

**Report for: Homes Policy Development Group**

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Date of Meeting: 18<sup>th</sup> March 2025

Subject: **VARIATION TO STANDARD MID DEVON HOUSING TENANCY AGREEMENT**

Cabinet Member: Cllr Simon Clist Cabinet Member for Housing, Assets and Property

Responsible Officer: Simon Newcombe – Head of Housing and Health

Exempt: None

which are Exempt from publication under paragraph 3, Part 1 of Schedule 12A to the Local Government Act 1972 (as amended) as it contains information relating to the financial or business affairs of any particular person (including the authority holding that information)

Wards Affected: All

Enclosures: None

**Section 1 – Summary and Recommendation(s)**

The current Tenancy Agreement was launched in 2016 and was due for a review. However, as the Cabinet approved the Homes PDG recommendation that the use of Flexible Tenancies be halted further changes are required to the Tenancy Agreement to reflect this change and therefore there is a requirement to undertake a broad review of the agreement now.

In addition to the above, many of the Mid Devon Housing (MDH) Policies have been reviewed and updated in line with recent legislation changes and the introduction of the Social Housing (Regulation) Act 2023. The changes made are also not reflected in the current 2016 Agreement.

## **Recommendation:**

**That the Homes PDG recommends to Cabinet that the procedure for the variation of tenancy conditions and updating the standard Tenancy Agreement, including formal consultation with tenants, commence in line with the Housing Act 1985 (sections 102 & 103).**

## **Section 2 – Report**

### **1 Introduction**

- 1.1 It should be noted that there has been significant change since November 2016 when the Tenancy Agreement was last reviewed and the amended, current version came into use. Since then, the fire at Grenfell Tower, subsequent legislative and regulatory changes, the pandemic and the cost of living crisis have all impacted the work of MDH as a landlord.
- 1.2 It is important that the tenancy agreement in use reflects the external operating environment. In particular, the implementation of the Social Housing (Regulation) Act 2023 has brought about significant changes, with the aim of putting tenants at the heart of the work of Registered Providers and setting new, mandated consumer standards under a wider updated consumer regulation regime. Recent policy reviews have taken account of some of the required changes and the Tenancy Agreement also needs to be updated to ensure that conditions of tenancy are aligned with policy commitments.
- 1.3 The Homes PDG set up a working group to look at tenure reform, as a result of this a recommendation was made to Cabinet that the use of flexible tenancies be halted. This means that we will need to issue a new Tenancy Agreement which reflects this new approach.
- 1.4 At the June 2024 Homes PDG, members received an update on the project plan relating to tenure reform and the update of the current standard Tenancy Agreement for our tenants. The action plan was dependant on the work of the tenure reform working group and was noted and agreed.
- 1.5 The agreed action plan has been followed since with several verbal updates to the PDG in the interim. These updates noted a delay in action plan due to an extended legal review of the proposed draft updated Tenancy Agreement. This legal review is now complete and any further amendments have been incorporated into a draft document that is now ready for formal consultation with tenants as set out within the action and further outlined below for clarity.

### **2 Legislative and regulatory requirements**

- 2.1 Sections 102 and 103 of the Housing Act 1985 contain specific provisions relating to the variation of tenancy conditions and sets out the procedure to be followed where landlords are planning to do these. These provisions relate to secure and introductory tenancies only.

2.2 It should be noted that the variation procedure set out in the Act must be adhered to. However, if it has, then tenants are not required to sign the new agreement.

### **3 Formal consultation**

3.1 The formal consultation process on the draft updated Tenancy Process will adhere to the legal requirements of this action as well as following best practice in terms communication with tenants to ensure as wide an engagement and response as possible.

3.2 Sections 102 and 103 of the Housing Act 1985 details that all secure and introductory tenants must be consulted on any tenancy changes. If commencement of the variation procedure be approved the following consultation exercise will be implemented:

- All secure and introductory tenants will be sent (in the post) a preliminary notice of variation providing them with the formal consultation period and informs tenants of the Council's intention to serve a Notice of Variation. The consultation will run for 28 days.
- Tenants will be provided a 'Tenancy Agreement changes at a glance' leaflet which explains the main changes affecting tenants. They will be provided with a consultation form which they can complete with their comments. They will be provided with pre-paid envelopes to ensure that they can complete and return their responses at no cost to themselves
- Partners and Members will also be invited to comment on the revised agreement during the consultation period
- A series of open sessions will be held in Tiverton, Crediton, Cullompton, and online via Teams with tenants being invited to attend and comment on the proposals
- The consultation will be available through our dedicated consultation hub on the website
- An online survey will be launched on Let's Talk Mid Devon and promoted through our social media pages offering tenants a chance to respond to the consultation
- We will promote the consultation through our community cuppa events

3.3 Once the preliminary consultation has been completed, Officers will collate all the responses received and present these back to Members before authorisation is sought to serve a Notice of Variation. The Council must consider any comments made by secure tenants within the consultation period before deciding to serve the Notice of Variation.

3.4 The new tenancy agreement will come into force 28 days after the Notice of Variation has been served.

### **4 Flexible tenancies**

4.1 Legislation under Sections 102 and 103 of the Housing Act 1985 provides that a Registered Provider may vary the terms of a secure tenancy only. There is

no legislation which allows for the variation of a flexible tenancy during the term of the tenancy.

- 4.2 In accordance with legislation only current secure tenants will be given notice of the variation.
- 4.3 As per the decision of Cabinet on 9<sup>th</sup> July 2024 no new flexible tenancies have been issued by MDH since that date.
- 4.4 Legislation does not allow Registered Providers to unilaterally move all current flexible tenancies onto a secure tenancy before the end of their flexible fixed term. The process would involve surrendering the current flexible lease and re-granting of a new one under secure terms. Where flexible tenants have rent arrears changing from flexible tenancy to secure also causes problems. If the variation operates as a surrender and re-grant then the Council will not be able to seek possession after the re-grant of the tenancy for rent arrears that accrued under the flexible tenancy.
- 4.5 When a flexible tenancy expires if the Council has taken no action to renew it then the flexible tenancy automatically becomes a secure periodic tenancy and there is no need to surrender the tenancy and re grant it. One way to change flexible tenants into secure tenants is to simply wait for the flexible tenancy to expire.
- 4.6 Therefore, existing flexible tenancies will no longer be renewed onto new fixed term arrangements when their flexible tenancy expires, they will instead be rolled onto a periodic secure tenancy at this point. Tenants will not be required to sign a new standard tenancy agreement as a result.
- 4.7 Once a flexible tenant moves onto a periodic secure tenancy they will be bound under the terms of the standard tenancy agreement in force at the time. Flexible tenants will be informed in writing when their tenancy becomes a periodic secure tenancy.

## **5 Recommendation**

- 5.1 In accordance with the above, the following recommendation is made:
  1. That the Homes PDG recommends to Cabinet that the procedure for the variation of tenancy conditions and updating the standard Tenancy Agreement, including formal consultation with tenants, commence in line with the Housing Act 1985 (sections 102 & 103).

## **Financial Implications**

The landlord service is funded through the Housing Revenue Account (HRA) which is a ring-fenced account. The main income into this account is derived from the rent paid by tenants, and the HRA must balance. The work involved in a tenure review and also a review of the standard conditions of tenancy will be contained within existing budgets in the HRA.

## **Legal Implications**

As a registered provider (RP) of social housing, the Council is obliged to take account of the standards contained within the revised regulatory framework which is administered by the Regulator of Social Housing (RSH). This states that RPs should meet all applicable statutory and legal requirements in relation to the form and use of tenancy agreements or terms of occupation.

The Social Housing (Regulation) Act 2023 is designed to strengthen the regulatory framework for social housing and to introduce a new proactive, consumer-led regulation regime focussed on meeting the needs of tenants.

Section 102 and 103 of the Housing Act 1985 provides that in England and Wales the terms of a secure tenancy (other than those implied by statute) may be varied, therefore correct compliance with legislation is a requirement to prevent any legal challenges.

Section 105 of the Housing Act 1985 sets out the Council's duties relating to consultation with tenants on matters of housing management. Following any consultation, the MDH will be obliged to give a minimum notice period of 4 weeks in advance of any change.

## **Risk Assessment**

It is good practice to review tenancy agreements on a regular basis to take account of changes to legislation, regulatory requirements, policy and good practice. RPs also need to ensure that those responsible for housing management can rely on a robust tenancy agreement which can be used in support of efficient and effective management of tenancies and the housing stock.

## **Impact on Climate Change**

The Housing Act 1985 requires local authority landlords to undertake consultation and also to print out various documents and to send these through the post when reviewing conditions of tenancy. This will, of course, have an impact upon emissions but cannot be avoided, in line with legislative requirements.

## **Equalities Impact Assessment**

The regulatory framework currently includes the Transparency, Influence and Accountability Standard and, in line with the provisions of this, RPs are required to treat all tenants with fairness and respect; and also to demonstrate that they understand the different needs of their tenants, including in relation to the equality strands and tenants with additional support needs.

Officers working in MDH have training in support of this and are mindful that the Public Sector Equality Duty applies in the discharge of their duties. Work has started to refresh the information held on tenants in MDH records and, to this end, diversity information will be sought at most contacts starting once teams have been briefed.

An Equality Impact Assessment (EIA) has been drafted and no significant impacts have been identified at this stage. However, the tenant consultation set out herein may

result in additional responses and consideration that need to be taken into account regarding protected characteristics. As such, when the final tenancy agreement comes forward for adoption it will include an EIA, updated as required.

Those tenants who may have difficulty using standard means of written communication, including those who with literacy issues or whose first language is not English can request alternative forms of communication, including telephone calls, face to face contact and alternative formats including information in large print. The consultation exercise will highlight and support these alternatives.

### **Relationship to Corporate Plan**

Homes and social housing are a clear priority within the Corporate Plan. We will work closely with our tenants to ensure they feel safe, secure and happy in their homes. It is also important that the obligations on tenants and MDH as the landlord are clearly defined and this is where an up to date, clear standard Tenancy Agreement is important.

### **Section 3 – Statutory Officer sign-off/mandatory checks**

**Statutory Officer:** Andrew Jarrett

Agreed by or on behalf of the Section 151 Officer

**Date:** 6 March 2025

**Statutory Officer:** Maria de Leburne

Agreed on behalf of the Monitoring Officer

**Date:** 6 March 2025

**Chief Officer:** Stephen Walford

Agreed by or on behalf of the Chief Executive/Corporate Director

**Date:** 6 March 2025

**Performance and risk:** Steve Carr

Agreed on behalf of the Corporate Performance & Improvement Manager

**Date:** 04 March 2025

**Cabinet member notified:** Yes

### **Section 4 - Contact Details and Background Papers**

**Contact:** Simon Newcombe – Head of Housing & Health

Email: [snewcombe@middevon.gov.uk](mailto:snewcombe@middevon.gov.uk)

Telephone: 01884 255255

**Background papers:**

Current Tenancy Agreements: [Tenancy Agreements - MIDDEVON.GOV.UK](#)

[Housing Act 1985](#)