

Subject:	Revised Tenancy Agreement		
Date of Meeting:	20 September 2017		
Report of:	Executive Director Neighbourhoods Communities & Housing		
Contact Officer:	Name:	Janet Dowdell	Tel: 01273 29-3191
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Ward(s) affected:	All		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 To present the results of the statutory consultation carried out with all current council tenants on the adoption of a revised tenancy agreement for tenants living in council housing.
- 1.2 To present an amended draft of the revised tenancy agreement as a result of comments received during the consultation.
- 1.3 The Housing Act 1985 provides that secure tenancies can only be varied by either agreement with the tenant or by using the statutory procedure pursuant to s.103 of the Housing Act 1985 which sets out the process and time limits to be followed.
- 1.4 In reviewing the Tenancy Agreement we have had regard to the Tenancy Strategy 2013 approved at Housing Committee on 6 March 2013 and Tenancy Policy 2014 approved at Housing Committee on 12 November 2014.

2. RECOMMENDATIONS

- 2.1 That Housing & New Homes Committee note the results of the consultation exercise as detailed in Appendix 1.
- 2.2 That Housing & New Homes Committee note the summary of the proposed changes as detailed in Appendix 3.
- 2.3 That Housing & New Homes Committee agrees to the implementation in January 2018 of the revised Tenancy Agreement, attached at Appendix 2.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 It is important that a tenancy agreement is kept up to date in terms of legislative requirements and as well as these mandatory changes our current Tenancy Agreement has not had any significant update since 2009 and there are a number of clauses which could now benefit from change.

- 3.2 The Housing and Planning Act 2016 (HPA) received Royal Assent on 12 May 2016. The Act has introduced numerous amendments including changes to succession rights for all tenants which required updating our current Tenancy Agreement.
- 3.3 Commencement Orders for the relevant legislation were expected in autumn 2017 but these have been delayed and further advice on commencement is not anticipated before April 2018
- 3.4 However, the revised new tenancy agreement (Appendix 2) has been produced to update the current Tenancy Agreement, and accommodate future changes to succession if required.
- 3.5 Tenancies are varied by serving a Notice of Variation.
- 3.6 [Section 103 of the Housing Act 1985](#) prescribes the procedure to be adopted when varying the terms of secure and introductory tenancies.
- 3.7 The first stage is to issue a Preliminary Notice of Variation. The procedure in section 103 is that the terms of an existing secure tenancy may be varied by the Council by the service of a Notice of Variation on the tenant. However, before the Council can serve this Notice of Variation, the Council must firstly serve a Preliminary Notice which informs the tenant of the Council's intention to serve a Notice of Variation.
- 3.8 The Notice must specify the proposed variation/s and its effect/s and invite the tenant to comment on the proposed variation/s within a period considered reasonable by the Council. The Council must consider any comments made by tenants within the consultation period before deciding to serve the Notice of Variation.
- 3.9 Preliminary Notice of Variation letters were posted to all existing council tenants on 20 April 2017. Consultation ended on 12 June 2017.
- 3.10 Copies were made available in large print, Braille and Interpreters were available on request. An easy read document to accompany the Tenancy Agreement is currently in development to support residents with learning disabilities.
- 3.11 The Housing and Planning Act 2016 (HPA) also mandates phasing out secure lifetime tenancies and replacing them with new fixed term tenancies. This will apply to new tenancies only and will not be applied retrospectively. The implementation with the exact date is yet to be announced. The regulations to accompany this part of the Act have not been issued as yet and we await further information to clarify what the conditions of fixed term tenancies will be. However, the new revised secure tenancy agreement will provide a good foundation from which to develop the new fixed term tenancies. When we have a date confirmed for the implementation of fixed term tenancies we will bring a draft fixed term tenancy agreement to committee for approval.

4. CONSULTATION & COMMUNITY ENGAGEMENT

- 4.1 During 20 and 21 April 2017 a Preliminary Notice of Variation was issued to over 11,300 council tenants. This notice was the first stage of our consultation with tenants about the proposed changes to the Tenancy Agreement and gave tenants the opportunity to give feedback. Although not required to do so tenants were invited to give their comments in a variety of ways. These were:
- returning a feedback form
 - completing the survey on the council website
 - completing a feedback form either over the telephone or in person at a local housing office
 - Seniors housing could provide comments at a surgery in their scheme
 - emailing comments to the tenancy agreement inbox
 - by attending one or all of the five pre-arranged drop-in events across the city
- 4.2 An additional 57 new tenants who signed tenancy agreements during the consultation period between 22 April and 11 June 2017 were sent Preliminary Notice of Variations giving them the opportunity to comment on the proposed changes.
- 4.3 From 12 June 2017 and until the new Tenancy Agreement is implemented in January 2018, a letter will be included with all new tenant information at sign up stage. The letter confirms that due to the timing of their new tenancy, we were unfortunately not able to include them in the consultation process. The letter also confirms that the terms and conditions which they have signed up to will almost certainly change and their tenancy will change with it.
- 4.4 Documents accompanying the Preliminary Notice of Variation included a:
- Revised draft Tenancy Agreement
 - Summary of proposed changes
 - Feedback Form
 - Stamped addressed envelope

A longer version of the summary of changes document was also made available to tenants to either download from our website or request a copy from the Housing Customer Services Team.

- 4.5 The feedback form was split into eight sections to reflect the sections in the new Tenancy Agreement:
- Section 1 Introduction
 - Section 2 Your rent and other charges
 - Section 3 Repairs, maintenance and improvements
 - Section 4 Living in your home
 - Section 5 Being a good neighbour
 - Section 6 Seniors and extra care housing
 - Section 7 Ending your tenancy
 - Section 8 Your Rights

- 4.6 Tenants were able to say overall how much they agreed or disagreed with each section of the revised Tenancy Agreement and to say if there was anything else they thought should be included or anything that should be removed. Tenants were also able to provide any other additional comments they had on the revised Tenancy Agreement.
- 4.7 Tenants who required the Tenancy Agreement in a different format, different language or had difficulties with understanding the agreement were advised to contact the Housing Customer Services Team for assistance.
- 4.8 Tenants who had indicated they required documents in large print or Braille were issued with the necessary formatted documents.
- 4.9 We also advertised the forthcoming consultation in the March 2017 edition of Homing In which is a quarterly newsletter for all council tenants and leaseholders.
- 4.10 Between 15 May and 25 May 2017 drop-in events were held across the city at:
- Woodingdean Library, Woodingdean
 - Moulscomb Housing Centre, Moulscomb
 - Robert Lodge, Whitehawk
 - Friends Centre, Brighton
 - Portslade Town Hall, Portslade
- 4.11 Regular messages about the consultation and the drop-in events were posted on our webpage as well as facebook and Twitter.
- 4.12 **Consultation closed on 12 June 2017.**

5. PROPOSED CHANGES

- 5.1 The current Tenancy Agreement has been reviewed to take into account changes in legislation and good practice. There are a number of new sub-sections that have been introduced to the revised Tenancy Agreement to make it easier to identify clauses and also to introduce new clauses and to strengthen existing clauses.
- 5.2 The numbering, titles and layout of the revised Tenancy Agreement has been adapted to make the agreement easier to read and understand and more user friendly.
- 5.3 A separate new section specifically for Seniors and Extra Care housing has been added.
- 5.4 A new section which sets out the rights of tenants has been included. This allows tenants to see at a glance some of their rights such as the right to be consulted or the right to make improvements.
- 5.5 We also consulted with Housing staff, Legal Services and the Neighbourhood and Community & Tenancy Service Improvement Group - Service Improvement

Groups are a way for tenants and leaseholders to get involved in how housing services are run - on possible changes and the following are just some that have been proposed:

- Simplify of the wording of some clauses, clearer layout, expand and updated examples
- Include supplementary information relating to the tenancy agreement in the Tenant Handbook and the Repairs & Improvement Handbook and refer tenants to handbooks for further details. These handbooks compliment the Tenancy Agreement and are currently being reviewed to reflect the changes.
- New headings, subheadings and page numbers so that information is easier to find
- (1.1) Update the Data Protection & Information sharing statement so that it is aligned with the overall council Privacy Notice
- (1.1) Include a 'utilities disclaimer' confirming that we may share personal information with other agencies (for example law enforcement agencies or utility companies). *This is something we can do by law but we want to ensure this information is available to tenants at the start of their tenancy*
- (3.a) Modify wording to confirm that we are responsible for keeping the listed examples in repair and working order, to reflect the Council's obligations under the law
- (3.d, e, f) New clauses clarifying what repairs we are responsible for, when we will carry out certain repairs, confirming what we will insure and highlighting the tenants responsibility for insuring the contents of their home
- (3.i,k,l,o) New clauses to highlight tenant's obligations such as keeping the home adequately ventilated, not interfering with any fixture or fittings for electricity or gas supplies. Taking reasonable precautions to prevent flood damage, avoid storing goods around/near power inverter units if you have solar panel systems fitted
- (3.p) A new clause confirming responsibility for maintaining garden fences
- (3.r) Expanded the wording to confirm where the Council has notified the tenant that access is required and this is not provided, the Council will force access for the purposes of carrying out a service under the Gas Safety Regulations 1998
- (4.h) A new clause and examples confirming that you and anyone living with you must not commit or attempt to commit tenancy fraud. It confirms that tenancy fraud is a breach of tenancy
- (4.i) A new clause to confirm that during the tenancy you must not own or rent any residential property which it would be reasonable for you to live in
- (5.g) Update and expand the nuisance/ harassment clauses including the inclusion of a Prevent statement which confirms not allowing the property to be used as a platform for extremist activities or to publish/broadcast hate messages or to use social media/ other means of communication to post offensive/ abusive material

- (5.i) A new clause confirming requirements on keeping firearms
- (5.l) Reworded clauses on keeping pets and confirms permission will be required for each animal in line with our agreed Pets Policy
- (5.q) Minor changes to the wording to clarify that within shared areas permission must be sought for each and every mobility scooter
- (6) New section and clauses dedicated to Seniors and extra care housing. 'Extra Care housing' is similar to Seniors Housing but with social care provision on site
- (7.a) A new clause for joint tenants confirming that either tenant can end the tenancy by giving notice
- (7.g) Expand the clause outlining tenants responsibility for the disposal of their belongings and rubbish at the end of a tenancy
- (7.n) Revision of succession rights to mirror provisions of Housing & Planning Act 2016

6. CONSULTATION FEEDBACK

- 6.1 We received 615 responses to the consultation. This included feedback from postal surveys and the consultation portal. A further 37 comments were received via email and from the drop-in sessions.
- 6.2 Of the 615 responses a total of 527 additional comments were received on each section on the revised tenancy agreement. Attached at Appendix 1 is a summary of the additional comments received grouped into subject areas along with our response.
- 6.3 For those returning feedback from postal surveys and from the portal there was a high level of agreement for the changes in each of the sections. Between 84% and 92% agreed with most or all changes within each section. A full breakdown is in the following table 1.

Overall do you agree or disagree with the changes under section...					
	Agree with all	Agree with most	Agree with a few	Do not agree with any of them	Don't know
Welcome to your new home (n=580)	61%	26%	5%	2%	7%
Introduction (n=578)	62%	25%	5%	2%	5%
Your rent and other charges (n=589)	66%	21%	5%	2%	6%
Repairs, maintenance and improvements (n=590)	59%	25%	9%	2%	4%
Living in your home (n=583)	68%	21%	6%	1%	4%
being a good neighbour (n=592)	75%	17%	4%	1%	3%
Seniors and extra care housing (n=535)	67%	17%	4%	2%	10%

Ending your tenancy (n=569)	65%	23%	4%	2%	7%
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Table 1

6.4 The highest proportion of responses came from tenants in the over 64 age range.

What is your age - Grouped				
		Frequency	Percent*	Valid Percent**
Valid	18 to 24	5	1	1
	25 to 44	84	14	16
	45 to 64	209	34	39
	Over 64	236	38	44
	Total	534	87	100
Missing	No reply	78	13	
	Prefer not to say	3	0	
	Total	81	13	
Total		615	100	

* number of responses excluding e.g. 'don't knows'/missing

** number of responses including e.g. 'don't knows'/missing

6.5 The highest proportion of respondents was female.

What gender are you?				
		Frequency	Percent	Valid Percent
Valid	Male	252	41	44
	Female	321	52	56
	Other	1	0	0
	Total	574	93	100
Missing	Prefer not to say	1	0	
	No reply	40	7	
	Total	41	7	

6.6 What type of accommodation do you live in?

		Frequency	Percent	Valid Percent
Valid	A whole house or bungalow that is detached	16	3	3
	A whole house or bungalow that is semi-detached	108	18	19
	A whole house or bungalow that is terraced	49	8	9
	A flat, maisonette or apartment that is in a purpose built block of flats	361	59	64
	A flat, maisonette or apartment that is part of a converted or shard house	27	4	5

	Total	561	91	100
Missing	No response	54	9	
Total		615	100	

Note: The (valid) percent of respondents who live in a house or bungalow (31%) was similar to the proportion amongst tenants as a whole (33%), as was the case for respondents who live in a flat, maisonette or apartment that is in a purpose built block of flats (valid percent of 69%) compared to tenants as a whole (67%).

- 6.7 Additional comments from tenants included feedback about what more should be included and or what should be removed on the revised tenancy agreement.
- 6.8 Asked 'overall do you have any other comments about the revised tenancy agreement (for example: do you like the new layout, is information easier to find, do you find the language easy to understand, do you find the clauses easy to understand)'. A total of 137 responses were received with 64 (47%) saying it was clearer and easier to understand.
- 6.9 On the 3 August 2017 officers met with the Neighbourhood and Community & Tenancy Service Improvement Group to review the comments and discuss changes needed to the Tenancy Agreement. The feedback has been invaluable and has enabled officers and the Neighbourhood and Community & Tenancy Service Improvement Group to ensure that the agreement is fair and easy to understand.
- 6.10 All comments were taken into account when making changes to the revised tenancy agreement. The agreement was well received with only 2% disagreeing with the proposed changes. As a result of the positive feedback we do not propose to make any further key changes to the revised version of the Tenancy Agreement.
- 6.11 We will however, in response to tenant feedback, make minor changes to the layout including the wording on the following clauses:

Proposed change to Clause 2.b at consultation:

We may increase or reduce your rent and other charges. If this is going to happen we will give you at least four weeks' notice in writing. This usually takes place in April each year in line with government guidelines. We will still change your rent even if you do not receive this notice.

As result of consultation feedback we have amended to read:

Clause 2.b - We may increase or reduce your rent and other charges. If this is going to happen we will give you at least four weeks' notice in writing after which the changes in your rent will be implemented. This usually takes place in April each year in line with government guidelines

Proposed change to Clause 3.m at consultation:

If you live in a flat or a maisonette above the lowest floor level you must put down a suitable floor covering with adequate underlay or insulation underneath it, to make sure that any noise, excluding normal day-to-day noise, could not and does not cause a nuisance to your neighbours. We will normally refuse permission for hard surface/solid wood/laminate flooring if you live in a flat or a maisonette above the lowest floor.

As a result of consultation feedback we have amended to read:

Clause 3.m –If you live in a flat or a maisonette above the lowest floor level you must put down a suitable floor covering, with adequate underlay or insulation underneath it, to make sure that any noise, excluding normal day-to-day noise, does not unreasonably cause nuisance to your neighbours. We will normally refuse permission for hard surface/solid wood/laminate flooring if you live in a flat or a maisonette above the lowest floor.

Proposed change to Clause 5.g at consultation:

You or anyone living with you or visiting must not harass or threaten any other person (or group of people) at all and in particular not do so because of their age, disability (which includes mental health conditions) colour, gender, nationality, religion, age, mental illness, disability, sexuality or for any other reason.

As result of consultation feedback we have amended to read:

Clause 5.g -You or anyone living with you or visiting you must not harass or threaten any other person (or group of people) at all and in particular not do so because of their age, disability (which includes mental health conditions) ethnicity/race, gender reassignment, religion or belief, sex, sexual orientation, or for any other reason

- 6.12 Feedback on how we have used this information and the results of the consultation will be reported back to all residents in the autumn/winter edition of Homing In as well as on our webpage and social media.
- 6.13 The results of the consultation and revised tenancy agreement were presented at Area Panels on 4, 5, 6 and 7 September 2017.
- 6.14 Feedback from Area Panels was positive. They noted the results of the consultation and endorsed the revised version of the tenancy agreement and appendices.
- 6.15 A revised Tenancy Agreement is attached at Appendix 2. A summary of the tenancy agreement changes is attached at Appendix 3.

7. NEXT STAGE

- 7.1 The provision of good quality housing in the public sector is a priority for the Council and there is a commitment to achieve this by managing our Council homes efficiently. We need to ensure we have a comprehensive tenancy agreement, which covers all the areas of tenancy management and reflects the priorities that are important to the council and its tenants.
- 7.2 It is the responsibility of the landlord to make every effort to ensure that tenants fully understand their obligations within the Tenancy Agreement.
- 7.3 We have now produced a very good, clearer, and easier to read new Tenancy Agreement with updated examples and strengthened clauses

- 7.4 The next stage will be to implement the new Tenancy Agreement. We will write to all tenants issuing them with Notice of Variation, which will vary the conditions of tenancy. Enclosed with this Notice will be a document which summarises the changes and a copy of the new agreement. The Notice will give a date when the new Tenancy Agreement will come into effect, which will be at least 28 days from the date of the Notice. We anticipate the new agreement coming into effect in January 2018.
- 7.5 Any new tenants offered either an introductory or secure tenancy from that date will sign up to the new terms and conditions.
- 7.6 Existing tenants will not have to sign a new tenancy agreement; they will receive a written Notice (Notice of Variation) and a copy of the new Tenancy Agreement which they will not be required to sign.

8. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 8.1 The 2017/18 HRA revenue budget included £0.035m for the costs of reviewing and revising the tenancy agreement.

Finance Officer Consulted: Monica Brooks Date:24/08/17

Legal Implications:

- 8.2 The Housing Act 1985 provides that secure tenancies can only be varied by either agreement with the tenant or by using the statutory procedure pursuant to s.103 of the Housing Act 1985 which sets out the process and time limits to be followed.

S.103 Notice of variation of periodic tenancy.

(1) The terms of a secure tenancy which is a periodic tenancy may be varied by the landlord by a Notice of Variation served on the tenant.

(2) Before serving a Notice of Variation on the tenant the landlord shall serve on him a Preliminary Notice—

(a) informing the tenant of the landlord's intention to serve a Notice of Variation,

(b) specifying the proposed variation and its effect, and

(c) inviting the tenant to comment on the proposed variation within such time, specified in the Notice, as the landlord considers reasonable;

and the landlord shall consider any comments made by the tenant within the specified time.

(4) The Notice of Variation shall specify—

(a) the variation effected by it, and

(b) the date on which it takes effect; and the period between the date on which it is served and the date on which it takes effect must be at least four weeks or the rental period, whichever is the longer.

(5) The Notice of Variation, when served, shall be accompanied by such information as the landlord considers necessary to inform the tenant of the nature and effect of the variation.

The consultation period outlined in paragraph 3.9 satisfied the reasonable requirement in section 103 (2)

(c) The procedural requirements in subsections 103(4) and (5) will be satisfied by the steps outlined in Section 7 of the report.

Lawyer Consulted: Name Liz Woodley, Juliet Escombe Date 11/08/17

Equalities Implications:

- 8.3 Feedback from the consultation has been used to finalise the Equality Impact Assessment (EIA) on the revised Tenancy Agreement. The development of the new Tenancy Agreement has been taken with due regards to equalities and diversity issues and will be available in a range of formats to meet to meet tenants needs. No significant negative consequences from the new tenancy agreement relating to groups with protected characteristics were identified.

Sustainability Implications:

- 8.4 An effective Tenancy Agreement will contribute to the development of sustainable communities.

Crime & Disorder Implications:

- 8.5 The new Tenancy Agreement will positively contribute to preventing crime and the fear of crime by stating the types of anti social behaviour and harassment that is prohibited and the enforcement action that the council can take should such behaviour occur. Housing will also continue to work closely with colleagues in the Corporate Fraud Team to tackle tenancy fraud.

Risk and Opportunity Management Implications:

- 8.6 A Tenancy Agreement which does not provide clear detail on how we manage tenancies, risks loss of confidence and may leave us open to legal challenge and associated costs. Any risk and opportunity management implications will be considered under the EIA.

Public Health Implications:

- 8.7 Good housing promotes higher levels of health and wellbeing. Any public health implications will be considered under the EIA.

Corporate / Citywide Implications:

- 8.8 The provision of good quality housing in the public sector is a priority for the Council and there is a commitment to achieve this by managing our Council homes efficiently. A robust tenancy agreement which sets out the rights and responsibilities of tenants and the Council will enable efficient and effective management of our homes.

SUPPORTING DOCUMENTATION

Appendices:

Appendix 1: Tenancy Agreement Consultation- Summary of feedback

Appendix 2: Draft Tenancy Agreement 2017

Appendix 3: Tenancy Agreement Changes

Documents in Members' Rooms

None

Background Documents

Preliminary Notice of Variation

Draft Notice of Variation

[Housing and Planning Act 2016 \(HPA\)](#)

<http://www.legislation.gov.uk/ukpga/2016/22/contents/enacted/data.htm>

Letter 1 - Preliminary Notice to new tenants

Letter 2 – Information to new tenants after consultation

Revised Tenancy Agreement Consultation - All Feedback

Current Tenancy Agreement (2015)