


BLAKE   
MORGAN



# WLGA Training – Implementation of The Renting Homes (Wales) Act 2016

Siân Jones, Adam Carbis  
and Tanya Barrett

2 March 2022

## Key Dates

---

- **15 July 2022** - Implementation Day
- **15 July 2022** - All dwellings to have Carbon Monoxide detectors
- **14 September 2022** - Last day for receipt of Section 13 Notices (standard contracts)
- **14 January 2023** - Last day for receipt of written statements of contract for converting tenants
- **15 July 2023** - All dwellings to have smoke alarms
- **15 July 2023** - EICR required for all converting tenancies

# Day 1 – What needs to be in place?

- Contracts for new residents:-
  - Secure Contract
  - Introductory Standard Contract
  - Standard Contracts
- Licences and other agreements:-
  - Under 18s
  - Homeless accommodation
  - Employees
- Section 13 Notice
- Updated Policies and Procedures

# Policies and Procedures – New or to be updated

- Use of standard contracts (including Introductory Contracts)
- Sign up processes
- Consents
- Joint Contract Holders
- Repairs & Inspections
- Succession
- Abandonment
- Under 18s
- Possession
- Rent Reviews

## Existing Tenants: Introduction

---

- Statutory abolition of tenancies
- Statutory conversion of licences and tenancies to occupational contracts (unless excluded)

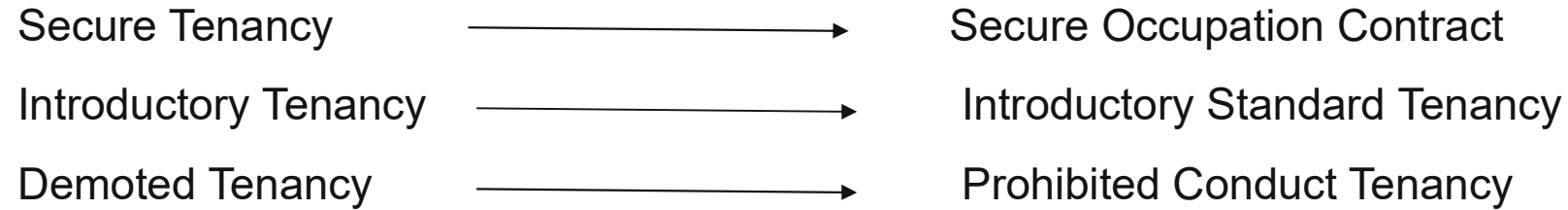
# Existing Tenants: Information Requirements

---

- Will the existing tenancy or licence be an occupation contract?
- Who are the contract holders?
- Is the contract a secure or standard contract?

Assessed immediately before Implementation.

# Existing Tenants: Conversion





# Existing Tenants: Procedural Requirements

- Issue a written statement of contract within 6 months
- Statement must include:-
  - Fundamental Terms (automatically incorporated);
  - Existing Tenancy Terms (provided not incompatible with the fundamental terms)
  - Supplementary Terms (provided not incompatible with the existing terms)
  - Comply with The Renting Homes (Explanatory Information for Written Statements of Occupation Contracts) (Wales) Regulations 2022

# Existing Tenants: Written statements of contract

- Can't be varied before the written statement is given
- Initial Notice Period – up to 14 September 2022
  - Any standard contracts will need Section 13 Notice served
  - Any standard contract can be made a secure contract by notice

Changes are then backdated to Implementation Day

- Occupation Date – is the date that occupation is allowed under the existing tenancy which is being converted
- Must be served before a possession notices can be served

# Existing Tenants: Succession

- Priority Successors —————> Spouses, civil partners, partners
- Reserve Successors —————> Family Members, carers
  
- Up to 2 successions, but no succession past a Reserve Successor

CH ———> Priority Successor ———> Reserved Successor



WLGA Training – 2 March 2022

Repair & Fitness for  
Human Habitation

Adam Carbis

## Obligations regarding Condition

---

- Condition of Dwelling (Part 4 of the RHWA, s. 91 to 99)
  - Obligations relating to condition
    - Fit for human habitation (FFHA) (S.91); and
    - Must ensure dwelling is kept in repair (s.92);
  - Apply to landlord under a secure contract, periodic standard contract or fixed term standard contract made for a term of less than 7 years.

# Dwelling in Repair (1)

- No substantive changes to law
  - reflects repair obligation implied under s.11, Landlord and Tenant Act 1985
- This obligation to keep in repair under s.92 extends to:-
  - the **structure and exterior** of the dwelling (including drains, gutters and external pipes),
    - *Irvine v Moran (1992) 24 HLR 1 - "The structure of the dwellinghouse consists of those elements of the overall dwelling house which give it its essential appearance, stability and shape. The expression does not extend to the many and various ways in which the dwellinghouse will be fitted out, equipped, decorated and generally made to be habitable. ...in order to be part of the structure of the dwellinghouse a particular element must be a material or significant element in the overall construction."*
  - the **service installations** in the dwelling, such as those:
    - for the supply of water, gas or electricity,
    - for sanitation (basins, sinks, baths, toilets and pipework), and
    - for space heating or for heating water (water and gas pipes, wiring, boilers, radiators, electric and gas fires etc).

## Dwelling in Repair (2)

- LL must keep dwelling **in repair** at all times (s.92(1))
  - Must be actual disrepair
    - *Alker v Llingwood Housing Association [2008] EWCA Civ 343* - duty to repair does not equate to duty to make safe if no disrepair (no safety glass was a hazard but no disrepair)
    - *Quick v Taff Ely BC [1986] QB 809* - Condensation caused by poor design of windows and installation rather than lack of repair not covered as no physical damage
- If dwelling forms part of building, LL must keep in repair (s.92(2))
  - Structure and repair of any other part in which LL has an estate or interest
    - *Edwards v Kumarasamy [2016] UKSC 40* - case law gives phrase wide interpretation (i.e. covered front hall block of flats over which LL had right of way)
  - Service installations which directly or indirectly serve building and either:
    - I) forms part of any part of the building in which LL has estate or interest
    - li) is owned by LL or under LL's control
  - NB LL only has to carry out repairs under s.92(2) (other parts of building) if the disrepair or failure to maintain in working order affects the contract holder's enjoyment of the dwelling or the common parts that the contract holder is entitled to use (s. 95(5))

## Dwelling in Repair (3)

- Standard of Repair (s.92(3)) –
  - that which is reasonable having regard to the age and character of the dwelling, and the period during which the dwelling is likely to be available for occupation as a home
  - Must make good any damage caused by works and repairs (s.93(1))
  - Cannot place obligation on contract holder relating to repairs (e.g. contribution to costs) if not contract holder's fault (s.93(2))
- Limits - no obligation on LL to:
  - (i) rebuild or reinstate the property if damaged or destroyed by fire, storm, flood or other inevitable accident (s.95(2)(b))
  - (ii) keep in repair or maintain anything that the tenant is entitled to remove from the dwelling (s.95(2)(a))



## Dwelling in Repair (4)

- Contract Holder Fault (s.96(2) –(3))
  - No obligation to carry out repairs under s.92(1) or (2) if disrepair, or failure of a service installation to be in working order, is wholly or mainly attributable to lack of care by the contract holder or permitted occupier
  - "Lack of care" means failure to care of the dwelling or the common parts (if forms part of a building)

## Dwelling in Repair (5)

- Notice/Knowledge of repair (s.97)
  - Obligation do not arise under s.92 until LL becomes **aware** that works or repairs are necessary
    - If internal, tenant will generally need to notify (although LL could be aware from inspection etc)
    - If outside demise and LL retains possession of area, obligation arises as soon as there is disrepair (British Telecommunications plc v Sun Life Assurance Society plc [1996] Ch 69)
  - Once LL aware of need for repair, must be carried out within a reasonable time (s.97(2))
    - Reasonable time will depend on circumstances (e.g. type and scale of the repair)

# FFHA (1)

- S.91 - Express duty to ensure dwelling is FFHA at **start and for the duration** of occupation contracts;
  - If dwelling forms part of a building, includes the structure and exterior of the building and the common parts
  - Goes further than repair obligation under s.92 (no requirement for actual disrepair although disrepair could constitute unfit FHH)
- The Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022 ("the FFHH Regulations")
  - Provide a set of specific landlord requirements which must be met; and
  - Outline 29 'circumstances/matters' which need to be taken into consideration/addressed by a landlord when deciding if a dwelling is FFHH under s.91(1)

## FFHA (2) – Specific requirements

- Specific requirements under the FFHH Regulations
  - That dwellings have working smoke alarms (by 15<sup>th</sup> July 2023)
    - On every storey, in proper working order, connected to electricity supply and interlinked
  - That dwellings have working carbon monoxide detectors (by 15<sup>th</sup> July 2022)
    - Any room with gas, oil or solid fuel burning appliance
  - That there is cyclical testing and inspection of electrical installations (EICR to be given either: by 15<sup>th</sup> July 2023 (converting), within 7 days of occupation (new) and every 5 years thereafter)
- If not in place, dwelling will be considered unfit for human habitation.

# FFHA (3) – Matters and Circumstances

- **29 matters and circumstances** to which **regard must be had** when determining if property is FFHH under s.91(1)
  - Replicates those in the Housing Health and Safety Rating System (Wales) Regulations 2006 (“the HHSRS Regulations”)
  - Familiar to LA EHOs – HHSRS prescribe hazards associated with risk of harm. LA assess dwelling by reference to these matters to identify whether Category 1 and 2 hazards exist.
    - Is distinction between HHSRS (where enforcement is responsibility of LA) and FFHA which is a term of an occupation contract and can be enforced by the Contract Holder directly against the LL
    - Includes potential harm to health (including mental health) and safety of occupier
    - NB even if hazard exists for purposes of HHSRS, does not pre-determine whether dwelling is unfit for human habitation under FFHH Regulations (see WG guidance for landlords e.g. slight variation in floor may be hazard under HHSRS but not render home unfit for human habitation)

# FFHA (4)

- WG guidance for landlords on FFHA – explains what LL must do from 15 July 2022
  - Provides context of issues that could arise from each of 29 matters and circumstances listed in FFHR Regulations to which LL must have regard
  - Provides examples of actions which a landlord should consider in order to prevent / diagnose / treat the occurrence of a particular matter and circumstance.
  - Aim is for Landlords to take steps to prevent homes becoming unfit by preventing the 'harms'/'things' listed and taking steps to ensure the continuing fitness of the dwelling.
  - In most cases it should be objectively quite clear if a property is FFHH when looking at one thing individually or a number of things taken together.

# FFHA (5)

## Matters and circumstances

- |  |  |
|--|--|
| <ol style="list-style-type: none"><li>1. Damp, mites, mould or fungal growth</li><li>2. Cold</li><li>3. Heat</li><li>4. Asbestos and manufactured minerals</li><li>5. Biocides</li><li>6. Carbon Monoxide and fuel combustion products</li><li>7. Lead</li><li>8. Radiation</li><li>9. Uncombusted fuel gas</li><li>10. Volatile organic compounds</li><li>11. Crowding and space</li><li>12. Entry by intruders</li><li>13. Lighting</li><li>14. Noise</li><li>15. Domestic hygiene, pests and refuse</li><li>16. Food safety</li></ol> | <ol style="list-style-type: none"><li>17. Personal hygiene, sanitation and drainage</li><li>18. Water supply</li><li>19. Falls associated with baths</li><li>20. Falling on surfaces</li><li>21. Falling on stairs, steps or ramps</li><li>22. Falling from one surface to another (including height)</li><li>23. Exposure to electricity</li><li>24. Fire</li><li>25. Flames, hot surfaces</li><li>26. Collision and entrapment</li><li>27. Explosions</li><li>28. Position and operation of amenities</li><li>29. Structural collapse and failing elements</li></ol> |
|--|--|

## FFHA (6) – examples

- Court will consider each case on its own facts and its own merit
  - Damp/condensation
    - Cause could be poor ventilation
    - Potential LL action - sufficient means of ventilation to cope with moisture from normal domestic activities without the need to open windows that could lead to heat loss, noise and security risks
    - Possible cause – tenant activity, improper drying, not using heating
  - Noise
    - Cause could be high noise levels outside (e.g. traffic)
    - Potential LL action – double/secondary glazing
    - NB would not however include noisy neighbour (domestic or commercial)



## FFHA (7) - Limitations

- No liability on a landlord under s.91(1) in respect of a dwelling which the landlord cannot make fit for human habitation **at reasonable expense** (s.95(1))
- **Contract Holder Fault** (s.96(1) and (3))
  - No liability on LL under s.91(1) if the dwelling is unfit for human habitation wholly or mainly because of an act or omission (including an act or omission amounting to a lack of care) by the contract holder or permitted occupier
  - "Lack of care" means failure to care of the dwelling or the common parts (if forms part of a building)
- No obligation on LL to:
  - (i) keep in repair or maintain anything that the tenant is entitled to remove from the dwelling (s.95(2)(a))
  - (ii) rebuild or reinstate the property (or the building if dwelling is part) if damaged or destroyed by fire, storm, flood or other inevitable accident (s.95(2)(b))

## FFHA (8)

- Notice/Knowledge of repair (s.97) (same as for repair)
  - Obligation do not arise under s.92 until LL becomes **aware** that works or repairs are necessary
    - Potential uncertainty as to at what point will become 'aware'
  - LL complies with provisions if carries out necessary works or repairs within a reasonable time after the day on which the LL becomes aware they are necessary (s.97(2))
    - Reasonable time will depend on circumstances (e.g. type and scale of the repair)
    - NB express requirement in standard contract for CH to "notify the landlord as soon as reasonably practicable of any fault, defect, damage or disrepair which the contract holder reasonably believes is the landlord's responsibility"

## FFHA (9) - consequences

- CH can bring a claim for breach of contract and seek damages. Ultimately for court to determine if breach of repair or FFHH obligations.
  - NB extends CH's rights where dwelling not FFHH (previously could only bring a claim for breach of repair under s.11 LTA or ask LA to inspect and take action under HHSRS)
  - Contract holder can seek an order for specific performance of the LL's obligations under s.91 and 92 (s.100)
- If premises is not FFHH, no rent payable for that period
- Non-retaliatory eviction under standard contract (if CH has enforced or relied on the LL's obligations under s.91 or s.92 and court is satisfied LL has made possession claim to avoid complying with those obligation, court may refuse to make order for possession) s.217

## FFHA (10)

---

- Right of Access to Inspect (s.98)
  - Right to enter at any reasonable time to:
    - (a) inspect condition or state of repair of dwelling;
    - (b) carry out works or repairs to comply with s.91 or 92
  - Must give contract-holder at least 24 hours' notice (s.98(2))

## FFHA (11) – Action points

---

- Begin installing carbon monoxide detectors and smoke detectors
- Begin a robust process for electrical testing
- Review planned programmes in light of the 29 conditions
- ‘Awareness’ - Ensure that where visits take place, any issues or concerns raised are recorded and information shared between departments
- Seek early advice where problems are apparent



WLGA Training – 2 March 2022

Homelessness Accommodation

Tanya Barrett

# Where Accommodation is provided by the LHA

- A tenancy or licence made **by a LHA** because of its homelessness functions is **not** an occupation contract **unless** the LHA is satisfied it owes a duty to the applicant under Section 75(1)

*i.e.* – A duty to secure accommodation where an applicant is eligible, homeless, and in Priority Need. (Paragraph 11, Schedule 4).

- This duty is triggered either:-
  - by the end of the 56 day period; or
  - an earlier acceptance of duty decision.
- Upon a Section 75(1) duty being triggered, the accommodation is thereafter provided pursuant to a Periodic Standard Occupation Contract.
- The Section 75 duty can be still be discharged by:-
  - Acceptance of an offer of accommodation
  - Refusal of an offer of accommodation

# Ending a Standard Periodic Contract

- Once a standard periodic contract has come into existence it can be ended:
  - by agreement,
  - as a result of breach of tenancy,
  - Following a Section 173 Notice.



# Ending a Periodic Standard Contract on discharge of duty

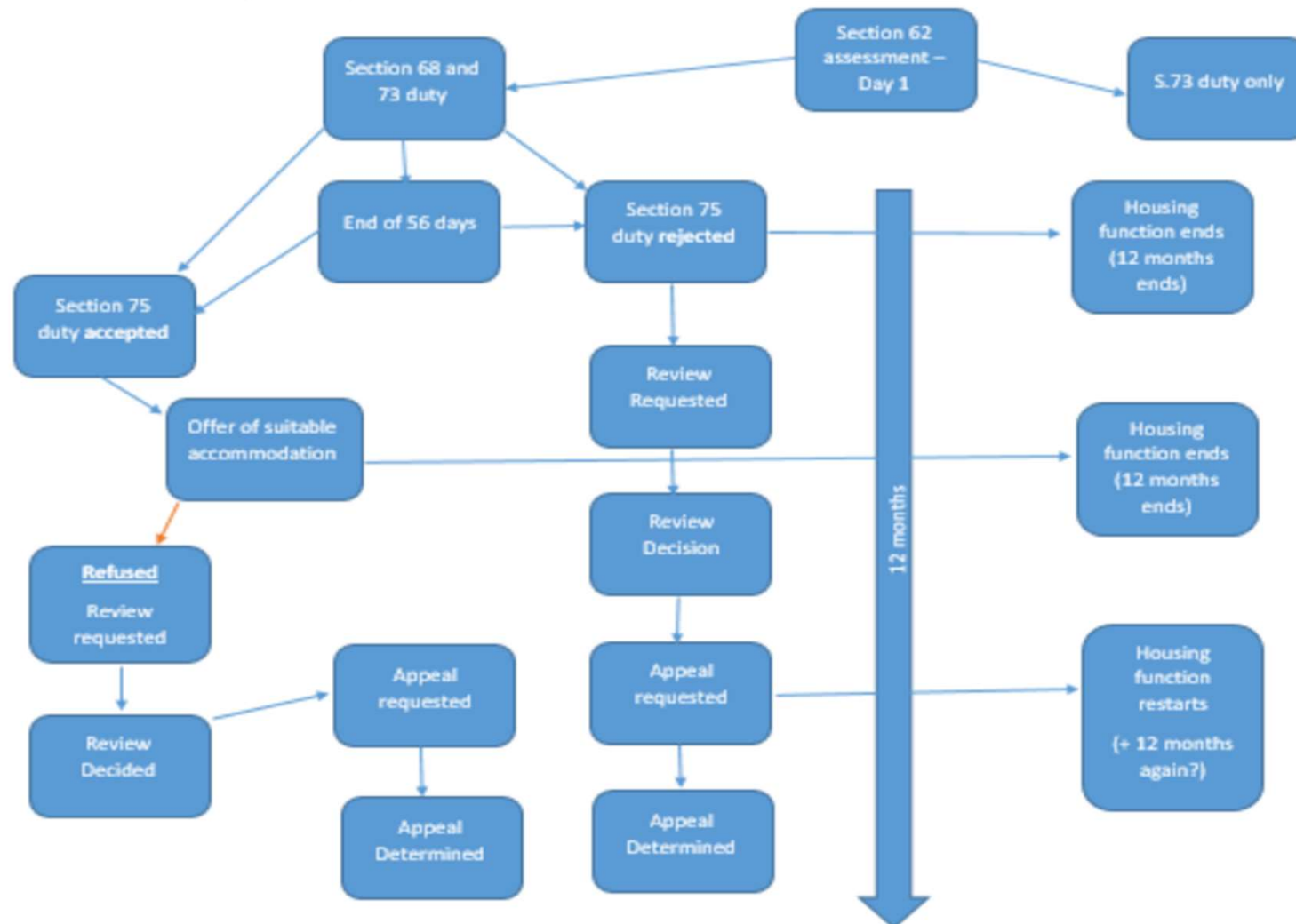
- A Periodic Standard Occupation Contract created as a result of the LHA's homelessness functions can be ended pursuant to Section 173 upon giving **2 months notice**.
- You will **not** need to wait until 6 months after the start of the agreement to serve notice but you will need to have made sure to have provided the following **before** serving a notice:-
  - Written statement of contract within 14 days (otherwise cannot serve for 6 months).
  - An address to which documents can be sent within 14 days
  - A valid EPC
  - A Gas Safety Certificate
- A contract cannot be ended when:
  - A deposit has not been protected/prescribed information not provided
  - Where security has been taken in a form other than money or Guarantee
  - Where prohibited payments have been made and not repaid
  - Where the dwelling is unfit for human habitation

# Where accommodation is provided by a relevant landlord

- Where a LHA makes arrangements with a 'relevant landlord' (a community landlord/a RSL/a PRPSC) for the provision of accommodation a tenancy or licence will not be an Occupation Contract until:-
  - 12 months after the applicant was notified of a Section 62 decision (*'the notification period'*); or
  - The landlord decides to give the applicant an occupation contract.
- The 12 month notification period starts on the date of notification of the 62 decision and continues throughout the period of the application regardless of whether accommodation is being provided under Section 68, 73 or 75.

- The only circumstance under which the relevant period appears to stop running is where suitable accommodation has been offered in discharge of the LHA's homelessness function.
- This is on the basis that (arguably) the accommodation is no longer being provided pursuant to your 'homelessness housing functions' once a Section 84 decision has been provided to the applicant ending duty.
- If an appeal is then made to the County Court (following a review of the decision) the time limit will begin to run again as any such accommodation you choose to provide during the appeal **is** provided pursuant to your 'homelessness housing functions'.
- After a total of 12 months has lapsed a standard periodic contract would be entered into.

Where accommodation provided by relevant Landlord





# WLGA Training – 2 March 2022

## Supported Accommodation

Tanya Barrett

# Where no occupation contract is provided

- Supported agreements **can** initially be tenancies or licences for the first 6 months ('the relevant period').
- An agreement will become an occupation contract automatically at the end of 6 months. At this time the Landlord is required to issue an occupation contract.
- The Relevant Period can be **extended** by three months with the consent of the Local Housing Authority (where the Landlord is not a LHA).
- *You will need to work with Landlords to ensure that there is an agreed process in place to allow you to be able to provide timely consent.*
- The occupier should be consulted and four weeks notice of the extension must be given by the Landlord once consent has been given by the LHA.

# Challenges to extension decisions

- If the occupier disagrees with a decision to extend they can make an application to the County Court to challenge the decision.
- Where a County Court challenge is made, it would either be:-
  - a) a challenge to the LHA's decision to extend (where accommodation is their own); or
  - b) of the LHA's decision to give consent to a landlord to extend
- In both cases it is the LHA's decision making being challenged and the process is intended to be akin to judicial review.

# Where Supported Standard Occupation contracts are provided

- 'A Supported Standard Contract' is a contract which '*relates to supported accommodation*'
- '**Supported accommodation**' is accommodation which is:-
  - Provided by a Community Landlord or Registered Charity; and
  - Landlord/Charity/Third party on behalf provides supports services; and
  - There is a connection between providing the accommodation and providing the support
  - Care institutions are excluded
- '**Support services**' are services which provide:-
  - Support in controlling over coming addiction
  - Support in finding employment or alternative accommodation
  - Support for someone who finds it difficult to live independently (age/illness/disability/other)
  - '**Support**' can include advice, training, guidance and counselling
- **Mobility Clauses** can be included in agreements to allow for mobility between units in the same building



# Temporary exclusion

- It is possible to **temporarily** exclude an occupant thereby requiring them to leave the dwelling **immediately** and not return for up a specified period of **up to 48 hours**. This includes communal areas.
- **Notice** must be given to the contract holder of the reason for the exclusion and this must be done at the time of the exclusion or as soon as reasonably practicable thereafter.
- A person can be excluded up to three times in any rolling six-month period.
- It is intended that such clauses are relied on:-
  - as a last resort to ensure the safety of others,
  - not punish the contract holder
  - to act as a period of reflection for the contract holder with a view to avoiding eviction.

# Grounds for exclusion

- Matters that can justify a temporary exclusion are:-
  - Use of violence against any person
  - Doing something in the dwelling (including common parts) which creates a risk of serious harm to any person
  - Behaving in a way which seriously impedes the ability of another resident to benefit from the support being provided
- Guidance published by the Welsh Ministers can be found at:-  
<https://gov.wales/sites/default/files/publications/2022-02/supported-accommodation-temporary-exclusion-procedures-statutory-guidance.pdf>  
and landlords must have regard to this guidance when deciding whether or not to exclude.

# Process for exclusion

- Landlords should:-
  - Have a 'temporary exclusion' Policy in place which addresses:-
    - steps to be taken before using the power; and
    - arrangements which can be put in place to prevent street homelessness in the event of an exclusion.
    - The make up of any review panel
  - Have regard to any vulnerabilities and risk to the excluded occupier when taking the decision to exclude
  - Only exclude as a last resort where relocation would not be appropriate/would not resolve the issue
  - Document all steps taken short of exclusion to be used as part of the review process.

- The decision to exclude:
  - Should be taken by a manager or someone who is suitably experienced and senior with responsibility for the operational management of the supported accommodation *(NB: A more senior member of staff would be required to conduct any review)*.
  - May need to be taken immediately/quickly and appropriately senior staff should be available on an 'on call basis'.
  - Should be documented by way of incident log in the contract holder's support plan

# Review of exclusion

- In each case of an exclusion a review of the decision should be undertaken within 14 days and include a 'lessons learned' session as part of the landlords preparation for a review meeting.
- A face to face review should then be held between those concerned in the incident and the contract holder should have the opportunity to attend.
- The contract holder should:
  - be given one weeks' notice; and
  - be signposted to support services to assist with/accompany them to the review process.
- Detailed guidance on the matters to be considered in the review and the make up of review panels can be found in the linked guidance (above).

# Practical considerations for LHAs

- Having a process to enable requests to extend the 'relevant period' to be considered and document and which would be capable of withstanding a challenge in the courts.
- Facilitating communication between landlords in the same locality to:
  - avoid (where possible) exclusions (by moving an occupier); or
  - to prevent the street homelessness of those excluded.
- Ensuring that Homelessness Advice Services/Housing Options departments are equipped to:
  - assist landlords who need to exclude contract holders; and
  - Assist excluded contract holders to prevent street homelessness.

- Let Landlords know what would be needed by HAS/HO to assist those who are excluded.
- Provide Landlords/Contact holders with appropriate benefits advice in the circumstances.
- Having sufficient availability to attend review meetings where possible.

BLAKE   
MORGAN