

Annex A: DRAFT City of York Draft Tenancy Policy and Tenancy Strategy

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1. Introduction

1.1 What is the Tenancy Policy?

1.1.1 This sets out the tenancy types and their intended use across the stock owned by City of York Council.

1.1.2 It is influenced by the CYC allocations policy, the wider Tenancy Strategy, regulatory and legal frameworks including meeting the Regulator for Social Housing's Tenancy Standard¹.

1.2 What is the Tenancy Strategy?

1.2.1 The strategy is an expression of how the council expects the various tenancy types will be used across the city. It therefore extends across all Registered Providers in the city. The Localism Act 2011 sets a requirement for Local Authorities to have an updated Tenancy Strategy. The Act sets out some procedural requirements for producing the Strategy and defines its scope as guiding local Registered Providers on:

- (a) the kinds of tenancies they grant,
- (b) the circumstances in which they will grant a tenancy of a particular kind,

¹ <https://www.gov.uk/government/publications/tenancy-standard> - this is part of the Consumer Standards which are currently subject to consultation for revised and expanded standards.

- (c) where they grant tenancies for a term certain, the lengths of the terms, and
- (d) the circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy (Localism Act 2011, paragraph 150).

1.2.2 Extensive consultation with stakeholders was undertaken in 2012 to develop the initial Tenancy Strategy, which reflected the issues raised by the Localism Act 2011 which permitted the discharge of statutory homelessness in the private rented sector and the introduction of Fixed term and Flexible tenancies. Further consultation has been carried out with Registered Providers, and the council's Tenant Scrutiny Panel, on this document draft during 2023-24. The table below (Section 2) sets out the core elements of the refreshed policy and strategy.

1.3 Tenancy Policy and Strategy Objectives

- 1.3.1 This refresh supports the council's implementation of the 2024 Consumer Standards² set by the Regulator of Social Housing. . The document also anticipates changes in the Renters' Rights Bill³, expected to end fixed term tenancies in the Housing Association sector and to require that Housing Associations issue either full Assured tenancies, or 'Periodic' tenancies in place of Assured Shorthold Tenancies.
- 1.3.2 The Policy and Strategy is intended to make the best use of social housing stock, and to protect tenant wellbeing while enabling the Council and Registered Provider partners to apply flexibility in management of homes where needed. Effective use of social housing stock can deliver better outcomes for disabled residents with a need for accessible housing, supporting access to specialist and adapted homes where appropriate.
- 1.3.3 Principles of transparency, clear communication and either meeting, or balancing, needs of individual tenants and tenants as a whole will be embedded within deliver of the policy.

² <https://www.gov.uk/government/collections/regulatory-standards-for-landlords>

³ <https://www.gov.uk/government/publications/guide-to-the-renters-rights-bill/82ffc7fb-64b0-4af5-a72e-c24701a5f12a#tenancy-reform>

1.3.4 This supports the Housing Charter⁴ vision of *One Team, Healthy Homes, Better Lives* and the principles *We Think Forward, We Think Together and We Think Home*.

1.3.5 Section 3 sets out expectations in respect of assignation, exchange, succession and fraud. These sections are part of the Tenancy Strategy and would also form the council's Tenancy Policy.

1.3.6 Appendix A sets out the City of York Living Rent framework, implementing Affordable Rent tenure in the context of our local evidence base.

1.4 Regulator of Social Housing Tenancy Standard: Relevant Expectations

1.4.1 This Tenancy Policy addresses the Regulator's Tenancy Standard⁵ expectations as follows:

[1.3] Tenure [all provisions]

[1.4.1] Registered providers must support relevant tenants living in eligible housing to mutually exchange their homes.

[2.3.1] Registered providers shall publish clear and accessible policies which outline their approach to tenancy management, including interventions to sustain tenancies and prevent unnecessary evictions, and tackling tenancy fraud, and set out:

- a) The type of tenancies they will grant.
- b) Where they grant tenancies for a fixed term, the length of those terms.
- c) The circumstances in which they will grant tenancies of a particular type.
- d) Any exceptional circumstances in which they will grant fixed term tenancies for a term of less than five

⁴ <https://www.york.gov.uk/HousingCharter>

⁵ <https://www.gov.uk/government/publications/tenancy-standard>

years in general needs housing following any probationary period.

e) The circumstances in which they may or may not grant another tenancy on the expiry of the fixed term, in the same property or in a different property.

f) The way in which a tenant or prospective tenant may appeal against or complain about the length of fixed term tenancy offered and the type of tenancy offered, and against a decision not to grant another tenancy on the expiry of the fixed term.

g) Their policy on taking into account the needs of those households who are vulnerable by reason of age, disability or illness, and households with children, including through the provision of tenancies which provide a reasonable degree of stability.

h) The advice and assistance they will give to tenants on finding alternative accommodation in the event that they decide not to grant another tenancy.

i) Their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members.

1.4.2 The provisions of 2.3.2 – 2.3.6 will also be embedded in landlord service delivery and 2.4.1 – 2.4.4.

2. Tenancy Policy and Strategy Overview

	Decision for Tenancy Policy only
	Tenancy Strategy Only
	Tenancy Policy & Strategy

Issue	Relevance: Tenancy Policy and/or Strategy	Policy / Strategy Approach
Introductory Tenancies	Tenancy Policy City of York Council (CYC)	<p>City of York Council continues to offer Introductory Tenancies to all new tenants as a probationary arrangement.</p> <p>Introductory Tenancies should not be extended beyond 18 months. There should be clarity on whether to offer a Secure tenancy or in rare cases, to pursue eviction by that point.</p>
Discretionary succession to Introductory or Secure Tenancies	Tenancy Policy (CYC) and Tenancy Strategy	Detailed consideration in 3.1 below.

Issue	Relevance: Tenancy Policy and/or Strategy	Policy / Strategy Approach
Notice Required from the tenant to terminate a Secure tenancy and Prisoner Protocol	Tenancy Policy (CYC)	<p>That CYC can consider a request from a tenant to terminate their tenancy with less than the standard 28 days, if exceptional circumstances apply. Granting the request would be at the council's discretion.</p> <p>That CYC continues to offer the Prisoner Protocol, where an imprisoned person, who surrenders their CYC tenancy on imprisonment, is reallocated a suitable home on their release (subject to the terms and conditions of scheme).</p>
Mutual exchanges	Tenancy Policy (CYC) and Tenancy Strategy	That RPs recognise the statutory grounds for refusing a mutual exchange request as per 3.1 below. Mutual exchange is a valuable tool for meeting housing need and RPs should use reasonable discretion to facilitate mutual exchange where appropriate as per 3.1 below
Affordable Rent	Tenancy Policy (CYC) and Tenancy Strategy	That CYC and other RPs participate in the government's Affordable Rent scheme only when this contributes to meeting housing need in the city. In these circumstances, Affordable Rents must be at a level which is genuinely affordable for low income residents.

Issue	Relevance: Tenancy Policy and/or Strategy	Policy / Strategy Approach
		<p>Where Affordable Rent is used, it must be demonstrated that the % figure of market rent used to calculate the level of Affordable Rent, considers the needs of lower paid working households.</p> <p>York has an expensive housing market and it is anticipated that Affordable Rents will not generally exceed 60% of market rent. Compliance with Rent Standard and Guidance must be ensured in all cases⁶.</p> <p>This Policy introduces the York Living Rent for Affordable Rent properties, set out in Appendix A alongside additional analysis of this tenure in the City of York local context.</p>
<p>Demoted tenancies</p> <p>Family Intervention Tenancies (FITs)</p>	<p>Tenancy Policy (CYC) and Tenancy Strategy</p>	<p>That CYC and other RPs in the city retain the ability to demote secure and assured tenancies for the better management of Anti-Social Behaviour.</p> <p>RPs may also consider the use of FITs, which originated with the Housing and Regeneration Act 2008. These are an</p>

⁶ <https://www.gov.uk/government/collections/rent-standard-and-guidance>

Issue	Relevance: Tenancy Policy and/or Strategy	Policy / Strategy Approach
		<p>alternative to Eviction for families who are facing an Eviction warrant for Anti Social Behaviour.</p> <p>The household's tenancy is demoted to the status of a Licence, allowing intensive support to be provided, with the tenant's consent. Should the support be ineffective, repossession would be secured under the Licence, without having to go to court.</p>
Secure and Assured Tenancies	Tenancy Policy (CYC) and Tenancy Strategy	That the standard post probationary social tenancies in the City are Secure (CYC) and Assured (other RPs) unless Fixed term, Flexible or Equitable tenancy are in use (see below)
Flexible (5 year) and Fixed term (2 year) tenancies	Tenancy Policy (CYC) and Tenancy Strategy	<p>CYC will consider issuing new Flexible and Fixed term tenancies in exceptional circumstances only in accordance with section 3.6 below, and government guidance. Tenancies would be</p> <p>CYC does not intend to issue Flexible or Fixed term tenancies for all new tenants.</p> <p>All RPs can consider incentivising existing tenants to move, to better meet housing need, in circumstances such as under-occupation or accommodation with adaptations which are no longer required.</p>

Issue	Relevance: Tenancy Policy and/or Strategy	Policy / Strategy Approach
Licences	Tenancy Policy (CYC) and Tenancy Strategy	<p>Licences have a limited range of uses in social housing as they offer the tenant very limited security in their home:</p> <ul style="list-style-type: none"> • Licences can be used by Housing Associations to create a probationary arrangement for new tenants. • Licences can be used by all RPs in the city. Usually, this will be for residents needing support in the 'Exempt Accommodation' sector or where this is agreed as part of a delivery plan for multidisciplinary support provision such as through the 'Housing First' programme <p>A probationary arrangement should not be extended beyond 18 months as above.</p>
Equitable tenancies (16- and 17-year olds)	Tenancy Policy (CYC) and Tenancy Strategy	<p>Minors cannot legally have any form of direct social tenancy.</p> <p>Where a minor needs social housing it is required that appropriate provision such as Equitable Tenancies (tenancies in trust) are used, as is existing practice across the sector.</p>
Assured Shorthold Tenancies (ASTs)	Tenancy Strategy	It is acceptable for ASTs to be used by Housing Associations for purposes of creating a probationary

Issue	Relevance: Tenancy Policy and/or Strategy	Policy / Strategy Approach
and the Renters' Rights Bill		<p>arrangement or providing and 'Exempt Accommodation' service to people needing support.</p> <p>CYC will issue Introductory Tenancies for new tenants as above as Local Authorities cannot issue ASTs.</p> <p>ASTs are expected to become a legacy arrangement if the provisions of the former Renters' Rights Bill become law. Periodic tenancies are expected to be required in place of ASTs.</p>
New rented social housing: includes Social Rent and Affordable Rent homes provided under s106 or similar future arrangement	Tenancy Strategy	<p>New social and affordable rent housing will be made available through the City's housing register when it is first released and either wholly or predominantly when re-let.</p> <p>Requirements will be set in a section 106 agreement or other nominations agreement with the council's standard terms applied.</p> <p>Historic developments will be subject to the original nomination arrangements with RPs encouraged to provide nominations in excess of original arrangements where appropriate, in recognition of the high levels of housing need in the City.</p>

Issue	Relevance: Tenancy Policy and/or Strategy	Policy / Strategy Approach
Shared Ownership and Discounted Sale	Tenancy Strategy	<p>There will be a single point of access for registering interest in each of these services.</p> <p>These products are for households with stable employment, access to savings and the ability to secure a mortgage but would experience difficulty in affording 'open market' prices.</p>
Discharge of statutory homeless duty in private rented sector (PRS)	Tenancy Strategy	<p>This is an acceptable option, provided there is a realistic chance of tenancy sustainment and that the property identified has been vetted by CYC.</p> <p>If the customer is subject to 'no fault eviction', within 12 months of duty discharge through this route, then that household must be recategorised as statutorily homeless.</p>

3. Consideration of Key Policy Areas

Further detail is set out on the council's tenancy processes and decision making criteria in the set of factsheets available on the council's website: <https://www.york.gov.uk/downloads/download/780/council-housing-factsheets>

3.1 Succession, Termination and Exchange

3.1.1 This Strategy includes within its scope the terms for succession, termination, assignation and mutual exchange (swap) of social housing tenancies. The council has an existing set of policies for its landlord function covering these elements.

3.1.2 Registered Providers (RPs) in the City are expected to apply the following approaches:

1. Where RPs in the city are considering a mutual exchange, they can refuse an exchange if such an exchange would entail adaptations to the property or properties that would entail major and unreasonable expense, for example installation of a through floor lift. This is expressed in the current allocations policy for the city⁷.
2. Discretionary Succession to a social tenancy can be considered on request, where survivorship, statutory or contractual succession do not apply. Whilst at the discretion of the landlord, fairness towards applicants on the city's housing register must be considered.
3. It is anticipated that discretionary succession will not be considered if the applicant has not acted in good faith.
4. Where an applicant who is seeking to succeed to a social tenancy does have a legal or contractual right of succession, then the RP can consider an alternative offer of accommodation if the succession proposed would be unsustainable or unaffordable for the applicant. If the applicant is not willing to

⁷ <https://www.york.gov.uk/EligibilityForCouncilHome>

accept a suitable offer, then the RP will use its legal powers to recover the property.

5. Persons on any form of probationary tenancy will not have any rights of assignation, exchange or transfer. Succession rights still apply.
6. Tenants in breach of their tenancy, or subject to demotion or Notice of Seeking Possession, may not seek a transfer or exchange. Breach of tenancy would also be considered when assessing assignation.

3.2 Grounds for refusing a Mutual Exchange

3.2.1 The grounds for refusal for mutual exchange requests which RPs must give consideration to are set out in Schedule 14 of the Localism Act 2011⁸, summarised in Appendix B below.

3.2.2 As noted above, mutual exchange is recognised as a useful and affordable means of meeting need. It is strongly supported that RPs in the city to facilitate mutual exchange where this would help meet housing need. For example, this may be assistance in helping one of the parties obtain a minor accessibility adaptation. It is expected that all RPs allow free access to approved online mutual exchange services, for the council's tenants this is <https://www.homeswapper.co.uk/>.

3.3 Deceased tenant

3.3.1 The council would expect all RPs to obtain a death certificate for any of their deceased tenants and not to terminate the tenancy until it is determined that there is no legal successor or survivor under the terms of Housing Acts 1985, 1988, 1996 as appropriate.

3.4 Fraud

3.4.1 Where a tenant of any RP in the city has obtained a tenancy by providing false information in a wilful, negligent or deliberate

⁸ <https://www.legislation.gov.uk/ukpga/2011/20/schedule/14/enacted>

manner then there are grounds for repossession under the relevant Housing Acts and it is entirely reasonable for a RP to pursue that route.

3.4.2 Obtaining a tenancy fraudulently is covered by the council's existing allocations policy. Provision of fraudulent information by an applicant or tenant is further penalised by exclusion from the housing register for a period of five years and a fine of £5,000 can be imposed, based on the current allocations policy.

3.4.3 Where a criminal inducement is used to obtain or attempt to obtain a RP tenancy within the city, then it is expected that this would be referred to the Police in addition to action under any tenancy agreement.

3.5 Joint Tenancies

3.5.1 RPs will issue new joint tenancies where the parties have been accepted as joint application through the allocations and/or statutory homelessness process and are aged over 18, providing that no refusal criteria apply.

3.5.2 RPs will have discretion to refuse a request to add a non-dependent person to an existing tenancy. These requests will be considered on a case-by-case basis. An application for someone to join a tenancy may be refused if they have been previously evicted from any accommodation or have a proven history of relevant criminal activity, anti-social behaviour or outstanding housing related debt (such as rent arrears or repair recharges) with any landlord. Arrears would not be taken into consideration where the applicant was subject to Domestic Abuse in the tenancy which the arrears relate to.

3.5.3 City of York Council tenancies will be issued and amended in accordance with the council's policies and procedures. The council would not normally agree to add anyone to the tenancy unless they were the spouse or partner of the tenant.

3.6 Flexible Tenancies

3.6.1 The 2011 Localism Act permits local authority landlords to issue Flexible tenancies for a fixed term period, which are reviewed at the end of the term. The fixed term is expected usually to be a minimum of 5 years but with a minimum 2 years in exceptional circumstances. The council's policy is to offer Flexible Tenancies in exceptional circumstances only, as a result 2 years is likely to be appropriate where these are used.

3.6.2 The Renters Reform Bill⁹ proposed a requirement that Housing Associations to issue periodic tenancies. This issue relates to Housing Association housing only and sits within the Tenancy Strategy.

3.6.3 Flexible Tenancies will be used for the purposes of effective stock management to meet tenant needs as a whole. Prior to the Flexible Tenancy commencement an Introductory Tenancy would be offered.

3.6.4 Where a Flexible Tenancy is not renewed, tenants will be offered an alternative suitable property provided they are not in breach of their existing tenancy.

Flexible Tenancy Allocation Criteria

3.6.5 The council will allocate Flexible Tenancies on a fixed term basis in circumstances as follows:

Circumstance for offering Flexible Tenancy	Likely fixed term period
1. Significant accessibility adaptations are carried out or already present in a property, which meet a tenant's needs at the point of allocation.	5 years
2. Tenants with a history of significant Antisocial Behaviour and/or arrears where recurrence is considered a potential risk.	2 years

⁹ <https://www.gov.uk/government/publications/guide-to-the-renters-rights-bill/guide-to-the-renters-rights-bill>

Circumstance for offering Flexible Tenancy	Likely fixed term period
<p>3. Tenancies with significant needs that may present challenges in tenancy sustainment.</p> <p>A suitable support package would usually be expected to have been identified prior to tenancy commencement.</p>	<p>2 years – at the end of the period, if a renewed tenancy is not considered appropriate alternative “step down” accommodation with extra support should be sought</p>
<p>4. Tenants allocated a property following award of high priority due to a being a foster carer, or being approved to adopt prior to the adoption taking place.</p>	<p>2 years – at the end of this period a Secure tenancy would be expected providing the household continues to need the property type allocated</p>
<p>5. Tenancies allocated a property of exceptional type in high need example, very large homes.</p>	<p>5 years</p>
<p>6. Other exceptional circumstances where a Flexible tenancy would meet the needs of stock management and tenant needs as a whole.</p>	<p>2-5 years</p>

3.6.6 Outside of these circumstances, new tenants will be allocated an Introductory tenancy with provision to become Secure and existing tenants will be allocated a Secure tenancy at a new property.

3.6.7 Prior to the end of the fixed term a review will be carried out and the council may decide to:

- Offer another fixed term tenancy at the same property
- Offer a secure tenancy at the same property
- End the tenancy and offer an alternative, more suitable property
- In cases where there is a tenancy breach, the council may end the tenancy without offering an alternative property, but would offer support to access alternative housing options if needed

3.6.8 The principles of this Tenancy Policy and the Allocations Policy will be applied in making this decision. The communication and

decision making process will ensure the expectations of Tenancy Standard¹⁰ 2.3.3 are met:

“Before a fixed term tenancy ends, registered providers shall provide notice in writing to the tenant stating either that they propose to grant another tenancy on the expiry of the existing fixed term or that they propose to end the tenancy.”

Flexible Tenancies Implementation

3.6.9 Flexible tenancies will only be implemented by CYC once available resources and systems are in place to do this. This will be determined through an appropriate Senior Officer decision.

4. Review of Tenancy Policy and Strategy

- 4.1 Impacts of the Tenancy Policy and Strategy will be monitored against the objectives.
- 4.2 A review will be carried out no later than 2 years from the approval of the policy. Earlier review may be implemented if impacts are identified supporting this.

¹⁰ <https://www.gov.uk/government/publications/tenancy-standard>

