

CONTROLLED DOCUMENT

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TENANCY POLICY

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Information for:	

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Groups/Individuals who have overseen the development of this Policy:	Housing team Extra Care Housing team
Groups/Individuals Consulted:	Operations Director/Director of Housing Services, Tenancy Services Manager

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For the Use of the Corporate Governance Team only:

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CONTENT

Section	Area Covered	Page
1	Policy Statement	4
2	Aim of the Policy and Related Legislation	5
3	Scope of the Policy	6
4	Definitions	6
5	Key Principles and Requirements	6
6	Roles and Responsibilities	14
7	Equality and Data Protection	15
8	Implementation and Training	15
9	Monitoring and Review	16
Appendices		
1	Review Panel procedure	17

1. POLICY STATEMENT

- 1.1 The Board of Brunelcare is committed to ensuring that the Charity complies with the Regulator of Social Housing's Tenancy Standard, which requires housing providers to grant tenancies which are compatible with the purpose of the accommodation, the needs of the individual household, the sustainability of the community and the efficient use of homes. In so doing Brunelcare will:
 - 1.1.1 Have due regard to the tenancy strategies published by the local authorities in which Brunelcare operates.
 - 1.1.2 Seek to make the best use of its homes, ensuring that properties are not under occupied or overcrowded, as far as possible, and adapted properties are occupied by tenants who need the adaptation for independent living.
 - 1.1.3 Will offer various tenancy types (including fixed term tenancies or market rent tenancies in certain circumstances) that make the best use of our larger and/or smaller homes.
 - 1.1.4 Will allocate homes in a fair and transparent way with all potential applicants and existing tenants given clear information and assistance throughout.
 - 1.1.5 Strive to ensure equality of opportunity for all applicants when allocating homes, having regard to individual needs.
- 1.2 Succession rights will be restricted to statutory rights to give Brunelcare increased flexibility in using homes to meet the needs of applicants on the housing and extra care waiting list.
- 1.3 Support will be provided to tenants who need it most to enable them to sustain their tenancy.
- 1.4 Brunelcare is committed to tackling tenancy fraud robustly, in cooperation with Local Authorities.
- 1.5 Tenants will be assisted to use mutual exchange or internal transfer as a way of making the best use of Brunelcare's homes, enabling tenants to move near family or support, and enjoy their home and neighbourhood.

1.6 Brunelcare seeks to enable tenants to contribute their skills and expertise in the management of their homes and communities.

Deborah Evans

Deborah Evans
Chair of the Board

O Goldsworthy

Oona Goldsworthy
Chief Executive Officer

2. AIM OF THE POLICY AND RELATED LEGISLATION

2.1 This policy sets out for customers, employees and local authorities the range of tenancies that Brunelcare may grant for each type of housing.

2.2 This policy aims to:

- provide clarity on the circumstances in which Brunelcare will grant each type of tenancy;
- offer tenancies which make the most efficient use of our housing stock and which are compatible with the purpose of the accommodation;
- make the best use of the Charity's stock to increase the number of people houses by Brunelcare;
- support tenants to remain in their home if their need for the size and type of property continues to exist when the tenancy is subject to review;
- contribute to local authorities strategic housing function;
- comply with the social housing regulators Tenancy Standard.

Relevant Legislation and Guidance

[Housing Act 1985](#)

[Housing Act 1988](#)

[Housing Act 1996](#)

[Localism Act 2011](#)

[Human Rights Act 1998](#)

[Equality Act 2010](#)

[Prevention of Social Housing Fraud Act 2013](#)

[Regulator of Social Housing's Tenancy Standard](#)

3. SCOPE OF THE POLICY

- 3.1 This Policy applies to all Brunelcare rented accommodation including: social housing and extra care housing. It is intended to give general guidance on the tenancies that will typically be offered for each type of housing.
- 3.2 The policy does not apply to leasehold and shared ownership properties.

4. DEFINITIONS

- 4.1 A *starter tenancy* is a tenancy offered to new tenants to Brunelcare and not to existing tenants who have already signed a tenancy agreement with Brunelcare (unless there are circumstances to offer a starter tenancy i.e. rent arrears on a previous property and the tenant is prepared to sign a Form 8). This is a probationary assured shorthold tenancy for a one-year period, and on successful completion will be converted to a full assured tenancy. It can be extended by a further 6 months if there are issues with the tenancy, to allow further time to monitor compliance with tenancy terms.
- 4.2 An *assured tenancy* is a tenancy offered to any existing Brunelcare tenant with an assured tenancy. This is considered a life-long tenancy. After successfully completing the probationary period of a starter tenancy, in most cases, the tenancy will become an assured tenancy.
- 4.3 An *assured shorthold tenancy* is a tenancy that will continue to be offered to those in accommodation which is intended to be temporary, or for a fixed period, and will be periodically assured. This type of tenancy will apply to Market Rent tenancies that are offered at an open market rent value.
- 4.4 A *contractual agreement* is offered to those tenants who are not able to occupy their current accommodation/sole and principal home because there is a need to decant for a short period of time due to specific reason (e.g. major repairs or they are a victim of domestic abuse/hate crime, as defined in the Decant Policy). This is an occupational agreement for temporary accommodation.
- 4.5 A *five or two year fixed-term tenancy* is an assured shorthold tenancy for a fixed term period of 5 or 2 years. A fixed term of a shorter period may be considered where it is a temporary let for a specific reason.

5. KEY PRINCIPLES AND REQUIREMENTS

Types of Tenancies

- 5.1 The types of tenancy offered are listed within section 4, above.

Starter Tenancies

- 5.2 A copy of the starter tenancy agreement will be provided to the successful applicant before they sign up and become a tenant. Applicants will be made aware of this policy and the starter tenancy review process. Any queries will be answered that the new tenant may have in relation to the tenancy prior to them signing it.
- 5.3 The conduct of the tenancy by the tenant will be kept under review and tenants will be notified throughout the tenancy if there are concerns about breaches of the agreement and what they need to do to remedy them. They will be reminded that they have a starter tenancy, and the implications if they continue to breach it.
- 5.4 Approximately ten months from the start of the tenancy, an inspection of the property and a review of the tenancy will be carried out. This review will consider the following:
- condition of the property;
 - rent account and payment record;
 - reports of anti-social behaviour or nuisance; and
 - any other breaches of the tenancy agreement.
- 5.5 Breaches of the tenancy will be investigated in accordance with Brunelcare's normal policies and procedures, for example the Anti-Social Behaviour Policy.
- 5.6 A positive review will result in the tenancy converting to an Assured or Fixed Term tenancy at the 12-month point. A negative review can result in the starter tenancy being extended or ended.
- 5.7 The initial 12-month term can be extended for a further six months by serving a written confirmation to that effect on the tenant. Where a starter tenancy has been extended by an additional six months, a further review, in line with the initial review, will take place, usually after fifteen months. No further extensions will normally be given after eighteen months.
- 5.8 If there are serious, persistent, or repeated breaches of the tenancy agreement, termination of the tenancy will be considered.
- 5.9 Tenants will, in writing, receive an explanation of the outcome of their review and the reasons for the tenancy being extended or ended. It will be explained to tenants that they have a right to request a review of this decision and that they should provide details of their personal circumstances which they wish to be taken into account. Tenants will be advised to seek independent legal and housing advice.

- 5.10 All extensions and terminations of starter tenancies will be approved by the Tenancy Services Manager following a review with the Housing Team Manager and/or the Tenancy Officer. Any request for a review by the tenant will be considered by a review panel.

Fixed Term Tenancies

- 5.11 Fixed term tenancies will be used in limited circumstances. This is not the standard form of tenancy offered.
- 5.12 A copy of the fixed term tenancy agreement will be provided to the proposed tenant before they sign up. Applicants will be made aware of this policy and the fixed term tenancy review process.
- 5.13 At the tenancy sign up Brunelcare will answer any queries that the new tenant may have in relation to the tenancy prior to them signing.
- 5.14 Approximately twelve months prior to the end of the fixed term tenancy a review will be conducted that will consider if the household still requires social housing, are eligible for social housing, and that they still require the size and type of property that they are housed in.
- 5.15 Tenancy reviews may consider other aspects of the tenancy conduct, such as arrears, payment records, anti-social behaviour, and property condition, however the Charity's aim is to investigate and deal with these under our standard policies to ensure fairness and consistency.
- 5.16 For a tenant or tenants to end their fixed term tenancy, they will need to issue Brunelcare with a formal notice. For the notice to take effect Brunelcare must accept it in writing. It may be chosen not to accept surrender if there are outstanding breaches of tenancy, such as arrears.
- 5.17 Brunelcare may seek to end a fixed term tenancy during the fixed term period through the court, using standard policies (for example due to rent arrears or anti-social behaviour).
- 5.18 Following the review, at the earliest opportunity and no less than six months before the end of the fixed term tenancy, the tenant will be notified as to whether a new fixed term tenancy will be issued upon expiry. Such notification will be by way of a '*Minded to Notice*'.
- 5.19 Where a new tenancy is not being offered, it will come to an end at the expiry of the fixed term period by the service of a Minded to Notice and a Section 21 Notice Requiring Possession. As long as both notices have been served correctly, Brunelcare will have a mandatory right to possession and vacant possession of the property will be required on or before the termination date.

- 5.20 All non-renewals of Fixed Term tenancies will be approved by the Tenancy Services Manager following a review with the Housing Officer. Any request for a review of that decision by the tenant will be considered by a review panel.

Review - Section 21 Notice or a decision not renew a Fixed Term tenancy

- 5.21 Reasonable advice and assistance will be provided to tenants when it is decided not to renew a tenancy or end a starter tenancy, this may include the following:
- Giving advice about housing options.
 - A referral to the Local Authority for further advice and support.
 - Support to access choice-based lettings and mutual exchange schemes.
 - Support to downsize, where possible.
 - Providing tenancy references.

Allocations and Lettings

- 5.22 Brunelcare has a dedicated policy covering how allocations and lettings are administered in line with the Tenancy Standard. Please refer to the Allocations and Lettings Policy. This includes our policy on any Allocation, Internal Transfer or Direct Lets.

Succession Rights

- 5.23 Brunelcare has a dedicated policy on how succession rights are administered in line with the Tenancy Standard. Please refer to the Succession Policy.

Mutual Exchanges

- 5.24 Brunelcare has a dedicated policy on how allocations and lettings are administered in line with the Tenancy Standard. Please refer to the Mutual Exchange and Assignment Policy.

Tackling Tenancy Fraud (also See Brunelcare's Fraud, Corruption and Money Laundering Policy)

- 5.25 The Housing Act 1988 states that a tenant has security of tenure if they use the property as their sole and principal home. However, if the tenant parts with possession on the property (wholly or partially) without Brunelcare's consent, security of tenure may be lost. The introduction of Prevention of

Social Housing Fraud Act 2013 created two criminal offences relating to tenancy fraud (the Local Authority has the power to prosecute).

5.26 Tenancy fraud falls into the following categories:

- Sub-letting.
- Abandonment.
- Key-selling.
- Succession fraud.
- Falsified applications or non-disclosure of relevant factors to obtain a tenancy.
- Right to Acquire where the applicant is not the main resident.
- Mutual exchanges where information about people living in the property is incorrect.

5.27 The following controls are in place to prevent/detect tenancy fraud:

5.27.1 All applicants will be interviewed before being offered a tenancy to ensure that they are the same person/household as on their housing application, the circumstances are the same as accepted by the Local Authority to give their banding priority, and any support needs can be identified prior to them being housed. In some circumstances, references from previous landlords may be sought.

5.27.2 A photograph will be taken of all tenants named on the tenancy agreement and saved against the tenants file.

5.27.3 Tenants not replying to requests for settling in visits or reviews of Starter Tenancy will be served with a Notice to Quit to highlight the importance of conducting the tenancy correctly and allowing access to Housing and Property service colleagues.

5.27.4 Tenants will be encouraged to report possible subletting or abandoned properties. All allegations will be investigated.

5.27.5 Tenancy audits will be carried out regularly taking a risk-based approach.

5.27.6 Joint working will be undertaken with Local Authority internal auditors, who will investigate suspicious circumstances with the aim of getting the property back. In certain circumstances tenants committing fraud can be prosecuted. Tenants are warned that personal data given can be shared for the purpose of investigating crime, or for the purpose of taking legal proceedings.

5.27.7 Brunelcare will seek possession and/or penalties under the Prevention of Social Housing Fraud Act 2013.

Interventions to Sustain Tenancies and Prevent Unnecessary Evictions

5.28 Interventions to help tenants sustain their tenancies with the aim of supporting tenants to become independent and self-reliant are set out in the following policies: Anti-Social Behaviour Policy, Current and Former Tenant Arrears Policy, and the Tenancy Sustainment and Support Policy.

Use of Mandatory Possession Grounds for Possession

5.29 Mandatory possession grounds will be used in the following circumstances:

5.29.1 To deal with anti-social behaviour where the circumstances include serious criminal offences and serious anti-social behaviour.

5.29.2 Where there are serious levels of arrears and a continued pattern of non-payment or the tenant has entered insolvency in the past which has resulted in rent arrears being written off.

5.29.3 With starter tenancies, where there has been a breach of tenancy that justifies ending the tenancy (as set out above), we may use Section 21 of the Housing Act 1988 to seek possession.

5.29.4 Where the tenant is not using the property as their only or principal home or it has not been returned to us on the death of a tenant.

5.29.5 Where it would normally be the procedure to end the tenancy/occupation by way of Notice to Quit.

5.30 If it is decided to take this step, the use of a mandatory possession ground will be authorised by someone of Director level due the consequences of using such a possession ground. Reasons will also be given to the tenant/occupant for the use of a mandatory ground.

5.31 Where a mandatory ground for possession is used, the tenant will be offered a chance to ask for a review of Brunelcare's decision and give them the opportunity to put forward any personal circumstances they want taken into account.

5.32 Any request for a review will be carried out as part of The Review Panel.

Making the Best Use of Stock

5.33 Brunelcare will work closely with Local Authorities to ensure:

- 5.33.1 All adaptations are noted on the property file so that adverts for lettings can be made available for applicants with needs for the adaptation.
- 5.33.2 Bungalows and properties with major adaptations are only offered to applicants with a need for this type of property. Adaptations are not routinely removed.
- 5.33.3 Requests for joint tenancies will not be granted where there will be implications for making the best use of housing stock in terms of future succession rights; this is particularly relevant for parent/child applications.
- 5.33.4 Tenants are encouraged and helped to use the Home Swapper scheme and internal transfers to meet their own required property type and area.

Sole to Joint tenancies

- 5.34 The person with the sole tenancy must apply in writing for a joint tenancy. It is at Brunelcare's discretion whether the joint tenancy is granted.
- 5.35 A joint tenancy will usually be granted in situations where there is a long-term commitment, or a spouse or partner. If a joint tenancy is declined, the applicants will be informed and given reasons in writing.
- 5.36 Considerations that should be taken into account in granting a joint tenancy include, but are not limited to:
 - 5.36.1 The likely continuance of the long-term commitment to the home, such as whether the other person has given up their own home to live with the tenant and has lived with the tenant for a continuous period of twelve months.
 - 5.36.2 Whether there are implications for the future in making the best use of the housing stock in terms of succession rights.
 - 5.36.3 Whether the prospective tenant meets Brunelcare's age requirements (over 55 years of age).
 - 5.36.4 Whether there has been a breach of the Tenancy Agreement, including outstanding debts, previous rent arrears, or anti-social behaviour.
 - 5.36.5 Whether the creation of a joint tenancy would mean the property is overcrowded or under occupied.

5.36.6 Whether the prospective tenant has a tenancy or an interest in property elsewhere.

5.37.7 Whether the tenancy has previously been succeeded.

5.37 Where permission is given, the change in tenancy should be carried out through a Deed of Assignment. Any debts owed to Brunelcare should be cleared in full before a Deed of Assignment is signed.

Joint to Sole Tenancies

5.38 Circumstances may arise such as a relationship breakdown, where one tenant may wish to assign the tenancy to the other as sole tenant.

5.39 The tenancy may be assigned, on the order of a court or with Brunelcare's permission, to someone who would have been qualified under the clause of the Tenancy Agreement relating to succession to the tenancy had the tenant died.

5.40 Both tenants need to agree to this change and sign a Deed of Assignment. If they cannot agree, they will be advised to seek legal advice to decide this issue between them.

5.41 Any debts, owed to Brunelcare, should be cleared in full before a Deed of Assignment is signed.

Decant

5.42 Brunelcare has a dedicated policy on how situations involving a decant are administered in line with the Tenancy Standard. Please refer to the Decant Policy.

Vulnerable Tenants/Residents

5.43 When letting properties or dealing with anyone under any part of this policy, the needs of vulnerable people will be taken into account. This will be through:

5.43.1 Providing advice and signposting people to other organisations or support agencies who can provide specialist support.

5.43.2 Making referrals within Brunelcare e.g. Help When You Need It.

5.43.3 Making referrals to external organisations.

5.43.4 Helping with the completion of forms or applications.

5.43.5 Providing information in other formats (translations/interpreting services, Braille or Large Print, etc.) to aid accessibility.

5.43.6 Discussing matters with any authorised advocate or Power of Attorney.

5.43.7 Arranging home visits or a place that is considered safe (where that is appropriate in the circumstances).

6. ROLES AND RESPONSIBILITIES

The Board of Brunelcare (Employer and Landlord)

6.1 The Board has overall accountability for the activities of the organisation, which includes tenancy arrangements. The Board will ensure that it receives appropriate assurance that the requirements set out in this policy are being met.

6.2 The Board discharges its responsibilities for tenancy arrangements through the Chief Executive Officer. It will report back to residents or their family representatives on how Brunelcare manages and assures the quality and safety of its tenancy arrangements.

Chief Executive Officer

6.3 The Chief Executive Officer has overall accountability for the provision of efficient and effective tenancy arrangements.

6.4 The Chief Executive Officer discharges the day to day operational responsibility for tenancy management through the Operation Director/Director of Housing Services.

Operation Director/Director of Housing Services

6.5 The Operations Director/Director of Housing Services is responsible for the operational delivery of this Policy and the associated procedures.

6.6 The Operations Director/Director of Housing Services will put clear mechanisms in place:

- to monitor and measure compliance with the policy, setting a performance framework that includes key Performance Indicators (KPIs);
- provide regular performance reports to the Board; and
- ensure performance against key performance indicators is regularly reported to Brunelcare's customers.

Tenancy Services Manager

- 6.7 The Tenancy Services Manager will oversee the tenancy process and Housing team, ensuring its efficient and effective operation.
- 6.8 The Tenancy Services Manager will report to the Operation Director/Director of Housing Services on the performance of the service.
- 6.9 Everyone has a professional, individual and collective responsibility to implement the policy with guidance and advice from the Tenancy Services Manager and Operation Director/Director of Housing Services as necessary.
- 6.9 Overall responsibility for the effective management of each individual case lies with the relevant Housing Team Manager/Tenancy Officer for the patch, or the Centre Manager/ECH Officer for Extra Care Housing.

7. EQUALITY AND DATA PROTECTION

Equality and Diversity

- 7.1 Brunelcare seeks to embed an environment where all clients, visitors and employees are treated as individuals, fairly and in a consistent way. We work within the spirit and the practice of the Equality Act 2010 by promoting a culture of respect and dignity and actively challenging discrimination, should it ever arise. This Policy will be applied in a way that is consistent with these principles.
- 7.2 This policy is available on request in other formats (for example in an alternative language, in Braille, on tape, in large type).

Data Protection

- 7.3 Brunelcare is committed to ensuring protection of all personal information that we hold, and to provide and protect all such data.
- 7.4 Brunelcare is dedicated to safeguarding the personal information under our control and in maintaining a system that meets our obligations under the General Data Protection Regulation (GDPR). Our Practice is set out in our Data Protection Policy.
- 7.5 It is recognised that dealing with tenancy issues will involve sensitive data, particularly from applicants and third-party agencies and therefore particular thought and care will be taken when processing data relating to this policy.

8. IMPLEMENTATION AND TRAINING

- 8.1 The Operation Director/Director of Housing Services has delegated the day-to-day responsibility for the implementation of this policy and for its regular review to the Tenancy Services Manager and Customer Services Manager.

8.2 The Housing Team and Customer Service Team should be referred and introduced to this policy upon induction.

9. MONITORING AND REVIEW

9.1 This policy will be reviewed every three years, or following any major statutory or regulatory changes, significant changes in procedures or practices, or if the author deems it to be required.

9.2 Information gathered through tenancy management processes will be reported to the Board on a regular basis to allow benchmarking against tenancy standards, and to ensure the effective implementation of this policy.

Review Panel for Ending of a Starter Tenancy (Section 21 Notice)



1. A Starter Tenancy

All new tenants are given a Starter Tenancy. It is explained to them when they sign up that they do not have the rights of a full assured tenancy. If a person who has a Starter Tenancy has a Notice Requiring Possession served upon them (also known as a Section 21 Notice), this will be for one of the following reasons:

- i) The tenant, a member of the household or a visitor to the property is behaving in an antisocial manner that is causing a serious problem, and the behaviour has continued despite warnings and requests to amend the behaviour.
- ii) The tenant, a member of the household or a visitor to the property has been responsible for a single incident that is regarded as very serious (e.g. violence or arson).
- iii) The tenant has not adhered to the Tenancy Agreement (including rent arrears) and has not put the matter right to the satisfaction of Brunelcare following repeated requests.

At the point the Notice Requiring Possession (Section 21 Notice) is hand delivered to the property, the tenant is given a letter with the reasons why the Notice has been served and a date when we want them to leave the property. The tenant is also informed of the right to appeal if the tenant feels the service of the Notice is unreasonable. The appeal must be sent to the Tenancy Services Manager within 14 days of the date of the Notice.

2. Review Panel

A panel meeting will be arranged within 21 days of receiving the appeal from the tenant and the tenant informed of the date, and the fact that they may bring a person as support. This is a meeting where the tenant will be able to say why they think the Notice should not have been served and why they should be allowed to remain in the property.

The Review Panel's members will consist of the Tenancy Service Manager and Director of Housing Services. A report will be written by the Housing colleague involved in the case and submitted to the panel members detailing the evidence along with reasons for the serving of the Notice. A copy of the letter sent by the tenant stating why they feel the service of the Notice was unreasonable will be considered by the panel members at the meeting, along with any further information the tenant wishes to provide to panel members.

3. Considerations of the Panel

The panel will review what the tenant has to say and review Housing information/evidence gathered. They will consider:

- i) Whether the tenant has been served notice correctly.
- ii) Whether the tenant, a member of the household or any visitor has behaved in a way which has caused serious harassment, alarm or distress to people who live in the area.
- iii) If the tenant has used their home in an illegal or immoral way.
- iv) If the tenant, anyone living at the property or a visitor has been convicted of a serious offence in the locality.
- v) Whether the tenant has breached the terms of the tenancy agreement despite repeated requests to remedy this or in a way that cannot be put right.
- vi) Whether the incidents complained of justify eviction.

4. Decision

Once the panel has heard what the tenant has to say and reviewed the information available from housing colleagues, a decision will be made and the decision will be one of the following:

- i) The Notice is reasonable; or
- ii) The Notice will not be taken further; or
- iii) The panel may decide that further evidence is needed and therefore will adjourn the meeting for another date.

If the decision is that the Notice is regarded as reasonable and correctly served, Brunelcare will continue with possession proceedings, unless the tenant has already left. The court must give a possession order (as a Section 21 notice is a

mandatory ground for possession) and as such it cannot give a suspended possession order. The court will inform the tenant of when they have to leave the property. If the tenant does not leave by that date, Brunelcare will apply for a warrant to evict.

If the Notice is not taken further, the tenant will be allowed to continue living at the property and the starter tenancy period will be extended for a further 6 months (the starter tenancy period is a maximum of 18 months from the tenancy start date). If there are no more breaches of the tenancy agreement, the tenancy will become an assured tenancy once the period of the starter tenancy has ended (i.e. 18 months following the tenancy start date).

If there are further breaches of the tenancy, Brunelcare will commence possession proceedings and the court will inform the tenant of when they have to leave the property. If the tenant does not leave by that date, Brunelcare will apply for a warrant to evict.

If the panel decides further information is needed, the tenant will be invited to another meeting within a week when a decision will be made.

The tenant will be notified in writing of the panel's decision within 14 days from the date of the hearing.

5. Outcome of the Review

A tenant who is unhappy with the outcome of the panel meeting should contact a solicitor, the Citizens Advice Bureau or an Advice Centre. They will have a further right of review, in court, should the tenant apply for a stay of execution following the service of a Bailiff's warrant of eviction.