



Tenure Reform

March 2024

A review of Tenure Reform by a Working Group of the Mid Devon District Council Homes Policy Development Group

1	Introduction	3
2	Working Group Members	3
3	Rationale	4
4	Tenant Involvement.....	5
5	Statistical Information.....	5
6	Considerations	6
7	Recommendations	7
8	Rationale for Recommendations	8

1 Introduction

- 1.1 MDH adopted the use of flexible tenancies in 2013 following the implementation of the Localism Act 2011. Following on from that, there was a requirement in the 2016 Housing and Planning Act which set out proposals to ensure that all new lettings offered by Councils in relation to general needs housing were made using flexible tenancies. However, these plans were abandoned in August 2018 with the launch of the Social Housing Green Paper following the disaster at Grenfell Tower.
- 1.2 The Council has been using flexible tenancies since 8 April 2013. The need to “make best use of the housing stock” was the driving factor which influenced the decision to introduce this form of tenure. However, there was also support for the view that social housing should be available to those who need it the most at the time when they need it the most; meaning that it is there as a safety net for those in housing need, offering a “helping hand” to enable them to get into a position whereby they can resolve their housing needs in a different way at the end of the fixed term.
- 1.3 At the start, there was some concern about the risks associated with the use of flexible tenancies. For example, it was felt that the use of flexible tenancies could impact tenants individually and collectively. This risk was identified on the basis that people may not feel settled or emotionally connected to their new home due to the fact that they may not be there for a long period. There was a concern that this, in turn, could then impact community cohesion on the basis that some people did not feel that they would be living in their neighbourhood for a long period of time.
- 1.4 The Working Group was required to review the continued use of flexible tenancies and to make a recommendation to the Homes PDG that the Cabinet adopt an approach and way forward which could be:
 - Halting the use of flexible tenancies
 - Maintaining the status quo
 - Adopting a blended approach – based on people and/ or property type

2 Working Group Members

- 2.1 The Working Group was made up of the following Members:
 - Cllr A Glover
 - Cllr N Letch
 - Cllr M Tuffin
- 2.2 Cllr A Glover was duly elected Chairman of the Working Group
- 2.3 The Working Group met on four occasions 18.12.2023, 31.01.2024, 5.03.2024 and 25.03.2024.

3 Rationale

3.1 The following issues have been widely recognised as being problematic with regard to the management of flexible tenancies. These issues can be summarised as follows:

- If a social landlord seeks to enforce the relevant terms of a flexible tenancy in relation to rent arrears, and the Court does not grant outright possession, instead making an Order for suspended possession, this results in the flexible tenancy becoming a secure tenancy.
- If the landlord serves a Notice of Seeking Termination on a flexible tenant on grounds other than rent arrears, due to legal issues, the landlord is required to serve the same Notice as the rent arrears but outlining the grounds. A Section 146 Notice must also be served and once this has been done, the landlord has to waive the right to collect rent.
- Tenancy agreements must include a clause which allows landlords to forfeit. (The Council's flexible tenancy agreement includes this).
- Once a landlord has elected to forfeit, any action incompatible with the decision to forfeit can (and often does) amount to the landlord having waived the breach. The most common example of waiver would be a demand for, or acceptance of rent after service of a Section 146 notice. So, if there is a demand for, or acceptance of rent by the landlord, in the period between electing to forfeit (service of Notice of Seeking Termination and/ or a Section 146 notice) and the issuing of proceedings, it can be argued that the landlord has waived the right to forfeit.
- If one joint tenant has left the home, the landlord cannot simply renew the tenancy at the end of the fixed term in the sole name of the remaining joint tenant. This scenario is covered by the Housing Act 1985. Due to legal considerations, Council landlords have to serve the relevant 6 month and 2 month notices prior to not renewing the tenancy at the end of the fixed term. Possession proceedings must be started and possession obtained prior to creating a new sole tenancy. This then raises the question of whether or not it would be reasonable to recharge the remaining tenant under the circumstances.

3.2 Very few flexible tenancies are not renewed. This is on the basis that frequently it is difficult to prove that the circumstances of the tenants have changed to such an extent that they should not remain in social housing. Experience has shown that any decision not to renew tends to result in requests for appeals and challenges from Ward Members and support agencies which are resource intensive to manage.

3.3 A Neighbourhood Officer explained that a majority of the reviews saw no change in the tenant's circumstances and the tenants were renewed onto another 5 year fixed term (flexible) tenancy. There had been issues with tenants not wanting to engage with the review process and this meant that in some circumstances the deadline to serve notice was missed and the tenant was put onto a periodic (secure) tenancy anyway by default.

- 3.4 Members were informed that a flexible tenancy did not guarantee that larger properties would be handed back into circulation any quicker than a secure tenancy if the property was found to be under occupied at review stage. It also had to be acknowledged that the Devon Home Choice Policy gave priority for people to be able to downsize if this was required.
- 3.5 Members were also informed that some tenants who had been found to be over the income threshold at review stage had then exercised their right to buy and that the properties had subsequently reverted to private ownership.

4 Tenant Involvement

- 4.1 The Working Group met with a tenant during the second meeting who told them of his concerns relating to flexible tenancies. It was established that he did not know what type of tenancy he had and that he would find any attempt to review his tenancy upsetting and intrusive.
- 4.2 The Working Group considered what had been done to engage with tenants in relation to the tenure review. It was noted that there had been some Housing Matters events in local communities and that a questionnaire had been posted on Let's Talk Mid Devon. Furthermore, tenants had been given an opportunity to discuss the project at the Community Cuppa events in Tiverton and Crediton.
- 4.3 By the time of the second meeting of the Working Group, feedback had been collected and this showed that there had been concern expressed regarding the review process and what would be assessed as part of that. Some tenants said that they were very anxious about the review process and the fear of losing their home. One respondent stated that it had not been made clear to them at the start of their tenancy that their tenancy would be reviewed at the end of the term with the financial circumstances of the household being taken into account. They were concerned that they did not have the resources to rent privately and gave detailed information relating to their particular circumstances and those of another member of the household.
- 4.4 Overall 269 people had read the consultation on line and there were 25 responses. The responses were split with 52.4% supporting stopping the use of flexible tenancies and 42.9% preferring a blended approach. Only 4.8% felt that MDH should do nothing.

5 Statistical Information

- 5.1 Members noted a number of statistics relating to flexible tenancies and the review process. It was noted that at 31 December 2023, there were 473 flexible tenancies, of which 19 were of two year duration. MDH has approximately 3,000 units. In the period between April 2013 and 31 December 2023, 1049 flexible tenancies had been issued, with 45 of these being of two year duration.
- 5.2 187 flexible tenancies had expired and had converted automatically to periodic ones as a result of the restrictions on movement and then resourcing issues during and after the pandemic.

- 5.3 It was noted that in April 2019, the time needed to review each flexible tenancy was calculated as being between 5 and 6 hours for each case, as an average. The impact on the workloads of individual team members was reviewed and it was noted that there were 112 flexible tenancy reviews to be completed up until the end of December 2024. It was noted that for one particular Officer, this would result in him having to spend 76 hours reviewing 19 cases on his patch, meaning that it would take a minimum of two weeks during the rest of the year for him to review the flexible tenancies where this was required on his patch until the end of this calendar year.
- 5.4 The Working Group considered statistics which demonstrated that the average debt accrued by someone with a flexible tenancy is much higher than that accrued by someone with a secure tenancy. For both secure and flexible tenancies, most evictions are actioned on the grounds of rent arrears.

6 Considerations

- 6.1 Members discussed the evidence presented. There was some discussion relating to the fact that flexible tenancies were an administrative burden and that sometimes it was difficult to see what tangible results, if any, there were for either tenants or MDH.
- 6.2 Officers confirmed that whatever decision the Working Group made that introductory tenancies would be retained. It was also explained that the legislation around introductory tenancies was different than the requirements for a flexible tenancy and that it was easier to terminate an introductory tenancy if a tenant did not comply with the terms of their tenancy agreement during their first year after being housed.
- 6.3 There was some discussion associated with the increase in the workload arising from the difficulties relating to the management of flexible tenancies and how there was no evidence to show that this tenure type really resulted in getting any properties back into circulation. There was also some discussion about whether or not it was right to expect tenants to be made to move to other properties if their circumstances changed. It was noted that, in many cases, people had spent time and money on their homes and had also built up local support networks which would be lost if they were forced to move to another property, which may not be in the same area. Members also questioned the costs to tenants forced to move, including the costs of making another property into a home.
- 6.4 A Member of the Working Group was concerned about the high number of sole tenants living alone in larger homes, more suitable for families. She said that she felt that individual circumstances should be considered; she said that she felt that it was still important for MDH to have a way to tackle under-occupation, if this was an issue at the flexible tenancy review stage. The Member said she felt that although flexible tenancies had their faults, that a future Government may bring in further legislation which would enable MDH to enforce the removal of tenants who under occupied. This would enable the freeing up of larger properties for more needy families.

- 6.5 Members discussed a blended approach with flexible tenancies being retained for larger properties of 3 bedrooms and above. There was some discussion about the mental health of our tenants in cases where tenancies were having to be reviewed every 5 years to see if they were eligible to stay in a property. It was noted that the review process could be stressful and, unnecessary for most tenants whose circumstances had not changed, and that these concerns relating to the review process had been demonstrated in their responses to the consultation.
- 6.6 Members stated they would be interested in setting up another Working Group to look at ways in which MDH could incentivize tenants to downsize to smaller homes when required. They also acknowledged the committed building program of 500 new social housing units which would assist with tenant's ability to downsize and stay in their communities.

7 Recommendations

7.1 The Working Group recommends that the Homes PDG recommends to Cabinet that:

- a) The use of flexible tenancies be halted
- b) All current flexible tenancies are moved to secure tenancies

7.2 The Working Group made the following recommendation to the Homes PDG:

- a) To establish a Working Group to look at ways in which MDH could incentivise tenants to downsize to smaller homes when required.

(Proposed by Cllr A Glover and seconded by Cllr H Tuffin)

Note:

- Cllr N Letch requested that her decision against the recommendations be recorded and stated she would prefer longer flexible terms of 10 years and for flexible tenancies to be kept for larger properties of 3 bedrooms and above. She stated:

'I have concerns about our losing sight of the role of social housing: it is to help those in urgent need and so flexible tenancy helps to guarantee a turnover of suitable housing for those in need. Our housing stock should not be a life time guarantee of cheap housing.

Our first priority needs to be those of urgent need of accommodation particularly young families with 2 plus children to help them with a healthy start.'

8 Rationale for Recommendations

- 8.1 Members had considered the views of our tenants and recognised the effect that a flexible review had on some of our tenants who felt that it had and would continue to affect their mental health. It was noted that potentially the uncertainty of not knowing how long you would be able to stay in your home would had a negative effect on tenants, many of whom did not realise they would be subject to a review every five years.
- 8.2 The use of flexible tenancies had not delivered the benefits expected for either tenants or MDH. Since the introduction of flexible tenancies in 2013 the external operating environment had changed and the cost of living crisis had resulted in hardship for some. In reality, tenants are not able to move onto home ownership or into private rented accommodation due to the costs involved and therefore tenants who qualified for social housing would usually need to receive this for a long period.
- 8.3 Flexible tenancies can be difficult to manage due to issues relating to the drafting of the regulations relating to them which were not always very clear. There were some particular difficulties associated with the management of such tenancies as a result. For example, seeking possession of a property on the grounds of anti-social behaviour can be challenging in a case where a tenant has a flexible tenancy because the Registered Provider (RP) cannot accept rent once the appropriate notice of impending possession action has been served.
- 8.4 Members acknowledged that there were currently limited numbers of smaller properties that people were able to downsize to but that the Council's committed development program was due to deliver 500 additional social housing units with majority of these being 1 or 2 bedroomed homes. Members were keen to explore introducing incentives to encourage tenants who were under occupying to downsize and so enable larger homes to be released for needy families.