

Report to Cabinet

23 February 2022

Subject:	Review of Council Tenancy Conditions
Cabinet Member:	Cabinet Member for Housing Cllr Zahoor Ahmed
Director:	Gillian Douglas, Director of Housing
Key Decision:	Yes - impacts on communities living in two or more wards of the Borough
Contact Officer:	Housing Strategy & Research Manager, Neville Rowe neville_rowe@sandwell.gov.uk

1 Recommendations

- 1.1 That approval be given to adopt the revised tenancy conditions (as per Appendix Three) and that in compliance Section 103 of the 1985 Housing Act, the Director – Housing be authorised to issue a Notice of Variation to all tenanted households in due course.



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.
- 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 **Overview and legislative context.** The Council has recently concluded a statutory consultation regarding proposed amendments to the Council’s Tenancy Agreement. In accordance with legislation the statutory consultation notice (Preliminary Notice and attached as Appendix One) was sent to all tenants the week commencing 11 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 and is outlined in Appendix Two. In addition, on 09 December the Safer Neighbourhoods and Active Communities Scrutiny Board also met to consider the proposals.

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 a dedicated 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 information that has enabled them to secure a home.
- Tenant responsibilities covering solid fuel appliances, fob keys and door entry systems, the installation 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 **Outcome from the consultation.** In total 1,597 consultation responses 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) 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 concerning the use of Social Media generated a considerable amount of wider media interest. From the consultation itself, the Council received 7 comments, 6 against and 1 in support.

4.5 Re Condition 5.2 Paying Rent in Advance. 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 social housing landlords have found that it 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 tenants toward achieving payment in advance.
- 4.7 Re Condition 4.11 - the proposal to restrict tenancy succession rights. 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 4.11 amends the existing Tenancy Conditions (4.14) 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 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 not under-occupying the property by two bedrooms or more (or one in the case of two-bedroomed houses). For those affected 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 Re. Condition 3.6, Note 'e' concerning responsibility for fencing. 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 are 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. New tenants on low income can apply under the Property Allowance Scheme for support in replacing fencing.
- 4.11 Re Condition 10.10 relating to the use of Social Media. 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. This constitutes an objection rate of 0.4% of all respondents.
- 4.12 Since April 2019 to the close of December 2021 there have been 63 recorded anti-social behaviour incidents where the behaviour has been specifically directed at employees, contractors or agents. Council employees, contractors and agents have the right to carry out their duties in an environment which is free from violence, threatening, harassing or abusive behaviour and the intention of this proposal is solely and exclusively aimed at supporting that fundamental right. To ensure clarity in this context and following recommendations made by the Safer Neighbourhoods and Active Communities Scrutiny Board it is proposed to amend the draft condition to:

Council employees, our contractors or agents have the right to go about their business free from abuse, threatening behaviour or harassment. You must not use social media or any other form of communication to abuse, threaten or harass Council employees, contractors or agents.

- 4.13 Aside of the above amendment to the proposals, the overwhelming positive feedback received in the consultation provides a robust base to justify that the amendments outlined in this report should be implemented. If the recommended amendments are approved by Cabinet, then in accordance with the 1985 Housing Act it is anticipated that a Notice of Variation, accompanied by a full copy of the new conditions will be served on all tenants in mid to late March.



The Notice will inform tenants as to how their conditions have changed and in accordance with legal requirements will inform them when the new conditions will take effect which will be at least four weeks after service of the notice.

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

<p>Resources:</p>	<p>Costs have been incurred through service of the statutory consultation process and these costs will be replicated with the future service of the revised tenancy conditions and the accompanying statutory Notice of Variation. 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. Once implemented, the revised conditions will assist the Council's Housing Service by making tenancies more sustainable and tackling anti-social behaviour and will have positive resource impacts.</p>
<p>Legal and Governance:</p>	<p>In accordance with legislation the statutory consultation notice (Preliminary Notice and attached as Appendix One) 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, if Cabinet approves the proposed amendments a Notice of Variation will 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:	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 specific risks have been identified in the revised draft conditions presented in this report.
Equality:	Feedback has largely been positive 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). An Equalities Impact Assessment has been completed and no adverse impacts have been identified for the Protected Characteristics.
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 One: Copy of Preliminary Notice

Appendix Two: Summary of feedback received from Preliminary Notice

Appendix Three: Copy of new proposed Tenancy Conditions

8. Background Papers

None

