

Cabinet Member Decision Note

Review of Flexible Fixed Term Tenancies

To: Cabinet Member for Housing and Public Safety

Date: 19th December 2019

Author:	Director of Housing
Wards:	All
Parishes Affected:	All

1 Purpose and Reasons

- 1.1 This report reviews the type of council tenancies provided to tenants of homes provided by Swindon Borough Council.
- 1.2 To switch from offering flexible tenancies to secure tenancies for new tenants of general needs properties. All new tenants will continue to have a one year introductory tenancy when they first become a tenant. Secure tenancies are often referred to as 'lifetime' tenancies and for the remainder of the report the use of lifetime will mean a secure tenancy.
- 1.3 That current tenants on a flexible tenancy default to a lifetime tenancy at the end of the fixed term.
- 1.4 That from the implementation date all new tenants are offered a lifetime tenancy using the new version of the secure (lifetime) tenancy agreement (see detail in paragraph 3.17).
- 1.5 This is a change to the Council's Housing Tenancy Strategy and Allocation Policy.
- 1.6 This Decision Note meets the following priorities in the Council Plan; Priority 4, Pledges 19, 23 and 26 and under the Swindon Programme will ensure that the service provides organisational excellence and will manage demand.

2 Recommended Action to be authorised by a Cabinet Member Under Delegated Powers

- 2.1 Recommended the Council's Housing Tenancy Strategy and Allocations Policy are amended and the vast majority of tenants of general needs properties are offered introductory tenancies followed by lifetime tenancies. This excludes offers of accommodation made under the provisions of the Housing Act 1996, Part 7 and the Homelessness Act 2002, as amended by The Homelessness Reduction Act 2017 when the Council will continue to offer temporary tenancies. Residents of homeless supported accommodation will continue to be offered licence agreements.
- 2.2 The existing secure lifetime tenancy agreement was last revised in 2004. It is therefore recommended that a new secure tenancy agreement is introduced which

Further information on the subject of this report can be obtained from Sylvia Darragh, 01793 464416, sdarragh@swindon.gov.uk.

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will contain the same rules as the present flexible agreement but with all reference to flexible and fixed term tenancies removed.

- 2.3 The Director of Housing writes to all Flexible Tenants to advise them of this change and that they will automatically become lifetime (secure) tenants when the current term ends.

3 Detail

- 3.1 The 'flexible tenancy' was introduced by the Localism Act 2011 as an option instead of granting 'lifetime' secure or assured tenancies. Social housing landlords were not obliged to offer fixed term tenancies. Low numbers of landlords implemented this and in 2014/15 just 15% of social housing tenancies were let as fixed-term tenancies. The statistics for 2017/18 are shown in Appendix 1 and these show that very few local authority offered Flexible Tenancies.
- 3.2 A key driver for adopting Flexible Tenancies was to tackle under-occupation but this provision has been overtaken by the under-occupancy charge, more commonly known as the "bedroom tax". Swindon proactively encourages tenants to move to more appropriate accommodation in order to make best use of its housing stock and as a result there is a waiting list for suitable vacancies. In addition, there is a specialist housing officer who provides support to tenants to downsize to more suitable accommodation such as a bungalow or sheltered home and at the same time releasing family accommodation that is relet through the council home waiting list. Last year 24 tenants were supported to downsize.
- 3.3 The Housing and Planning Act 2016 included the provisions needed to compel local authorities to grant fixed-term secure tenancies, however, the regulations were not brought into force.
- 3.4 The social housing green paper – a 'new deal' for social housing was published 2018 and states that there has been a growing recognition of the importance of housing stability for those who rent and "now proposing not to implement at this time the provisions in the Housing and Planning Act 2016 to make fixed term tenancies mandatory for local authorities, after listening to residents' concerns."
- 3.5 In recent months many social landlords, in response to the green paper, have announced that they are scrapping fixed term tenancies in favour of lifetime tenancies (L&Q, Sanctuary, Royal Borough of Kensington and Chelsea and Peabody) and many more are reviewing their use.
- 3.6 Many of the housing associations that responded to an Inside Housing survey cited uncertainty for tenants and extra work for frontline staff as key reasons fixed-

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Tenancy because it is about to or has ended and this will affect other applicants on the Housing Register.

- 3.14 If the tenant has not been able to move after the tenancy has ended because a suitable property has not become available, the tenancy will run on as a periodic tenancy without undermining the Council's right to gain possession.
- 3.15 It is clear that the above processes are likely to be a time consuming and based on other landlords' experience, it is anticipated that the overwhelming majority of these tenancies will not be ended. In addition, the renewal process will cause unnecessary worry for residents and they will have to incur the significant cost of moving and setting up a new home.
- 3.16 In common with many other social landlords, this Council recognises that our tenants prefer to have a house or flat that they can call 'home', that is somewhere that is safe and secure. The change from fixed term tenancies to secure lifetime tenancies will provide tenants with more security, enabling residents to build lasting and positive relationships with their neighbours and as a result building stronger communities.
- 3.17 The Flexible Tenancy agreement reflects the terms of this type of tenancy and these terms were also revised and updated in 2015. The existing secure "lifetime" tenancy was last revised in 2004. It is therefore proposed that a new secure tenancy is introduced which will contain the same terms as the present flexible agreement but with all reference to flexible and fixed term tenancies removed.
- 3.18 This decision will affect just over 1,000 existing fixed term tenants who will automatically become secure "lifetime" tenants when the current term ends. For future tenants it will not affect who is entitled to council homes, only the type of tenancy that is offered. The vast majority of current tenants (over 9,000) have lifetime tenancies and therefore this decision is not a significant change that requires a Cabinet decision and it is considered that it is appropriately delegated for a Cabinet Member decision.

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term tenancies were not working. A summary of their comments is provided at Appendix 2.

3.7 Swindon Borough Council

- 3.8 Flexible tenancies were introduced in January 2015. Tenants have a 1 year introductory tenancy followed by the 5 or 10 year flexible tenancy. Sheltered tenants have continued to be issued secure (lifetime) tenancies.
- 3.9 Currently there are 392 five year and 695 ten year flexible tenancies with the first reviews due January 2021, and the review process commencing up to 12 months earlier.
- 3.10 It is therefore timely to review the future of flexible tenancies and comply with the stated aim of the housing green paper to "to rebalance the relationship between landlords and residents, tackle stigma and ensure social housing can act as a stable base and support social mobility". This must be balanced against the Government's statement within the social housing green paper that the requirement to generally grant fixed term tenancies will not be implemented 'at this time'. This leaves the possibility that the regulations may be introduced at a future date.
- 3.11 Officers have yet to develop a formal review process to determine if a fixed term tenant will be offered another tenancy at their home. This process must start up to 12 months prior to the end of the existing tenancy. The review would take into account eligibility under the allocation policy, arrears history, compliance with tenancy agreement, size of the property etc. If appropriate the tenant will be signed up to a further fixed term tenancy at the current property
- 3.12 If a decision is made not to grant a new tenancy then at least 6 months written notice must be issued to the tenant informing them that they do not intend to renew the tenancy. The tenant will have the right to request a review of the decision. If the tenant fails to leave the Council will have to give 2 months' notice that it requires possession by serving notice before the tenancy ends and then the council would apply to the court for a hearing. This will involve the Council in additional legal work and the associated costs of taking action. There will also be implications for voids, as turnover will increase and this will impact on void costs.
- 3.13 If the tenant is still eligible for housing under the Council's Allocation Policy they will need to move to a property more suitable for their needs, by means of a transfer. Consideration will have to be given to amending the Allocations Policy to give greater priority to tenants who need to move from their present Flexible

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4 Alternative Options

- 4.1 To continue the present policy of offering new tenants of general needs housing Flexible Tenancies and provide a report 12 months after the first batch of tenants have been reviewed to show the implications and costs.
- 4.2 If this is decided the Council's Allocations Policy will need to be revised to give sufficient priority to tenants when their flexible tenancy has ended but who occupy accommodation unsuitable for their needs (ie. overcrowded or under-occupying).

5 Consultation

- 5.1 The following Opposition Spokespersons have been consulted on the recommendations of the report and their responses are also summarised below:
- 5.2 Councillor Emma Bushell - formally supports the proposal and will report any comments to the Housing Management CMAG in January 2020.
- 5.3 Councillor Stan Pajak – Happy to support the proposal.

6 Implications, Diversity Impact Assessment and Risk Management

6.1 Financial and Procurement Implications

Reintroduction of secure lifetime tenancies will not lead to additional costs.

6.2 Legal and Human Rights Implications

These are considered within the report.

6.3 All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

None identified.

6.4 A Diversity Impact Assessment has not been completed for this Decision Note as none of the recommendations will change who will be allocated council housing.

6.5 Risk Management

There are no risk management implications arising from this report.

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7 Consultees

- 7.1 The Director of Finance (Section 151 Officer) and Chief Legal Officer (Monitoring Officer) are consulted in respect of all reports.

8 Background Papers

None.

9 Appendices

See separate attachment.

10 Declarations of Interest

Cabinet Members are reminded to consider whether they have any known interests in any of the matters referred to in this Decision Note. If such an interest exists this should be declared to the Monitoring Officer (or Committee and Member Services Manager), and they should take no part in the consideration of the Decision Note and should refer the Decision Note to the Leader of the Council instead for consideration.

11 Sign-off

The Cabinet Member is requested to respond within 5 days of the date of this report.

The Cabinet Member is requested to indicate one of the following responses to the Recommendations set out in Section 2 of this report:

Note and support the proposed action to be taken under delegated authority –

Yes / ~~No~~

Note and request the proposed action be reconsidered – ~~Yes~~ / No

Reasons for Reconsideration:

~~N~~ / A

Request Report be Referred to Cabinet - ~~Yes~~ / No

NB To protect against identity theft, Cabinet Member's signatures will be redacted on public versions of the signed Briefing Note.

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Date 20.12.2019

Signed  Cabinet Member

Decisions of Cabinet must not be implemented in the Members' Bulletin. The Decision must not be implemented if a five-day "Call-in" period has expired. This date will be specified in the Members Bulletin. If a Decision is "called-in" it will be referred to the Scrutiny Committee for consideration. It must only be implemented if the Scrutiny Committee has raised no objection. If an objection is forthcoming the matter will be referred back to the Decision-Maker.

Appendix One

ENGLAND SOCIAL HOUSING LETTINGS 2017/18

28%	LIFETIME Local Authority (LA)
40%	LIFETIME PRIVATE REGISTERED PROVIDER (PRP)
2%	FIXED TERM LA
16%	FIXED TERM PRP
12%	LICENCE AGREEMENT
2%	OTHER

Total lets 313,000.

SOURCE : Social Housing Lettings 2017/18

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759738/Social_Housing_Lettings_April2017_to_March2018_England.pdf

Appendix Two

L&Q stated that the renewal date very rarely coincided with a change in residents' circumstances, and said L&Q has renewed the overwhelming majority of its tenancies without ending a single one due to under occupation

Peabody said it decided to move away from fixed-term tenancies after a review found "no difference in the level of rent arrears or terminations between fixed-term and lifetime tenancies and no increase in mobility due to change in circumstances including downsizing".

Sanctuary stated "We believe everyone should be able to live in a decent home, where they feel safe and secure. Our social purpose – the reason we were set up 50 years ago – was to provide a home that people could afford, where they could raise a family and grow old. Lifetime tenures are preferred by our residents and they make for stronger, more engaged and thriving communities."

Royal Borough Kensington Chelsea is reviewing its fixed term tenancy policy in its new draft housing strategy. Deputy leader of RBKC, Kim Taylor-Smith said: "We are committed to putting our residents first and are continually discussing how we can improve the services we provide, while giving them more of a say in how we deliver those services. "Knowing they have a home for life will come as a relief to our tenants and, with the extra resources we will have as a result, we hope to improve and strengthen local communities further."

