

**Decision Session - Executive Member for  
Housing and Safer Neighbourhoods**

**19 February 2018**

Report of the Assistant Director, Housing and Community Safety

**New Lease for use on Future Right To Buy Sales of Bedsits, Flats  
and Maisonettes**

**Summary**

1. The lease is important as it is a framework which controls the relationship between registered social landlords and leaseholders / tenants. It also determines the service charge. Overall the relationship involves
  - The lease
  - Common law and court decisions
  - Statutory provisions

Although there is no standard working, layout or required order of clauses in a lease, there are main lease terms that should always be present. These cover the core issues that can lead to disputes between lessees and landlord in management and it is essential to good management to know what these are so that they can be located for each lease being managed. The current lease is vague in many areas, does not reflect current best practice in this area and has not been reviewed for at least 30 years. A copy of the existing lease can be found at Annex A.

**Recommendations**

2. The Executive Member is asked to:
  - 1) Decide to accept the proposed lease at Annex B for all future appropriate Right To Buy sales (option A).

Reason: This provides greater clarity for Housing Services, leaseholders and tenants and will allow Housing Services to recover legitimate costs from leaseholders with confidence.

## Background

3. Leases typically need to include details on positive covenants (to pay rent, service charges, rates etc), restrictive covenants (not to make structural alterations etc) as well as details easements (where land is sold as part of the leasehold sale and access rights across it are required), items of expenditure providing a list of services and the costs, what the demised premises are (the property bought by the leaseholder).
4. The current City of York Council Lease has been in use since Right To Buy was introduced and fails to adequately address the issues listed above. Local Authorities at the time were not geared up for sale of assets, let alone how to manage sale of leasehold stock. This resulted in many leases (such as current City of York Council lease) being drafted without consideration of issues such as operational management, recovery of freeholder costs etc. and so lacks the detail on the core issues that modern day leases have. City of York Council Housing Service now manage over 500 Leasehold properties and have much greater knowledge of operational and legal issues in this area. We require a lease that accurately details City of York Council's role as a landlord and the leaseholder as our tenant.
5. Typically, current leases are designed to mirror existing tenancy agreements to provide clarity across tenures. City of York Council's does not do this. For example the current tenancy is very prescriptive about permissions for keeping pets, while the Lease does not have any restrictive clauses regarding pets. This means that in a block of flats with a mix of tenants and leaseholders they will be allowed to keep pets that tenants cannot, creating an inequality across tenure. The proposed new lease removes this inequality by having the same restrictive clause across both tenures.
6. City of York Council's current lease is not sufficiently widely drawn to enable recovery of our costs for all services provided, through service charges. Service charge is defined so that it refers only to "services, repairs, maintenance, improvements, insurance or management". If the cost of anything else is covered by the service charge clause in the lease, that cost can be included in the service charge without the constraints of the Leasehold and Tenant Act 1985 being applied to that particular cost. Currently, City of York Council cannot recover costs for managing Anti-Social Behaviour,

Information, Communication Technology support, system development and service development and so these areas are provided at a loss to the Authority. .

7. In areas where leases are vague First Tier Tribunal will find in favour of the Leaseholder and so we cannot look to recover costs that are not mentioned within the lease.
8. CYC cannot insist that current leaseholders to adopt the new lease, although an application can be made to the First Tier Tribunal to vary the current lease on the grounds it is defective, providing that it is not opposed by more than 10% of the parties concerned and at least 75% of them must consent to it. For these purposes the landlord (City of York Council) counts as one of the parties concerned.
9. As City of York Council has the same standard lease citywide, it is extremely unlikely that City of York Council would have less than 50 objections to varying the lease, as when discussed at the Leaseholder Forum nearly half of the sample audience were against it. Should an application to vary not be made then this lease will be rolled out for new leaseholders and current leaseholders wishing to extend the term of their current lease. This would mean that there will be two City of York Council leases in place that will not have the same terms and mean that in some cases new lease customers are paying a higher service charge than those ones in the same block who have the current lease. .
10. Having two leases will mean increased capacity for management in calculating service charge bills and enforcement, but will be offset by the increased income from service charges the new lease allows to be recovered

## **Consultation**

11. Consultation has been done with the Leaseholder Scrutiny Panel members (existing leaseholders) who indicate that the updated lease should be adopted for new leaseholders and were understanding of City of York Council's need to do this.
12. Very helpful queries and comments were received which have shaped the final version of the lease presented with this report
13. Prospective leaseholders get advance notice of leasehold and other charges (estimated) before they finalise the purchase under the

Right To Buy scheme along with a copy of the terms of the lease via their solicitor.

## **Options**

14.

- A) Agree to the new lease being issued to all new leaseholders exercising the Right To Buy for all appropriate properties including bedsits, flats and maisonettes.
- B) Indicate that the current lease continue to be used for appropriate Right To Buy sales.

## **Analysis**

15.

A) This will provide:

- Clarity for City of York Council, leaseholders and tenants, bring the lease issued more in line with the current tenancy agreement and allow City of York Council to recover legitimate costs from leaseholder for services that they benefit from directly or indirectly.

It will mean that there will be 2 types of lease in operation for former council stock in York but this is not an unusual situation across the country. Indeed, many areas have several different leases operating.

B) This will mean

- That the current vagueness for the Council, leaseholders and tenants continues and minimal costs for services paid for by the Housing Revenue Account (Council rents) will be recovered.

It will mean that service charges will remain comparatively very low for Council leaseholders compared to other leasehold arrangements.

## **Council Plan**

16. This initiative contributes to the Council Plan in the following ways:

**a focus on frontline services** - to ensure all residents, particularly the least advantaged, can access reliable services and community facilities

The new lease will ensure that all tenants and future leaseholders contribute appropriately to the services provided through the Housing Revenue Account by either rent or service charges.

## **Implications**

17.

- **Financial** (Contact – Director of Resources)

Extra income could be raised for the Housing Revenue Account – this depends on the services charged for in future and the number of leases issued via the Right To Buy scheme.

- **Human Resources (HR)** (Contact – Head of HR)

None

- **Equalities** (Contact – Equalities Officer)

None

- **Legal** (Contact – Head of Legal and Democratic Services)

Legal services have been instrumental in drawing up the new lease.

- **Crime and Disorder**

None

- **Information Technology (IT)** (Contact – Head of IT)

None

- **Property** (Contact – Property)

None

- **Other**

None

## Risk Management

18. Risk that legal challenges will succeed due to lack of clarity in current lease.

Risk of lost potential income to the Housing Revenue Account in future if new lease not adopted.

## Contact Details

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### Chief Officer Responsible for the report:

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Report  
Approved



Date 3 Jan 2018

Specialist Implications Officer(s) None

Wards Affected:

All

For further information please contact the author of the report

### Background Papers:

None

### Annexes

Annex A – Existing Lease

Annex B – New Lease – final draft