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| Report To: | SCRUTINY PANEL A | Date: | 18 FEBRUARY 2021 |
| Heading: | SCRUTINY REVIEW: TENANCY SUPPORT | | |
| Portfolio Holder: | NOT APPLICABLE | | |
| Ward/s: | ALL | | |
| Key Decision: | NO | | |
| Subject to Call-In: | NO | | |

Purpose of Report

Tenancy Support was added as a topic to the Scrutiny Workplan 2020/2021 at the November 2020 meeting of the Overview and Scrutiny Committee. The purpose of this report is to introduce the topic to Members and begin planning out the review process by establishing terms of reference. Included in this report is some information on tenancies from the Council's website and the Government's protocol for possession claims by social landlords.

Recommendation(s)

Scrutiny Panel A Members are recommended to:

- a. Note the information contained within this report.
- b. Establish terms of reference for the Scrutiny Review: Tenancy Support.

Reasons for Recommendation(s)

Tenancy Support was added as a topic to the Scrutiny Workplan 2020/2021 at the November 2020 meeting of the Overview and Scrutiny Committee.

Alternative Options Considered

No alternative options have been considered.

Detailed Information

INFORMATION FOR TENANTS

Various information is made available on the Council's website under the housing section regarding tenancies. Please see the information below:

Your Tenancy

When you become a tenant, you will be given a tenancy agreement which sets out our responsibilities as your landlord, and your responsibilities as our tenant. You can find all the details of your tenancy in the tenant portal.

Types of Tenancy

There are two types of tenant:

- **Introductory Tenancy**

If you have not been a council tenant before you will be given an introductory tenancy.

This is a temporary tenancy that lasts for 12 months. It means you have fewer rights than a secure tenant. It also means it is easier for us to evict you if we need to.

Your tenancy will be reviewed at regular intervals to ensure that you are conducting your tenancy in a satisfactory manner. If you breach your tenancy, we may extend this period by another 6 months.

- **Secure Tenancy**

All introductory tenants will automatically become secure tenants on the first anniversary of the date of the start of their tenancy. This only happens if they have conducted their tenancy in a satisfactory manner.

A secure tenancy gives you more rights.

Rights and Responsibilities

As your landlord we have some rights and responsibilities and as a tenant you have rights and responsibilities too. Your tenancy agreement will set these out for you.

Your Rights

As a tenant you have the right:

- to be consulted about the way we manage your property and any changes that may be made
- to make alterations or improvements with our written permission
- to live in the property as your principle home
- to exercise your legal rights as a tenant
- to have any repairs that are our responsibility carried out
- to take on a lodger as long as we have granted permission. We will take into consideration the house make-up and the capacity of your home.

Your Responsibilities

As a tenant you have the responsibility:

- to pay your rent and other charges on time
- to keep the inside of your home and your garden in a satisfactory condition
- to ensure your household/visitors/pets do not cause nuisance to your neighbours
- to give us access to complete any repairs, annual service works or to allow employees and contractors to go about their duties
- to raise awareness of repairs needed. Not to alter the property without written consent. Inform us of any struggles you face with your tenancy, so we can signpost you to the relevant support agencies
- to adhere to your tenancy conditions to prevent court action being taken against you.

Our Rights

As a landlord we have the right:

- to request access to the property to carry out inspection or repairs. We will give you reasonable notice of our intention, unless it is an emergency
- ask the courts to end your tenancy if you break the conditions of your tenancy agreement.

Our Responsibilities

As a landlord we have the responsibility:

- to consult with you about important changes to the management of your tenancy
- to deal with your complaints
- to maintain service standards
- to ensure the tenancy agreement is being adhered to at all times
- to act on any repairs that are our responsibility.

PRE-ACTION PROTOCOL FOR POSSESSION CLAIMS BY SOCIAL LANDLORDS

In adding this topic to the workplan, Members expressed an interest in understanding the procedures the Council must follow regarding evictions.

Please see below the Government procedure for social landlord evictions.

The Government have set out a Pre-Action protocol that describes the actions the Council, as social landlords, must take before issuing a possession claim against a tenant. This came into force on 13 January 2020.

Part 1: Aims and Scope of the Protocol

This Protocol applies to residential possession claims in England and Wales brought by social landlords (such as local authorities and housing associations). This Part sets out the aims and scope of the protocol. Part 2 relates to claims which are based solely on rent arrears. Part 3 applies to claims brought by social landlords where the court must, in principle, grant possession and where s89(1) Housing Act 1980 applies. The protocol does not apply to claims in respect of long leases.

Part 2 reflects the guidance on good practice given to social landlords in the collection of rent arrears. It recognises that it is in the interests of both social landlords and tenants to ensure that rent is paid promptly and that difficulties are resolved, wherever possible, without court proceedings.

Part 3 seeks to ensure that, in cases where human rights, public law or equality law matters are or may be raised, the necessary information is before the Court at the first hearing so that issues of proportionality may be dealt with summarily, if appropriate, or that appropriate directions for trial may be given.

The aims of the protocol are:

- a. to encourage more pre-action contact and exchange of information between landlords and tenants.
- b. to enable the parties to avoid litigation by settling the matter, if possible; and
- c. to enable court time to be used more effectively if proceedings are necessary.

Courts should take into account whether this protocol has been followed when considering what orders to make. Social landlords should also comply with guidance issued from time to time by the Regulator of Social Housing, the Ministry for Housing, Communities and Local Government and, in Wales, the Welsh Ministers.

- a. If the landlord is aware that the tenant has difficulty in reading or understanding information given, the landlord should take reasonable steps to ensure that the tenant understands any information given. The landlord should be able to demonstrate that reasonable steps have been taken to ensure that the information has been appropriately communicated in ways that the tenant can understand.
- b. If the landlord is aware that the tenant is particularly vulnerable, the landlord should consider at an early stage—
 - I. whether or not the tenant has the mental capacity to defend possession proceedings and the extent to which CPR 21 applies;
 - II. whether or not any issues arise under the Equality Act 2010; and
 - III. in the case of a local authority landlord, whether or not there is a need for a community care assessment in accordance with the Care Act 2014.

Part 2: Possession Claims Based Upon Rent Arrears

Initial contact

If the tenant falls into arrears, the landlord should contact the tenant, as soon as reasonably possible, to discuss: the cause of the arrears; the tenant's financial circumstances; the tenant's entitlement to benefits; and repayment of the arrears. Where contact is by letter, the landlord should write separately to each named tenant.

The landlord and tenant should try to agree affordable sums for the tenant to pay towards the arrears, based upon the tenant's income and expenditure (where such information has been supplied in response to the landlord's enquiries). The landlord should clearly set out, in pre-action correspondence, any time limits with which the tenant should comply.

The landlord should provide, on a quarterly basis, rent statements in a comprehensible format showing rent due and sums received for the past 13 weeks. The landlord should, upon request,

provide the tenant with copies of rent statements in a comprehensible format, from the date when arrears first arose, showing all amounts of rent due, the dates and amounts of all payments made (whether through housing benefit, discretionary housing payments or directly by the tenant) and a running total of the arrears.

If the tenant meets the appropriate criteria, the landlord should apply for arrears to be paid by the Department for Work and Pensions ['DWP'] by deductions from the tenant's benefit.

The landlord should offer to assist the tenant in any claim that the tenant may have for housing benefit, discretionary housing payments or universal credit (housing element).

Possession proceedings for rent arrears should not be started against a tenant who can demonstrate that –

- a. the local authority or DWP have been provided with all the evidence required to process a housing benefit or universal credit (housing element) claim.
- b. there is a reasonable expectation of eligibility for housing benefit or universal credit (housing element); and
- c. they have paid other sums due that are not covered by housing benefit or universal credit (housing element).

The landlord should make every effort to establish effective ongoing liaison with housing benefit departments and the DWP and, with the tenant's consent, make direct contact with the relevant housing benefit department or DWP office before taking enforcement action.

The landlord and tenant should work together to resolve any housing benefit or universal credit (housing element) problems.

Bearing in mind that rent arrears may be part of a general debt problem, the landlord should advise the tenant to seek assistance from citizens advice bureaux, debt advice agencies or other appropriate agencies as soon as possible. Information on debt advice is available on the Money Advice Service website.

After service of statutory notices

After service of a statutory notice, but before the issue of proceedings, the landlord should make reasonable attempts to contact the tenant to discuss: the amount of the arrears; the cause of the arrears; repayment of the arrears; and the housing benefit or universal credit (housing element) position. The landlord should send the tenant a copy of this protocol.

If the tenant complies with an agreement to pay the current rent and a reasonable amount towards arrears, the landlord should agree to postpone issuing court proceedings for so long as the tenant keeps to such agreement. If the tenant ceases to comply with such an agreement, the landlord should warn the tenant of the intention to bring proceedings and give the tenant clear time limits within which to comply again and avoid proceedings.

Alternative dispute resolution

The parties should consider whether it is possible to resolve the issues between them by discussion and negotiation without recourse to litigation. The parties may be required by the court to provide evidence that alternative means of resolving the dispute were considered. Courts take the view that

litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored.

The Civil Justice Council and the Judicial College have endorsed The Jackson ADR Handbook by Susan Blake, Julie Browne, and Stuart Sime (2013, Oxford University Press). The Citizens Advice Bureaux website also provides information about ADR:

- the Civil Mediation Council
- the Citizens Advice website

Court proceedings

Not later than ten days before the date set for the hearing of the possession claim, the landlord should—

- a. provide the tenant with up-to-date rent statements; and
- b. disclose what knowledge it possesses of the tenant's housing benefit or universal credit (housing element) position to the tenant.

The landlord should inform the tenant of the date and time of any court hearing and provide an up-to-date rent statement and the terms of the order that will be applied for. The landlord should advise the tenant to attend the hearing as the tenant's home is at risk. Records of such advice should be kept.

If the tenant complies with an agreement made, after the issue of proceedings, to pay the current rent and a reasonable amount towards arrears, the landlord should agree to adjourn the court proceedings for so long as the tenant keeps to such agreement.

If the tenant ceases to comply with such agreement, the landlord should warn the tenant of the intention to restore the proceedings and give the tenant clear time limits within which to comply again and avoid restoration of the proceedings.

If the landlord unreasonably fails to comply with the terms of this protocol, the court may make one or more of the following orders—

- a. an order for costs.
- b. an order adjourning the claim; or
- c. an order striking out or dismissing the claim (other than a claim based on a mandatory ground).

If the tenant unreasonably fails to comply with the terms of this protocol, the court may take such failure into account when considering whether it is reasonable to make a possession order.

Part 3: Mandatory Grounds for Possession

This Part applies in cases where, if a social landlord proves its case, the court must, in principle, grant possession and where s.89(1) Housing Act 1980 applies

Before issuing any such possession claim a social landlord—

- a. should write to the occupants explaining why it currently intends to seek possession and requiring the occupants, within a specified time, to notify the landlord in writing of any personal circumstances or other matters which they wish to have taken into account. In appropriate cases, such a letter could accompany any notice to quit or notice seeking possession and so would not necessarily delay the issue of proceedings; and
- b. should consider any representations received and, if they decide to proceed with a claim for possession, give brief written reasons for doing so.

The social landlord should include with its claim form, or in any witness statement filed under CPR 55.8(3), a schedule stating—

- a. whether it has (by a statutory review procedure or otherwise) invited the defendant to make representations of any personal circumstances or other matters which they wished to be taken into account before the social landlord issued the proceedings.
- b. if representations were made, whether and how they were considered and with what outcome; and
- c. brief reasons for bringing proceedings.

Copies of any relevant documents which the social landlord wishes the court to consider in relation to the proportionality of the landlord's decision to bring the proceedings should be attached to the schedule.

TERMS OF REFERENCE

Terms of reference are a simple set of criteria to be considered and discussed at the outset of a review. Establishing terms of reference is a useful tool for structuring a review and ensuring tangible outcomes can be achieved. Please see below some suggestions review terms of reference:

Review Objectives

- Gain a full understanding of all aspects of tenancy support offered by the Council
- Understand the process for evictions
- Understand how the COVID-19 pandemic has impacted tenancy support

Methodology

- Understanding key legislation
- Working with Officers to understand support measures
- Best practice examples from other authorities

Key Information

- Council policy documents, such as the Tenancy Policy
- Legislation/Government guidance documents
- Details of Council support initiatives

Key Involvement

- Housing Officers
- Portfolio Holder for Housing

Implications

Corporate Plan:

The Council's Corporate Plan 2019 – 2023 sets out key priorities and ambitions to be achieved over the coming years. Under the Homes and Housing vision, the following desired outcomes are set out:

- Assist tenants with welfare and monetary advice to increase tenancy sustainment
- Maintain and increase positive preventative action
- Increase tenancy sustainment by offering appropriate tenancy support

Legal:

Panel Members will explore the legislative requirements the Council must adhere to regarding all aspects of tenancy support as part of the review process.

Finance:

There are no direct financial implications resulting from this report. Any financial implications identified over the course of this review will be explored and addressed appropriately.

| Budget Area | Implication |
|---|--------------------|
| General Fund – Revenue Budget | None. |
| General Fund – Capital Programme | |
| Housing Revenue Account – Revenue Budget | |
| Housing Revenue Account – Capital Programme | |

Risk:

No risks have been identified at this stage of the scrutiny review process.

| Risk | Mitigation |
|-------------|-------------------|
| None. | None. |

Human Resources:

There are no HR implications resulting from this report. Any HR implications identified over the course of this review will be explored and addressed appropriately.

Environmental/Sustainability

There are no environmental/sustainability implications resulting from this report. Any environmental/sustainability implications identified over the course of this review will be explored and addressed appropriately.

Equalities:

There are no equalities implications resulting from this report. Any equalities implications identified over the course of this review will be explored and addressed appropriately.

Other Implications:

There are no other implications resulting from this report. Any other implications identified over the course of this review will be explored and addressed appropriately.

Reason(s) for Urgency

None.

Reason(s) for Exemption

None.

Background Papers

None.

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