

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Portfolio Holder for Housing and Health and/or Executive Director - Place

To: Policy Development Panel, 15 January 2019
Cabinet, 12 February 2019

(Author: Vikki Cherry Housing Services Manager)

Subject Tenancy agreement update

Purpose: To advise Members of the consultation process required to amend the Council's Introductory and Secure Tenancy Agreement and to seek approval to begin this process.

Recommendation(s)

- 1) That the proposed changes to the Council's Introductory and Secure Agreement are approved for consultation
- 2) That a Preliminary Notice under section 103, Housing Act 1985 is issued to all Council tenants
- 3) That approval of final amendments to the Tenancy Agreement following consultation is delegated to the Executive Director Place (prior to final Notice of Variation being served).

1.0 BACKGROUND

- 1.1 The Tenancy Agreement was last reviewed in 2011 to reflect the implementation of Introductory Tenancies (where tenants have a year's trial with reduced rights (extended to a maximum of 18 months)). All tenants were last consulted on changes to the Agreement in 2005. (Tenants were not consulted on the 2011 Agreement as the changes only affected new tenants).
- 1.2 The proposed new Tenancy Agreement is attached at appendix 1. The Agreement sets out the rights and responsibilities of the Council and our tenants, and applies to Introductory and Secure tenancies. There are no proposals to offer Fixed Term tenancies. Non-secure tenancies are not currently being reviewed. Failure to adhere to the tenancy agreement can result in warning letters, legal notices, fines and ultimately possession.
- 1.3 There is a legal requirement to consult with tenants on any changes to the Agreement (as per the Housing Act 1985). Relevant internal stakeholders (including Legal, Housing and Communities) have been consulted with.
- 1.4 The majority of changes proposed are around clarity and ability to enforce as well as strengthening the rights and responsibilities of tenants. A summary of the material changes the existing Agreement can be found in appendix 2.
- 1.5 The Agreement reflects the following new pieces of legislation:

- Antisocial Behaviour and Policing Act 2014
- Localism Act 2011,
- General Data Protection Regulation 2018.

- 1.6 The consultation for the Agreement review will be conducted in accordance with sections 102-103 of the Housing Act 1985. The Housing Services Manager will write to all tenants informing them by a Preliminary Notice (appendix 3) that we wish to vary the terms of the Tenancy Agreement. The intention is to issue this Notice in March 2019.
- 1.7 In addition to the Preliminary Notice, tenants will be provided with the following documents:
- draft copy of the Agreement (appendix 1),
 - summary of changes (appendix 2),
 - Frequently Asked Questions paper (appendix 4).
- 1.8 Tenants will be given a period of 28 days consultation. Methods of consultation will include an online survey, and the option to send comments to a dedicated email address/by post. Sheltered Housing residents will have the opportunity to comment at Meet and Greet sessions also.
- 1.9 New tenants that sign their tenancy agreement after the Preliminary Notice is sent will be issued with a copy of the Preliminary Notice at the point of sign up.
- 1.10 A page on the Council's website will be produced setting out the proposed changes and the consultation process.
- 1.11 All comments will be logged and will inform the final Tenancy Agreement. The report requests that authority to sign off the final Agreement (following consultation) is delegated to the Executive Director Place.

2.0 **OPTIONS**

- 2.1 Approve the draft proposed Agreement and the service of a Preliminary Notice under section 103, Housing Act 1985 to all Council tenants on an introductory or secure tenancy (to begin the formal consultation process). Delegate permission for final amendments (following consultation) to the Executive Director Place.
- 2.2 Do nothing, continue to operate under the conditions of the existing two out of date Tenancy Agreements.

3.0 **REASONS FOR RECOMMENDATION(S)**

- 3.1 The reason for reviewing the Agreement is to provide an updated Agreement for tenants to reflect changes in legislation and operational practice. The revised document is clearer and easier for tenants to understand, helping them to meet their obligations as a tenant and sustain their tenancy. A revised Tenant's Handbook will also be produced as part of this work.

4.0 **EXPECTED BENEFITS**

- 4.1 One Agreement in place, reducing confusion for officers and tenants.

- 4.2 Addressing concerns regarding fire safety including storage of items in communal areas and bonfires.
- 4.3 Use of the Antisocial Behaviour and Policing Act 2014 through warnings and notices to address issues such as untidy gardens and noise nuisance. Penalties include financial penalties, orders for work to be carried out and charged to the tenant, and possession of the property.
- 4.4 Reduction in rent arrears due to the requirement of payment of four week's rent in advance for all new tenants, and formal action being taken for the repeat late payment of rent.
- 4.5 Improved property condition through the ability to treat hoarding as a breach of tenancy and considering overgrown gardens to be cases of anti-social behaviour/nuisance.
- 4.6 Reduction in complaints as a result of the flexibility on the number of pets depending on property size, and also ability to withdraw permission if issues arise from pets. Dogs no longer being allowed in flats (for new tenants). Existing tenants will be able to keep up to 2 dogs and 3 cats without permission until they move property.
- 4.7 Reduction in outgoings through a stronger emphasis on repairs and re-charging tenants for work that is their responsibility. This will result in additional income to the Council. Photos of the condition of the property at sign-up will support this process.

5.0 **IMPLICATIONS**

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

5.1 **Carbon Footprint / Environmental Issues**

- 5.1.1 It is a legal requirement to serve the Notice and proposed Agreement on all tenants. This requirement will be met by printing and posting papers out. The authority does not have reliable contact details for tenants to send the papers by email and so could not guarantee they have been served.
- 5.1.2 A section will be added to the website for tenants to update their contact details. The link to this section of the website will be included in letters and tenants will be encouraged to complete this as part of their response to the consultation. (This exercise will assist with future communications to tenants by email on non-legal matters).

5.2 **Constitutional & Legal**

- 5.2.1 The review of the Tenancy Agreement meets a statutory requirement. There is a requirement for the review to be conducted in accordance with sections 102-103 of the Housing Act 1985.
- 5.2.2 The Council is at risk of legal challenge around fulfilling the terms of the Housing Act 1985, section 103. A tenant may challenge the variation on the basis of not being consulted or

not receiving a copy of the preliminary notice. The Notice will be posted to all tenants (along with a copy of the proposed Agreement), and information will be added to the Council's website to mitigate this risk.

5.3 Corporate Priorities

5.3.1 The Agreement review underpins the relationship between the Council as a landlord and its tenants, by delivering sustainable tenancies, and therefore more settled communities. This helps to support the Council's priority of having pride in South Holland by supporting the district and residents to develop and thrive, and developing safer, stronger, healthier and more independent communities whilst protecting the most vulnerable.

5.4 Crime and Disorder

5.4.1 The Agreement refers to the Antisocial Behaviour and Policing Act 2014. There are many tools available under this act to address nuisance including the issue of Community Protection Notices and fixed term penalties, injunctions and mandatory possession ground in extreme cases of antisocial behaviour.

5.5 Equality and Diversity / Human Rights

5.5.1 There is a potential for certain groups to be disadvantaged by the terms of the tenancy agreement, for example, tenants on a low income.

5.5.2 Tenants may struggle to pay the required four weeks rent in advance. Officers have the ability to reduce this amount in extenuating circumstances. Assistance is available (in the form of a grant) to existing Housing Benefit/Universal Benefit claimants towards rent in advance payments through the authority's Discretionary Housing Payment scheme. Many social landlords require rent in advance with local housing associations currently requiring four weeks rent in advance also.

5.5.3 Affordable payment arrangements will be available to tenants to repay the charge for repairs that are the responsibility of the tenant.

5.5.4 Tenants whose first language is not English may require additional support to ensure they fully understand the terms of the Tenancy Agreement. Copies of the Agreement will be translated upon request.

5.6 Financial

5.6.1 The Housing Revenue Account will incur the cost of printing and postage to send the required notice and Agreements to all households.

5.7 Health & Wellbeing

5.7.1 Sustainable tenancies will support the health and wellbeing of residents of South Holland.

5.8 Risk Management

5.8.1 The Council must ensure that all tenants receive a copy of the Preliminary Notice and sufficient information to understand the proposals being considered. Postage is considered an acceptable means and the authority is not required to provide proof of postage/similar.

5.8.2 The terms of the Agreement must be seen to be reasonable, not interfere with the tenant's right to respect for family and private life and not discriminate on equality grounds unjustifiably.

5.9 Stakeholders / Constitution / Timescales

5.9.1 Internal stakeholders have been consulted and their feedback has been included in the proposed Agreement. External stakeholders will be consulted at the same time as tenants. The Agreement is intended to be 'live' by early summer 2019 (due to the legal timescales involved with consulting and informing tenants).

6.0 WARDS/COMMUNITIES AFFECTED

6.1 The review of the Agreement affects all wards.

Background papers:- [None](#)

Lead Contact Officer

Name and Post: Vikki Cherry Housing Services Manager
Telephone Number 01775 764707
Email: vcherry@sholland.gov.uk

Key Decision: N

Exempt Decision: N

This report refers to a Mandatory Service

Appendices attached to this report:

Appendix 1 Proposed Agreement
Appendix 2 Summary of proposed changes
Appendix 3 Preliminary notice
Appendix 4 Frequently Asked Questions