



AUDIT COMMITTEE - 8TH MARCH 2017

SUBJECT: REHOUSING FORMER TENANTS WITH ARREARS AND REDUCING THE INCIDENCE OF TENANCY FRAUD

REPORT BY: CORPORATE DIRECTOR - COMMUNITIES

1. PURPOSE OF REPORT

- 1.1 This report has been prepared at the request of the Audit Committee at its meeting held on 14th September 2016. The report outlines the policies and procedures in place to deal with Housing applicants who have arrears, and to reduce fraud through dual occupancy

2. SUMMARY

- 2.1 At the meeting of the Audit Committee held on 14th September 2016 members discussed an update report on the 2014/15 National Fraud Initiative. The subsequent debate resulted in a request being made for a report on the Council's policy towards rehousing previous council house tenants with arrears and the risk to the Council. Members also sought information on the investigations conducted by Housing Staff to reduce fraud through dual occupancy.
- 2.2 This report responds to the Committee's request by outlining the legal framework within which allocations of council housing are made. The report outlines how allocations were made under the Council's previous Allocations Policy which was valid until December 2016 and also how allocations are now made under the new Common Allocations Policy which was introduced on 5th December 2016.
- 2.3 The report also outlines the procedures and measures taken when attempting to recover outstanding debts and the steps taken by the Authority in its pursuit of the prevention of fraud as it relates to social housing tenancies.

3. LINKS TO STRATEGY

- a. This report links to the Single Integrated Plan 2013-2017 priority to "improve standards of housing and communities giving appropriate access to services across the county borough."
- b. This report links to the Local Housing Strategy aim of "providing good quality, well managed homes in communities where people want to live and offer people housing choices which meet their needs and aspirations."
- c. This report would link most closely to the following Well-being Goals within the Well-being of Future Generations Act (Wales) 2015:
- *A prosperous Wales**
 - *A resilient Wales**
 - *A more equal Wales**
 - *A Wales of cohesive communities**
 - *A globally responsible Wales**

4. THE REPORT

Relevant Legislation and Guidance

Anyone over the age of 16 years may apply to the Council to be rehoused, regardless of their housing need, subject to them meeting eligibility criteria set out in its policy. Section 166 (3) of the Housing Act 1996 obligates the Council to consider all applications for social housing. It must, however, ascertain whether an applicant is eligible for accommodation or excluded from allocation.

- 4.1 Under s.160A of the Housing Act 1996, the Council, where it is satisfied that an applicant, or a member their prospective household, is guilty of unacceptable behaviour serious enough to make them unsuitable to be its tenant, may treat them as ineligible for an allocation of Council housing.
- 4.2 However, the only behaviour which can be regarded as unacceptable is behaviour that would, if they had been a Council tenant, have entitled the Council to a possession order under defined discretionary grounds which include non-payment of rent, breach of tenancy conditions, conduct likely to cause nuisance or annoyance and use of the property for immoral or illegal purposes.
- 4.3 Where the Council has reason to believe that s.160A may apply, there is a three stage test that must be applied:

- **Whether a possession order would have been granted.** A court must have regard to the interests and circumstances of the tenant and their household, the Council and the wider public. If not satisfied that the court would decide it was reasonable to grant a possession order, the applicant cannot be guilty of unacceptable behaviour.
- **Whether the behaviour is serious enough to make the person unsuitable to be a tenant.** It is the Welsh Government's view that to do this the Council needs to satisfy itself that if a possession order were granted it would have been an outright order. Where the Council believes that the court would have suspended the order, then such behaviour should not normally be considered serious enough to make the applicant unsuitable to be a tenant.

Welsh Government guidance highlights that possession orders are often suspended in rent arrears cases to give tenants an opportunity to clear the rent arrears. This is particularly so where the arrears are:

- relatively modest,
 - where delays have been caused in relation to housing benefit
 - where the tenant does not have a history of persistently defaulting on rent payments;
 - where the applicant was not in control of the household's finances or was unaware that rent arrears were accruing or is being held liable for a partner's debts,
 - where the Local Authority has failed to take steps or provide advice to help the tenant pay their rent.
- **If satisfied that the applicant is unsuitable to be a tenant by reason of unacceptable behaviour, the Council must have regard to the circumstances at the time the application is considered and must satisfy itself that the applicant is still unsuitable at the time of the application.** Previous unacceptable behaviour or even an outright possession order, may not justify a decision to treat the applicant as ineligible where that behaviour can be shown by the applicant to have improved. A policy of treating all those evicted as unsuitable is likely to be unlawful.

- 4.4 Where the Council is satisfied that an applicant is unsuitable to be a tenant, they are not necessarily required to decide that he or she is ineligible for an allocation, they may instead proceed with the application and decide to give the applicant no priority. After a period of ineligibility has elapsed, they may re-apply and their circumstances must be reviewed.

- 4.5 It is the Welsh Government's view that barriers to social housing should be minimised and that in developing policies on unacceptable behaviour Local Authorities should consider their role as social landlords and brokers of social housing. Welsh Government consider that social housing is subsidised stock and that it is incumbent on councils to allocate tenancies primarily to meet housing need and keep restricted access measures to a minimum to ensure their statutory responsibilities are being met.
- 4.6 For former tenants with compound issues of high arrears and serious antisocial behaviour, the three stage test is applied by the Council at the point of application and, where circumstances and evidence warrant it, the applicant is classed as 'ineligible for an offer of accommodation'. However, Members should be aware that it is not unusual to have insufficient evidence to be satisfied that an applicant is unsuitable to be a tenant as the burden of proof is high. The Council has, therefore, adopted a policy that allows for applicants or members of their prospective household to be registered on the Common Housing Register but suspended until such time as they have addressed current or past behavioural issues

Homeless Applicants

- 4.7 The Council has a legal duty to provide accommodation for certain people if they become homeless. Assessments and decisions are carried out under Part 2 of the Housing (Wales) Act 2014. It is, however, possible for the Council, if it has determined an applicant is unintentionally homeless and in priority need but guilty of unacceptable behaviour serious enough to make them unsuitable to be a tenant, to decide to either treat them as ineligible for an allocation, or not afford them any priority.
- 4.8 The Council does, however, still have a statutory duty to secure them accommodation. This need not be in its own stock as the Council now has discretion to accommodate them in the private rented sector or by some other means. This accommodation may be only on a temporary basis and may involve placements in hostel, temporary leased or bed and breakfast, accommodation.

Common Allocations Policy

- 4.9 The Common Allocations Policy was developed by the Council in partnership with six housing associations to ensure that all applicants applying for social housing in the County Borough are provided with a single route of access and assessed using a single policy. It was introduced on 5th December 2016 along with the Common Housing Register. This policy allows for eligible applicants or members of their prospective household to be registered on the Common Housing Register but suspended until such time as they have addressed current or past behavioural issues.
- 4.10 Where it is determined that the applicant or a member of the applicant's household has failed to maintain their current or any previous social rented or private sector rented property within the terms of their tenancy agreement they are informed of the action(s) that they will need to demonstrate before the suspension will be lifted. Any action is required to be reasonable and proportionate, and to take into account the protected characteristics of the individual.
- 4.11 The Council investigate and take into consideration all property related debts, associated with either a current or former tenancy with any social housing provider in the UK, that are both recoverable and not statute barred. These include:
- (i) current or former tenancy rent arrears;
 - (ii) outstanding re-chargeable repairs;
 - (iii) current and former housing related service charge arrears;
 - (iv) bed and breakfast charge arrears;
 - (v) housing benefit overpayments; and
 - (vi) associated court costs.

- 4.12 Where the property related debt is over £500 the application for housing is automatically suspended. The applicant is not actively considered for housing until such time as the Council is satisfied that the applicant has:
- (i) entered into a repayment plan with the current or former landlord;
 - (ii) made a minimum of 13 consecutive weekly payments, at an agreed level; and
 - (iii) repaid a minimum of 25% of the debt.
- 4.13 This process can only be circumvented where the debt is repaid in full. However, in order to encourage good financial management and discourage applicants from using doorstep lenders, lump sum payments of 25% or over but below 100% would not be considered as having met these criteria unless the 13-week minimum period has also been satisfied. Applicants with a housing related debt up to £500 can be considered for housing immediately providing that they have agreed to and are actively following a repayment plan.
- 4.14 The process for debts over £500 may be circumvented where the Council and its partner Housing Associations believe that highly exceptional and significant circumstances exist, and the need to move is considered urgent. Should the criteria be waived the applicant or a member of their perspective household must have entered into and be following a repayment plan before an offer of accommodation is made.
- 4.15 If an applicant offered a tenancy has recoverable and non statute barred housing related debts outstanding with the Council, they are asked to sign an agreement for repayment of their debt as a further Condition of Tenancy agreement.

Previous Allocations Policy (prior to December 2016)

- 4.16 Prior to the introduction of the Common Allocations Policy the Council allocated its accommodation using a points system. Everyone who was eligible to register was awarded points, depending on their circumstances and needs. If eligible applicants, including transfer applicants, owed outstanding housing related debts, or were in breach of their conditions of tenancy, they would receive reduced preference on the waiting list by way of a points subtraction, with discretion afforded in exceptional circumstances.
- 4.17 The Council deducted points from an application if any housing related debts were owed to it or another social landlord. Points were deducted for each £200 owed, or part of. Points would be reinstated when repayments were made. No points were deducted for any amount outstanding under £100.
- 4.18 Where an applicant reached the top of a shortlist for an offer on the basis of their reduced points level, they would have been entitled to the allocation. Applicants subject to exceptional circumstances were still considered under 'exceptional circumstances' provisions, which could then over-ride a proposed reduction of points. In areas experiencing low housing demand there were often instances of allocations being made to households with significant levels of outstanding property related debts.
- 4.19 Following the introduction of the 'Spare Room Subsidy' Housing Managers had discretion to allow a transfer when a housing debt existed in order to address financial hardship, having considered the applicant's housing conditions and any physical health, mental health, disability or social factors that may have applied, together with any housing related debt or Welfare Reform implications.
- 4.20 If an offer was made to an applicant with a current or former debt owed to the Council, the applicant was advised at the earliest opportunity that repayment of the debt would be an additional condition of their new tenancy, and when signing the Acceptance of Tenancy document a payment plan for this debt was agreed.

Recovery Procedures

- 4.21 When a tenancy ends exhaustive effort is made to recover outstanding debts by way of letters, home visits, the use of Experian to trace former tenants, court action where applicable and referral to an outside debt collection agency if all in-house recovery action fails to secure payment. However, the majority of larger debts relate to tenancies that end following possession proceedings and inevitably former tenants do not provide forwarding addresses so tracing and recovery is difficult. There are many instances where successful recovery is initiated only when applications for social housing are submitted by former tenants with historical debts.
- 4.22 In all cases of possession for rent arrears the Council obtains a money judgement. This enables the Council to pursue recovery of the debt, however, the Council cannot obtain a warrant to enforce the money judgement without permission of the court if six or more years have elapsed since the date of the order or judgement. Courts are reluctant to do so other than in exceptional circumstances.
- 4.23 The Council has six years to commence legal proceedings in regards to the debt before it becomes statute barred. The starting point is the date rent arrears fall due or, for breach of contract, the date the contractual duty is broken. Should the Council receive either a payment towards the debt or a signed acknowledgement of the debt, from the debtor, during the limitation period, then the limitation period restarts from the date of its receipt.
- 4.24 The requirement of applicants to enter into repayment arrangements for recoverable and non statute barred debts to be eligible to receive offers of accommodation assists in ensuring that such debts do not become statute barred.

5. PREVENTION OF FRAUD

Applications

- 5.1 Under the provisions of section 171 of the Housing Act 1996, it is a criminal offence for any person to knowingly or recklessly make a false statement, or to withhold information which the Council has reasonably required them to supply, in connection with their housing application. In such circumstances, the Council may either bring a prosecution against the applicant concerned, or may exclude him/her from the waiting list. Should any person obtain a tenancy by such means, the Council is legally entitled to commence possession proceedings against them.
- 5.2 Applicants are required to submit defined supporting information depending on their circumstances and application status. This will include:
- Proof of identity for anyone in household aged 16 years or older
 - Proof of current address for anyone over 16 years
 - Proof of Immigration status
 - Evidence of children in household aged under 18 years
 - Evidence of local connection
 - Tenancy reference report or home ownership information
 - Evidence of divorce or separation
 - Capital assets
 - Evidence of medical or mental health condition or disability
 - Evidence of no fixed address

Documentation is checked and verified by experienced staff prior to an application being made live. In relation to debts, applications are cross checked against multiple Housing databases. Updated verification checks are completed at offer stage.

Tenancy Sign Up

- 5.3 At tenancy sign-up proof of National Insurance (NI) number must be provided in addition to one original identity document. The applicant's NI number is checked to ensure that the correct number was given at the application registration stage. Two original documents are also required to provide proof of address and, in addition, photographs are taken of all new tenant(s) which are held on the tenancy file.

Tenancy Breaches

- 5.4 **Subletting.** Whilst social tenants are allowed to take in lodgers, subletting a property is prohibited and constitutes a breach of contract. A tenant who has unlawfully sublet their property remains a tenant until such time as they are evicted as a result of possession proceedings. However, if they are no longer in occupation then they may lose their status as a secure tenant which makes possession easier to obtain. In areas of the country where there is little difference between social and market rents it is considered that illegal subletting is less often for profit and more often as a favour to friends or family to help them 'jump the queue', or is linked to commission of benefit fraud. Feedback from landlords strongly suggests that there is no such thing as a typical tenancy fraudster or associated property type. It is notoriously difficult to identify concerted cases of tenancy fraud where properties are sublet. However, estate management staff are aware of the signs to look out for and the evidence required and any concerns or allegations are fully investigated.
- 5.5 **Succession.** When a social tenant dies there are certain circumstances in which a spouse or family member can succeed to the tenancy. There is, however, a requirement that the successor was living with the tenant at the time of the tenant's death, and in certain cases, for at least a year before. Some people are not entitled seek succession and some landlords believe that succession fraud within their stock is more prevalent than subletting. This is not considered to be prevalent in the Caerphilly County Borough and robust checks are carried out into eligibility for all succession claims prior to granting a succession.
- 5.6 **Assignment.** Assignment is the formal legal transfer of a letting agreement from one tenant to another. The effect of a valid assignment is that, broadly, the new tenant takes on the rights and responsibilities of the previous tenant. Assignment is only possible in certain circumstances and usually requires prior landlord's consent. If the tenant obtains this consent by deception, such as providing false information, possession proceedings can be taken on the basis of a breach of tenancy agreement and the assignment is invalid. An assignment without landlord's consent is invalid. Again, this is not considered prevalent in the County Borough.
- 5.7 **Non-occupation.** While it is a condition of a secure tenancy that the property must be used as the tenant's only or principal home, case law has established that a tenant can live elsewhere but still retain the tenancy to the property if they can prove they intend to return to it. This intent can be demonstrated by such means as keeping furniture or other possessions in the home. Courts currently apply a case by case approach whereby a sufficiently long absence will create a presumption that the tenancy has been abandoned, but the tenant can refute this by showing a 'substantial, formal, outward and visible sign' of an intention to return within a reasonable time. It can be extremely difficult to identify and subsequently prove cases of non-occupation, however, all concerns and allegations are fully investigated by estate management staff.

National Fraud Initiative (NFI)

- 5.8 NFI data is extracted annually in relation to:
- Housing tenancies
 - Right to Buy applications
 - Housing waiting list (new for 2016/17).

Any subsequent data matches involving Housing are co-ordinated within the Rents Section and investigated by the relevant department.

6. WELL-BEING OF FUTURE GENERATIONS

- 6.1 This report contributes to the Well-being Goals as set out in Links to Strategy above. The report is also consistent with the five ways of working set out in the sustainable development principle, as defined in the Act.
- 6.2 The report highlights the need to take a long term systematic approach to maximising debt recovery and minimising tenancy fraud whilst meeting our legal obligations in respect of housing allocations, thereby supporting the prevention of homelessness and meeting housing need. It exemplifies collaboration within and across organisational boundaries, working together with partner Housing organisations for the good of our communities in pursuit of shared objectives. The Common Allocations Policy has been developed with the active involvement of tenants, applicants, and partner organisations. It integrates the work of the Council alongside the work of partner Housing Associations who themselves have similar aims and objectives.

7. EQUALITIES IMPLICATIONS

- 7.1 This report is for information purposes only. There are, therefore, no equalities implications arising from the report.

8. FINANCIAL IMPLICATIONS

- 8.1 This report is for information purposes only. There are, therefore, no financial implications arising from the report.

9. PERSONNEL IMPLICATIONS

- 9.1 This report is for information purposes only. There are, therefore, no personnel implications arising from the report.

10. CONSULTATIONS

- 10.1 The report reflects any views of consultees.

11. RECOMMENDATIONS

- 11.1 It is recommended that Members note the contents of the report.

12. REASONS FOR THE RECOMMENDATIONS

- 12.1 To comply with a request from a meeting of the Audit Committee held on 14th September 2016.

13. STATUTORY POWER

- 13.1 N/A.

Author: Kenyon Williams – Private Sector Housing Manager
Fiona Wilkins – Public Sector Housing Manager

Consultees: Christina Harray - Corporate Director of Communities
Cllr Dave Poole - Deputy Leader and Cabinet Member for Housing
Shaun Couzens - Chief Housing Officer
Suzanne Cousins – Principal Housing Officer (Housing Portfolio)
Craig Singler – Senior Allocations Officer
Sandra Isaacs – Rents Manager
Debbie Bishop – Area Housing Manager
Julie Reynolds – Area Housing Manager
Karen James – Neighbourhood Housing Manager
Tracy Lundy – Neighbourhood Housing Manager
Rachel Hawker – Service Development Officer
Todd Rawson – Solicitor
Steve Harris – Interim Head of Corporate Finance