



CABINET: 11 June 2019

EXECUTIVE OVERVIEW &  
SCRUTINY COMMITTEE: 27 June  
2019

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**Report of: Director of Housing and Inclusion**

**Relevant Portfolio Holder: Councillor J Forshaw**

**Contact for further information: Mrs N. Bradley (Ext. 5296)**

**Email: [nicola.bradley@westlancs.gov.uk](mailto:nicola.bradley@westlancs.gov.uk)**

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**SUBJECT: REVIEW OF FLEXIBLE TENANCIES**

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Wards affected: Borough wide

## **1.0 PURPOSE OF THE REPORT**

1.1 To consider the impact and future use of Flexible Tenancies.

## **2.0 RECOMMENDATIONS**

2.1 That Flexible tenancies are no longer used and that all new tenants are offered a Secure Lifetime tenancy.

2.2 That the Director of Housing and Inclusion, in consultation with the relevant Portfolio Holder, be given delegated authority to implement and make any minor updates and changes as required.

2.3 That Call In is not appropriate for this item as the report is being submitted to the next meeting of the Executive Overview and Scrutiny Committee on 27 June 2019.

## **3.0 RECOMMENDATIONS TO THE EXECUTIVE OVERVIEW & SCRUTINY COMMITTEE**

3.1 That the content of the report be noted.

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## **4.0 BACKGROUND**

4.1 What are Flexible Tenancies?

- 4.1.1 Flexible tenancies are secure fixed-term tenancies with a minimum term of two years, although a five years term is more commonly used.
- 4.1.2 Flexible tenants enjoy similar rights as secure tenants, including the Right to Buy their home after a qualifying period, and the Right to Repair. However, under section 155 of the Localism Act, flexible tenants do however not have a statutory right to improve their properties or be compensated for those improvements, rights which are enjoyed by secure tenants of local authorities.
- 4.1.3 At the end of the fixed tenancy period, the tenant's circumstances are reviewed, and decision made to offer either: another fixed-term flexible tenancy; a secure tenancy; or not to renew the tenancy.

#### 4.2 The Localism Act

- 4.2.1 The Localism Act 2011 first introduced the power for local authorities to offer flexible tenancies to new social tenants after 1 April 2012.
- 4.2.2 Housing providers were required to publish a tenancy policy setting out whether and how they intended to use the new flexibilities, a copy of the Councils current Tenure Policy is attached at Appendix 1, with the proposed updated Tenure Policy in Appendix 2.
- 4.2.3 The changes were intended to give local authorities and housing associations greater freedom to manage their housing stock, ensure that social housing is allocated to those who need it most, and that lifetime tenancies are not given to tenants irrespective of how their circumstances might change in the future.
- 4.2.4 There has been very limited take-up of fixed-term and flexible tenancies by councils and housing associations, The Equality Impact Assessment on Lifetime Tenancies (May 2016) said that in 2014/15 "only 15% of social housing tenancies were let on a fixed-term basis."
- 4.2.5 According to the Ministry of Housing Communities & Local Government Social Housing Lettings Statistical release, in 2017/18 18% of all social housing lettings were on a fixed term basis. The information shows the level differed between Private Registered Providers who let 22% of their properties on a fixed term basis whilst in local authorities fixed term tenancies only accounted for only 8% of lettings.

#### 4.3 The Housing & Planning Act

- 4.3.1 The Housing and Planning Act 2016 proposed the phasing out of lifetime tenancies, by making the use of Flexible Tenancy's mandatory with the maximum term of a fixed-term tenancy being 10 years, potentially longer for families with children.
- 4.3.2 Details were to be set out in regulations which were expected to be finalised in winter 2016/17, but these provisions have not yet been enacted.

4.3.3 On publication of the social housing Green Paper on 14 August 2018, "A new deal for social housing", the Government announced that it will not implement these provisions "at this time".

## 5.0 CURRENT POSITION

5.1 Following the Localism Act the Council introduced Flexible Tenancies on 1 July 2013.

### 5.2 How Flexible Tenancies work

The Councils Tenure Policy (Appendix 1) details how tenancies are granted. The type and length of new tenancies are dependent on the household type, the table below provides examples of the type of tenancy awarded to different groups of tenants:

Type of Tenancy	Examples	Tenancy Length
Introductory Tenancy	All new social housing tenants will be given a 12 month Introductory tenancy	1 year
Secure Tenancy	Existing secure tenants who transfer to another property. All Sheltered Housing tenants	Lifetime
Flexible Tenancy	All new social housing tenants or tenants transferring from another landlord	5 years (or exceptionally 2 years)

### 5.3 The Review Process

As Flexible Tenancies are granted for a fixed term, there is a need to undertake a formal review of the tenancy, which must be completed at least six months before the end of the fixed term. As the Council introduced Flexible tenancies in 2013, the first Flexible Tenancies reviews have now been undertaken.

### 5.4 The process for carrying out a review

The review process involves writing to tenants to confirm who resides at the property and their income details. This part of the process is reliant on tenants returning information, it is often necessary for Housing Officer to spend time chasing up information. The conduct of the current tenancy is also reviewed to establish whether there have been any breaches of tenancy, e.g. rent arrears. A decision on whether to grant a new tenancy will need to be made at least 7 months prior to the tenancy end date.

5.5 The circumstances where a further term may **not** be granted are:

- Property is under-occupied
- Property is no longer suitable for the tenant's needs
- Tenant's circumstances have changed
- Tenant and/or their advocate do not engage in the tenure review process
- Possession proceedings have commenced or tenure obligation has been broken
- Disposal or refurbishment of property

A decision notice will be issued not less than 6 months before the tenancy end date.

5.6 There are three potential outcomes from the review:

- The tenant is offered a new flexible tenancy of the existing property
- The tenant is offered a new flexible or lifetime tenancy of suitable alternative property
- The tenant is not offered the renewal of a tenancy

## **6.0 DISADVANTAGES OF FLEXIBLE TENANCIES**

6.1 The continued use of Flexible Tenancies has clear disadvantages for our customers. Tenants who have a fixed term tenancy lack the security and stability of a lifetime tenancy, which is particularly valuable to our most vulnerable client groups. The stability provided by a permanent tenancy means that people can make their accommodation a real home – get to know neighbours, and feel part of the local community. There is a risk that the use of fixed-term tenancies could undermine the sustainability of communities if tenants are required to move, or feel they need to move for additional security.

6.1.1 It is also possible that Flexible tenancies could act as a disincentive to tenants seeking or taking up work, as an increase in income could take them over the income threshold which would prevent a flexible tenancy being renewed.

6.1.2 Even in cases where a new tenancy is awarded, the process can lead to uncertainty for tenants, until the decision is finalised they will not know whether they are able to remain in their home.

6.2 There are also a number of disadvantages for the Council.

6.2.1 There is a significant amount of administration, staffing resource and costs involved in conducting tenancy reviews. As no additional staffing resources were identified to carry out the review process, Housing Officers focus is being taken away from tenancy management, tenancy enforcement and tenancy sustainability tasks.

6.2.2 Ending a higher number of flexible tenancies would also increase the costs involved in ensuring empty properties are repaired and ready for letting, and could increase the burden on teams managing the Housing Register, maintaining and letting properties.

- 6.2.3 Although no legal costs have been incurred to date there would be legal costs involved in ending flexible tenancies, if the tenant does not leave the property at the end of the fixed term, as the Council would be required to recover possession through the courts.
- 6.2.4 If it is determined that the tenancy cannot continue due to the property not being suitable e.g. because of under occupation, there is a requirement on the Council to provide suitable alternative accommodation which is likely to prove difficult particularly in those areas where we have limited housing stock.
- 6.2.5 In cases where a tenancy is ended due to breach of tenancy, the authority may still have an obligation to flexible tenants under the provisions of the Homelessness legislation.

## **7.0 FUTURE OF FLEXIBLE TENANCIES**

### **7.1 Outcomes of reviews to date.**

To date we have carried out 89 Flexible Tenancy Reviews, of these

- 85 tenants have been issued with new Flexible Tenancies
- 2 tenancies were dealt with as potentially abandoned properties
- 1 tenancy was ended as tenant had died
- 1 tenant was served notice to end the tenancy due to arrears.

The issues regarding abandonment and rent arrears had already been identified prior to the review, and were being dealt with under our normal procedures.

- 7.2 One of the main arguments for tenure reform is to focus scarce social housing resources on those who need it most. However initial indications are that this will not be achievable. Only 1 out of the 89 Flexible Tenancy reviews undertaken could potentially be ended, and as this was on the grounds of rent arrears there would be other opportunities available through our normal income recovery procedures to end this tenancy if appropriate.
- 7.3 Given the limited outcomes of the reviews undertaken and the disadvantages for both customers and the Council as outlined in section 7.0 above, it is recommended that Flexible Tenancies are no longer issued, and that all new Council tenants are issued with an introductory tenancy which will convert into a secure lifetime tenancy rather than a Flexible Tenancy.
- 7.4 If the recommendations are approved, implementation will involve issuing all current flexible tenants with a new secure tenancy agreement. To avoid any further uncertainty for tenants, it is proposed that all flexible tenants are asked to sign a new agreement straight away rather than wait until the end of the fixed term.

## **8.0 SUSTAINABILITY IMPLICATIONS**

8.1 There are sustainability impacts associated with this report, as reverting to lifetime tenancies will support tenancy sustainment and provide greater community stability. There are no significant impact on crime and disorder.

## **9.0 FINANCIAL AND RESOURCE IMPLICATIONS**

9.1 There are some financial and resource implications arising from this report as it provides an opportunity to target resources more effectively, reduce administration costs and avoid any increase in the cost of repairs to empty properties.

9.2 It is estimated that we would need to carryout in the region of 350 Flexible tenancy reviews per year. To carry out review including sending correspondence to tenants chasing up missing information and visiting those cases where we need to carry out additional check or where the tenants are not engaging would take on average 1 hour 45 minutes per tenancy. Annually this equates to over 600 hours of Housing Officers time that could otherwise be utilised supporting tenants and helping them to sustain their tenancies.

## **10.0 RISK ASSESSMENT**

10.1 The actions referred to in this report offer an opportunity to target resources more effectively into tasks which support our tenants and improve tenancy sustainability.

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### **Background Documents**

There are no background documents (as defined in Section 100D (5) of the Local Government Act 1972) to this Report.

### **Equality Impact Assessment**

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

### **Appendices**

Appendix A - Tenure Policy

Appendix B - Draft Tenure Policy

Appendix C – Minute of Cabinet (Executive Overview and Scrutiny Committee only)