



Decision Maker:	Cabinet Member for Housing Services
Date:	23 August 2019
Classification:	General Release
Title:	Changes to the Tenancy Policy
Wards Affected:	All
Key Decision:	Yes
Financial Summary:	There are no financial implications as a result of the changes to the Policy
Report of:	Executive Director of Growth, Planning and Housing

1. Executive Summary

The council started issuing flexible or fixed term tenancies in 2013 and the first of these are due to expire later in 2019. The review process, to decide if a further tenancy should be offered at the same or another address, began in January. The council's Tenancy Policy sets out how long tenancies are for and when they will be renewed and it also outlines the review process.

- 1.1 Detailed processes have been developed in order to implement the tenancy reviews and legal advice has been sought on them. Some changes are proposed to the Tenancy Policy to reflect this advice. Additionally, changes are also proposed to the Tenancy Policy to generally update the Policy and to reflect the current legal framework and the council's current organisational structure.
- 1.2 It has already been agreed as part of the council's Supply and Allocation of Social Housing Report 2018/19 not to go ahead and implement the Pay to Stay approach set out in the Tenancy Policy (where higher income flexible tenants

may pay more rent). For completeness some further changes are proposed to the Tenancy Policy to reflect this decision.

2. Recommendations

2.1 It is recommended that:

With regard to implementing tenancy reviews:

- 2.1.1 The Tenancy Policy is amended at 3.3, 3.5, 4.7 and 4.16 to reflect circumstances where a new flexible tenancy of more than two or five years may be granted.
- 2.1.2 The Tenancy Policy is amended at 4.17 and 4.18 to set out that legal notices to end all flexible tenancies will need to be served, regardless of whether a new flexible tenancy is being offered and to describe the associated information that will accompany this.

With regard to not introducing a local Pay to Stay Scheme:

- 2.1.3 The reference to income and capital reviews in the Tenancy Policy at 4.6.3 is removed

With regard to generally updating the Tenancy Policy to reflect legislative and organisational changes:

- 2.1.4 The Tenancy Policy is amended at 4.14.2 to make it clear that the mandatory right to possession has been implemented as part of the Antisocial Behaviour, Crime and Policing Act 2014
- 2.1.5 The Tenancy Policy is amended at 3.11 to make it clear that a secure tenancy will be awarded to any secure or assured tenant that needs to move as a result of domestic abuse in line with the Secure Tenancy (Victims of Domestic Abuse) Act 2018
- 2.15 A range of minor changes are made throughout the Tenancy policy to improve the wording and to reflect updated job titles and practices etc.
- 2.16 The Tenancy Agreement and Notices are approved

3. Reasons for Decision

3.1 With regard to implementing tenancy reviews

Legal advice has been received on the review process and as a result some changes are needed to the Tenancy Policy:

- The Tenancy Policy currently says that new tenancies will not be for longer than two or five years. Legal advice is that where a new flexible tenancy is offered, it should not cause a tenant to suffer a loss of entitlement. For example, if a further five year tenancy were to be offered at the review (which is held eight months before the tenancy expires) which the tenant accepted by ending his existing five year term early, then he would not have enjoyed the full length of his original term. To avoid this, and to incentivise existing flexible tenants to enter into new flexible tenancies early, new tenancies may be offered for longer than two or five years to ensure that the tenant does not thereby lose any time as a flexible tenant. For example, if the existing term is expressed to end on Monday 2 September 2019 but the tenant enters into a new tenancy that commences on Monday 6 May 2019 the new tenancy term will be expressed to end on Monday 2 September 2024 (a fixed term of five years and four months).
- The Tenancy Policy currently says that where a decision has been made not to renew a tenancy, a 'Notice of Non Renewal' will be served at least six months before the tenancy is due to expire. Legal advice is that a legal notice best described as an "End of Tenancy Notice" must be served on *all tenants* at least six months before their current tenancy is due to end, even if, the flexible tenancy is being renewed. This is to enable the council to rely on the mandatory right to possession, a right that will have to be invoked if the tenant declines to sign a new flexible tenancy. In the absence of a possession order such a tenant would, by default, become a periodic secure tenant.

3.2 ***With regard to not introducing a local Pay to Stay Scheme:***

Westminster's Tenancy Strategy and Tenancy Policy support a Pay to Stay approach, which involves a higher rent being charged if it is identified at the tenancy review that the income of the tenant and their spouse or partner exceeds a certain threshold. It was agreed, as set out in the Supply and Allocation Report of Social Report 2018/19 that this policy should not go ahead at this time and this type of approach would be considered again as part of a full policy review. For completeness, some further additional changes need to be made to the Tenancy Policy to reflect this.

3.3 ***With regard to generally updating the Tenancy Policy to reflect legislative and organisational changes:***

The current Tenancy Policy refers to no further tenancy being granted to flexible tenants if they, or a member of their household, had been convicted of serious housing related anti-social behaviour in another court, and the offence meets the criteria to trigger the proposed mandatory Right of Possession. This right to mandatory possession has now become law as part of the Antisocial Behaviour, Crime and Policing Act 2014 and the Tenancy Policy needs to be updated to reflect this. Changes are also needed to make it clear that any existing secure or assured tenant will be offered a secure tenancy in line with the Secure Tenancy (Victims of Domestic Abuse) Act 2018

- 3.4 Minor changes are also needed to the Tenancy Policy to improve the wording and to reflect organisational changes and practices.
- 3.5 Changes are also need to the Tenancy Agreement and Notices to improve the wording, ensure they reflect the legislation and changes to the Tenancy Policy, and are fit for purpose going forward

4. Background, including Policy Context

The Localism Act 2011 introduced a new flexible tenancy, which is a type of secure tenancy but can be for a fixed term. It also placed a requirement on local authorities to develop a tenancy strategy for their local area, setting out the council's supported approach to social tenancies i.e. the type of tenancies that should be issued and how long they should be for. Local registered providers are required to 'have regard' to this Strategy.

- 4.1 The council published its Tenancy Strategy in 2012 following a consultation with residents, registered providers and other stakeholders. The Strategy supports the use of fixed term tenancies for the majority of new social tenants, in order to make best use of the housing stock given high levels of demand. In 2013 a Tenancy Policy was published for the council's own housing stock which set out that the majority of new tenancies would be flexible ones for a fixed period of five years, following a one year introductory tenancy. The Policy also gives detail on how and when the reviews will be carried out to decide if a new tenancy should be offered at the same or another address.
- 4.2 There are now 1,205 flexible tenancies and the first of these are due to expire in September 2019, with the review process starting in January 2019. A set of processes have been developed in order to implement the tenancy reviews and legal advice has been sought on them.
- 4.3 The policy landscape has changed since the introduction of flexible tenancies. The Housing and Planning Act 2016 contained provisions to phase out secure lifetime tenancies for *all* tenants, but government announced in the Social Housing Green Paper 'A new deal for social housing' that it was not being implemented 'at this time', in view of concerns from residents. It goes on say that government 'recognise the benefits of fixed term tenancies in the right circumstances' and that decisions should generally be at local level, 'in consultation with residents, the wider community, and other social landlords in the area'. It is recommended above that a full review of the council's Tenancy Strategy is undertaken when the council has one full year of experience of implementing flexible term tenancies.

5. Equality Implications

- 5.1 A full equality impact assessment was undertaken on the Tenancy Strategy and Tenancy Policy in 2012 and there are no new equalities implications arising from the minor changes to the Tenancy Policy.

6. Legal Implications

- 6.1 By virtue of the Localism Act 2011, the City Council must have regard to its Tenancy Strategy in the exercise of its housing management functions. In reviewing its Tenancy Policy the City Council has had regard to its Tenancy Strategy.
- 6.2 The City Council is required to have clear tenure policies covering (amongst other matters) the types of tenancy they will grant, the circumstances in which they will grant tenancies of a particular type, the length of the fixed terms, the circumstances when further tenancies may be granted, exceptional circumstances for tenancy terms of less than 5 years, as well as outlining tenancy management approach to sustaining tenancies, appeals and complaints etc.
- 6.3 Processes have been developed to implement the tenancy reviews and amendments to the Tenancy Policy are required to reflect this and generally as set out in the report.
- 6.4 Following the outcome of the review meeting, a new flexible tenancy will be offered to flexible tenants unless the circumstances set out in the policy apply. The new flexible tenancy will be for a further two or five years from the current tenancy end date. Adopting this approach whereby any shortfall on the duration of the first tenancy is compensated with a corresponding lengthening of the renewal tenancy is consistent with the Tenancy Strategy, which does not preclude the granting of flexible tenancies for more than five years.
- 6.5 By virtue of section 107 of the Housing Act 1985 legal notices to end flexible tenancies must be served on all tenants at least six and two months before the current tenancy is due to end. This is irrespective of whether the tenancy is to be renewed at the same property or not. This is so as to enable the Council to exercise its mandatory right to possession under s 107 if necessary, as failure to serve these notices will give rise to the tenancy becoming a secure periodic tenancy.
- 6.6 Where a tenancy is to be renewed at a different property, a break notice (ie 4 weeks written notice ending on a Monday) will be sought from the tenant prior to the signing of the new tenancy. This is so the Council can manage the risks where the tenant moves but claims the previous tenancy still endures, or where the tenant fails to move out etc.

- 6.7 The tenancy agreement and notices have also been amended/drafted to reflect the changes and to ensure they comply with the legislation and are fit for purpose going forward.
- 6.8 Officers have sought Counsel's advice on the review processes, Tenancy Policy, Tenancy Agreement and notices etc, in implementing these changes so as to minimise the risk of legal challenge.
- 6.9 The other updating of the policy to reflect legislative changes are as set out in the body of the report.
- 6.10 Section 149 of the Equality Act 2010 sets out the public sector equality duty which requires local authority when exercising its functions to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and those who do not. Relevant protected characteristics for these purposes include age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 6.11 Reference should also be made to section 5 above concerning Equality Implications where it is not considered that new equalities implications arise from the changes to the Tenancy Policy.
- 6.12 As a public authority, the council must take account of the provisions of the Human Rights Act 1998 and not act in a way which is incompatible with a Convention right. Under Article 8, any interference with the right to respect for a person's private and family life and home must be proportionate, and officers of the Council need to ensure proportionality in their decision making when determining tenancies, and Article 14 requires that there must be no unjustified discrimination within the scope of human rights on any grounds, such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.

7. Financial Implications

- 7.1 There are no financial implications arising as a result of the changes to the Policy

8. Risk Management Implications

8.1 There are no risk management implications arising from the minor changes to the Tenancy Policy.

9. Consultation

9.1 The proposed changes to the Tenancy Policy, in order to implement the tenancy reviews, are minor and therefore a consultation is not needed. A full consultation will be carried out when the Tenancy Strategy is updated in 2020.

10. Communications implications

- 10.1 The notices referred to in 2.1.2 and 3.1 above will be served with a letter that, subject to the outcome of the flexible tenancy review, will either:
- (a) inform the tenant(s) that their tenancy is to be renewed for a five year term;
 - (b) inform the tenant(s) that their tenancy is to be renewed for a two year term;
 - (c) inform the tenant(s) that their existing tenancy will not be renewed but explain that they will be offered a tenancy in a different property; or
 - (d) inform the tenant(s) that they will not be offered a new tenancy and that the council intends to seek possession of the property at the end of their current tenancy.
- 10.2 Where appropriate the letters will set out the process for seeking a review, inform the tenant(s) that any breaches of their tenancy agreement could see the recommendation reviewed by the council, and advise the tenant to either contact their local housing office or to seek independent advice if there is anything in the Notice or accompanying letter that they do not understand.
- 10.3 Where tenancies are being renewed tenants will be advised in person and in writing of the end date of their new tenancy to ensure they understand that they are receiving their full tenancy entitlement.

If you have any queries about this Report or wish to inspect any of the Background papers please contact:

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BACKGROUND PAPERS

Westminster Tenancy Strategy 2012 (slightly updated 2016) can be found at the following link:

www.westminster.gov.uk/housing-strategies

Westminster Tenancy Policy 2013 (slightly updated 2016) can be found the following link:

www.westminster.gov.uk/housing-strategies

The Supply and Allocation of Social Housing Report 2018/19 can be found at the following link:

www.westminster.gov.uk/how-we-allocate-housing

The associated decision report can be found at the following link:

committees.westminster.gov.uk/ieDecisionDetails.aspx?Id=967

For completion by the **Cabinet Member for Housing Services**

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: _____

State nature of interest if any

.....
(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendations in the report entitled **Changes to the Tenancy Policy** and reject any alternative options which are referred to but not recommended.

Signed

Councillor Andrew Smith, Cabinet Member for Housing Services

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, the Executive Director of Finance and Resources, and, if there are human resources

implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

Appendix A

Other Implications

1. **Resources Implication**
There are no resource implications.
2. **Business Plan Implications**
There are no Business Plan implications.
3. **Health and Wellbeing Impact Assessment including Health and Safety Implications**
There are no Health and Wellbeing or Health and Safety implications.
4. **Crime and Disorder Implications**
There are no Crime and Disorder implications.
5. **Impact on the Environment**
There are no environmental impacts.
6. **Staffing Implications**
There are no staffing implications.
7. **Human Rights Implications**
There are no Human Rights implications.
8. **Energy Measure Implications**
There are no Energy Measure implications.

Appendix B – Amendments to WCC Tenancy Policy