



Tenancy Strategy

2020 - 2022

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1. Introduction

The aim of this document is to:

- a. Convey to partnering registered social housing providers (RSHP) Newcastle City Council's view on the use and issue of flexible fixed term tenancies for social housing that RSHPs own and manage within the boundaries of the city,
- b. Instruct the city council's arms-length management organisation, Your Homes Newcastle, in the use and circumstances of the various tenancies to be used for the social and affordable rented housing managed by YHN on behalf of the City Council; and
- c. ensure a consistent approach to the types of social housing tenancies issued in the City across all social housing providers, that affordable housing is genuinely affordable, and to ensure the best use of housing stock to cater for general needs and specialist housing requirements.

In keeping with this, the strategy will outline the uses and circumstances for issuing the following types of tenancies:

- Flexible Fixed Term Tenancies
- Lifetime Tenancies
- Introductory Tenancies
- Family Intervention Tenancies
- Demoted Tenancies
- License to Occupy

2. Background

The 2011 Localism Act introduced a duty on Local Authorities to prepare and publish a Tenancy Strategy. The purpose of this Strategy is to set out what Registered Providers (formerly known as Housing Associations) who own stock in the City need to have regard to when formulating their Policies on Tenancies and in any subsequent reviews and revisions

This Tenancy Strategy is the second such Strategy for Newcastle City Council, and replaces the 2012 strategy titled: *'Our Pledge to Tenants': Defending social housing as a choice for single people and families'*.

The Localism Act introduced a fundamental reform of the social housing tenure, the principal reforms were:

- That Registered Providers can offer Fixed Term Tenancies of a minimum of 5 years, or in exceptional circumstances 2 years
- Increased flexibility for Councils to set their own Allocations Policies to meet local needs and circumstances
- The ability for Councils to place homeless households in suitable Private Rented Sector housing
- New social housing developments to include Affordable Rent model with rents of up to 80% market rent on new homes and the ability to convert vacant Social Rent homes to Affordable Rent

- Registered Providers being required to adopt and publish a Tenancy Policy
- Councils being required to consult on, adopt and publish a Tenancy Strategy
- The introduction of Affordable Rents and Fixed Term Tenancies has implications for tenants who wish to Mutual Exchange
- Changes to the rights of Succession has limited those able to succeed to a Tenancy on the death of the tenant

Registered Providers Tenancy Policies -

It is a regulatory requirement that registered providers of affordable housing publish clear and accessible policies which outline their approach to tenancy management, including interventions to sustain tenancies and prevent unnecessary eviction, tackling tenancy fraud and granting discretionary succession rights. This will include information on:

- the kinds of tenancies they grant
- the circumstances in which they will grant a tenancy of a particular kind
- where they grant tenancies for a term certain, the lengths of the terms
- the circumstances in which they will grant a further tenancy when an existing tenancy comes to an end.
- the succession criteria and whether this is extended beyond a spouse, civil partner or those in equivalent relationships.

In developing their tenancy policies, registered providers must have regard to the position provided in this document. We would expect general needs tenancies issued by individual registered providers operating within Newcastle take into account our position on the use of flexible fixed term tenancies, and issue life time tenancies for general needs housing.

3. Consultation

Part 7 Chapter 2 Section 151 of the Localism Act¹ states that, before adopting a tenancy strategy, or making a modification to it reflecting a major change of policy, the local authority must:

- (a) send a copy of the draft strategy, or proposed modification, to every private registered provider of social housing for its district, and
- (b) give the private registered provider a reasonable opportunity to comment on those proposals.

In line with this, it should be noted a modification to the City Council's original position on the use and issue of fixed term tenancies. This update to the tenancy strategy introduces further criteria for the use of flexible fixed term tenancies. This is: *Where a tenancy has been issued under Rent to Buy, a 5-year fixed term tenancy will be used.*

Full detail of this can be found on page 7, to which the views of registered providers has been sought.

¹ <http://www.legislation.gov.uk/ukpga/2011/20/part/7/enacted>

To meet with this requirement, a draft of the update to the Tenancy Strategy was sent to all registered providers (RPs) operating in Newcastle. The contact details of each of these can be found in Section 8.

4. Types of Tenancies

Fixed Term Tenancies

We ask that partnering registered social housing providers note the city council's position on the use of flexible fixed term tenancies, and that they are minded to follow this position when issuing tenancies (both social and affordable) to housing they own and manage with the boundaries of the city.

This section also gives instruction to Your Homes Newcastle (YHN) to follow the position laid out for when a flexible fixed term tenancy can be used for the social housing they manage on behalf of the City Council.

The term 'fixed term tenancies' refers to both:

- flexible tenancies – a form of tenancy introduced by the Localism Act 2011 which can be used by local authorities. A flexible tenancy is a time-limited form of secure tenancy and carries many of the same rights a secure tenancy
- assured shorthold tenancies, granted for fixed term – a form of tenancy granted by housing associations where they wish to let a property for a fixed period of time

A fixed term tenancy can only be issued to new tenancies. Existing life time tenancies cannot be converted to a fixed term tenancy, even during instances of mutual exchange or transfer.

It should be noted that local authorities do not have to issue or support the use of flexible fixed term tenancies as part of the allocation of social housing. They are merely obliged to consult on whether or not to support the use of flexible fixed term tenancies by registered providers (formerly housing associations) which operate within their administrative boundary.

The Government's view on the issue and use of fixed term tenancies

The Government's view of flexible fixed term tenancies is that they will allow social housing providers (councils and registered providers) to make better use of their housing stock by setting a timescale on the length of a tenancy. This will be on a minimum of five years, except in special circumstances whereby a two-year tenancy may be granted. This change only applies to new tenants: with current secure/assured tenants still able to enjoy a secure home for life.

At the end of the fixed term the landlord will make sure that the home is still suitable and needed by the people living there. If it is, then another tenancy will be granted: If not, then tenants will be helped to find something more fitting to their needs.

Newcastle City Council's view on the issue and use of flexible fixed term tenancies

Newcastle City Council takes the opposite view and believes lifetime tenancies in general needs housing is the preferred tenancy type and not flexible short fixed term

tenancies. This supports both the tenant and the delivery of successful sustainable communities.

We do not feel it is right for people to be in fear of losing their home if their circumstances change or improve. This could lead to a disincentive for people to gain employment or invest in their home and community.

We do, however, understand the importance of making the best use of stock and will support voluntary schemes which help tenants move to the most appropriately sized accommodation.

It is the belief of Newcastle City Council that people of different ages or circumstances should not be treated unequally in respect to the type of tenancies they receive. We believe introductory tenancies followed by 'lifetime' tenancies (secure or assured) in general needs housing should be available to all new households who are eligible and qualify to join our housing register.

We request that registered housing providers (formerly housing associations) take account of this when framing their tenancy policies, and set "lifetime" tenancies as their prevailing tenancy when operating in the City.

The table below summarises the potential Advantages and Disadvantages for the introduction of Fixed Term Tenancies:

Advantages	Disadvantages
<ul style="list-style-type: none"> • Makes best use of housing to meet housing needs • Reduces under occupation • Opportunity to review with the tenant their Tenancy Agreement and to consider whether their current property meets their needs including location • The ending of a Tenancy can be an opportunity to tackle specific housing management issues, such as anti-social behaviour and or breaches of a tenancy • May reduce rent arrears by ensuring tenants can afford to pay the rent 	<ul style="list-style-type: none"> • Tenants may take less pride in their home which may result in higher repair costs for the Landlord • May be disruptive to families with children who have to relocate away from friends and schools • May discourage people into work if their earning capacity is a factor in retaining a property • Maybe a potential cost to the Landlord in reviewing Tenancies at the end of the fixed period • Suitable properties need to be available to rehouse households.

Situations where the use of fixed term tenancies are acceptable for new tenancies issued in Newcastle (exemptions to lifetime tenancies)

While we support lifetime tenancies as a preferred tenure for general needs social housing, we accept that in some situations flexible (fixed term) tenancies can be appropriate.

The previously adopted 2012 tenancy strategy provided the circumstances when it was advisable to consider a fixed term tenancy:

- When they allow the use of an additional property for affordable housing. An example would be where a registered provider brings private sector properties into use as affordable accommodation as part of a leasing scheme and a lifetime tenancy could not be offered. Where this applies, we generally expect tenancies to be 5 years or longer. However, shorter periods than 5 years may be acceptable if the property in question is only available for a limited period of time. For example, when there is only 3 years remaining of a lease with a private owner.
- Tenancies which are let to people with a specific short-term support or housing need, with an expectation that the tenant will be required to move on at some stage. In these cases, it is advisable to issue a maximum 2-year fixed term tenancy without an introductory period is granted. This will ensure the tenant receives the support they require; whilst ensuring specialist property of this nature can be used to provide support to subsequent tenants.
- Where a property in the private rented sector has been used to discharge the Council's homeless duty. In this instance properties must be accredited to the Council's Rent Deposit Scheme standards². In line with Clause 148 of the Localism Act, this will be for a minimum fixed term of 12 months³. Rents charged will be at no more than Local Housing Allowance rate for the property, unless there is a prior agreement with the tenant. The impact of using the private rented sector to discharge our homeless duty will be reviewed annually alongside the review of this document.

This updated strategy introduces another criteria for the use of flexible fixed term tenancies. This is:

- Where a tenancy has been issued under **Rent to Buy**⁴. In these situations, a 5 year fixed term tenancy will be issued. Inserted into the tenancy agreement will be the expectation that tenants will be expected to purchase the property at the market rate, either during or at the end of the 5-year fixed term period.

² For a copy of the council's Rent Deposit Standards email the City Council's Fairer Housing Unit: fairerhousingunit@newcastle.gov.uk

³ Clause 148 and 149 Localism Act 2011 amends the Housing Act 1996, so that a local authority may discharge the main housing duty owed under s.193 with an offer of suitable accommodation in the private rented sector provided that the tenancy is for a minimum fixed term of 12 months.

⁴ Rent to Buy is a government scheme designed to ease the transition from renting to buying a home by providing subsidised rent – usually at an affordable rent (80% of the market rent in the locality).

When a fixed term tenancy is issued, the tenant must be informed on the length of the tenancy and what support they can expect from the housing provider when their tenancy nears completion.

The Council at this point reiterates its desire to see registered providers issue lifetime (Secured or Assured) tenancies, especially for families, for general needs social housing that fall outside of the exceptions listed above.

Introductory tenancies & flexible tenancies

The Localism Act provided that introductory tenancies may become flexible tenancies once the introductory period has ended, provided that the landlord has served notice of this and the period and terms of the flexible tenancy, before the introductory tenancy started.

Newcastle's view is that, tenants who complete a successful Introductory Tenancy shall be given a life time tenancy, except for those falling within the exemptions to the issue of lifetime tenancies given above.

Those suffering domestic violence and abuse

Where existing lifetime tenants move as a result of domestic violence or abuse, they will be guaranteed a further lifetime tenancy in their new home.

Tenants' rights

Existing Tenants undertake a mutual exchange (2 way house swap)

Section 158 of the Localism Act 2011 provides for transfers between tenants with different levels of security and ensures that Secure or Assured tenants keep their security of tenure if they swap with a flexible tenant or an affordable rent tenant. Provision, however, is made in the Act to allow a landlord to refuse such a transfer request on certain grounds.

Existing tenants housed on a lifetime secure or assured tenancy will keep all existing rights, including the right to remain as per the conditions of their Tenancy Agreement.

Existing tenants will not be affected by any changes to tenancy arrangements and will only be affected by changes to affordable rent where tenants choose to move to properties on which affordable rent is charged.

Tenants with a Flexible Tenancy

Tenants with flexible tenancies will have the same protection from eviction as tenants with a secure or assured tenancy. Landlords will still be required to rely on one of the grounds for possession and also prove they acted reasonably when deciding to seek possession.

The Localism Act states tenants with flexible tenancies will have the following rights:

- Right to exchange with limited exceptions
- Right to buy / acquire (on the same conditions assured tenants).
- Right to take in lodgers and to sub-let part of the property (with landlord's permission).
- Right to have repairs carried out.
- Right to consultation and information.
- Right to one succession to spouse or partner of the deceased tenant.
Landlords will be able to offer other relatives the opportunity to succeed but will not be required to do so.

Lifetime Tenancies

Long-term security of tenure was introduced for most social housing tenants by the Housing Act 1980. The Housing Act 1988 subsequently introduced the assured tenancy regime for housing associations. This regime has applied to most new housing association tenancies created since 15 January 1989. The level of security of tenure offered by these tenancies has led to them being described as 'lifetime tenancies.' Essentially, with some limited exceptions, if a secure or assured tenant does not breach the conditions of their tenancy agreement they cannot be evicted.

We would encourage the use of life-time tenancies for all new general needs tenancies created in Newcastle, with the exceptions to those tenancies given on Page 7.

A life time tenancy may follow a 12 month introductory tenancy, extendable to 18 months, providing all conditions of the introductory tenancy were met.

Introductory Tenancies

An introductory tenancy is a trial tenancy that allows the council to decide if a new tenant can manage their tenancy in accordance with their tenancy agreement. The trial period lasts for 12 months from the date the tenancy starts or the date of occupation, whichever is later. The council can extend an introductory tenancy for a further 6 months.

An Introductory Tenancy can only be used for new tenants. They shall not be used for tenants transferring from a secure council tenancy or an assured housing association tenancy. Nor can they be used for a mutual exchanges - where 2 existing tenancies undertake a house swap.

After a successful 12-month introductory period – the tenant shall be offered a life time tenancy.

Extending an Introductory Tenancy

An Introductory Tenancy can be extended for a further six months should it be felt the tenant has not fully complied with their tenancy agreement. By extending the introductory tenancy for a further six months, this will allow the tenant more time to resolve problems and to ensure they will not be repeated.

Ending a tenancy after the introductory period

It is easier to be evicted from this type of tenancy. The council does not have to prove a legal reason to a court for the tenant to be evicted. Common reasons for eviction include:

- Causing a nuisance to neighbours
- **Failure to pay the rent**
- Not paying any water or heating charges included in your rent

Family Intervention Tenancy (FIT)

What is a family intervention tenancy?

Family intervention tenancies came into force on 1 January 2009 and were introduced by the Housing and Regeneration Act 2008.

Family Intervention Tenancies will not be secure or assured. They fall into the list of excluded tenancies (ie those which are not secure or assured) specified in Schedule 1 of the Housing Act 1985 (for secure tenancies) and Schedule 1 of the Housing Act 1988 (for assured tenancies). As such they will be terminable on notice with no need to prove any grounds for termination or possession.

It is important to note that Family Intervention Tenancies are entered into voluntarily on the part of the tenant, who cannot be compelled to sign such a tenancy agreement.

Family intervention tenancies were created as a means of working with families that have been involved in antisocial behaviour.

Family intervention tenancies can only be offered for the purposes of providing behavioural support services to tenants against whom a possession order:

- has been made in relation to a secure/assured tenancy on the grounds of antisocial behaviour; or
- could have been so made in relation to a secure/assured tenancy, or could have been so made if the tenant had had such a tenancy, on the grounds of antisocial behaviour.

Family intervention tenancies do not provide any rights to succession nor offer tenants any long-term security. They can be terminated by the landlord following the correct procedure.

Behaviour support agreement

Family intervention tenancies can only be used for the purpose of providing behaviour support services that have been outlined in a written behaviour support agreement. This agreement will be between the tenant, the family intervention project, the social landlord providing the accommodation, and the local housing authority for the district in which the accommodation is to be provided (where different from the landlord).

The behaviour support agreement should outline:

- the expected changes in the behaviour of the household
- the behaviour support that will be provided
- the sanctions that will apply if the agreement is not complied with.

Terminating a Family Intervention Tenancy

The following provides national guidance on the uses and management of the Family Intervention Tenancies

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7833/familyinterventiontenancies.pdf

License to Occupy

A license to occupy is offered to an occupier of a property by a landlord who does not want the occupier to enjoy the security of tenure offered through varying forms of tenancies. An occupier with a license to occupy may therefore only be given 28 days notice to leave, or less in certain circumstances. Some Licensees will not be given a term in which they may occupy the property but receive implied permission on a week-by-week basis. Furthermore, some licensees do not even enjoy the protection from eviction offered by the Act with the same name created in 1977.

Licenses are very attractive to landlords for a number of reasons. The law is therefore very careful to illustrate the difference between tenancies and licenses. A tenancy described by a landlord, as a license has become known as a “Sham” tenancy within housing law terms.

A simple example of what might constitute a licence is a landlord renting out a room in his/her house to a lodger. The right to occupy will be granted under a license. Little rights are therefore enjoyed by the lodger who can be asked to leave at very short notice. Equally, a family member living with another family member or friend may live there under a license. The license does not need to be written up although in some cases a “contractual” license is produced and signed by both parties.

If an occupier is given a written license but pays rent to live in a property with exclusive possession, not sharing it with any other lodgers or landlords then the license may in fact be a tenancy. At this point both parties may need to speak to solicitor or adviser about the implications of the situation.

Non-Secure Tenancies

Non-secure tenancies are sometimes given when a homeless household is placed in temporary accommodation owned by the Council by virtue of Homelessness legislation.

Once permanent housing is found an Introductory or secure tenancy will be given (depending upon the length of stay in non-secure accommodation).

In order to terminate, and gain possession of, a non-secure tenancy, the landlord is not required to prove any statutory ground. All that is required is for the landlord to serve on the tenant a valid Notice to Quit. Following which, a claim for possession may be brought. The tenancy will subsequently end on the date specified in the court order for possession.

Non-Secure tenancies do not have all the rights that secure tenants have including no:

- Right to Buy, Right to Exchange, Right to Succession, Right to Take in Lodgers or to Sublet

5. Monitoring and review

This document will be kept under review to ensure our current position on the uses and issue of flexible (fixed term) tenancies remains relevant. The first review will be undertaken on the first anniversary after its adoption to ensure the policy position remains relevant.

To assess if the document needs amending we will monitor:

- Housing needs information.
- Households in crisis, including homelessness.
- Impact assessment. of the Allocations and Lettings Policy
- Rent levels across tenures
- Delivery of new homes, including rent levels and property type

Should we need to adjust our position towards the use and issue of flexible fixed term tenancies prior to the annual review, then this will be carried out under full consultation.

We will monitor compliance with our approach to the issue and use of flexible fixed term tenancies through regular meetings with Registered Providers.

6. Equality impact

In developing this document, we have taken into account the potential impact of our policy approach for current and future residents. In doing this, the City Council feels that lifetime tenancies are the best form of tenancy for all residents in general needs housing, and that people of different ages, or in different situations should not be treated differently or unfairly by being issued with different tenancy arrangements.

7. Background Papers

The Localism Act – Plain English Guide

www.communities.gov.uk/publications/localgovernment/localismplainenglishupdate

Overview of the Localism Act by Arden Chambers

www.ardenchambers.com/index.php?page=eflash-415---localism-bill

The Localism Act 2011

www.legislation.gov.uk/ukpga/2011/20/contents/enacted/data.htm

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