

Report to Safer Neighbourhoods and Active Communities Scrutiny Board

09 December 2021

Subject:	Review of Tenancy Conditions
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1 Recommendations

- 1.1 That the Scrutiny Board considers the progress made to date in reviewing the Council's Tenancy Conditions and the results of the statutory consultation exercise.
- 1.2 That the Scrutiny Board considers and comments on the information presented and the plans to take forward the review of tenancy conditions.



2 Reasons for Recommendations

- 2.1 The Council has recently concluded a statutory consultation regarding proposed amendments to the Council's Tenancy Agreement. The Tenancy Agreement is the legal contract between the Council and tenant and details the tenant's rights and responsibilities and the Council's rights and responsibilities. Officers have received just short of 1,600 responses (1,597) and this report details the issues raised in the consultation together with the Council's proposed response to the feedback.
- 2.2 Last reviewed in 2009, the current tenancy conditions have been reviewed to both update them and align them with the modernisation of the Council's Housing Service. In addition, and looking ahead, the



Council needs to ensure that the conditions are fit for purpose specifically to support the sustainment of tenancies, to continue to tackle anti-social behaviour, to help the Council to maintain housing standards and to contribute toward preventing homelessness.

3 How does this deliver objectives of the Corporate Plan?

	<p>Strong resilient communities Feeling safe at home and in the local community is fundamental to living well and to strong community relationships. The Tenancy Agreement supports this objective.</p>
	<p>Quality homes in thriving neighbourhoods Having a warm, safe and secure home is key for improving living standards. There are approximately twenty-eight thousand local authority homes in Sandwell. The council has a strong commitment to continually improve the housing environment and housing services and the revised Tenancy Conditions will support this objective.</p>

4 Context and Key Issues

- 4.1 The Council has recently concluded a statutory consultation regarding proposed amendments to the Council's Tenancy Agreement with a series of proposed amendments with a view to making the conditions fit for the foreseeable future. In accordance with legislation the statutory consultation notice (Preliminary Notice and attached as Appendix 1) was sent to all tenants the week commencing 18 October 2021 with a closing date of 12 November 2021 for receipt of responses. A detailed overview of the feedback received from tenants is set out in this report.
- 4.2 In compliance with Section 103 of the Housing Act 1985, the Preliminary Notice invited tenants to comment on the proposed changes and tenants had the opportunity to respond in three ways:
1. By completing a free text questionnaire via a dedicated consultation webpage on the Council website
 2. By e-mail using a dedicated e-mail address
 3. By completing a feedback form at the back of the Preliminary Notice and forwarding it to the Roway Lane postal address.



4.3 In summary, the main changes being proposed cover:

- Clarifying that the Council is not responsible for dividing fences (other than privacy panels).
- Restricting tenancy succession rights to spouses, civil partners and common law partners for tenancies that commenced after 01 April 2012.
- A requirement to pay rent in advance and encouraging the use of Direct Debit to pay rent.
- The ability of the Council to recover costs from the tenant if taken to court when not meeting the obligations of the Tenancy Agreement.
- Stipulating that the Council will take action against persons providing false information or withholding of information that has enabled them to secure a home.
- Tenant responsibilities covering solid fuel appliances, fob keys and door entry systems, the installation and use of CCTV systems, and for damage to neighbouring properties caused by a tenant.
- Setting out the grounds for emergency access to properties and the grounds for allowing the Council to access a property when carrying out repairs to neighbouring properties.
- Making the possession of taser or stun guns, abstracting electricity, benefit fraud, the dumping of rubbish and causing unnecessary suffering to animals a breach of tenancy conditions.
- Being clear that the Council will take action where social media or any other form of communication is used to abuse, threaten or harass Council employees, contractors or agents.

4.4 In total 1,597 responses to the consultation were received. This represents a response rate of 5% and represents a robust sample on which to base conclusions. The Council is very grateful to all those who took the time to take part in the consultation. Of note:

- 82% (1,309) of respondents answered 'Yes' to '*Do you agree to the proposed changes in the agreement*' with no further comment. A further 21 respondents answered 'No' with no further comment.



- 95 answered 'Yes' to the proposals and added comment, 70 answered 'No' with comment and 102 made comment only. In total 88% of respondents agreed with the proposals
- The amendment receiving the highest volume of objection was Condition 5.2, Paying Rent in Advance, with 52 (3% of all respondents) in total objecting to this requirement. The second highest volume of objections was to Condition 4.11 - the proposal to restrict tenancy succession rights to spouses, civil partners and common law partners for tenancies that commenced after 01 April 2012. This attracted a total of 27 (2% of all respondents) objections. The next highest volume of concerns and objections related to who should take responsibility for fencing between properties (excluding privacy panels). This attracted 8 critical comments where the view was that the Council should take responsibility and refers to Condition 3.6 Note 'e'.
- In addition to the above responses the proposed Condition 10.10 involving the use of Social Media generated a considerable amount of media interest. From the consultation itself, the Council received 7 comments, 6 against and 1 in support.

A more detailed breakdown of the consultation feedback is set out at Appendix 2. The proposed new Tenancy Conditions, with amended or added text highlighted in red, is attached as Appendix 3.

- 4.5. In line with the other three Black Country local authorities (Walsall Housing Group in the case of Walsall), Condition 5.2 proposes that rent should be 'payable in advance'. A key aim of this condition is to enhance the financial resilience of the customer base by changing payment culture, ensuring tenants understand their rental obligations and to protect their home by developing a 'rent first' culture. By introducing this condition other landlords have found that this has led to a payment culture that protects the tenant from arrears and safeguards their tenancy particularly if income fluctuates.
- 4.6 When Condition 5.2 is adopted the Council intends to take proactive steps to encourage and support tenants to get their accounts in credit by providing budgeting and benefits support and where necessary by agreeing reasonable and achievable payment plans. To be clear, this condition will not be used to take enforcement action against tenants who cannot pay their rent in advance, enforcement action will only be



taken in circumstances where tenants either do not pay their rent or consistently pay it late. Aside of this latter group, interventions and actions will be aimed at supporting and nudging tenants toward achieving payment in advance.

- 4.7 Since 01 April 2012, the 2011 Localism Act has amended the statutory succession rights of new tenants to the spouse or civil partner of the deceased tenant. The council landlord may, at its discretion, contractually provide for more extensive succession rights to other family members. The proposed Condition 4.14 proposes to amend the existing Tenancy Conditions to the statutory rights of succession only.
- 4.8 Within the Council's housing stock the highest levels of need and demand is experienced in the larger stock (three or more bedrooms) and the driver behind the above proposal is to enhance the Council's ability to make the best use of its current stock and to restrict where possible properties being succeeded to where the remaining household leaves two or more bedrooms unused because of household size. The Council's Housing Allocations Policy covers Non-Successors left in occupation (Section F) and provides that Non-Successors left in occupation are granted a new Introductory Tenancy in the same property so long as the household is under-occupying the property by not more than one bedroom. For those under-occupying by two bedrooms or more a Band Two priority is awarded within the Housing Allocations Policy to enable the said household to move to accommodation more appropriate to their needs.
- 4.9 Since the current conditions were introduced officers have noted that the issue of fencing and the responsibilities thereof is regularly questioned. Condition 3.6 Note 'e' seeks to clarify this matter by stating that the Council is not responsible for any dividing fences between the tenant and their neighbour other than privacy panels which is usually the first panel of the fence. This is not a change to tenants' current responsibilities which already includes dividing fences. Rather, it is a clarification to help tenants understand their responsibilities.
- 4.10 Of note, from a cost perspective it is estimated that if the Council took full responsibility for fencing, then from a stock base of twenty-eight thousand units the cost could exceed £50 million to replace fencing as it comes up for replacement. It should be noted that new tenants on low income can apply under the Property Allowance Scheme for support in replacing fencing.



- 4.11 The proposed Condition 10.10 involving the misuse of social media has generated a considerable amount of media interest. However, from the consultation itself, the Council received 7 comments from tenants, 6 against and 1 in support of the clause. This constitutes an objection rate of 0.4% of all respondents. Council employees, contractors and agents have the right to carry out their duties in an environment free from violence, threatening, harassing or abusive behaviour and to be clear the intention of the proposal is solely and exclusively aimed at supporting that fundamental right. To ensure clarity in this context it is proposed to amend the proposed condition to:

You must not use social media or any other form of communication to abuse, threaten or harass Council employees, contractors or agents.

- 4.12 Looking ahead, Cabinet will be asked to approve the draft amendments, taking full account of the responses from the statutory consultation and the recommendations of this Scrutiny Board. Once Cabinet has approved the amendments a Notice of Variation will then be served on all Council tenants informing them of how their conditions have changed and when the new conditions will take effect. In compliance with legislation, all tenants will be given at least four weeks' notice of when the new conditions will take effect.

5 Alternative Options

- 5.1 There are no alternative options other than to retain the current Tenancy Conditions that took effect from October 2009.



6 Implications

Resources:	<p>Costs have been incurred as part of the consultation process together with the future service of the revised tenancy conditions and the accompanying Notice of Variation (the latter of which needs to be served under the 1985 Housing Act). These costs will be funded from the Housing Revenue Account.</p> <p>Apart from acquiring a familiarity with the revised conditions, there will be no training implications or associated costs for staff.</p> <p>Once implemented, the revised conditions will assist the Housing Revenue Account by supporting the Council's Housing Service, for example in making tenancies more sustainable and in tackling anti-social behaviour.</p>
Legal and Governance:	<p>In accordance with legislation the statutory consultation notice (Preliminary Notice and attached as Appendix 1) was sent to all tenants the week commencing 18 October 2021 with a closing date of 12 November 2021 for receipt of responses.</p> <p>Looking ahead, Cabinet will be asked to approve the draft amendments and subsequently a Notice of Variation will then be served on all tenants informing them of how their conditions have changed and when the new conditions will take effect. All tenants will be given at least four weeks' notice of when the new conditions will take effect.</p>
Risk:	<p>The revised Tenancy Agreement has been drafted in conjunction with the Council's Legal Team and now that the wider statutory tenant consultation has closed no significant risks have been identified in the revised draft conditions presented to this Board.</p>
Equality:	<p>In compliance with Section 103 of the Housing Act 1985, a Preliminary Notice has been served on every Council tenant in the borough (Appendix 1). This</p>



	<p>Notice outlined in detail the proposed changes and encouraged persons to forward their comments and concerns via a choice of three sources as set out in Section 4.2.</p> <p>Feedback has largely been both positive and constructive and has reached a credible response rate of 5%. Of note, the Preliminary Notice contained a strapline in eleven community languages and where requested notices were sent out incorporating large text (Font size 22). Regarding the Protected Characteristics no adverse impacts were identified.</p>
Health and Wellbeing:	The health and wellbeing benefits of living in a decent sustainable home are well documented in improving a wide range of both physical and mental health determinants. The Tenancy Agreement supports this objective by supporting the sustainment of tenancies, continuing to tackle anti-social behaviour and helping the Council to maintain housing standards.
Social Value	As identified above

7. Appendices

Appendix 1: Copy of Preliminary Notice

Appendix 2: Summary of feedback received from Preliminary Notice

Appendix 3: Copy of new proposed Tenancy Conditions

8. Background Papers

None

