



<b>Report to:</b>	Cabinet	22 March 2022
<b>Lead Cabinet Member:</b>	Councillor John Batchelor, Lead Cabinet Member for Housing	
<b>Lead Officer:</b>	Peter Campbell, Head of Housing	

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## Fixed Term Tenancies

### Executive Summary

1. This report proposes discontinuing the use of fixed term tenancies for Council Housing Tenants and replacing these with lifetime tenancies for new and existing tenants.

### Key Decision

2. Yes

(b) It is significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.

### Recommendations

3. It is recommended that the Council ends the use of fixed term tenancies for its own housing tenants and replaces these with lifetime tenancies for both existing and new tenants.
4. The Council's approach to introductory tenancies will remain unchanged. Introductory tenancies are for a period of 12 months but can be extended for a further 18 months if the tenancy has not been conducted in a satisfactory manner.

### Reasons for Recommendations

5. Whereas Secure tenancies are a 'tenancy for life,' fixed term tenancies were promoted by the Government as a tool to ration council tenancies by reviewing the needs of tenants periodically. If people were assessed as not in need, the landlord could choose to end the tenancy at the end of the fixed term.

6. There are, significant disadvantages to their use and they have not worked in practice for the following main reasons:
- Fixed term tenancies have not met their intended aims. They have not led to a higher turnover of housing stock and do not contribute towards promoting strong and successful communities.
  - The Government has moved away from supporting tenancies on a fixed term. Plans to make it mandatory for local authorities to issue fixed term tenancies have been reversed due to the recognition of the importance of housing stability for those who rent in the social housing sector.
  - There has been low take up of the use of fixed term tenancies by social landlords in general. Of those social landlords who have adopted fixed term tenancies, many have either reverted to issuing secure tenancies or are now looking to discontinue using them.
  - Fixed term tenancies are administratively complex to administer, time consuming and costly with no positive outcomes for the Council.

## **Details**

7. Fixed term tenancies are secure fixed term tenancies with a minimum of five years or two years in exceptional circumstances. South Cambridgeshire District Council introduced fixed term tenancies as part of its Tenancy Policy in 2012. From April 2013 most new tenants have been granted a twelve-month introductory tenancy, followed by a fixed tenancy of ten years. Existing tenants retained their secure lifetime periodic tenancy.
8. The Localism Act 2011 gave local authorities the discretionary power to offer fixed term tenancies on a fixed term to new tenants after 1 April 2012. The Localism Act 2011 also allowed housing associations to offer fixed term tenancies to new tenants after 1 April 2012.
9. 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. 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 may include moving the tenant on from social housing into the private or home ownership sector, thereby, theoretically freeing up much needed and limited stock for others who need it.
10. Fixed term tenants enjoy some of the same rights as lifetime tenants. These rights include the right to buy and right to repair. Although, unlike lifetime tenants, fixed tenants do not have a statutory right to improve properties or be compensated for those improvements.
11. The Housing and Planning Act 2016 intended the phasing out of lifetime tenancies by requiring local authorities to grant future tenants fixed term

tenancies in most circumstances. Since then, the national climate regarding social housing has changed dramatically and these provisions have not been implemented.

12. There has since been recognition by the Government of the importance of housing stability for those who rent in the social housing sector. 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.
13. A shift in the Government's view in recognising the value of lifetime tenancies can be further evidenced in the provisions contained in the Secure Tenancies (Victims of Domestic Abuse) Act 2018. This requires that, where a lifetime tenant is moving due to domestic abuse, they should retain their existing security of tenure and not be offered a fixed term tenancy.
14. The use of fixed term tenancies further contradicts the spirit of the more recently published 'Charter for Social Housing Residents' White Paper of 2020, which aims to reduce the stigma associated with a social housing tenant's longstanding place in the community.
15. The Government's Equality Impact Assessment on Lifetime Tenancies in May 2016 said that in 2014/15 "only 15% of social housing tenancies were let on a fixed term basis". Many of the housing providers who have implemented fixed term tenancies have demonstrated a desire to revert to offering lifetime tenancies.
16. There are also disadvantages for the Council in the operation of fixed term tenancies. There is a significant amount of administration, staffing resource and costs involved in conducting tenancy reviews. If fixed term tenancies are retained, each will need to be reviewed during the final 12 months of the tenancy. This process will need to start in April 2022 – i.e., when the first fixed term tenancies enter their final year. No additional staffing resources were identified to carry out the review process, this means that either additional resources would be needed, or Housing Officers' will be taken away from tenancy management, tenancy enforcement and tenancy sustainability tasks.
17. Fixed term tenancies are difficult to administer when joint tenants have a relationship breakdown and one of the tenants wishes to leave the property and bring the tenancy to an end. Unlike a lifetime tenancy both parties need to agree for this to happen. This can lead to complicated legal proceedings.
18. Tenants with fixed term tenancies often find it difficult to exchange their home with another social housing tenant (as the incoming tenants would, in effect, give up a lifetime tenancy for a fixed term agreement).
19. It is unlikely that following a review of a tenants' fixed term tenancy there will be suitable alternative accommodation available that would better meet their needs. Therefore, fixed term tenancies are both resource intensive to the Council and have a potentially negative impact on the health and wellbeing of tenants who may think they will lose their home at the end of their fixed term tenancy.

20. There would be legal costs involved in ending a fixed term tenancy if the tenant does not leave the property at the end of the fixed term, as the Council would be required to recover possession through the courts. There would also be costs involved in ensuring empty properties are repaired and ready for letting.
21. There are quite specific legal complications surrounding fixed term tenancies that were not clear at the time they were adopted. For example, a recent High Court case (Croydon LBC v Kalonga [2020]) considered the issue of how local authorities can obtain possession of a fixed term tenancy during the fixed term. In this case, Croydon LBC served a Notice of Seeking Possession on the tenant for breach of the tenancy agreement. The tenant argued that there was no right to determine the tenancy prior to the expiry of the fixed term because the tenancy agreement did not contain a forfeiture clause. The High Court dismissed the possession claim for this reason.
22. This case highlighted that tenants now enjoy exceptionally strong security of tenure during their fixed term. The courts have struggled to grasp fixed term tenancies due to their complexity and this adds an additional burden to the work involved should it be necessary to proceed to court and further issues are identified by the courts.

## **Options**

23. Council ends the use of fixed term tenancies for its own housing tenants and replaces these with lifetime tenancies for both existing and new tenants. This is the recommended option.
24. Council continues the use of fixed term tenancies for its own housing tenants. This is not recommended for the reasons laid out in Reasons for Recommendation section.

## **Implications**

25. In the writing of this report, taking into account financial, legal, staffing, risk, equality and diversity, climate change, and any other key issues, the following implications have been considered: -

## **Financial**

26. If the recommended option was not accepted the Council would need to employ additional staff to administer reviews of fixed term tenancies, potential legal costs, and costs of empty properties. It is estimated that this will cost in the region of £120k per year.

## **Legal**

27. There are no legal implications if the recommended option is accepted. There are legal complexities around managing fixed term tenancies, these are covered in the details section above.

### **Staffing**

28. There are no staffing implications if the recommended option is accepted.

### **Equality and Diversity**

29. Ending the use of fixed term tenancies will have no differential impact on the basis of any of the protected characteristics.

30. The recommended change in policy to end the use of fixed term tenancies should not have a direct negative impact overall. There may be positive impacts whereby the granting of lifetime tenancies to all tenants will give security and stability to allow them to put down firm roots in the community thereby contributing towards fostering good relations and promoting strong and successful communities. It will give stability to vulnerable tenants, all categories of disabled tenants and older tenants, and families and their children's schooling.

### **Health & Wellbeing**

31. It is highly likely that tenants' concerns about losing their home will have a negative impact on the mental health of people with fixed term tenancies, but there is no direct evidence to support this.

### **Alignment with Council Priority Areas**

#### **Housing that is truly affordable for everyone to live in**

32. This report is concerned with security of tenure for council tenants. Security of tenure will allow tenants to become more settled and help community development.

#### **A modern and caring Council**

33. The report recommends that the Council no longer uses fixed term tenancies. This provides significantly more security to Council housing tenants.

### **Report Author:**

Peter Campbell – Head of Housing