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**Report of: Corporate Director of Place and Community**

**Relevant Portfolio Holder: Councillor J Wilkie**

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**SUBJECT: Tenancy Policy**

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Wards affected: Borough wide

## **1.0 PURPOSE OF THE REPORT**

1.1 To consider and agree the revised Tenancy Policy.

## **2.0 RECOMMENDATIONS TO EXECUTIVE OVERVIEW & SCRUTINY COMMITTEE**

2.1 That the contents of the policy be considered by the committee and that any agreed comments be considered by Cabinet.

## **3.0 RECOMMENDATIONS TO CABINET**

3.1 That the Tenancy Policy attached at Appendix 1 be approved

3.2 That the Head of Housing & Regulatory Services, in consultation with the relevant Portfolio Holder, be given delegated authority to make minor drafting updates and changes arising from new legislation as required for this policy.

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## **4.0 BACKGROUND**

4.1 The Governments Tenancy Standard is one of four consumer standards that registered providers of social housing must comply with. The Tenancy Standard sets expectations for registered providers of social housing to let their homes to tenants in a fair, transparent and efficient way.

- 4.2 The Tenancy Standard states Registered providers shall publish clear and accessible policies which outline their approach to tenancy management, including interventions to sustain tenancies, prevent unnecessary evictions and tackling tenancy fraud. The policies should set out:
- (a) The type of tenancies they will grant.
  - (b) Where they grant tenancies for a fixed term, the length of those terms.
  - (c) The circumstances in which they will grant tenancies of a particular type.
  - (d) Any exceptional circumstances in which they will grant fixed term tenancies for a term of less than five years in general needs housing following any probationary period.
  - (e) The circumstances in which they may or may not grant another tenancy on the expiry of the fixed term, in the same property or in a different property.
  - (f) The way in which a tenant or prospective tenant may appeal against or complain about the length of fixed term tenancy offered and the type of tenancy offered, and against a decision not to grant another tenancy on the expiry of the fixed term.
  - (g) Their policy on taking into account the needs of those households who are vulnerable by reason of age, disability or illness, and households with children, including through the provision of tenancies which provide a reasonable degree of stability.
  - (h) The advice and assistance they will give to tenants on finding alternative accommodation in the event that they decide not to grant another tenancy.
  - i) Their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members.

4.3 Succession is the process by which a tenancy is passed to another person on the death of the original sole or joint tenant.

4.4 Recent correspondence from the Housing Minister outlined that the succession rights to council housing tenancies are a small but important part of the powers available to local authority landlords in ensuring that council housing is used both effectively and fairly. This correspondence prompted the review of our Tenancy Policy.

4.5 Following a review of our current procedures in regards to succession it was identified that whilst we have adequate procedures in place they are not sufficiently documented in our current Tenure Policy

4.6 In addition to clarifying the Councils Policy on succession the Tenancy Policy has also been updated to provide an overview of the Councils approach to tenancy management.

## **5.0 CURRENT POSITION**

5.1 The Tenancy Policy at Appendix 1 is an overarching policy document which details our approach to successions and how the Council would deal with situations such as resident carers who have given up their home, those accepting responsibility for deceased tenants children and disabled adult children or other family members if the property had been adapted

## **6.0 SUSTAINABILITY IMPLICATIONS**

6.1 This Policy allows the Council to meet housing need in a more flexible way whilst protecting the more vulnerable groups and sustaining stable balanced communities.

## **7.0 FINANCIAL AND RESOURCE IMPLICATIONS**

7.1 This policy will help support the HRA Business Plan.

## **8.0 RISK ASSESSMENT**

8.1 The actions referred to in this report offer an opportunity to introduce a clearer more customer focused policy document to assist the Council manage its housing stock more effectively.

## **9.0 HEALTH AND WELLBEING IMPLICATIONS**

9.0 There are no health and wellbeing implications arising from this report.

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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**

There is no direct impact on members of the public, employees, elected members and / or stakeholders, therefore no Equality Impact Assessment is required.

### **Appendices**

Appendix 1 – Revised Tenancy Policy



# ***Tenancy Policy***

## **1.0 Purpose of the Tenancy Policy**

- 1.1 The purpose of the Tenancy Policy is to ensure that the most appropriate tenancies are granted to enable the best use to be made of the Council's housing stock, while maintaining cohesive and stable communities.
- 1.2 The Tenancy Policy sets out our approach to providing an effective tenancy management service.

## **2.0 Aims of the Policy**

- 2.1 The key aims of this policy and the Council's Allocations Policy are to:
  - Create and maintain sustainable and stable communities
  - Have regard to the Council's Tenure Strategy
  - Set out proposals for the creation and management of tenancies for Council properties
  - Support the prevention of homelessness
  - Make best use of the available council housing stock
  - Meet local housing need by providing tenancies that are compatible with the purpose of meeting household needs of the individual households.
  - Be clear and fully understood by our tenants and applicants for our housing

### 3.0 The Charter for social housing residents: social housing white paper.

This policy also aims to meet the expectations of the White paper which are detailed below:

- o To be safe in your home.
- o To know how your landlord is performing.
- o To have your complaints dealt with promptly and fairly.
- o To be treated with respect.
- o To have your voice heard by your landlord.
- o To have a good quality home and neighbourhood to live in.
- o To be supported to take your first step to ownership.

### 4.0 The kind of tenancies that will be granted

- a. Until the Localism Act 2011 was enacted, councils were only able to grant lifetime secure tenancies, introductory tenancies and tenancies which are not secure tenancies. The Localism Act now also allows flexible tenancies to be granted to new tenants, while protecting the rights of existing tenants.
- b. Although the Council still retains some historic flexible tenancies it has taken the decision not to issue any new ones. Existing flexible tenancies will be converted to Secure Tenancies at the end of the fixed term if deemed appropriate. See Section 4.1 below
- c. The new tenancies that West Lancashire Borough Council grant are:

Type of Tenure	Legal Basis	Definition	Tenure Length
Secure tenure	Housing Act 1985, Part IV, Sections 79-81	Lifetime periodic weekly tenure, with protected rights, granted to all tenants I, who have completed a one year introductory period. Those offered these tenancies after 1st July 2013 will not have the	Lifetime

		benefit of protected rights.	
Introductory tenure	Housing Act 1996, Part V, Chapter 1, Sections 124- 125	Periodic weekly tenure issued to new tenants for the first year of their tenure.	1 Year
Tenancies which are not secure tenancies	Housing Act 1985, Schedule 1	Non secure tenure granted for example for homeless persons or a tied tenancy.	Periodic tenure

There are two main types of council tenancy – Introductory Tenancies and Secure Tenancies.

#### 4.1 Introductory Tenancies

Introductory Tenants will not have the same rights as a secure tenant until the first 12 months, or any extension period, has been successfully completed.

Unless a new tenant (or one party to a joint tenancy) already has a secure tenancy, or another social housing equivalent such as an assured non shorthold tenancy, the Council will grant an introductory tenancy for a trial period which lasts for a year. During the trial period, it is easier to evict the tenant if they break the terms of their tenancy. This could include running up large rent arrears, or being involved in anti-social behaviour. The trial period can be extended for another six months if the tenant does not fully comply with the tenancy terms in order for the tenant to prove that they are responsible enough to hold down a tenancy and comply with the terms of a tenancy agreement going forward.

The Regulatory Framework allows for introductory tenancies for a maximum of 12 months, or a maximum of 18 months where the reasons for extending the introductory period have been given and where the tenant has the opportunity to request a review. During the trial period tenants have less security and fewer rights.

For example: Their home is at much higher risk of repossession if they do not keep to the tenancy agreement.

Introductory tenants will not be able to do the following:

- Exchange
- Buy their property
- Make alterations and improvements
- Take in lodgers

- Sublet their home

## **Review**

In situations where the Council takes action to end or extend an Introductory Tenancy the tenant has the right to review. A review request must be made within 14 days of the tenant being served with a Notice to Terminate an Introductory Tenancy (NTIT) or notice of extension being served. The day the notice is served counts as the first day of the 14 day limit. If the Introductory Tenant does not notify the Council within the time limit they will not be entitled to a review.

The Introductory tenant will be provided with a details of the Review procedure when the NTIT is served.

## **4.2 Secure Tenancies**

A Secure Tenancy gives additional rights to the tenant. Introductory tenant's will automatically become secure tenants at the end of the year if there have been no issues with their tenancy.

Where a new tenant has come directly from another secure tenancy, or from an assured tenancy with a registered social landlord, they will be secure tenants straight away without an introductory period.

## **4.3 Length of tenancy**

A Secure Tenancy is not for a fixed length of time; it can carry on indefinitely. The tenant can end their tenancy by giving 4 weeks' notice in writing. The Council can only end a Secure Tenancy if the tenant breaches the tenancy agreement, and they have to go through the court if they want to evict a tenant. If a tenancy has to be ended for any other reason, for example if the property needs to be demolished, the Council will offer the tenant an alternative property.

We will only grant a joint tenancy to spouses, partners or cohabiters. We will not normally grant a joint tenancy to more than two people or to family members for example a brother and sister, unless exceptional circumstances apply. In most cases where there is more than one adult applying for housing we will determine who should be the named tenant taking into account any responsibility for dependent children in the household or any requirements for adaptations or support requirements. In cases where the tenant applies for a transfer to another Council property at the same time as changing to a joint tenancy the original tenancy will remain in place but be transferred to the new property and the request to add another party to the Tenancy Agreement will be dealt with as an assignment.

## **5.0 The kind of tenancies that will not be granted**

### **5.1 Flexible (fixed term) tenancies**

Section 154 of the Localism act 2011 gives local authorities the power to offer flexible tenancies to new social tenants and to family intervention tenants. A flexible tenancy is a secure tenancy of a fixed term of not less than 2 years.

The Council introduced Flexible Tenancies in 2013. Following a review it was decided that with effect from July 2019 fixed term tenancies would no longer be offered, as the Council values the stability that a lifetime tenancy offers to its tenants particularly those in the most vulnerable client groups.

## **6.0 Mutual Exchanges, Successions and Assignments**

### **6.1 Mutual Exchanges**

Tenants have the right to a mutual exchange once they become a secure tenant of West Lancashire Borough Council.

The Council subscribes Homeswapper an internet based mutual exchange service allowing:

- (a) a tenant to register an interest in arranging a mutual exchange through the mutual exchange service without payment of a fee
- (b) the tenant to enter their current property details and the tenant's requirements for the mutual exchange property they hope to obtain
- (c) the tenant to be provided with the property details of those properties where a match occurs

Tenants who do not have access to the internet can access support in using the mutual exchange service via their Neighbourhood Officer.

The Council does, however, reserve the right to make the best use of its housing stock and allocate properties in a fair and equitable manner and may refuse 'tenant initiated' requests for a Mutual Exchange if the tenant does not meet the criteria.

There are certain circumstances where permission may be refused to undertake an exchange or transfer, for example but not limited to:

- a) The tenant must not owe any rent or be in breach of any of the terms of their tenancy agreement.
- b) Where one of the homes would be over-crowded

- c) Legal action is being taken to gain possession of any of the homes involved
- d) The exchange would mean that a home adapted for elderly or disabled people or people requiring special facilities e.g. sheltered housing for the elderly would have no one living there who needed the adaption and/or facility provided
- e) One of the homes would be obviously too large or too small for the new tenants.

We will give or refuse consent within 42 days of the application to exchange being received. There are certain conditions, which must be met before the exchange can take place, for example but not limited to:

- a) Any current and former rent arrears must be cleared.
- b) Any repairs identified during the property inspection must be complete.
- c) Rent in advance must be paid prior to the Mutual Exchange sign up.

## **6.2 Successions**

### **Joint Tenancy**

In cases where one joint tenant dies, the remaining tenant will take the tenancy on the same terms and this will count as a succession under the 1985 Act. Accordingly, no further assignments or successions can occur.

### **Spouse**

On the death of a sole tenant who is not a successor themselves the Secure or Introductory tenancy will pass to the tenant's spouse, whether or not the couple are married, and including same sex spouses, so long as:

- The spouse occupied the property as his or her only or principal home at the time of the tenant's death.

The 'spouse' means the person who was living with the tenant as his or her wife or husband.

In cases of succession by a spouse to an Introductory tenancy, any qualifying successor would succeed to the remaining period of the Introductory Tenancy, which would then become secure at the end of that period.

### **Other Family Members**

Where the tenancy is Secure and began before 1<sup>st</sup> April 2012 family members are allowed to succeed the tenancy under the 1985 Act, so long as the below clauses A and B are complied with.

Where the tenancy is an Introductory or secure tenancy, family members are allowed to succeed the tenancy under the 1996 Act, so long as the below clauses A and B are complied with.

- A. In all cases, the deceased tenant must not have been a successor him/herself.
- B. In all cases, the family member must have occupied the property as his/her only principal home at the time of the tenant's death and for at least twelve months prior to the tenant's death.

A tenant's family member includes a tenants parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece including step-relations and illegitimate children.

In cases of succession by a family member to an Introductory tenancy any qualifying successor would succeed to the remaining period of the Introductory tenancy, which would then become secure at the end of that period.

## **Minors**

A minor (an individual under the age of 18) may succeed to a tenancy where they meet the succession eligibility criteria outlined above. However, as a minor cannot legally hold a tenancy, the succession will result in an equitable tenancy being held on trust for the minor until they attain the age of 18.

A relevant legal guardian must act as Trustee for the minor and enter into a Deed of Trust with the Council until the minor attains the age of 18 in order for the succession to apply.

The Council will only allow a succession to a minor under the age of 16 where it is legally obliged to do so and where appropriate support and safeguards are in place.

## **6.3 Assignment**

Assignment means legally transferring a tenancy from one person to another.

Secure tenants have the right to assign their tenancy to someone else under the following circumstances:

- a) By way of a Mutual Exchange (A Mutual Exchange will not extinguish a tenant's right to use the one right of assignment under the tenancy, if applicable).
- b) By way of a property transfer made by a Court in connection with matrimonial proceedings; or
- c) By way of an assignment to a person who would qualify to succeed the tenancy if the tenant died immediately before the assignment.

Introductory tenants have the right to assign their tenancy to someone else under the following circumstances:

- a) By way of a property transfer made by a Court in connection with matrimonial proceedings; or
- b) By way of an assignment to a person who would qualify to succeed the tenancy if the tenant died immediately before the assignment.

The tenant will need to obtain the Council's written agreement before an assignment takes place. The Council will only grant consent if the following conditions are met, but are not limited to:

- a) That each party needs to sign deed of assignment.
- b) There must have a clear rent account.
- c) The person being assigned the tenancy are taking on the rights and responsibilities of the tenancy agreement.

In certain cases we will consent to a joint to sole assignment which has arrears if it is in everyone's best interests such as Domestic Violence cases.

#### **6.4 Exceptional Circumstances**

The Council accepts that there may be circumstances that warrant exceptions to the normal rules under the Allocations Policy. In such circumstances the Head of Housing & Regulatory Services is authorised to assess individual cases and where appropriate and reasonable to do so decide that an exception be made to the normal rules under the Allocation Policy to facilitate a new tenancy being granted to a person who may not normally be entitled to succeed or be assigned the tenancy. The key criteria taken into account when making this decision will be:

- i. the cost implications to the Council;
- ii. the occupier's personal circumstances
- iii. the size, type and details of any adaptations made to the property
- iv. the demand for accommodation at the time.

Exceptional circumstances would include but are not limited to the following:

- a) Effective management of our homes for example where a property has been significantly adapted for disabled children or other family members who are to remain in the property.
- b) Resident Carers who have given up their home.
- c) Those accepting responsibility for deceased tenants children or vulnerable adults.

## **6.5 Discretionary Tenancies**

If no succession right exists, we may consider granting a discretionary tenancy of the current property. This will be a new Introductory Tenancy and will be let in accordance with the eligibility criteria of the Councils Allocations Policy, this will include appropriate checks to ensure that the proposed tenant would be eligible to join the Council's Housing Register, e.g. in relation to any previous history of anti-social behaviour and their immigration status

If a new tenancy is granted on this basis the new tenant will not benefit from any rights obtained by the previous tenant. This will be classed as a completely new tenancy.

## **7.0 Managing and sustaining tenancies**

As part of the tenancy sign up process all new tenants will have a Needs Risk Assessment carried out and the outcome of the assessment will determine what level of support the tenant may need within the first 12 months and beyond if necessary.

The assessment will take into account issues such as:

- Is it the tenants first tenancy
- If there is a history of substance misuse
- If there is a history of Domestic Violence
- Financial circumstances
- Mental and physical health

Once the tenant is signed up the Neighbourhood Officer will make contact with the tenant to discuss any support they may require to sustain their tenancy, or we will sign post the tenant to other internal or external support agencies such as the Councils Money Advice Team.

We will work in partnership with other agencies to support vulnerable adults and families in the community to help them to sustain their tenancy. This includes actively participating in , MARAC meetings to support Council tenants who may be at high risk of domestic violence and the West Lancashire Integrated Working Team, which involves a number of partner agencies such as Social Services and the Police working together to

address the needs of an individual household. Tenants are required to maintain their properties in a reasonable condition and abide by all the terms of their tenancy agreement, where breaches of tenancy are identified we will take appropriate action. We will take court action to repossess a property as we consider necessary, on a case by case basis. Where a decision has been made to carry out an eviction on one of our tenants for a breach of their tenancy, we will make a referral to Social Services and Mental Health Services to ensure that they are receiving appropriate support and will liaise with our Legal team to carry out an Equalities Act 2010 Assessment.

## **8.0 Tenancy Fraud**

West Lancashire Borough Council is committed to dealing with tenancy fraud and has a Tenancy Fraud Policy, which details the types of tenancy fraud and the action we can take. We want to ensure fair allocation of our properties and making best use of Council housing stock. The Council will tackle fraudulent applications, unlawful subletting and tenancy misuse promptly and effectively, to ensure all its housing stock is used by those with legitimate housing need.

## **9.0 Abandoned Properties**

Where we have been notified that a tenant may have abandoned their property the Tenancy Services team will make the necessary investigations in accordance with the Councils Abandonment Procedure. Where there is an overdue gas safety check and we deem there to be an immediate health and safety risk to neighbouring residents, we may enter the property with or without notice to cap the tenant's gas supply. Please note this might involve carrying out a lock change on the property. If this becomes necessary the tenant will need to contact the Council to gain entry. In normal circumstances a contact telephone number will be left at the property, alternatively the tenant can contact the Council offices directly. We will liaise with our Legal Team to take possession back of the property following the lock change.

## **10.0 Lodgers and Sub-letting**

Tenants may take in lodgers during the Secure Tenancy, but not during the Introductory Tenancy. A lodger is someone who lives in your home with you but doesn't have exclusive right to any one part of the property. This is different to Sub-letting.

Sub-letting means that someone pays rent to have exclusive right to part of your home. Tenants may sub-let part of their home during the Secure Tenancy, but not during the Introductory Tenancy and they must get our agreement in writing first. Tenants cannot sub-let the whole of the property. For full details refer to the tenancy agreement.

## **11.0 Complaints**

We aim to deliver the best services possible to our customers and positively encourage feedback in the form of complaints, compliments and comments. This information is extremely valuable as it can tell us how well we are doing and how we can improve our services. To find out more you can follow the link below to our complaints procedure.

<https://www.westlancs.gov.uk/about-the-council/contact-us/comments-and-feedback/complaints-procedure.aspx>