at the enquiry stage an Applicant is given an Excluded Licence. If unsuccessful that Licence is then terminated and Court proceedings taken if appropriate. If successful the Licence should be ended and a Non-Secure Tenancy offered. If the former Licensee fails to take the Non-Secure Tenancy Possession action will follow. If they do take the Tenancy then it will be in place for 12 months from the decision date, it can be ended at any time during that period by a Notice to Quit and Possession obtained if necessary by Possession Order. After the 12 months it will convert to an Assured Shorthold Tenancy.

It is clearly important that the Local Authority keep the relevant Registered Social Landlord updated in relation to its decision making processes so that



the Landlord may take the appropriate steps to obtain Possession/Change the nature of the Occupancy Agreement in good time.

