

This report will be made public on 7 February 2022

Report Number: **OS/21/13**

To: Overview and Scrutiny Committee
Date: 15 February 2022
Status: Key Decision for Cabinet – scheduled for 23 March 2022
Responsible Officer: Tom Harding, Neighbourhood Management Senior Specialist
Cabinet Member: Cllr Godfrey, Portfolio Holder for Housing and Special Projects

SUBJECT: The Use of Fixed Term Tenancies for Council Tenants

SUMMARY: This report reviews the use of fixed term tenancies for council housing lettings, to cease using fixed term tenancies and to return to using secure tenancies in the Council's social housing stock.

REASONS FOR CABINET RECOMMENDATIONS:

1. The use of fixed term tenancies is out of step with national government thinking on reducing the so called 'stigma' attached to social housing.
2. Fixed term tenancies have proven to be inefficient and a burden on resources.
3. Fixed term tenancies have not met the ambitions expected of them when they were first introduced.

RECOMMENDATIONS:

1. To receive and note report OS/21/13.
2. To note that Cabinet will be asked to approve the amendments to the FHDC Housing Service Tenancy Policy (as set out in Appendix 1) that will allow for the cessation in issuing fixed term tenancies, and the reversion to the use of secure tenancies for permanent council housing lettings.
3. To note that Cabinet will be asked to authorise officers to investigate and implement the most effective way to convert existing fixed term tenancies to secure tenancies.
4. To provide feedback on the use of fixed term tenancies for Council tenants.

1. BACKGROUND

1.1 Secure tenancies

The Housing Act 1980 introduced long-term security of tenure for most social housing tenants. The level of security of tenure offered by these tenancies has led to them being described as 'secure tenancies'. This means that, with some limited exceptions, if a secure tenant does not breach the conditions of their tenancy agreement, their tenancy will last as long as the tenant wants it to.

1.2 Fixed Term Tenancies

The Localism Act 2011 gave local authorities and housing associations the discretionary power to offer tenancies on a fixed term basis to new tenants after 1 April 2012.

The Government's reasoning at the time was to give social landlords greater freedom to manage their housing stock and tenants. Fixed term tenancies enable a review of the tenants' circumstances at the end of the fixed term to identify the most suitable housing option, which (in theory), may include moving the tenant on from social housing into the private or home ownership sector, or promoting other tenures such as shared ownership. This would then theoretically free up much needed and limited stock for others who need it. Fixed term tenants enjoy similar rights as secure tenants. These rights include the right to buy and right to repair. Although, unlike secure tenants, fixed term tenants do not have a statutory right to improve properties or be compensated for those improvements.

FHDC introduced the use of fixed term tenancies in 2013.

1.3 The Council's Current Approach

All new tenants are given a twelve-month introductory tenancy. Following successful completion of the introductory tenancy, a fixed term tenancy of three years (for general needs tenants) is given. This makes a total of four years. Independent Living tenants (sheltered and semi-sheltered housing), are issued a 9 year fixed term tenancy on completion of the introductory tenancy of 12-months, making a total fixed term of 10 years.

The fixed term tenancy is reviewed around nine months before the tenancy is due to end. This includes carrying out an assessment of the household's circumstances and income, and a property inspection. A Notice is then served on the tenant outlining what the Council intends to do at the end of the tenancy. This may include to:

- Give the tenant a new fixed term tenancy of four years at the same home (however, in exceptional circumstances a new two year fixed term tenancy may be given if there have been persistent minor breaches of the tenancy agreement)

OR

- End the tenancy and provide advice and assistance in finding an alternative home.

A tenant has the right to appeal any proposal by the Council not to give them another tenancy of their home, and procedures are in place to deal with this, although as will be explained in more detail below, this appeals process has never been used.

If the decision is made to not grant another tenancy, a further Notice will be served on the tenant giving not less than two months' notice in writing stating that the Council requires possession of the property. Appropriate advice and assistance will be provided to help the tenant find alternative accommodation. It is an expectation of the current FHDC Tenancy Strategy, that any decision not to renew should not result in a homelessness application being made.

1.4 The Numbers (all as at 14/01/22)

Since their introduction in 2013, a total of 1634 fixed term tenancies have been issued. This includes 'renewals' where a tenancy has come to the end of its fixed term, and a new fixed term tenancy has been issued to the household.

The current position is as shown in the table below:

Tenancy Type	Number
4 year fixed term	508
10 year fixed term	373
Introductory, to convert to 4 year	77
Introductory, to convert to 10 year	83
Other	13
total	1054
% of total stock	31% approx.

Approximately 70% of tenants still hold secure tenancies either because their tenancy began before 2013, or because the tenant has moved either by internal transfer or mutual exchange and retained their secure tenure.

254 tenancies have reached the end of their 1st fixed term and been reviewed. On review, **all have been issued with a new fixed term tenancy** and none have had a new tenancy refused.

Approximately 30 tenancies are coming up to the end of their 2nd fixed term tenancy within the next 6 months, and based on the history of reviews carried out so far, it is not expected that any will 'fail' the tenancy review and so will be offered a 3rd fixed term tenancy.

1.5 The original aims and objectives of the fixed term tenancy, and have they been met?

As mentioned in 1.2 above, the Government's reasoning at the time for tenancies on a fixed term was to give social landlords greater freedom to

manage their housing stock. Also to give social housing tenants the opportunity to move into our tenure, including home ownership, should they so wish. This would increase the amount of available social housing for those on the waiting list.

The table below sets out the original aims and objectives in more detail and considers whether they have been met for FHDC.

<p>Aim 1 - Fixed Term tenancies encourage social landlords to make the best use their housing stock.</p> <p>There is a high demand for social housing and fixed term tenancies provide an opportunity to create movement in the housing stock when tenants financial circumstances change; helping to make the best use of it for those most in need.</p>	<p>FHDC Situation - When looking at the reviews completed so far, tenants' income circumstances have not generally changed significantly over the fixed term, and in no cases has the household income level increased above the threshold that would lead to the tenancy not being renewed. Currently, 67% of (all) tenants are in receipt of Housing Benefit or Universal Credit to help pay their rent. Experience so far indicates these tenants would be likely to still be in receipt of benefits at the end of their fixed term. This means they are not in a position to consider more costly alternative housing options such as home ownership or private rent. Overall, it is extremely unlikely that tenants' income levels will change significantly enough to lead to the 'freeing-up' of housing stock.</p> <p>The Fixed term tenancy regime may actually act as a disincentive to tenants seeking work or better paid work, if there is a risk this could lead to them losing their home.</p>
<p>Aim 2 - Fixed Term tenancies have the opportunity to address over and under occupation in social housing.</p> <p>The 'one size fits all' secure tenancy model could contribute to an imbalance between the size of households and the homes in which they live, creating over time over and under occupation. Under the Council's current Tenancy Policy, if a Fixed Term tenant's home becomes too large for their needs or is no longer suitable for their needs, the Council could propose giving the tenant another tenancy but with a different property at the end of the fixed term. This in theory assists in</p>	<p>FHDC Situation</p> <p>The fixed term tenancy has never been used to deal with over-crowded households, as the vast majority of over-crowded households are already seeking more appropriate housing and are simply limited by the lack of suitable stock available to them.</p> <p>Most properties are fully occupied at the start of a tenancy and there is no evidence so far to indicate that households have become under-occupied by the time of their 1st or 2nd review. As time goes on, and children become adults etc., this may become more of an issue – but by that</p>

<p>ensuring tenants live in properties suitable for their needs.</p>	<p>time the tenancy will have been running for in excess of 12 years and raises questions about the ethics of requiring people to move out of their long-standing home. This touches on the view of the stigmatisation of social housing tenants as mentioned in 1.6 below.</p> <p>The Council already operates a downsizing incentive scheme where under-occupying tenants who register are placed in Band B of the Housing Register and can receive a financial incentive if they successfully bid for a smaller property.</p>
<p>Aim 3 - Fixed Term tenancies incentivise and support households to make the transition into private and home ownership tenures.</p> <p>The fixed term tenancy approach takes the view that some households may need social housing at a point in time but may not need it indefinitely. An original aim of Fixed Term tenancies was to ensure that a person's housing circumstances do not become a barrier to fulfilling aspirations for transition into private and home ownership tenures.</p>	<p>FHDC Situation</p> <p>Whilst the fact that a council tenancy is not permanent may in theory incentivise people to consider other housing options in the longer term, this is outweighed by the need for tenants to feel secure in their own homes and community through the guarantee of a long term home. There is no evidence that fixed term tenancies do support households into private renting or home ownership. Whilst we are proud of our housing service, it is fair to say that for some people if they were in a position to move into home-ownership, they probably would do so whether they had a fixed term tenancy or not.</p> <p>The lack of long-term security can in fact be a barrier to residents feeling settled and investing in their homes and their community. Even relatively low cost decisions such as whether or not to buy new carpets, or refurbish a garden will be affected if the tenant has no guarantees that they will be able to remain in their home for longer than four years.</p>
<p>4 – Using the tenancy review as a tool to deal with tenancy breaches – Whilst this was not a stated aim in the Localism Act 2011, it was initially thought that the 'break' in a tenancy would be a useful tool to deal with minor breaches of tenancy.</p>	<p>FHDC Situation</p> <p>Serious breaches of tenancy are dealt with as they occur and do not wait until the tenancy is due for review. The Council has robust procedures in place for dealing with tenancy breach, which are more effective than relying on the end of a fixed term tenancy.</p>

	<p>If a situation arose where a fixed term tenancy was ended due to a breach of the tenancy condition, the Council may still have an obligation to the tenants under the provisions of Homelessness legislation. This relates especially to families with children or adults with a recognised priority need. It would not be in the Council's interest to go through the lengthy process of bringing a fixed term tenancy to an end, only for the Housing Options team to have to pick them up as a homeless household.</p>
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1.6 The National Government position

Since the Localism Act 2011 was introduced, the Government's position on the use of fixed term tenancies in social housing has moved significantly. The Housing and Planning Act 2016 introduced provisions for the phasing out of secure tenancies, but the regulations, (that were intended to provide further detail on how local authorities will issue fixed term tenancies and what type of tenants will still be offered secure tenancies), have never been released.

Subsequently, the Government announced in the 'A New Deal for Social Housing' Green Paper in August 2018 that it has decided not to implement the provisions of the legislation at this time.¹

A shift in the Governments' view in recognising the value of secure tenancies can be further evidenced in the provisions contained in the Secure Tenancies (Victims of Domestic Abuse) Act 2018. This specifically requires that, where a secure tenant is moving due to domestic abuse, they should retain their existing security of tenure and not be offered a fixed term tenancy.

1.7 The Administrative Burden

As set out in section 1.4 above, FHDC currently has over 1000 fixed term tenancies, and this number is increasing. Approximately 254 fixed term tenancies have been reviewed, and so far, none has led to the return of a unit of social housing. This number is increasing and it is calculated that 150 reviews will fall due during the year 2022/2023.

The review involves a desktop review of the tenancy history, an interview with the tenant, a property inspection and a review of the tenant's financial circumstances. It has been calculated that – including the associated time for preparation, monitoring and management and so on – each fixed term tenancy review takes approximately 3.5 hours to fully complete. This results in an estimated 525 hours (14 weeks) of unproductive officer time per year,

¹ [A new deal for social housing \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748212/a-new-deal-for-social-housing-green-paper.pdf)

and increasing. It is considered that this time could be much better spent on delivering services to tenants, and ensuring the health and safety of the estate.

If it is necessary to take legal action against a tenant with a fixed term tenancy, this can be significantly more complicated (and therefore expensive) than it would be for a normal secure tenancy.

Because secure tenancies are less complicated from an administrative and legal perspective, the end of fixed term tenancies would reduce the burden on other teams such as Case Management and Income Teams.

This is an inefficient use of officer time and as we move in to a phase within the housing service where we are looking to increase efficiencies and effect savings an administrative burden at this level is not sustainable.

1.8 Peer Review

Of the three other Local Authorities that used to be part of East Kent Housing, all have either stopped using fixed term Tenancies, or are in the process of doing so.

Nationally, the use of fixed term tenancies is low, the Governments' Equality Impact Assessment on Tenancies in May 2016 said that in 2014/15 only 15% of social housing tenancies were let on a fixed term basis.

1.9 FHDC Tenancy Policy

The types of tenancy that FHDC will offer is set out in the FHDC Housing Service Tenancy Policy. If the decision to cease the use of fixed term tenancies is approved, this Policy will need to be amended. Details of the current wording of the Policy and the proposed amendments, are attached at Appendix 1.

1.10 Existing Fixed Term Tenancies

If the decision to cease the use of fixed term tenancies is approved, there will be a question over what to do with the 1000+ fixed term tenancies that are currently in place. These could either be left to 'run their course' and be converted to secure tenancies as they expire, or there could be a programme of work to get all current fixed term tenancies converted to secure tenancies as soon as possible.

There are benefits and difficulties with both options, so if the main recommendation of this report is approved, officers would investigate and decide on the most efficient, low risk and cost effective course of action.

2. CONSULTATION

2.1 A summary of this report is to be presented to the Strategic Tenants' Advisory Panel (STAP) on 10 February.

2.2 Subject to any comments for STAP, a wider (non-statutory) consultation with council tenants is scheduled to be completed in advance of the

Cabinet meeting in March 2022. If this consultation raises any significant issues or concerns about these proposals, the situation will be reviewed and will not be taken forward until the matters raised have been fully considered.

Because the proposals are for the benefit of existing and future tenants, it is not anticipated that the consultation will raise any significant issues.

3. OPTIONS

- 3.1 There are no other practical options. If the recommendations are not approved, the Council will continue with the use of fixed term tenancies.

4. RISK MANAGEMENT ISSUES

- 4.1 There is not a great deal of risk management involved in this issue

Perceived risk	Seriousness	Likelihood	Preventative action
Council tenancies will not be checked or reviewed on a regular basis.	medium	low	<ol style="list-style-type: none"> 1. The Housing Service has an ongoing programme of Tenancy Audits where tenants are interviewed and their circumstances checked. This helps ensure that we know our tenants and can deal with any issues. 2. The Council will maintain the system of Introductory Tenancies whereby all tenants who are new to social housing are met with at least three times during the first year, and their conduct reviewed before the tenancy can convert to a secure tenancy.
Council tenants will remain in homes they no longer 'need'.	medium	low	An under-occupation incentive scheme is in place with cash incentives to tenants who give up larger homes.
The Council will be less able to deal with breaches of tenancy or 'problem' tenants	medium	low	The Council has clear procedures in place for dealing with breach of tenancy including the Rent Arrears Procedure and the ASB Procedure. These breaches are dealt with as they arise.

7. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

7.1 Legal Officer's Comments

There are no legal implications arising directly from this report.

7.2 Finance Officer's Comments

There are no financial implications arising directly from this report.

7.3 Diversities and Equalities Implications

If the recommendations are approved, the Tenancy Policy Equalities Impact Assessment will be reviewed and updated to reflect the changes.

It is considered that the diversity and equalities implications are all positive however for numerous reasons including the following.

7.3.1 All Council tenants will have the same tenancy, there will not be the 2-tier system based purely on how long someone has been a council tenant that exists at the moment.

7.3.2 Families with school age children will have the security of knowing that their tenancy will not be disrupted during the children's' education.

7.3.3 Households where a member is or becomes disabled will have the security of the guarantee of a long-term home, so they will be able to consider long term arrangements such as care, or adaptations.

7.4 Climate Change Implications (AT/HS)

As this is an administrative change, these proposals have no particular climate change implications.

8. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting

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The following background documents have been relied upon in the preparation of this report: None

Appendices:

Appendix 1: Current and proposed wording to the FHDC Tenancy Policy