

**GUIDANCE NOTES**

**FOR**

**MEMBERS OF THE**

**HOUSING APPEALS AND REVIEW**

**PANEL (H.A.R.P.)**

# **INDEX**

	<b>PAGE</b>
Terms of Reference	2
Procedure	3-6
Rent Arrears (Eviction Warrant)	7-8
Special Cases/Permissions under Conditions of Tenancy	9-10
Adaptations	11-12
Introductory Tenancies – Notices Of Possession Proceedings	13-14
Extending Introductory Tenancies	15-16
Tenant Incentive Scheme	17-18
Demoted Tenancies	19-21
Absolute Grounds for Possession – Anti-Social Behaviour, Crime and Policing Act 2014.	22-23

# **HOUSING APPEALS AND REVIEW PANEL**

## **TERMS OF REFERENCE**

As defined by the Council Constitution Part 3 -  
responsibility for Section 2 Council functions

The Housing Appeals and Review Panel can only consider the following appeals and make the decisions against those appeals as described in the section titled the Powers of the Panel. The Housing Appeals and Review Panel have no other powers other those described in the Housing Appeals and Review Terms of Reference.

- (1) Appeals against intention to request eviction warrants (rent arrears).
- (2) Appeals against refusal of permissions under Conditions of Tenancy, e.g.:-
  - Running a business
  - Erecting structures etc.
- (3) Appeals against refusals to carry out disabled adaptations to a Council property.
- (4) Appeals against the service of Notices of Possession proceedings under the Introductory Tenancy regime.
- (5) Appeals against the service of a Notice to extend an Introductory Tenancy.

- (6) Appeals against the service of a Notice to Seek Possession of a Demoted Tenancy.
- (7) Appeals against a decision not to award the Resettlement Service and appeals against a decision not to award payment under the Tenants Incentive Grants Scheme
- (8) Appeals against the service of a Notice of Seeking Possession under the Anti-Social Behaviour, Crime and Policing Act 2014

# **HOUSING APPEALS AND REVIEW PANEL (HARP)**

## **PROCEDURE**

### **1. Before the Panel Meeting**

- a) If a tenant wishes to make an appeal it needs to be made in writing. We have an agreement to say a Panel will be convened within a fixed period of the Council receiving the appeal that is compliant with the Terms of Reference
- b) Any information the appellant wishes to be considered by the Panel must be passed to the Housing Officer at least 9 clear working days before the Panel meeting.
- c) A Panel will meet as and when required and any papers for the Panel Meeting will be circulated at least 5 clear working days before the meeting.
- c) The Panel will comprise of three nominated members from the pool of Councillors annually appointed by group leaders who must agree to undergo training on how to undertake such hearings. This training will consist of the responsibilities of chairing the meetings, the legal requirements of the Panel and an overview of the relevant policies and procedures of Housing and Property Services. This requirement is supported by the Group Leaders.
- d) Papers will be sent to the appropriate members of the Panel and the Appellant.

The Papers will include:-

- i) Formal Agenda for the Harp meeting, to be provided by Committee Services
- ii) A covering report , to be provided by Housing and Property Services, detailing which article of the terms of reference the hearing relates to, the documents as listed below, and the decision that the panel needs to consider.
  - The decision of the Housing Officer.
  - The reason for the decision.
  - The relevant legislation, policy and procedures
  - Any supporting information/evidence (including that supplied by the Appellant).

## 2. **The Panel Meeting**

- a) The Panel is a private meeting and its proceedings will not be for publication.
- b) The only people at the Meeting will be:-
  - i) The Members on the Panel.
  - ii) The Housing Client Officer who is the Case Manager (or representative),
  - iii) Other Council Officers and witnesses who have had involvement in the the case or who have specific knowledge or expertise (if applicable).
  - iv) The appellant and or their representative and if applicable any witnesses.
  - v) The Council's Solicitor who will act as Advisor to the Panel.
  - vi) An officer from Committee Services as Clerk/Minute taker.
- c) If the appellant does not attend the meeting the hearing will be adjourned to another date. However if the appellant fails to attend a second time the matter will be considered in their absence.

The appellant has the right to a written or oral hearing. If the appellant has requested a written hearing then the panel will still meet. The appellant can change their request from a written to an oral hearing at any time up until the panel meet.

- d) The normal procedure would be:-
  - i) The Housing Client Officer (or representative) case and questions.
  - ii) The Appellant's case and questions.
  - iii) Summing-up by Housing Client Officer (or representative).
  - iv) Summing-up by Appellant.
- e) The Panel will then ask the Housing Client Officer and any other Council officer who are present and the Appellant and the witnesses to withdraw whilst it considers its decision.
- f) he Appellant may be asked to wait so that the Panel can give its decision - which will be confirmed in writing within 5 working days of the Meeting."

- g) The panel can decide not to make their decision on the day of the hearing but to hear the case and then adjourn the case to another date and they will make their decision at the new hearing date.
- h) Alternatively the panel can decide to give their decision at a later date in writing. The decision should be made within 14 working days of the panel hearing.
- g) There will be formal minutes of the meeting. Each individual case will be considered by reference to the relevant background papers, legislation, case law, Good Practice Guidelines. A decision notice will be produced by the Panel, in liaison with the Legal officer giving the reasons for the decision and any other relevant information. This will be issued to the Housing Officer attending the hearing by Committee Services The Housing Officer will send a written copy of the decision to the appellant and copy will be placed on the relevant case file.
- h) The Appellant is responsible for taking their own notes.

### 3. **Powers of the Panel**

The Panel has delegated power under the Council's Constitution to hear the following: -

- (1) Appeals against intention to request eviction warrants (rent arrears).
- (2) Appeals against refusal of permissions under Conditions of Tenancy, e.g.: -
  - Running a business
  - Erecting structures etc.
- (3) Appeals against refusals to carry out disabled adaptations to a Council property.
- (4) Appeals against the service of Notices of Possession proceedings under the Introductory Tenancy regime.
- (5) Appeals against the service of a Notice to extend an Introductory Tenancy.
- (6) Appeals against the service of a Notice to Seek Possession of a Demoted Tenancy.
- (7) Appeals against a decision not to award the Resettlement Service and appeals against a decision not to award a payment under the Tenants Incentive Grant Scheme.

- (8) Appeals against the service of Notice of Possession proceedings under the Anti-Social Behaviour, Crime and Policing Act, 2014

**NB:** If the breach is satisfied and the notice is withdrawn before the HARP panel convenes then there is no requirement for the matter to be considered at HARP. i.e. rent arrears are cleared.

The Panel can choose to do the following in respect of the above cases:

- 1) The Panel can decide either to dismiss the appeal or accept the appeal. If the appeal is dismissed the Warrant will not be requested as long as the tenant adheres to conditions set by the Panel. If the tenant does not adhere to these conditions the Warrant will be requested. The tenant cannot appeal against any subsequent decision to request a warrant.
- 2) The Panel can either dismiss the appeal or uphold the appeal and grant permission, possible with conditions.
- 3) The Panel has jurisdiction to uphold or quash the original decision. If decision is quashed the file will be returned to the case officer for further enquiries and a new decision will be issued. The panel cannot invoke a new decision.
- 4) The Panel can either uphold the Notice or dismiss the Notice
- 5) The Panel can either uphold the Notice or dismiss the Notice
- 6) The Panel can either uphold the Notice or dismiss the Notice
- 7) The panel can award the Resettlement Scheme or award payment under the Tenants Incentive Scheme, or increase the amount paid under the Scheme.
- 8) The panel can either uphold the Notice or dismiss the Notice.

#### 4. **Use of Substitutes**

Substitute Members may be used, in line with Council procedure rules, but only from within the allotted Group of Councillors appointed by group leaders and trained to undertake such hearings. Members cannot substitute part way through a hearing.

The hearing can only proceed if three members, who have been duly appointed, attend the meeting. The Meeting will be adjourned to another date if three members are not present.

#### 5. **Appeals**



There is no right of appeal against the decision of the HARP.

6. **Information**

A Committee Services Officer will act as Clerk to the Panel. The Clerk will keep a note of the hearing, the decision taken and the reasons for the decision. The Clerk shall be responsible for collecting together and destroying surplus Case Papers at the end of the Meeting. A copy of the Agenda and the official minutes will be kept on file for at least six years.

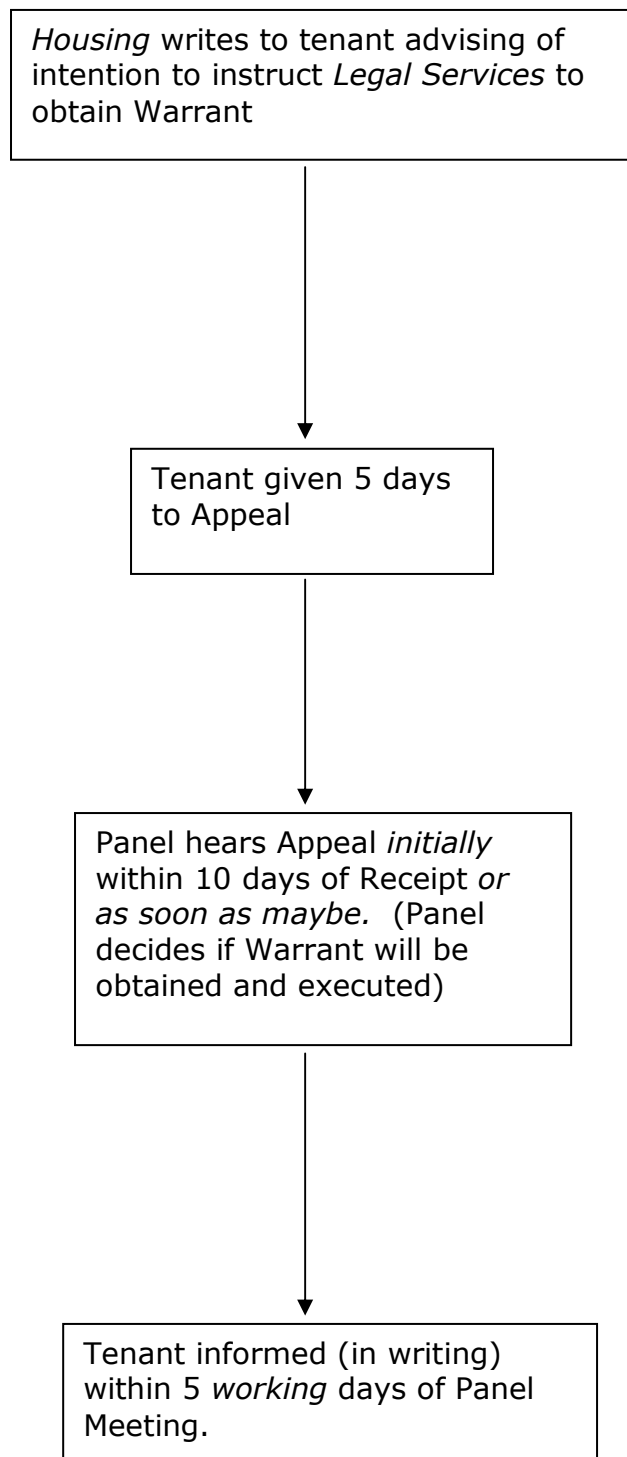
## **RENT ARREARS (Eviction Warrant)**

The law relating to rent arrears is contained in part IV and Schedule 2 of the Housing Act 1985.

The Local Authority must apply to the Court to recover possession of a property if the tenant has fallen into rent arrears.

There are a number of stages that must be gone through before the Local Authority can seek to evict a tenant for rent arrears and these are described in the Ministry of Justice's pre-court protocol.

## RENT ARREARS EVICTION WARRANTS



## **SPECIAL CASES/PERMISSIONS UNDER CONDITIONS OF TENANCY**

Periodically the Council receives requests from tenants who want approval to do something where 'permission' is required under the Conditions of Tenancy.

Examples of these two situations include:-

- Running a business from a Council property

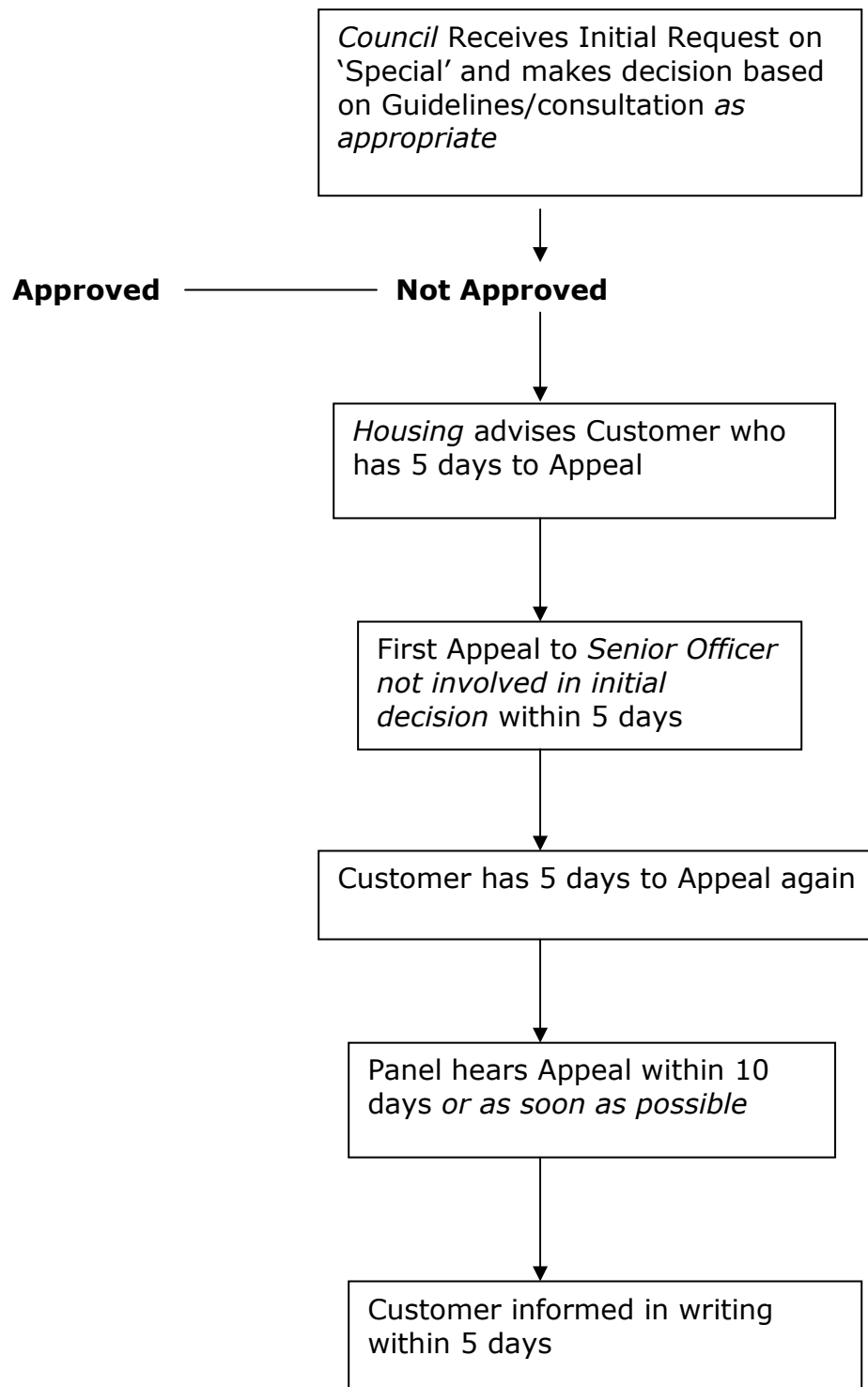
And

- Erecting a structure (e.g. conservatory)

Unfortunately, no two cases are the same and each has to be dealt with on its merits based on experience and legal precedents. Requests will initially be dealt with by Housing and Property Services.

# SPECIAL CASES/PERMISSIONS UNDER CONDITIONS OF TENANCY

## APPEALS PROCESS

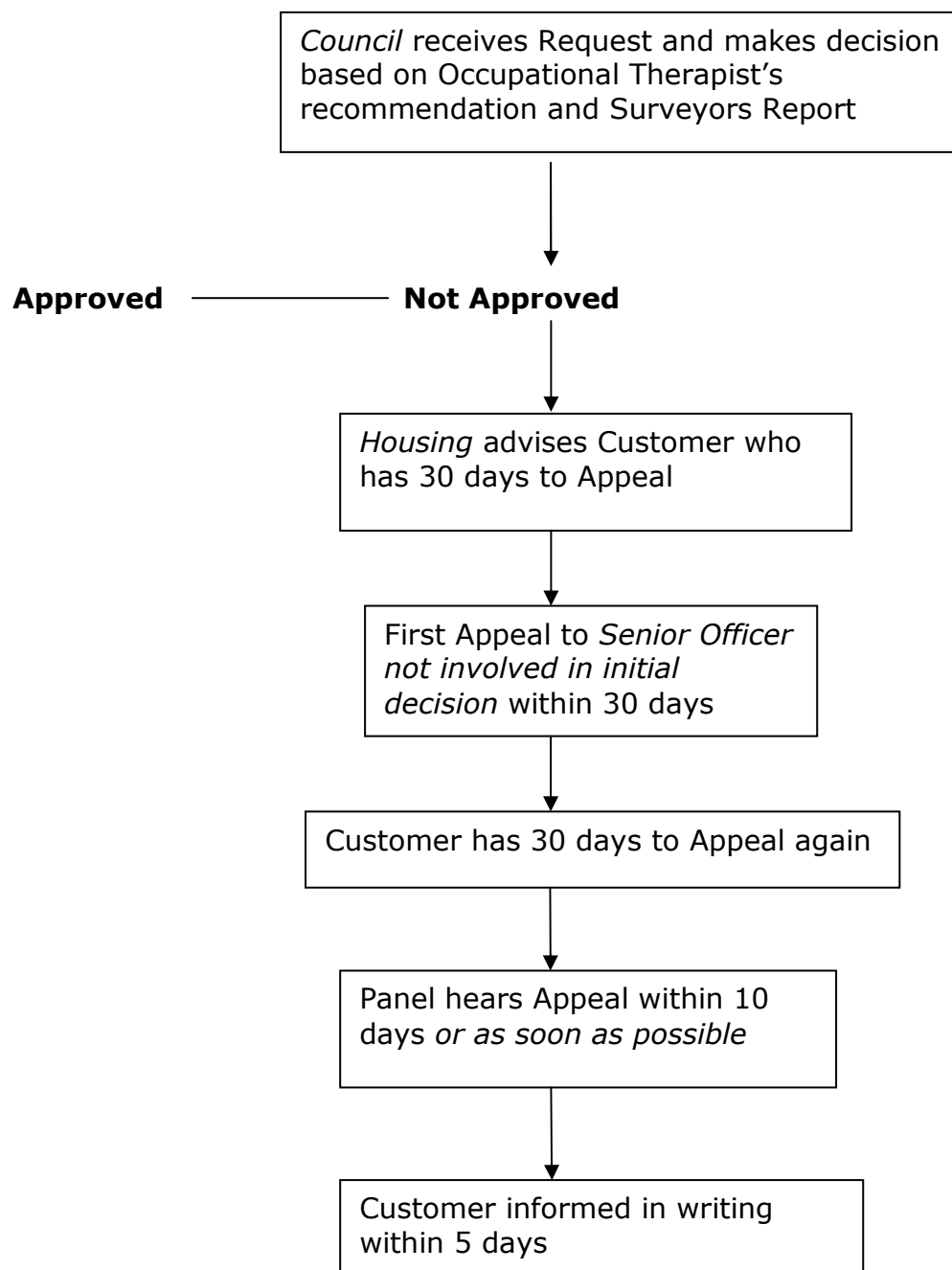


## **APPEALS AGAINST REFUSALS TO CARRY OUT DISABLED ADAPTATIONS TO A COUNCIL PROPERTY**

- The Council receives requests from Warwickshire County Council Occupational Therapist or the Jointly Funded (WCC and WDC) Occupational Therapist for adaptations to Council property. If resources allow, **high need applications** are processed immediately and passed to Property Services for survey and implementation.
- **Substantial need applications** are held until sufficient funding available to enable works to be carried out, or the need is re-assessed by the applicant's G.P. or Occupational Therapist.

# APPEALS AGAINST REFUSALS TO CARRY OUT DISABLED ADAPTATIONS TO A COUNCIL PROPERTY

## APPEALS PROCESS

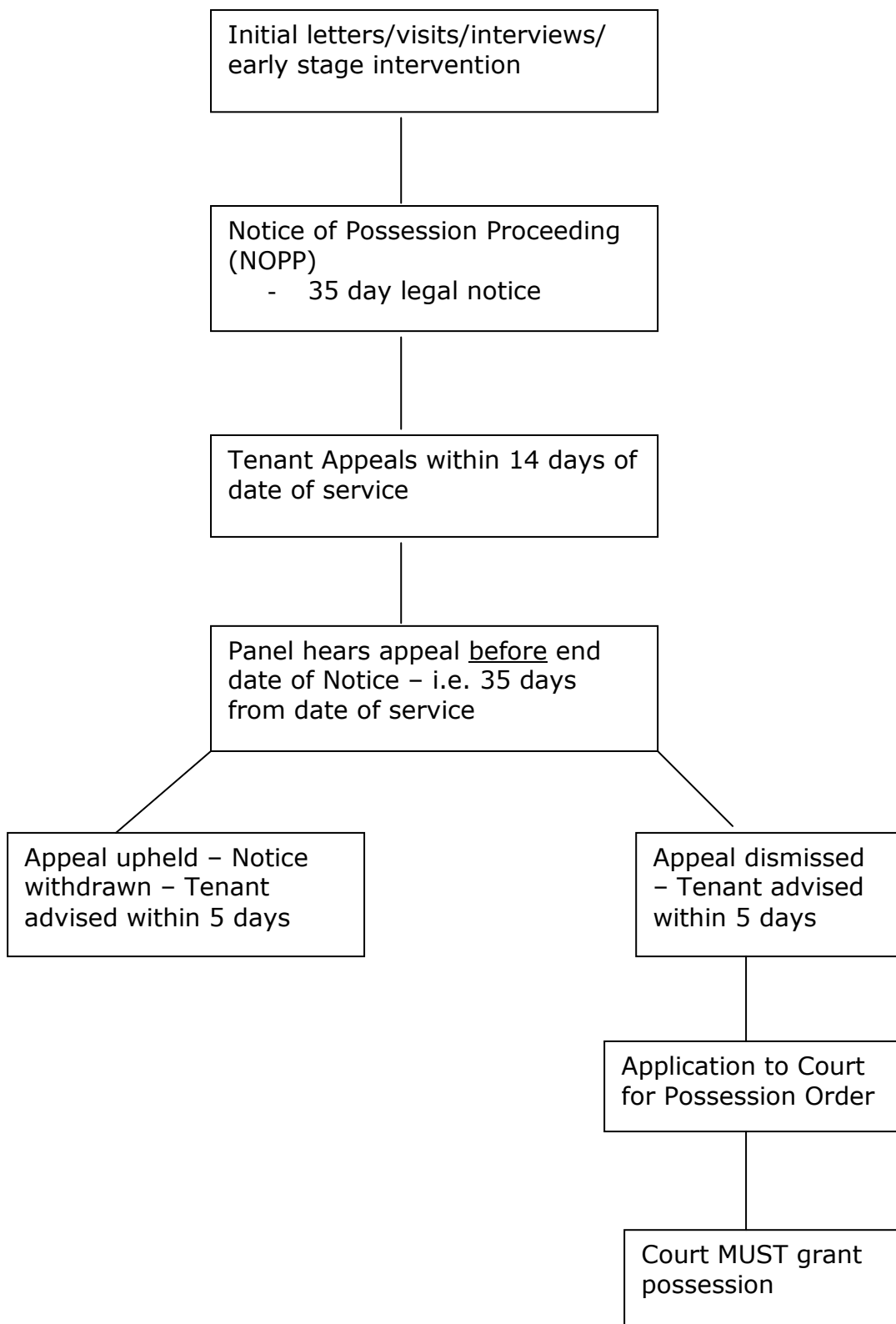


## INTRODUCTORY TENANCIES

1. Before applying to the County Court for a Possession Order for a property occupied under an Introductory Tenancy, the Council has to serve on the Tenant a Notice of Possession Proceedings. (NOPP).
2. There is a Statutory requirement that the Council must afford to the Tenant an opportunity to appeal against the service of the Notice.
3. The Appeal has to be lodged within 14 days from the date of service.
4. The Appeal **MUST** be heard before the Notice becomes live to be a date not less than 28 days from the date of service – we adopt 35 days.
5. There is no first stage appraisal of the Appeal by Officers because of the tightness of the timescales.
6. If the Notice is upheld on Appeal, or there is no Appeal, the Court must then grant possession on demand (the Order cannot be suspended provided the formalities of the Notice are in order).
7. The above procedure applies to **any** breach of the Conditions of Tenancy.



## INTRODUCTORY TENANCIES – FLOW CHART

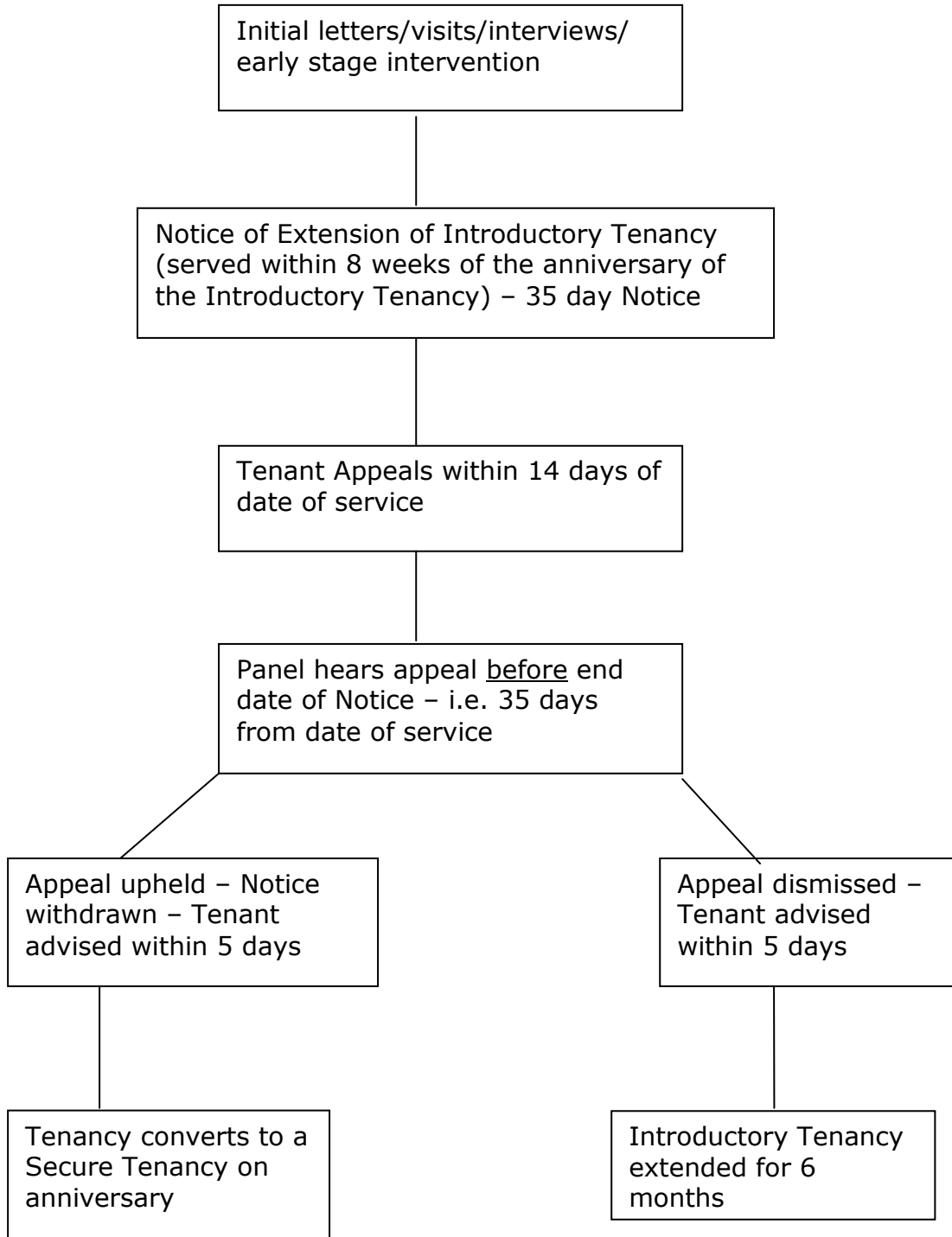


## EXTENDING INTRODUCTORY TENANCIES

1. Under Section 125 of the Housing Act 1996, the Council can extend an Introductory Tenancy if that tenancy is not conducted satisfactorily and there is a potential breach of the Introductory Tenancy Agreement.
2. The Council is required to service a Notice of Extension of an Introductory Tenancy. This must be served within eight weeks of the anniversary of the Introductory Tenancy.
3. There is a statutory requirement that the Council must afford to the tenant an opportunity to appeal against the service of the Notice.
4. The appeal must be lodged within 14 days from the date of service.
5. The appeal **must** be heard before the Notice becomes live – not less than 28 days (we adopt 35 days to allow sufficient time for the appeal process).
6. There is no first stage review by officers because of the tightness of timescales.
7. If the Notice is upheld the Introductory Tenancy is extended for 6 months.
8. If there is no appeal then the Introductory Tenancy is extended for six months. At the end of this period, the Introductory Tenancy may convert to a Secure Tenancy if the terms of the Tenancy Agreement are adhered to by the tenant. If the tenant is deemed to be in breach of the terms of the Introductory Tenancy Agreement, then a Notice of Possession Proceedings (NOPP) may be served.

# EXTENDING AN INTRODUCTORY TENANCY

## FLOW CHART



# TENANT INCENTIVE SCHEMES

The Council operates two incentive schemes designed to make the most effective use of housing stock by encouraging tenants to transfer to smaller properties from larger properties which they are under-occupying.

## **Resettlement Service**

A Resettlement Service is offered to applicants on the Housing Register who successfully bid for a specified low demand property under the HomeChoice Scheme.

The resettlement package includes assistance with removals, fitting of carpets and curtains etc.

## **Tenants Incentive Grant Scheme**

A financial incentive is offered to Secure Tenants of the Council who transfer from three or four bedroomed family-sized general needs accommodation (houses, flats or maisonettes) to a one bedroom property, or a two bedroom older person's designated property.

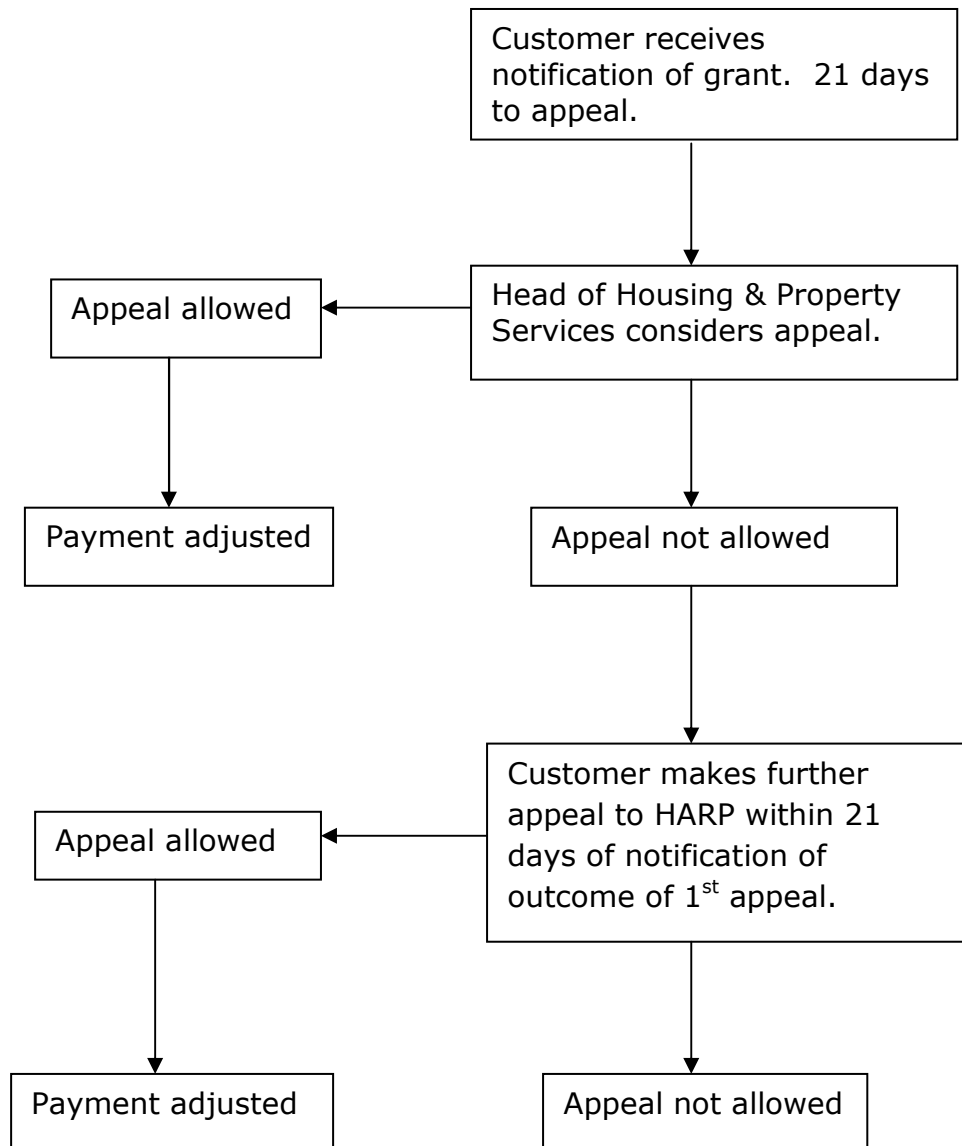
Qualifying tenants who are 60 years of age or over who transfer to a specified low demand older persons designated property will also be eligible to receive the Resettlement Service.

## **Appeal**

Where a tenant believes they have unreasonably been excluded from the scheme, or believes that the amount of their eligible grant has been unreasonably reduced will have the right to appeal to the Head of Housing & Property Services within 21 days of notification of the decision and if they remain dissatisfied, can appeal to the Housing Appeals & Review Panel within a further 21 days of receiving formal notification of the outcome of their first appeal.

# TENANT INCENTIVE SCHEMES

## APPEAL PROCESS



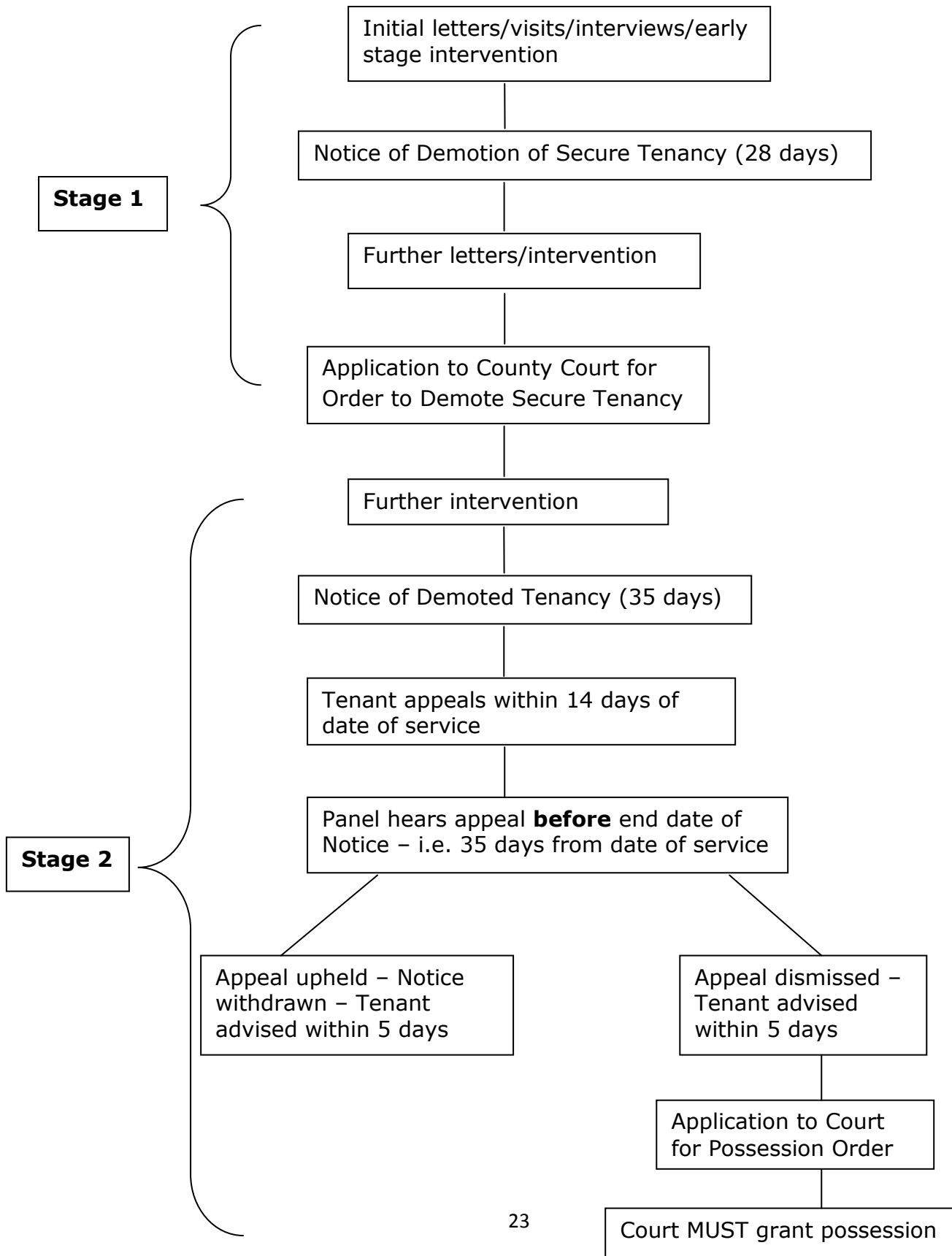
## **DEMOTED TENANCIES**

1. Under the provisions of the Anti-Social Behaviour Act 2003, the demoted tenancy enables the Council to deal more effectively with anti-social behaviour. It involves a two-stage process enabling the Council to demote an otherwise Secure Tenancy and then, during the demoted period, the landlord may seek possession of the property.
2. The Council is required to serve on the tenant a Notice of Demotion of a Secure Tenancy (28 days).
3. If the alleged breach of the Tenancy Agreement persists, then an application is made to the County Court for an Order to Demote a Secure Tenancy.
4. A Demotion Order will end the Secure Tenancy and replace it with a Demoted Tenancy.
5. The demotion period will initially be for one year. (However, this may be extended if possession is sought during this time).
6. Following the expiry of the demotion period (and assuming an order for possession has not been sought during this time) the demoted tenancy reverts back to the original tenancy.
7. If the anti-social or illegal behaviour persists, the Council can gain possession of the property by serving a Notice of Demoted Tenancy.
8. There is a statutory requirement that the Council must afford to the Tenant an opportunity to appeal against the service of the Notice (Housing Act 1996 s.143 D-F).

9. The appeal must be lodged within 14 days from the date of service.
10. The appeal **MUST** be heard before the Notice becomes live i.e. within 35 days from the date of service.
11. There is no first stage appraisal of the Appeal by officers because of the tightness of timescales.
12. If the Notice is upheld on Appeal or there is no Appeal, the Court must then grant possession on demand (the Order cannot be suspended provided the formalities of the Notice are in Order).

# DEMOTION OF A SECURE TENANCY

## FLOW CHART





## **ABSOLUTE GROUNDS FOR POSSESSION- Anti-Social Behaviour, Crime and Policing Act 2014**

1. Under the Anti- Social Behaviour, Crime and Policing Act 2014 the Council can apply to the County Courts for absolute Possession of a secure tenancy, the Council has to serve on the Tenant a Notice Seeking Possession (NSP)
2. There is a statutory requirement that the Council must give to the tenant an opportunity to Appeal against the service of the Notice.
3. The Appeal has to be lodged within 7 days from the date of service.
4. The Appeal **MUST** be heard before the Notice becomes live to be a date not less than 28 days from the date of service – we adopt 35 days.
5. There is no first stage appraisal of the Appeal by Officers because of the tightness of the timescale.
6. If the Notice is upheld, or there is no appeal, the Court must then grant possession on demand.

# ABSOLUTE GROUNDS FOR POSSESSION

## Anti-Social Behaviour Crime and Policing Act 2014

### FLOW CHART

