



Author/Lead Officer of Report: (Vicky Kennedy, Ops Manager, FoCH Team & Jim Dee, Ops and Development Manager, ASB & Community Safety Team)

Tel: (30241 / 34507)

Report of: *Executive Director, Place*

Report to: *Cabinet*

Date of Decision: *17th January 2018*

Subject: *Conditions of Tenancy Review (Council Housing)*

| | | |
|--|---|--|
| Is this a Key Decision? If Yes, reason Key Decision:- | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| - Expenditure and/or savings over £500,000 | <input type="checkbox"/> | |
| - Affects 2 or more Wards | <input checked="" type="checkbox"/> | |
| Which Cabinet Member Portfolio does this relate to? <i>Neighbourhoods and Community Safety</i> | | |
| Which Scrutiny and Policy Development Committee does this relate to? <i>Safer and Stronger Communities</i> | | |
| Has an Equality Impact Assessment (EIA) been undertaken? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| If YES, what EIA reference number has it been given? <i>118</i> | | |
| Does the report contain confidential or exempt information? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

Purpose of Report:

To update Cabinet on the progress of the review of the Council's social housing Conditions of Tenancy.

To inform Cabinet of the feedback received from the consultation with tenants on the proposed updated tenancy conditions.

To recommend revised Tenancy Conditions, and seek Cabinet's approval to vary the terms of all Council tenancies in May 2018.

Recommendations:

It is recommended that Cabinet:

(i) Notes the reasons for reviewing the Conditions Of Tenancy, and the outcome of consultation with tenants on the proposals.

(ii) Approves the proposed revised set of Tenancy Conditions attached as an appendix to this report.

(iii) Authorises the Director of Housing and Neighbourhoods Service to take the necessary steps to implement the new tenancy conditions with effect from 7th May 2018 by undertaking the statutory process to vary the terms of the Council's secure social housing tenancies or terminating and reletting non-secure tenancies as described in the report.

(iv) Authorises the Director of Housing and Neighbourhoods Service to make any final amendments to the conditions necessary in response to comments received after service of the preliminary notice.

| Lead Officer to complete:- | | |
|---|--|---|
| 1 | I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required. | Finance: <i>Claire Jamieson</i> |
| | | Legal: <i>Andrea Simpson</i> |
| | | Equalities: <i>Louise Nunn</i> |
| <i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i> | | |
| 2 | EMT member who approved submission: | <i>Laraine Manley</i> |
| 3 | Cabinet Member consulted: | <i>Jayne Dunn</i> |
| 4 | I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1. | |
| | Lead Officer Name: <i>Vicky Kennedy</i> | Job Title: <i>FoCH Operations Manager</i> |

1. PROPOSAL

1.1 The legally binding terms of the Council's tenancy agreement for its social housing are the Conditions of Tenancy set out in the booklet 'You and Your Home'. They set down both the Council's and the tenant's

responsibilities and obligations in relation to the tenancy. They apply to all Council housing tenancies, whether secure or non-secure, including furnished tenancies. They do not apply to tenancies granted for other purposes such as service tenancies in houses at schools or parks.

1.2 The current tenancy conditions for council housing tenants have been in force since 1995. They no longer reflect the needs of the service and carry operational risks, particularly in relation to management of pets in flats. Some conditions are unclear or not written in plain English.

1.3 The Conditions of Tenancy Review aims to deliver an updated and modern set of tenancy conditions which reflect current priorities and the economic, legal and societal context in which the Council Housing Service now operates. The conditions will be clear and enforceable, emphasising the rights and responsibilities involved in taking a Council Tenancy.

1.4 Whilst most of the proposed changes are around clarity and ability to enforce, they do include new conditions to promote responsible pet ownership and enable better management of pets and animals in our properties. They also strengthen our rights and tenants' responsibilities in terms of fire safety.

1.5 The Council's current set of tenancy conditions are included in Appendix One, in the booklet entitled "You and Your Home". The proposed new set of conditions is given in Appendix Two. Some of the current conditions will stay the same and some will be removed. Many have been rewritten to ensure they are easier to understand. There are also some new conditions. A summary of the main changes is as follows:

- Tenants will be required to pay rent by Direct Debit unless another payment method has been agreed.
- Tenants will have more freedom to have pets, but with stricter requirements to look after them properly and to prevent them causing a nuisance to others.
- Conditions around fire safety have been strengthened and made clearer.
- Clarity on the fact that tenants will be charged the costs incurred if they lose the keys to their property.
- There are several new conditions about the use of communal areas and about the parts of the property shared with neighbours.
- Boundaries of properties must not be changed without the Council's permission.
- Clear explanations about what needing the Council's "permission" means and "charging" the tenant for any costs.

1.6 Following a decision of the Cabinet Member for Neighbourhoods and Community Safety on 11th September 2017 tenants and their representatives have been consulted on the proposed changes. Further details of the consultation are given below in Section 3.

- 1.7 If Cabinet approves the new proposed conditions, then the statutory process described below at section 4.3 will be followed in order to vary the standard terms of all secure Council housing tenancies with effect from May 2018. Some Council housing tenancies are not secure tenancies. Those tenants will be made subject to the new conditions by the process described below at paragraph 4.3.8.
- 1.8 Tenants will each be given a copy of the new tenancy conditions but alongside the legal process the implementation of the new conditions will be accompanied by a robust communications plan to ensure that tenants fully understand the changes. This plan will include:
- A revised “You and Your Home” booklet to set out the new conditions and explain them and what they mean for tenants in more detail.
 - Updates on the relevant Council webpages.
 - Social media updates.
 - Information-sharing through the Council’s existing community engagement framework (eg. Citywide Forum, Local Area Housing Forums, etc).

2. HOW DOES THIS DECISION CONTRIBUTE ?

- 2.1 The revised tenancy conditions will be clearer and easier for tenants to understand, helping them to meet their obligations as a council tenant and so sustain their tenancy. Sustainable tenancies, and therefore more settled communities, help support the Council’s **Thriving Neighbourhoods and Communities** priority.
- 2.2 The new rules on keeping pets make it easier for tenants to have a pet, which is particularly important for the elderly and those living on their own who may be socially isolated and for whom a pet could help improve their well-being. This therefore contributes to the Council’s **Better Health and Wellbeing** priority.
- 2.3 Alongside this, there are also stricter rules on how those pets are kept and their behaviour managed. These rules will ensure that the Council has stronger enforcement powers in cases of irresponsible pet ownership which breaches these tenancy conditions. These powers will enable the Council to insist that the pet is removed from the property and seek to terminate the tenancy if necessary. This will help prevent nuisance to those people living in neighbouring properties, thereby contributing to both the **Thriving Neighbourhoods and Communities** priority and the **Better Health and Wellbeing** priority.
- 2.4 The new conditions also strengthen / clarify the rules around fire safety and the disposal of rubbish, helping to make our neighbourhoods safer and more attractive for all. This therefore supports the **Thriving**

Neighbourhoods and Communities priority.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 In accordance with the decision of the Cabinet Member for Neighbourhoods and Community Safety, extensive consultation with tenants and their representatives has been undertaken in relation to the new proposed tenancy conditions. This consultation was undertaken in accordance with the Council's Consultation Principles, which state that statutory requirements must be taken into account, that the consultation is meaningful and timely, and that it uses a variety of engagement methods:
- Online surveys
 - Face-to-face city-wide meetings / consultation events
 - Dedicated web-pages
 - Social media updates
 - Gov.Delivery circulation
 - Feedback also given via email, telephone and letter
- 3.2 Around 550 tenants have given us their views on the proposals – 459 via the online survey, 64 over the telephone and around 45 have attended the two consultation meetings which took place for TARA reps (the numbers are not mutually exclusive – eg. Some of those who attended the meetings may also have filled-in an online survey, hence the slight rounding down of the estimated total figure). The deadline for the consultation was extended by a month following feedback from tenants that they wanted more time to consider the proposed revisions.
- 3.3 The vast majority of respondents (80%) are tenants, 4% are leaseholders and 16% are residents (so neither tenant nor leaseholder). A further 3% indicated that they are also a TARA member.
- 3.4 A summary of the feedback is attached in Appendix Three. All feedback received has been carefully considered and taken into account when finalising the proposed revisions to the conditions.
- 3.5 The most concerns / issues raised were in relation to the proposals to enforce Direct Debits. Around half of all those who responded stated their disagreement with this proposal. As a result, when the new conditions are enforced, we will emphasise the statement in the new conditions which states that payment must be made by Direct Debit “... **unless we agree that you can pay by another method**”.
- 3.6 After Direct Debits, the next issue prompting most feedback (from around 16% of respondents) was the change to the rules regarding pets. The split between those in favour of and those against the proposed changes was fairly even. The Council remains of the view that the new conditions will mean the behaviour of pets is better managed, and make it easier to

take enforcement action where that isn't the case. Whilst at the same time being fairer to responsible pet-owners and helping to increase health-and-wellbeing of those who will benefit from the companionship of a pet. The proposed conditions around pets therefore remain the same following consultation.

- 3.7** The issue of artexing and polystyrene ceiling tiles was the next biggest issue for respondents (around 11% of them commented on this). However, these respondents were not objecting to the new condition, but questioning what will happen to those tenants who already have one or both of these in their property. The new condition **is not retrospective** and will only apply to *new* artexing or ceiling tiles – when the new conditions are implemented the Council will make this clear so as not to cause undue concern.
- 3.8** The only other issue concerning more than 5% of respondents was ASB – commented on by around 6% of them. Again, this feedback was not raising concerns about the proposed conditions themselves, but expressing dissatisfaction with how the Council manages ASB. Whilst this is feedback the Council needs to take on board and respond to, it is not relevant to the wording of the new conditions and so no changes have been made as a result.
- 3.9** The remaining comments and feedback were miscellaneous, some positive and some negative. It was felt that none of these were expressed by enough respondents to be significant enough to require changes to be made to the proposed conditions as they cannot be considered representative.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality of Opportunity Implications

- 4.1.1** An EIA has been undertaken in relation to the proposed changes to tenancy conditions and no significant issues were found.

4.2 Financial and Commercial Implications

- 4.2.1** As part of the consultation exercise described in Section 3 above, every tenant / household was issued with details of the proposed changes. To minimise the cost of this, the information was circulated via email to all tenants who have indicated email as their preferred method of communication from us. This enabled distribution costs to be kept to a minimum.
- 4.2.2** The cost of printing the information leaflets to send to all households (approx. 44,000 – including leaseholders) was covered by the existing Service Level Agreement between H&NS and the Communications Service, and so there was no additional cost to the HRA for this. The only additional cost specific to this review, therefore, has so far been the

distribution costs associated with circulating these leaflets.

- 4.2.3** Where tenants needed a postal copy of the information, the mail-out was combined with two other key projects / publications – the Review of Community Engagement and the Council Housing Service’s Annual Report . Combining these three pieces of information into one mail-out meant that the significant postage costs could be shared across all three. The cost of this review to date, therefore, is approximately £13,000.
- 4.2.4** To implement the new tenancy conditions, the terms of the Council’s secure housing tenancies will be varied in accordance with the procedure described below in Section 4.3, by service of formal written notices. Therefore, further costs will be incurred for printing and posting these notices. A new “You and Your Home” booklet will also need to be produced and distributed. A budget provision of £100,000 was built in to the 2017/18 HRA Business Plan. Subject to the timing of the review the costs may span financial years 2017/18 and 2018/19
- 4.2.5** The expenditure for this Review has been expected and has been included in the HRA budget.

4.3 Legal Implications

- 4.3.1** The general power of management of its housing is vested in the Council by section 21 of the Housing Act 1985. There is a duty under section 105 of the Act to consult secure tenants who are likely to be substantially affected by a change in a matter of housing management. Variation of the standard terms of the Council’s housing tenancies is such a change and so the consultation exercise described at Section 3 of this report has been carried out to comply with the duty, as approved by the Cabinet Member for Neighbourhoods and Community Safety in September 2017.
- 4.3.2** Section 102 of the Act prescribes the two ways in which the Council may vary the terms of a secure tenancy:
- (a) By agreement between the landlord and the tenant. It is however impractical to attempt to reach individual agreement with around 40,000 tenants.
 - (b) In accordance with section 103 by giving a notice of variation of the tenancy to the tenant.
- 4.3.3** Section 103 sets out a two stage process. The Council is first required to serve a preliminary notice on the tenant to inform them that the Council intends to serve them a notice of variation. The preliminary notice must specify the proposed variation to the tenancy and its effect, and give the tenant the opportunity to make comments on the intended variation within a reasonable timescale. The Council must then consider these comments.
- 4.3.4** The second stage is to serve a notice of variation specifying what variation is affected by it and the date on which it takes effect. The period

between the date of service and the date on which it takes effect for a notice of variation must be the longer of a minimum of 4 weeks or the rental period. The notice should be accompanied by such information as the Council considers necessary to enable the tenant to understand the nature and effect of the variation.

4.3.5 In accordance with the statutory process all Council housing tenants will be served with a preliminary notice in February 2018 with the draft new tenancy conditions and a notice of variation later with the final conditions and other information as described at paragraph 1.7 above. The notice of variation will be served at a time which has allowed sufficient time for comments to have been made and considered with a notice period that enables the variation to take effect in May 2018.

4.3.6 If a tenant gives a valid notice to quit after the service of a notice of variation but before the date on which the variation is to take effect then their tenancy shall not be varied unless the notice to quit is withdrawn, with the Council's written agreement, before the effective date.

4.3.7 The Council has a duty under section 104 of the Act to publish and supply to its secure tenants information to explain in simple terms the effect of the tenancy conditions, Part IV of the Act (governing secure tenancies and the rights of secure tenants) and the repair obligations of the Landlord and Tenant Act 1985 (incorporated into the Council's conditions of tenancy). The information to be provided to all tenants with the notice of variation, and to new tenants at the grant of a tenancy thereafter, complies with this duty.

4.3.8 A tenancy is not a secure tenancy if it falls within one of the exceptions set out in Schedule 1 to the Act, such as a tenancy granted pursuant to a homelessness function under Part 7 of the Housing Act 1996. Such a tenancy is contractual and there is no statutory or other mechanism for the landlord to vary the terms of the tenancy unilaterally. In these cases the tenant will be served with a Notice to Quit to terminate the current tenancy and offered a new non-secure tenancy on the new conditions to start immediately on termination of the old tenancy.

5. ALTERNATIVE OPTIONS CONSIDERED

5.1 One possible alternative to these proposals is to leave the Council's tenancy conditions as they are. However, for the reasons stated above in Section One, this is not believed to be the best option as it would leave the Council with an outdated and unclear set of tenancy conditions, which is to the detriment of both the Council and its tenants.

6. REASONS FOR RECOMMENDATIONS

6.1 There are a number of reasons for recommending the approval of these conditions:

- If the proposed revised conditions are approved and implemented, tenants will have a clearer understanding of their obligations and of those of the Council.
- There will be a fairer process surrounding pet ownership, alongside it being easier for the Council to take action against irresponsible pet owners.
- Fire safety will be further strengthened and promoted, and there will be savings for the HRA by more tenants paying by direct debit.

6.2 The statutory process that must be followed to vary the Council's housing tenancies gives tenants the opportunity to comment on the proposed variation and requires the Council to consider these comments. Whilst it is unlikely, in view of the consultation that has already taken place, that any comments will result in a need to amend any draft condition of tenancy, this does remain a possibility. It is therefore recommended that the Director of Housing and Neighbourhoods be given delegated authority to make any final amendments to the conditions necessary after the preliminary notice has been served to avoid the need to come back to Cabinet again for further approval before the tenancy variation can be completed.

Appendix One – Current Tenancy Conditions

Contained in the “You and Your Home” leaflet – attached separately

Appendix Two – Proposed Revised Tenancy Conditions

Contained in the “Our Proposed New Tenancy Conditions” leaflet – attached separately

Appendix Three – summary of consultation feedback and the Council’s response

| Feedback | Council’s response |
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| Payment methods | |
| <p>A few tenants welcomed the flexibility and convenience which Direct Debits offer and are happy to pay this way.</p> | <p>We agree that Direct Debits are a convenient payment method, and will continue to look at ways of making these even more flexible to suit the needs of tenants – eg. Enabling a choice of frequency, day / date on which payment is taken, etc.</p> |
| <p>Around half of all respondents have concerns about being forced to pay by Direct Debit - they do not wish to pay by this method and believe that the Council shouldn’t make it compulsory.</p> <p>Some tenants want to pay by other methods – eg. Cash, standing order, paypoint, telephone, etc</p> | <p>Direct Debits are the standard way of paying for utility bills, mobile phone contracts etc, and around 11,000 of our customers (1 in 4) already pay their rent this way. Tenants will be able to pay weekly or monthly, on the day of their choice, and won’t need to worry about amending the amount each year when rent changes as the Council will do that for them. (Tenants will always be notified at least 10 working days in advance before any change to their Direct Debit payment amount as well as being given the statutory 4 week notice of rent variations).</p> <p>Moving to Direct Debit as the standard way of paying rent could save the Council up to £250K a year in costs, as it is much cheaper to administer than other payment methods. This would enable investment of that money into other services for tenants.</p> <p>However, we have listened to the feedback received on this proposal. As a result, Direct Debits will be introduced for all <i>new</i> tenants when the new tenancy conditions are implemented (exceptions will be discussed with anyone who <i>cannot</i> pay this way). For existing tenants who are not in arrears on their rent, we will promote Direct Debits as the most convenient way to pay but will not insist on it.</p> <p>We do not want to cause tenant undue concern and will make this clear in future communications about the new conditions.</p> |
| Pets | |
| <p>Around 16% of respondents commented on the new proposals regarding pets. Around 42% of those welcome the proposal to make it easier for them to have a pet in their home – particularly those who feel socially isolated.</p> | <p>The comfort and friendship which a pet can bring is one of the main reasons the Council wishes to make it easier for its tenants to have a pet if they wish – hence the proposed new conditions covering pet ownership.</p> |

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| <p>Around 58% of those who responded about pets are concerned about the new rules, particularly in relation to the noise nuisance which they (dogs in particular) can cause, the potential fouling of communal areas and the unsuitability of some properties for certain types of pets (eg. Large dogs in a tower-block flat).</p> | <p>The Council recognises these as valid concerns, and alongside making it easier for Council tenants to own a pet the proposals also include tougher conditions on managing the behaviour of pets properly. The proposed new conditions will make it easier for the Council to take action against irresponsible pet owners – eg. Those allowing their pet to cause a nuisance, to foul communal areas, and those who try to keep a pet in a property which is clearly unsuitable for the animal. The Council is committed to ensuring that these conditions are enforced, and anyone not adhering to the rules will be asked to rehouse their pet. If that doesn't happen then the Council will be able to ultimately take court action which may lead to eviction.</p> |
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Repairs to properties

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| <p>Around 11% of respondents are concerned that they already have artexing / ceiling tiles in their homes and that it isn't fair to force tenants to remove these.</p> | <p>The Council will not be enforcing this retrospectively – the new proposed condition does not apply to existing artexing or polystyrene ceiling tiles. The new condition will only prevent any <i>new</i> such decoration being applied in Council homes. We do not want to cause tenant undue concern and will make this clear in future communications about the new conditions.</p> |
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| <p>A small number of respondents (1.5%) have expressed concerns about the Council charging for replacement keys – particularly for vulnerable tenants.</p> | <p>The Council already charge tenants for lost keys but at the moment this isn't made explicit in the tenancy conditions. These proposals seek to rectify this. The Council accepts that there may be some instances – eg. In the case of vulnerable tenants – where charging for replacement keys would not be the best course of action. Individual cases will be judged on their own merit, as they are now, and exceptions may be made where there is justification to do so.</p> |
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General / other

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| <p>Approx. 6% of respondents expressed concerns about how ASB is dealt with by the Council, but without reference to any specific element of the proposed tenancy conditions. Comments were more about how the Council manages</p> | <p>The Council remains committed to resolving ASB issues effectively and consistently. A main aim of the new proposed conditions is to make them clearer and easier to enforce, so in terms of managing and tackling ASB the new conditions will help us improve in this area.</p> |
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| <p>ASB cases rather than the wording of the conditions.</p> | |
| <p>Around 8% of respondents welcome the updated tenancy conditions in their entirety, with no concerns / issues expressed about any of them. Comments included that they feel they are easier to understand and make tenants' obligations much clearer.</p> | <p>Making it easier for tenants to understand what their – and the Council's – obligations are in terms of their tenancy was a key aim of the review. So if tenants feel that the new conditions are clearer then the revised set of conditions have achieved this aim.</p> |
| <p>A few tenants have expressed their belief that the Council needs to be stricter in enforcing the conditions, and ensuring that breaches are dealt with quickly and effectively.</p> | <p>The Council hopes to make it easier to take enforcement action by strengthening some of the conditions – eg. those around keeping pets, and ASB. It too is keen to take swift action in the cases of serious tenancy breaches – alongside offering support to tenants wherever possible to help them maintain their tenancy. Enforcement action will always be a last resort, but where it is necessary these new conditions should make it easier for that action to be taken.</p> |

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