

Subject:	Tenancy Policy		
Date of Meeting:	12 November 2014		
Report of:	Executive Director of Environment Development and Housing		
Contact Officer:	Name:	Rachel Chasseaud	Tel: 01273 290753
	Email:	Rachel.Chasseaud@brighton-hove.gov.uk	
Ward(s) affected:	All		

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 The council is required under the Localism Act 2011 and the current Homes & Communities Agency (HCA) regulatory framework for social housing, to publish a Tenancy Policy. The draft Tenancy Policy is attached (appendix 1)
- 1.2 The Tenancy Policy has been produced in line with the council's Tenancy Strategy 2013 which was approved at Housing Committee on 6 March 2013.

2. RECOMMENDATIONS:

- 2.1 That the Housing Committee approves the draft Tenancy Policy.
- 2.2 That Housing Committee agrees to amend the tenancy agreement for new tenants with effect from 1 January 2015 to reflect the proposed new succession rules for new tenants and discretionary succession outlined in the report.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The HCA's regulatory framework requires that all providers of social housing publish a clear and accessible approach in relation to:
 - The types of tenancies it will grant
 - The provision of service to vulnerable households
 - Whether discretionary succession rights are offered
 - The approach to tenancy sustainment and how they prevent unnecessary evictions
 - The approach to tackling tenancy fraud

3.2 **Type of Tenancies**

The Localism Act gave social housing providers the option to introduce fixed term tenancies, which is a time limited form of secure tenancy. As outlined in the Tenancy Strategy 2013 Brighton & Hove City Council has decided not to offer fixed term tenancies at this time. Instead we will continue to offer introductory and secure tenancies, and where appropriate apply for demoted tenancies during court proceedings for anti-social behaviour.

3.3 **Succession**

The Act also made changes to statutory succession rights for new tenants after 1 April 2012. For secure and introductory tenancies that started before 1 April 2012, the law allowed for one statutory succession to either:

- the joint tenant, or
- the deceased tenant's spouse or civil partner providing they were residing with the deceased tenant at the time of their death as their main home, or
- a member of the deceased tenant's family who had been residing with the deceased tenant for twelve months prior to the tenant's death as their main home

3.3.1 For existing tenancies statutory succession rights remain unchanged, with family members being able to succeed.

3.3.2 For tenancies that started on or after 1 April 2012, the changes meant family members no longer have a statutory right of succession. The statutory right of succession has been limited to the husband, wife, civil partner or cohabiting partner of the tenant if s/he occupied the property as his/her only or principal home at the time of the tenant's death. However, these changes have to date not been implemented by the council which has continued to grant tenancies under the pre-2012 succession policy. It is proposed that in line with current legislation that the succession policy for new tenancies be amended to only allow succession to the deceased's tenant's spouse, civil partner and cohabiting partners who have been residing with the deceased tenant as their only or principal home at the date of the tenant's death. This means that children of the deceased and other members of the deceased's family will not qualify to succeed but their need may be met through a discretionary succession policy.

Discretionary Succession

3.3.3 The council's Tenancy Strategy required social housing providers to have policies on discretionary succession to support those in need.

3.3.4 Discretionary succession has been limited to include members of the family in priority need only who have been residing with the deceased tenant in the property for 12 months or more as their principal home. Family members are defined by Section 113 of the Housing Act 1985 as spouses, parents, grandparents, siblings, uncles, aunts, nephews and nieces; including step-relations, half-relations and illegitimate children and persons living together as husband and wife. Family members will be assessed as to whether they are in priority need and against criteria. Details of the criteria are included in the Tenancy Policy at Appendix 1.

- 3.3.5 In Brighton & Hove the consideration to not offer discretion to family members residing with deceased tenants in all cases, is based upon the current levels of housing need. The number of households on the housing register reflects the shortage of social housing in the city.
- 3.3.6 We reviewed succession applications from 1st January 2013 to 1st January 2014 to try to illustrate the potential impact of these changes. During the course of the year there were 60 applications for succession of which 47 were straightforward spousal, civil partner or co-habitee successions. The remaining 13 applications were made by other family members. Of these applications 2 were declined. It is not possible to identify of the 11 successful applications how many applicants would not have been in priority and so under the new discretionary succession policy would not have succeeded, as we did not collect information about health issues at the time as this information was not relevant. However this does nevertheless indicate that there is likely to be a very small number of households affected every year.

Sustaining tenancies and provision of services to vulnerable households

- 3.4 We have a Housing Inclusion Team to help reduce inequality, promote social, financial and digital inclusion. They work with residents, housing teams and partner agencies to achieve improved and sustainable outcomes for residents living in cycles of multiple disadvantage.
- 3.4.1 The council has a Sustainable Tenancies Strategy developed in response to the challenges brought about by welfare reform.
- 3.4.2 The Council has a team of specialist officers that aim to sustain tenancies by intensively working to effectively manage the tenancies of people with complex needs (including mental health, substance misuse, learning difficulties), balancing both individuals and community interests.

Tackling tenancy fraud

- 3.5 We will take action to recover properties that have been sublet or that are unoccupied. This enables us to make best use of our properties to help meet housing need.
- 3.5.1 In June 2013 the council set up an Anti-Fraud Team with part of its remit to tackle tenancy fraud. We work in partnership with this team and they undertake a number of activities to minimise tenancy fraud.

4. COMMUNITY ENGAGEMENT AND CONSULTATION

- 4.1 Consultation on the Tenancy Policy has taken place with current residents, Area Panels and housing list applicants.
- 4.2 Consultation with current tenants also took place in the form of an online survey through the council's online facility and Survey Monkey, generating a good rate of response. There were a total of 326 responses received.

- 4.3 A 10% sample of the then 17,000 on the housing waiting list in January 2014 has been carried out by sending out a paper survey to randomly selected addresses. A total of 149 responses were generated from this group.
- 4.4 The feedback received from residents through consultation and making the best use of housing stock have been considered when deciding on the discretionary succession policy.
- 4.5 The feedback from Area Panels was positive with tenant representatives commenting that they were pleased the discretionary succession policy goes beyond the Localism Act 2011 statutory requirements. Tenant representatives were also pleased the details on how we tackle tenancy fraud have been included in the policy document.
- 4.6 At the initial round of Area Panels in 2013 residents expressed a view that consideration should be given to giving carers who live with a tenant discretionary succession rights. In the vast majority, if not all cases that we have dealt with in these circumstances, live in carers have also been a family member. Therefore the same discretionary succession decision making process would apply. Area Panels were satisfied with this approach when the final draft went back to them in September 2014.
- 4.7 A Councillor raised a concern at one Area Panel that having a discretionary succession policy may allow officers to make arbitrary decisions about who does and does not succeed to a tenancy. Officers reassured the Panel that the framework for decisions on discretionary succession is clearly outlined in the Tenancy Policy and any decisions will be made within the policy framework and would be transparent and open to scrutiny. The criteria are outlined in appendix 1 Those who are declined a succession will be able to request a review of that decision via the Council's complaints procedure and would ultimately be able to request that it is scrutinised by the Housing Ombudsman or through the Courts.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The costs of revising the Tenancy Policy mainly relate to staff time, with some printing and stationery costs. These costs can be met from existing HRA 2014/15 revenue budgets within the Performance and Improvement Team and Tenancy Management Teams.

Finance Officer Consulted: Monica Brooks

Date: 16.10.14

Legal Implications:

- 5.2 The requirement for the introduction of a Tenancy Policy is set out in the report.

As set out in the main body of the report, the Localism Act 2011 (the Act) amended the rules governing succession to secure tenancies and restricted succession to only spouses, civil partners and cohabiting couples who were residing with the deceased tenant as their only or principal home at the date of death. This new rule is only applicable to new tenancies granted after the Act came into force.

The proposed changes to the succession rules for new tenancies will therefore bring the council's succession policy in line with current legislation.

The Act also gave landlords wide powers to grant wider succession rights in their tenancy agreements than that permitted and inserted section 86(A) (1) into the Housing Act 1985 to give effect to this power. The proposed policy on Discretionary Succession is therefore legally permissible.

Lawyer Consulted: Amma Boateng

Date: 30/10/14

Equalities Implications:

- 5.3 A Tenancy Policy has the potential to impact on households as anyone can become vulnerable at any point in the tenancy for a number of reasons such as illness, age or financial difficulties. Our Equalities Impact Assessment has highlighted that the policy could have different impacts on different groups and where appropriate we have developed measures within those policies to reduce the impact. Monitoring the impact of the policy will help us establish whether certain household types or groups are inadvertently being excluded or disadvantaged which could lead to a review of our policy. Once agreed the policy will be published on the council's website and will be available in alternative formats on request.

Sustainability Implications:

- 5.4 Brighton & Hove City Council has opted to remain offering secure lifetime tenancies in line with the Tenancy Strategy, to support a stable home environment.

The way in which tenancies are managed encourages stable neighbourhoods, with teams dealing effectively with anti-social behaviour to enable this.

Crime & Disorder Implications:

- 5.5 The Tenancy Policy provides detail on Introductory Tenancies and the use of this type of tenancy to address anti-social behaviour.
- 5.6 The Policy also sets out how we aim to sustain tenancies by encouraging tenants to adhere to the conditions set out in their tenancy.

Risk and Opportunity Management Implications:

- 5.7 A Tenancy Policy which does not provide clear detail on how we manage tenancies risks loss of confidence from those who have limited housing options. The Tenancy Policy gives clear detail to promote confidence.

Public Health Implications:

- 5.8 There are no direct public health implications. The policy sets out the support offered to vulnerable persons and includes the mechanisms we have in place to do this.

Corporate / Citywide Implications:

- 5.9 Affordable housing is in short supply across Brighton and Hove with social housing in more demand than availability. Meeting criteria for social housing in the city often means only the most vulnerable in society are eligible.
- 5.10 The measures detailed in the Tenancy Policy outline how we sustain tenancies to enable stability through lifetime tenancies with policies to support vulnerable tenants.

SUPPORTING DOCUMENTATION

Appendices:

1. Tenancy Policy
2. Discretionary Succession Criteria

Documents in Members' Rooms

None

Background Documents

1. [Tenancy Strategy 2013](#)
2. [Regulatory Framework for Social Housing](#)
3. Tenancy Policy Equalities Impact Assessment

Brighton & Hove **Tenancy** **Policy**



Brighton & Hove
City Council

1 Introduction

- 1.1 Tenancy Policies were introduced as part of a wider package of social housing reforms implemented through the Localism Act 2011 and through changes to the regulatory standards that all social landlords are expected to meet.
- 1.2 The requirement to produce and publish a Tenancy Policy is regulatory rather than legal. It is set out in the Tenancy Standard in the Regulatory Framework for Social Housing by the Homes and Communities Agency.
- 1.3 This policy sets out how Brighton & Hove City Council will use the range of options available in the Localism Act, and provide all tenants with information on the advice and support we provide to help them manage their tenancies successfully. It clarifies how we will support tenancy sustainment, prevent unnecessary evictions, tackle tenancy fraud and grant discretionary successions. This policy will ensure we meet the aims of the council's Tenancy Strategy 2013 which was agreed at Housing Committee on 6 March 2013.
- 1.4 Our approach to formulating the Tenancy Policy has been to consolidate the tenancy policies that currently exist separately into one accessible document.
- 1.5 The council is committed to ensuring that tenants are informed about their rights, responsibilities and have access to services. Information is available in a range of ways including in the Tenancy Agreement, Tenant Handbook, and on the council's website.

2 Rents

- 2.1 The council will continue to charge social rents for existing properties.
- 2.2 For new council housing and in line with the Tenancy Strategy 2013, affordable rent levels will be agreed by Housing Committee, on a scheme by scheme basis.

3 The types and lengths of tenancies granted

3.1 Flexible Tenancies

Brighton & Hove City Council will not offer flexible tenancies at this time as outlined in the Tenancy Strategy 2013.

3.2 Introductory Tenancies

The council introduced introductory tenancies in 2005 to help sustain tenancies and neighbourhoods by encouraging people to adhere to their tenancy conditions. They also enabled firmer and quicker action when dealing with nuisance and non payment of rent.

- 3.3 We will grant an Introductory Tenancy to all new tenants, lasting for a period of 12 months, except where existing secure tenants transfer to another property within the council housing stock.

- 3.4 As well as being used to assess the suitability of granting a Secure Tenancy an Introductory Tenancy also has fewer legal rights. For example the Right To Buy is not available (although the introductory 12 month period will count towards the discount offered). There is also no right to mutual exchange or a right to take in a lodger.
- 3.5 During the probationary period, a series of visits are made to the new tenant, forming part of the assessment process. A successful Introductory Tenancy will then become a Secure Tenancy.
- 3.6 Introductory tenants not eligible for promotion to a Secure Tenancy at the end of the initial 12 month probationary period will receive depending upon the individual circumstances either a Notice to Extend the Introductory Period by a further six months or a Notice to Terminate. Reasons for extending or terminating the tenancy will be provided in the notice.
- 3.7 **The process for reviewing an Introductory Tenancy**
The tenant has a right to request a review where a notice is served against the Introductory Tenancy and details of how to do this are included with the notice.
- 3.8 **Secure Tenancies**
Secure Tenancies will be granted to those tenants that have successfully completed an introductory tenancy, tenants moving from another registered social landlord who hold an assured tenancy and any existing secure tenant where they choose to move to another council owned property.
- 3.9 **The process for reviewing a Secure Tenancy**
Our review process is managed through the terms and conditions in our Tenancy Agreement and supported by our policies for managing tenancies.

4 Supporting vulnerable tenants and preventing unnecessary evictions

- 4.1 **Supporting vulnerable tenants**
Tenants can become vulnerable at any point in the tenancy for a number of reasons such as illness, age or financial difficulties. We have a number of interventions to provide an increased degree of stability to vulnerable tenants.
- 4.2 A specialist Tenancy Sustainment Team is able to work with tenants with complex needs (including mental health, learning difficulties and substance misuse) who have difficulties in managing their tenancies and maybe at risk of losing their homes.
- 4.3 The team carries out short to medium term interventions, working with a range of agencies to help put tailored support in place for individual tenants who may be struggling to manage their tenancies.
This work includes:
- ensuring support networks are in place
 - promoting life skills to tenants so they can live safely in their own home and manage their personal care
 - offering assistance and signposting to agencies who are able to provide help managing finances and debt where a tenancy is at risk

- signposting to a range of specialist agencies most appropriate to support the person's needs, whose behaviour is impacting on the community
- encouraging and facilitating life skill opportunities through training and employment
- signposting to partner agencies to provide basic parenting skills
- seeking innovative solutions to resolve problems caused by those with complex needs (eg hoarding cases)
- acting as support/liaison for tenants dealing with other housing services and external agencies

4.4 **Preventing unnecessary evictions**

As far as possible the council seek to minimise the number of evictions that are carried out.

4.5 In addition to Brighton & Hove City Council's own interventions to prevent evictions, we adhere to the rent arrears pre action protocol. All providers of social housing are expected to observe the good practice set out in the protocol to minimise possession claims for non-payment of rent.

4.6 We have a Sustainable Tenancies Strategy in place which contains aims, initiatives and an action plan in response to the challenges brought about by welfare reform.

4.7 The expected outcomes of this strategy are to:

- reduce uncontrollable or unmanageable personal debt
- maximise income
- increase tenant confidence
- minimise personal, social and financial costs associated with tenancy breakdown

4.8 A Housing Inclusion Team is in place with an aim to help reduce inequality, and promote social, financial and digital inclusion. They work closely with housing teams, partners, external agencies and residents to achieve improved and sustainable outcomes for residents of the authority's housing stock living in cycles of multiple disadvantage.

4.9 The specific focus of the Housing Inclusion Team is on:

- increasing opportunities and engagement in learning, skills and employment
- improving the health and wellbeing of communities (with an emphasis on financial inclusion, child poverty, fuel poverty)
- increasing community involvement, aspirations and building capacity

5 Succession

5.1 When a tenant dies the tenancy can sometimes be passed on to another member of the family and this is known as succession. The Localism Act made changes to the right of succession.

5.2 For secure and introductory tenancies that started before 1 April 2012, the law allowed for one statutory succession to either:

- the joint tenant, or

- the deceased tenant's spouse, civil partner or co-habitee providing they were residing with the deceased tenant at the time of their death as their main home, or
- a member of the deceased tenant's family who had been residing with the deceased tenant for 12 months prior to the tenants death as their main home

For these tenancies statutory succession rights remain unchanged, with family members being able to succeed.

- 5.3 For tenancies that started on or after 1 April 2012, the changes meant family members no longer have a statutory right of succession. The statutory right of succession has been limited to the joint tenant, the husband, wife, civil partner or cohabiting partner of the tenant if s/he occupied the property as his/her only or principal home at the time of the tenant's death.

6 Discretionary Succession

- 6.1 In certain circumstances if the tenant dies and there has already been one statutory succession at the property, the council may offer a discretionary succession.
- 6.2 Brighton & Hove City Council will grant discretionary succession to family members¹ who are considered to be likely to be in 'priority need'² should they become homeless; who had been resident with the deceased tenant for at least 12 months prior to the death. There will not be an automatic right to a discretionary succession for family members as each application will be individually assessed to determine whether they would be likely to be 'priority need' and meet the criteria in appendix 1.
- 6.3 Where a family member of the deceased tenant applies for discretionary succession, the council will consider whether the criteria have been met.
- 6.4 Where there is more than one applicant the persons must agree among themselves who is to take over the tenancy. If they cannot agree, we are entitled to choose the successor. If there is a spouse/civil partner, the spouse/civil partner must become the successor, they cannot opt out of this status and, for example, request that the tenancy passes to another family member – it must remain with them.

¹ Family members are defined by Section 113 Housing Act 1985 as spouses, parents, grandparents, siblings, uncles, aunts, nephews and nieces; including step-relations, half-relations and illegitimate children and persons living together as husband and wife.

² The **1996 Housing Act** defined a household in 'priority need', a pregnant woman, dependent children, someone vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, someone homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster . This was expanded by the **2002 Homelessness (Priority Need for Accommodation) (England) Order** to include those: aged 16 and 17 years old, aged under 21 years old who were in local authority care between the ages of 16 and 18, aged 21 and over who are vulnerable as a result of leaving local authority care, vulnerable as a result of leaving the armed forces, vulnerable as a result of leaving prisoner, vulnerable as a result of fleeing domestic violence or the threat of domestic violence.

- 6.5 In cases where the application is accepted, if the property is not of the appropriate size for the household, in accordance with the council's Allocations Policy, or there are substantial adaptations that the discretionary successor does not need, the council will require that the discretionary successor moves to suitable accommodation for their needs.
- 6.6 Officers will support the occupant to move by offering advice on the moving process through the choice based lettings scheme.
- 6.7 Where the discretionary succession application is declined, officers will be sensitive, provide support and allow reasonable time to find alternative accommodation this includes sign posting to other agencies. In these cases remaining occupants would normally be provided with a period of 6 months to find alternative accommodation. This information and the reason for them not being able to succeed will be provided in writing. Information will also be provided about how to request a review of the decision.
- 6.8 Those who are declined a succession will be able to request a review of that decision via the Council's complaints procedure and would ultimately be able to request that it is scrutinised by the Housing Ombudsman or through the Courts.

7 Tenancy Fraud

- 7.1 We will take action to recover properties that have been sublet or that are unoccupied. This enables us to make best use of our properties to help meet housing need.
- 7.2 Routine visits to all tenants, take place every three years which include checks on identity. We also complete unannounced visits when we receive information that a property may be sublet.
- 7.3 In June 2013 the council set up an Anti-Fraud Team with part of its remit to tackle tenancy fraud. We work in partnership with this team and they undertake a number of activities to minimise tenancy fraud.
- 7.4 These include:
 - undertaking tenancy fraud campaigns, publicising successes and reporting savings
 - using the full investigative powers in the prevention of Social Housing Fraud Act 2013.
 - exploring how information provided by applicants can be better verified before the point of offering a tenancy including the use of photographs of applicants
 - continued participation in the National Fraud Initiative Data Matching exercise and data matching with external data sets
 - risk assessing tenancy visits in to high, medium and low visits

8 Equalities Impact Assessment

- 8.1 Our Equalities Impact Assessment has highlighted that the policy could have different impacts on different groups and where appropriate we have developed measures within those policies to reduce the impact.
- 8.2 This policy will be kept under review with adverse impacts being assessed when changes are likely to be made.

9 Complaints

- 9.1 If a resident wishes to make a complaint about any aspect of our housing service, we encourage residents to contact us so we can try and resolve the issue. Complaints can also be made through the council's Standards and Complaints Team.

10 Exceptional circumstances

- 10.1 There may be limited circumstances when the Executive Director Environment Development & Housing, or any officer duly authorised, may exercise discretion in relation to the Tenancy Policy, due to exceptional circumstances and will do this by taking into account all of the circumstances.

11 Policy review

- 11.1 The Tenancy Policy will be reviewed every three years or where the Tenancy Strategy 2013 is amended, or circumstances change significantly. Any changes will be agreed with Housing Committee before being published.

Housing

Housing Centre
Unit 1 Fairway Trading Estate
Eastergate Road, Brighton, BN2 4QL
01273 293030
www.brighton-hove.gov.uk/council-housing

Appendix 1

Discretionary Succession Policy - Criteria

In addition to the criteria set out in this appendix the applicant must meet the Priority Need test, in order to qualify for discretionary succession to a tenancy.

Each application will be individually assessed by a Neighbourhood Team Leader and a final decision will be made by the Neighbourhood Housing Manager.

The council will consider:

- i) Evidence of residence with the tenant as their only home, for a continuous period of 12 months before the tenant's death. Electoral registration and registration for benefits or as a tax payer from the address will be required, as will evidence that they were the carer or child of the deceased.
- ii) Evidence of relationship to the tenant as outlined in the Tenancy Policy.
- iii) Immigration status
- iv) Mental capacity
- v) Anti-social behaviour or conviction of any indictable offences committed at the property or in the neighbourhood as per the tenancy agreement.
- vi) Debt to the council including where applicable, evidence of consistent payment of use and occupation charges
- vii) A tenancy elsewhere (including jointly)
- viii) Potential interest in property owned or rented by their spouse/civil partner
- ix) Income exceeding the 'working household income limits' as per the Allocations Policy
- x) Evidence of sufficient income to secure accommodation in the private sector
- xi) If the council would have a duty to house the person should they become homeless
- xii) And any other information significant to the individual case.