


<p>Cabinet</p> <p>9 February 2022</p>	 <p>TOWER HAMLETS</p>
<p>Report of: Karen Swift, Divisional Director, Housing & Regeneration</p>	<p>Classification Unrestricted</p>
<p>Tenancy Agreement Review - Post Consultation Report</p>	

Originating Officer(s)	Mark Slowikowski, Strategy and Policy Manager
Wards affected	All wards

Executive Summary

The council consulted its tenants on the proposed changes to the tenancy agreement between 6th September and 17th October 2021. This 6-week consultation period was in accordance with S.103 HA 1985, which requires a minimum of 4-weeks for such consultations. The consultation included a proposal to rescind the second succession policy adopted by the council in 1994.

This report advises Mayor and Cabinet of the outcome of the consultation process and recommends the introduction of the revised tenancy agreement, the rescission of the second succession policy and seeks approval to serve council tenants with a formal notice of variation of their tenancy agreement.

Recommendations:

Cabinet is recommended to:

1. Approve the revised tenancy agreement for council tenants which has been subject to consultation with residents in accordance with S.103 Housing Act 1985.
2. Approve the rescission of the 1994 second succession policy.
3. Approve the service of a formal notice of variation of tenancy upon the council's tenants.

1. REASONS FOR THE DECISIONS

- 1.1 The council's current tenancy agreement dates from 1999. This was the first review for over 20 years and the work undertaken has resulted in a substantial reworking and modernisation of the agreement that supports the delivery of excellent housing services to tenants.

- 1.2 Specifically, the revised agreement now accommodates key legislative and regulatory changes such as the ASB Act 2014, GDPR 2018, Domestic Abuse Act 2021, and takes into account of the proposals contained in the Social Housing White Paper and the Building Safety Bill 2020.
- 1.3 The revised agreement also incorporates best practice across the housing sector in relation to some of the more contentious areas such as the introduction of full-face photo ID, changes to succession, fire safety and second home ownership where Counsel advice was sought on the application of the proposed changes.
- 1.4 The decision to rescind the second succession policy is also based on best practice as the policy is at odds with most if not all other London authorities. Furthermore, the second succession policy impacts negatively on the implementation of the new clauses on succession in the revised tenancy agreement, is at odds with the council's Housing Strategy 2016-21 and it does not accord with the current regulatory requirements.
- 1.5 Approval is also being sought to serve a formal notice of variation of tenancy upon the council's tenants in compliance with the requirements specified under section 103 of the Housing Act 1985.

2. ALTERNATIVE OPTIONS

- 2.1 Not to implement all or to implement only some of the proposed changes is not recommended as an alternative; the analysis of the consultation responses demonstrates that there is no specific reason for any exclusions.
- 2.2 Not to rescind the 1994 Second Succession Policy would not make best use of the council's housing stock and risks the council operating in breach of the Regulatory Code. It would also fall foul of its stated objectives in the current (2016-21) Housing Strategy and not help tackle homelessness and tackle overcrowding.

3. DETAILS OF THE REPORT

- 3.1 Members approved the decision to consult tenants on all the proposed changes to the tenancy agreement at the Mayor's Advisory Board meeting on the 9th June 2021.
- 3.2 The consultation process with tenants commenced on Monday 6th September and ran for 6 weeks (the minimum statutory requirement is 4 weeks) until Sunday 17th October 2021. Advance notification of the consultation was provided in the THH summer newsletter that went to all tenants in July 2021.
- 3.3 A statutory "Preliminary Notice of Variation" was posted to every council tenant (approximately 11,500) to ensure receipt by the consultation commencement date, although a few residents received their letters a few days earlier. As a result, the consultation page on the council's *Let's Talk*

website was opened slightly earlier on Friday 3rd September 2021.

3.4 The consultation process included the following:

1. A dedicated page on the council's *Let's Talk* consultation portal.
2. A dedicated e-mail address.
3. A webinar on the proposed changes apart from succession.
4. A webinar dedicated to the proposed changes on succession.

Consultation Website

- 3.5 The consultation website provided tenants with information on the proposed changes including a copy of the preliminary notice, a copy of their existing tenancy agreement, the draft proposed agreement and a copies of the webinar slides delivered at the two webinars held on the 16th and 28th September. A FAQ was also provided covering over a dozen or so key points about the proposed changes.
- 3.6 The consultation website also included a survey on the proposed changes for tenants to complete. Of the 72 council tenants completing the survey, overall, 69% said they were happy, 25% said they felt neutral and only 6% said they were unhappy with the proposed changes.

Dedicated e-mail Address

- 3.7 In addition to the consultation site, tenants were provided with a dedicated e-mail address to send in any comments on the proposals:
tenagcomments@towerhamlets.gov.uk .
- 3.8 A total of 70 emails were received via the dedicated e-mail address of which the majority 40 (57%) were requests for further information, clarification on how to access the consultation site or documents or related to non-consultation matters. All of these were referred to Tower Hamlets Homes (THH) to deal with.
- 3.9 30 comments (43%) were received on the proposed changes including views on succession, fire safety, flooring, noise/ASB/gangs, running a business from home, pets and emergency access. Appendix 1: TenAg Comments & Responses contains the comments received and the response sent. Every comment received was responded to or acknowledged within 24 hours of receipt more detailed responses sent to tenants if required.
- 3.10 Five of the 30 comments were referred to THH as they related to general housing matters unrelated to the proposed changes and one was referred to Community Safety. At least 5 tenants commented on the proposed change to the rules on succession and a further two on the removal of the second succession policy. Three comments on laminate flooring and two comments each on pets, noise, fire safety and running a business from home. Only 1 comment was received on second home ownership.

General Tenancy Changes Webinar

- 3.11 The first of 2 webinars was held on Thursday 16th September on the general changes excluding succession. 15 attendees asked a range of questions concerning owning a second property, laminate flooring, trees and security of tenure.
- 3.12 There were also some questions on the proposed changes to succession, notwithstanding a separate webinar on this area that took place on Tuesday 28th September.

Succession Changes Webinar

- 3.13 This webinar was attended by 13 tenants who provided comments or asked questions on both the proposed change on succession and the proposed removal of the second succession policy. A number of the questions were specific scenarios posited by tenants based on their family situation.
- 3.14 Examples of the comments made, questions asked and the responses provided are contained in Appendix 2: General and Succession Webinars Q&A.

Succession Changes – A Reminder

- 3.15 The **current** position on succession for council tenants is two-fold:
- (i) Statutory Succession – as contained in the current tenancy agreement:

Succession

On the death of the tenant, in accordance with the law, the tenancy may be transferred, if there is a person who is entitled to succeed.

- (ii) A right to a “Second Succession” – as detailed in the 1994 policy.
- 3.16 Statutory Succession – since the Localism Act 2011 came into force on the 1st April 2012, only spouses or civil partners of the tenant occupying the property as their only or principal home at the time of the tenant’s death are automatically entitled to succeed.
- 3.17 Second Succession Policy - In September 1994, the council adopted a policy to allow “second successions” by creating a new tenancy if the applicant met the criteria for a succession but could not succeed to the tenancy as a previous succession has taken place. This was agreed to protect the interest of the family members who lived with the deceased tenant.
- 3.18 The right to a second succession is an automatic right and applies to both joint and sole tenancies, but it only applies to pre 2012 (Localism Act) tenancies (62% circa 7,000) and NOT post 2012 tenancies (38%, circa 4,000).

- 3.19 The **proposed** position on succession (and the one which we consulted tenants on) is to extend the statutory right to succeed to a tenancy to all qualifying family members:

Succession

- i. If you are a joint tenant, when you die the tenancy will pass automatically - through a process called survivorship - to the other joint tenant as long as they occupied the property as their only or principal home at the time of your death.
- ii. If you are a sole tenant, when you die the tenancy will pass to your spouse or civil partner if they occupied the property as their only or principal home at the time of your death, or a co-habitee/partner who had been residing with you for the last 12 months immediately prior to your death, as long as they occupied the property as their only or principal home.
- iii. If you are a sole tenant and do not have a husband, wife, civil partner or partner, the tenancy can pass on to a member of your family (this includes parent, grandparent, child, grandchild, brother, sister, uncle, aunt, niece or nephew and stepchild) who had been residing with you for the last 12 months immediately prior to your death as long as they occupied the property as their only or principal home.
- iv. If a family member (not a surviving spouse or civil partner) succeeds to the tenancy we may make an offer of suitable alternative accommodation if the succession results in the under occupation of your home.

- 3.20 If the second succession policy is rescinded and the proposed wording above is implemented, the outcome will be that:

- There will be no distinction between family members who reside with a surviving spouse in a pre or post 2012 tenancy.
- All qualifying family members will be able to succeed to a tenancy.
- All qualifying family members (pre and post 2012) will benefit from a discretionary new tenancy (replacing the second succession policy). The decision will rest with Housing Management Panel (HMP).

Conclusion

- 3.21 Across all consultation platforms (online, email and webinars) a total of 130 sets of comments were received equating to an approximate response rate of

1% of the tenant base.

- 3.22 The most common area commented upon was the proposed change to succession including removal of the second succession policy. In total a maximum of 30 comments were received, taking into account the 13 residents that attended the webinar dedicated to this topic and the additional comments received via the online survey (10) and the 7 comments received via e-mail.
- 3.23 In the main, the comments received on this area expressed a desire to ensure succession rights were extended to their children and approximately 15 residents requested the retention of the second succession policy.
- 3.24 Two questions on succession were asked in the survey. The first was on the proposal to add in a clause enabling qualifying family members to succeed. 79% of tenants were happy, 13% felt neutral and 8% were unhappy with this proposal.
- 3.25 The second question was on the proposal to remove the second succession policy. 38% of tenants were happy, 32% felt neutral and 29% were unhappy with this proposal.

4. EQUALITIES IMPLICATIONS

- 4.1 Two full Equality Impact Analysis reports have been prepared following the conclusion of the consultation process. Appendix 3 covers the proposed changes except the proposed changes to succession and Appendix 4 considers the impacts of the proposed changes to succession.
- 4.2 Based on the conclusion of the equality analysis undertaken, the proposed changes to the council's tenancy agreement are not considered to have negative or detrimental impact on council tenants overall.
- 4.3 Removing the second succession policy and introducing the proposed clauses on succession will remove the pre 2012 v post 2012 discrimination and will ensure parity of treatment for all qualifying family members regardless of when the tenancy was granted.
- 4.4 The proposed changes to the council's rules on succession will provide greater security and stability to post 2012 tenants and their qualifying household members. It will enable the council to ensure mixed and sustainable communities linking in with Priority 2 of the council's Strategic Plan 2020-2023 (***A borough that our residents are proud of and love to live in***).

5. OTHER STATUTORY IMPLICATIONS

This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:

- Best Value Implications,
- Consultations,
- Environmental (including air quality),
- Risk Management,
- Crime Reduction,
- Safeguarding.
- Data Protection / Privacy Impact Assessment.

- 5.1 Many of the proposed revisions to the council's tenancy agreement reflect statutory provisions which the council cannot control, for example, introductory tenants have fewer rights than secure tenants.
- 5.2 However, since the council's tenancy agreement was last reviewed, there have been several statutory provisions which have now been included in the proposed revised tenancy agreement:
- 5.3 **General Data Protection Regulations (GDPR) 2018** – These regulations ensure that organisations must keep individual personal details secure. The rules of the GDPR must be adhered to in order to process the data of anybody from an EU member country, even if they live in the UK. The proposals in the revised tenancy agreement reflect this requirement.
- 5.4 **The Localism Act (2011)** - removed the statutory right for family members to succeed a tenancy on the death of a tenant. The minimum succession rights in law are limited to the spouse or partner of a deceased tenant. Any additional familial rights of succession are at the discretion of the Local Housing Authority. The proposals in the revised tenancy (rule 5) include extending the right to succeed to qualifying family members.
- 5.7 **The Secure Tenancies (Victims of Domestic Abuse) Act (2018)** - provides protection for social housing tenants to ensure that those fleeing domestic abuse or violence are granted a further secure tenancy where they:
- a) Either need to leave or have left their home to escape domestic abuse and are being re-housed by a local authority; or
 - b) Where they or a joint tenant and wish to remain a tenant of their social home after the perpetrator has left or been removed and the local authority decides to grant them a further sole tenant in their current home.
- 5.8 The revised tenancy agreement (rule 2) aligns with the intention of this Act.
- 5.9 Rule 12 of the revised tenancy agreement has been updated to include the current definition of Domestic Abuse (provided by the Government) since March 2013, this is the most widely accepted and agreed definition and has been further amended in the **Domestic Abuse Act 2021**.
- 5.10 Proposed rule 13 has been added to the revised tenancy agreement and concerns 'safeguarding'. This affirms the council's legal duty as a social landlord to keep at risk and vulnerable residents safe from abuse, (**The**

Children Act (2004) and the Care Act (2014)), and that the council will take possession action in such instances of abuse by any perpetrating tenant.

- 5.11 Enforcement powers under the **Housing Act (1985)** and the **Anti-Social Behaviour Crime and Policing Act (2014)** allow the council to tackle instances of nuisance, anti-social behaviour and hate crime. These provisions strengthen powers given to local authorities through the **Anti-Social Behaviour Act (2003)**. These apply to all incidents where a council tenant, a member of their household or a visitor to their property is suspected of anti-social behaviour or hate crime (both introductory and secure tenants). In terms of managing and tackling ASB, the new conditions will help the council and its partners to improve in this area.
- 5.12 The proposals in the revised tenancy agreement (rule 1) sees the inclusion of a clause which confirms the council may, in the instance of anti-social behaviour, demote a secure lifetime tenancy.
- 5.13 Proposed rule 11 of the revised tenancy agreement now incorporates the government's definition of hate crime, which is the most widely accepted definition. It stems from the government's **paper 'Challenge it, Report it, Stop it: The Government's Plan to tackle crime'** – published in March 2012. The intention is to reinforce that the council will not tolerate incidents of hate crime and is committed to retaining social cohesion among all residents in the borough.
- 5.14 The revised tenancy agreement expands the clauses and conditions relating to the keeping of pets in the tenant's home – see Rule 31. Since the current tenancy agreement was drafted, there have been notable Acts of Parliament brought in which the proposed revised tenancy agreement acknowledges.
- 5.15 **The Animal Welfare Act (2016)** places responsibility on all pet owners to take responsibility for the welfare of their animal. **The Microchipping of Dogs (England) Act (2015)** stated that all dogs should be microchipped. The council have also shaped this rule to incorporate older legislative provision brought in prior to the current tenancy agreement being drafted. This includes the element of **The Control of Dogs Order (1992)** which states that all dogs must wear a collar displaying the owners address and postcode. It also includes **The Dangerous Dogs Act (1991)** any breed of dog specified as a danger must not be kept or brought into a public area.
- 5.16 Proposed rule 31 recognises the benefits of tenants keeping pets but reinforces that tenants must obtain permission from the council and that any permission granted is conditional on tenant's adhering to all of the clauses within the rule.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 There are no financial implications emanating from this report which is seeking approval of the Council's tenancy agreement following consultation with tenants.

7. COMMENTS OF LEGAL SERVICES

- 7.1 This report seeks the approval of Mayor in Cabinet of a new council tenancy agreement. The current agreement was last updated in 1999. The council has complied with its statutory duty under section 103 of the Housing Act 1985 to serve a preliminary notice of variation of the tenancy agreement on its secure tenants. It has also carried out consultation with tenants on the proposed changes in accordance with section 105 of the Act. The outcome of the consultation exercise is set out in the body of the report. Overall, the majority of those tenants who responded are in favour of the proposed changes. Formal notice of variation of the terms of the agreement will be served on tenants if the Mayor in Cabinet agrees the proposed changes.
- 7.2 When considering whether to adopt the proposed changes to the tenancy agreement, the council should consider the impacts of those changes on tenants. In making these amendments, the council must consider the public sector equality duty to have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not.
- 7.3 Two equality assessments have been carried out and are attached as Appendix 3 and 4. The first EIA on the general changes, highlights a negative impact of the change relating to the requirement for new and existing tenants to provide full face photo ID when they first become a tenant or during a tenancy audit. Those likely to be affected are those with a protected characteristic of gender and religion or religious faith. These negative impacts will be mitigated by actions set out in the action plan which provide for special arrangements to be made for those affected when their photographs are taken. Having photo ID for all tenants is necessary for the efficient management of the council's housing stock and to assist in the prevention and detection of housing fraud. The EIA also highlights a negative impact on those with a protected characteristic of age and disability in relation to the change allowing the council to recharge tenants for work carried out to clear their gardens. The impact will be mitigated by the possibility of the council waiving such charges and providing assistance to tenants who cannot do the work by reason of their age or disability.
- 7.4 The EIA at appendix 4 deals with the impact on tenants of the proposal to rescind the council's second succession policy. The EIA concludes that the proposal will not have a negative effect on any tenants with protected characteristics. There will however be a negative effect on pre-2012 tenancies where family members will lose their automatic right to a "second succession" (the grant of a new tenancy of their deceased relative's property). This negative impact is mitigated by the proposal to give all tenants the same right for their family members to be considered for a discretionary tenancy based on eligibility under the council's Allocations Policy, in circumstances where there has already been one statutory succession to the tenancy.

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Appendix 1 – TenAg Comments
- Appendix 2 – General and Succession Webinars Q&A
- Appendix 3 – EIA – General Tenancy Conditions
- Appendix 4 – EIA – Succession Changes

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- NONE.

Officer contact details for documents: N/A