

# Royal Borough of Kensington and Chelsea

## Draft Tenancy Policy

### 1. Purpose

1.1 The purpose of this policy is to detail how the Royal Borough of Kensington and Chelsea (the Council) will issue tenancies to the social homes it owns and which Kensington and Chelsea Tenant Management Organisation (KCTMO) manage on its behalf.

### 2. Scope

- 2.1 This Tenancy Policy sets out the approach to issuing and re-issuing tenancies by the Council to the housing stock which is owned by the Council and managed by KCTMO.
- 2.2 This policy does not cover tenancies which will be issued by Registered Providers of Social Housing (meaning housing associations and hereafter referred to as RPs) either in the Royal Borough or into whose stock the Council has nomination rights. This means that existing tenants of a registered provider and those who transfer to a registered provider will not be covered by this policy.

### 3. Legislative framework

- 3.1 This Tenancy Policy is set within the legislative framework provided by the Localism Act 2011, and in particular the new sections 107A-107E of the Housing Act 1985 and the Flexible Tenancies (Review Procedures) Regulations 2012. It is also set within the regulatory framework set out by the regulator of social housing (the Homes and Communities Agency).
- 3.2 The objectives which underpin this policy are contained in the Council's Tenancy Strategy. The key objectives are:
- Tackling housing need
  - Ensuring appropriate use of tenancies and tenancy options
  - Promoting affordable housing options
  - Promoting mobility and reducing under-occupation and overcrowding
  - Supporting and incentivising work and training
- 3.3 A copy of the Council's Tenancy Strategy can be found on the housing section of the Council's website: <http://www.rbkc.gov.uk/housing.aspx>

- 3.4 This Tenancy Policy is based on the principle that a social housing tenancy should provide a home when a household is in need or vulnerable and should provide stability, where that is consistent with making the best use of limited housing resources. Also, as set out in our Tenancy Strategy, it is our aim that social housing should be a springboard to other housing opportunities, whilst acknowledging the difficulties of the housing market locally.
- 3.5 This Tenancy Policy sets out the criteria upon which tenancies will be reissued, balancing our aim to provide stability to households who are in need and particularly to vulnerable households against flexibility in the way that we use our housing stock to ensure the best and most suitable use of the limited lettings we get each year.

#### 4. ISSUING A TENANCY

- 4.1 Properties will be let to those in housing need and registered on the Council's Common Housing Register. Housing is allocated broadly based on need as assessed in accordance with the criteria in the Council's Housing Allocations Scheme. A copy of our current Housing Allocations Scheme can be found on the housing section of the Council's website:  
<http://www.rbkc.gov.uk/housing.aspx>

##### **Length of fixed term secure tenancies**

- 4.2 Five year tenancy terms will normally be issued to all new tenants including those accepting a Council owned KCTMO managed property from the Council's Housing Register, and including those who meet the 'reasonable preference' criteria set out in current, relevant legislation. Five year tenancies balance the provision of housing security for those who need it and the requirement for the Council to make best use of its stock for those in need.
- 4.3 Shorter tenancies will be granted in exceptional circumstances, which are defined below:
- 4.4 All fixed term tenancies will be subject to a review at the end of the tenancy term. This review could lead to the tenancy being reissued for the same tenancy term or for a different term, or in some cases the tenancy will not be re-issued. A decision will be made no less than 6 months before the end of the tenancy to re-issue the tenancy or not. If it is not re-issued, the tenant will be given two months' notice that the Council requires possession at or after the end of the term. Section 5 of this policy provides further details on this process.

##### **Exclusions**

- 4.5 Secure Fixed Term tenancies will be issued in line with this policy to new tenants except where:
- a) The tenancy is issued to an existing Secure tenant or non-shorthold assured tenant (whose the tenancy was issued // **DATE OF START OF POLICY TO BE INSERTED** // transferring from one socially rented home to another. In

these circumstances the tenancy will be for the same length as the existing tenancy;

- b) The tenancy is issued to an existing Secure tenant or non-shorthold assured tenant whose tenancy was issued // **DATE OF START OF POLICY TO BE INSERTED** // as a result of major repairs or regeneration which means the tenant has to be moved from their existing home to allow the works / regeneration to take place. In these circumstances the tenancy will be for the same length as the existing tenancy;
  - c) The property is covered by an existing contractual requirement to be let on a particular type of tenancy (for example, where required by a planning obligation). In these circumstances, tenancies will be let according to the contractual requirements; and
  - d) The property is being used to provide temporary accommodation. In these circumstances, an appropriate non-secure tenancy will be issued.
- 4.6 Mutual exchanges between tenants are not within the scope of this policy but covered by separate KCTMO policy and procedure on mutual exchange. A copy of this policy can be found on KCTMO's website:  
<http://www.kctmo.org.uk/>

#### **Introductory tenancies**

- 4.7 All new tenants will be granted with an introductory tenancy for the first year.
- 4.8 Five year and two year tenancies will be exclusive of the first year introductory tenancy. This means the tenancy will run for a further five or two years if the introductory tenancy conditions have not been broken.
- 4.9 Introductory tenancies will not be used when a tenancy is re-issued. Re-issued tenancies will be for either five or two years, depending on the term decided as part of the review process set out below.

#### **Exceptional circumstances and two year tenancies**

- 4.10 Exceptional circumstances where a two year tenancy may be issued are:
  - a) For tenants leaving temporary accommodation who are following an agreed payment plan which is being kept to and there are less than eight weeks arrears, and all other criteria are met, a two year tenancy may be awarded.
  - b) For tenants who are following an agreed payment plan which is being kept to and there are less than eight weeks arrears from their previous tenancy, and all other criteria are met, a two year tenancy may be awarded.
- 4.11 Exceptional circumstances where a two year tenancy may be issued at the end of the fixed term are:

- a) For tenants who are following an agreed payment plan which is being kept to and there are less than eight weeks arrears and all other criteria are met, a two year tenancy may be awarded.

### **Accessible housing**

- 4.12 Accessible housing is housing that has been built or adapted to be more suitable for residents with limited mobility. Accessible housing will be let according to our Housing Allocations Scheme. In line with this Policy, all new tenancies issued to new tenants of accessible housing will be five year tenancies unless there are exceptional circumstances where a two year tenancy would be issued.

### **Existing tenants**

- 4.13 Sections 4.5 – 4.6 above detail the groups excluded from the policy of granting Fixed Term tenancies. However, if existing Secure tenants are transferring to a housing association property they will be subject to the housing association's Tenancy Policy, not this Tenancy Policy, and therefore could be granted a fixed term tenancy or an Affordable Rent tenancy.
- 4.14 Tenancy Policies for Registered Providers which have stock within the Royal Borough of Kensington and Chelsea are available either from the RP or [www.rbkc.gov.uk/housing](http://www.rbkc.gov.uk/housing).
- 4.15 For tenants transferring tenancies under the Council's mutual exchange policy, whose exchange takes place by surrender of the existing tenancies and the grant of new tenancies and whose existing tenancy is a fixed term tenancy, the new tenancy will be for a term equivalent to the remaining term of the existing tenancy, subject to a minimum of two years.

## **5. TENANCY REVIEW AND REISSUE**

### **Review at the end of the tenancy period**

- 5.1 An assessment of the household's circumstances will take place as part of this process. It will be carried out by KCTMO and a decision recommended to the Council to either re-issue the tenancy or to end the tenancy. This will then be confirmed by the Council.
- 5.2 The tenant will need to give his or her consent to the Council/TMO obtaining evidence and information relevant to the assessment and provide relevant information to the Council or TMO themselves as part of the assessment that takes place to establish if a tenancy should be re-issued. This must include information regarding household members, income, savings, assets and investments
- 5.2 A tenancy will normally be re-issued unless one or more of the reasons for not re-issuing it set out below apply. The facts of a households' circumstances will be assessed as at the date of the review.

## **Income and savings**

5.3 Tenancies will not be re-issued where:

- a) The total income of the tenant and spouse/ partner (meaning someone who is able to succeed the tenancy) is above:
  - £50,000 gross for household requiring a studio, one or two bedroom property
  - £65,000 gross for a household requiring a property with three or more bedrooms

The Council intends to participate in the Government's Pay to Stay scheme when (if) it is implemented and this would lead to a review of this section of this policy.

- b) The tenant or tenant's partner/ spouse has a legal interest in another property (including property abroad).
- c) The tenant or tenant's partner /spouse has savings and/ or investments which exceed £25,000 (excluding money to be used for pension purposes).

5.4 The amounts set in this policy will change each year to reference to the London Mayor's limits for access to shared ownership and intermediate housing products.

## **Conduct of tenancy**

5.5 Where a serious breach of the tenancy has occurred during the term, the tenancy will not be re-issued. This includes:

- Where there are eight weeks' or more of arrears and there is no payment plan in place or the payment plan is not being kept to;
- If a tenant or a household member has an Anti Social Behaviour Order or Anti Social Behaviour Injunction or any other order as a result of anti-social behaviour made against them or has been convicted of a serious criminal offence committed at or in or near the locality of the property or at or near the Royal Borough of Kensington and Chelsea and there has not been a period of at least six months without any further significant breach of the tenancy, anti social behaviour or criminal conduct;
- Where there is a possession order, including a suspended order in force in relation to the relevant tenancy;
- Where court proceedings have been issued or a notice seeking possession served for breach of tenancy or anti social behaviour or criminal conduct which is sufficiently serious to justify the issue of

proceedings and there has not been a period of at least six months without any further significant breach of the tenancy, anti social behaviour or criminal conduct; and

- Where the property has been used for illegal purposes, benefit fraud or unlawful subletting, or the tenancy was induced by a false statement made by or on behalf of the tenant (or any one of them).

### **Suitability of property**

- 5.7 Tenancies will be re-issued where the property remains suitable for the households needs. In addition, tenancies will be reissued to:
- a) Overcrowded households by one bedroom if no alternative is available, however they will join the mutual exchange register to help them to move during the term of their new tenancy.
  - b) Overcrowded households by two or more bedrooms if no alternative is available, however they must join the Common Housing Register to help them to move during the term of their new tenancy.
  - c) Households living in an inaccessible property or a property unsuitable for other medical reasons, if there are no suitable properties available for them to move into during the final year of their fixed term tenancy.
- 5.8 Tenancies will not be re-issued to households living in properties which are too large for their needs. Where a tenant is not successful in moving via bidding under our Housing Allocation Scheme or other housing options available to them, the Council may make a direct offer of suitable accommodation. If this is refused, the Council will not re-issue the tenancy.
- 5.9 The Housing Allocations Policy will be used to determine if the current property is suitable for the household's needs and size. Where appropriate, medical assessments will be carried out to establish any medical requirements the household has. This will be done in accordance with the Housing Allocations Policy.
- 5.11 When a property is not suitable for the household but the tenancy is re-issued, the household must be registered on the Common Housing Register. The Housing department will work with households registered on the Common Housing Register to move to a suitable property. This will be done in line with the current Housing Allocations Scheme and could involve a direct offer of suitable accommodation at any point, but it may be many years before we are able to do so.

### **Exceptional circumstances**

- 5.12 There will be exceptional circumstances where the Council will use its discretion to waive the sections set out above and to re-issue tenancies to a household. Where this happens, this will be agreed by the Director of Housing.

However, the tenant will have to show that there are exceptional, compelling circumstances to justify the re-issue of the tenancy.

### **Process for tenancy review**

- 5.13 KCTMO will contact tenants between 12 to nine months before the end of their tenancy, investigate the circumstances of the household at the end of a tenancy and made the recommendation to the Council to either re-issue the tenancy or to not re-issue the tenancy.
- 5.14 There may be circumstances where the tenant refuses to engage with either KCTMO or the Council regarding the review process. Where a tenant refuses to co-operate fully with the review process or does not contact the Council or KCTMO before the end of the seven months prior to the date the tenancy ends, the Council will deem that the tenant does not wish to continue occupying the home. The tenancy will not be re-issued in these circumstances. This includes failing to provide information to allow a review of the households' circumstances.
- 5.15 The Council will then make the final decision, reviewing all the supporting documentation provided by KCTMO. The tenant will be notified of the decision not less than six months before the expiry of the tenancy.
- 5.16 Where a tenancy is to be reissued, the Council will confirm the terms on which the tenancy is to be reissued.

## **6 Cases where a tenancy is reissued**

- 6.1 Where the tenancy is re-issued (either for the same or a different term), KCTMO will sign up the tenant(s), ensuring full verification of details as set out in the Housing Allocations Scheme.
- 6.2 New tenancies will be issued for five years (with no introductory tenancy) unless any of the circumstances set out in section 4.11 apply, in which case a two year tenancy will be granted.

## **7 Cases where a tenancy is not reissued**

- 7.1 Where a tenancy is not re-issued, the Council will give two months' notice to the tenant that the Council requires possession at or after the end of the term and KCTMO will provide advice to help the tenant find alternative accommodation. This may include shared ownership or private sector renting. This could be in other parts of London.
- 7.2 Where appropriate, referrals will be made to relevant advice agencies, such as Citizens Advice Bureau. Referrals to the Council's Housing Options service are also available.

## **8 Succession**

- 8.1 In line with the Localism Act 2011, the new tenancies will provide for one right to succession to the tenancy for the tenant's spouse or partner.

## **9. Housing Allocations Scheme**

9.1 Applications to the Common Housing Register will be made in line with our Housing Allocations Scheme. Where a tenancy is reissued to a household where the property is no longer suitable, as part of the reissue process the tenant will register on the Common Housing Register to move to a suitable property.

## **10 Appeals and complaints**

### **Appeals about the length of the fixed term tenancy**

- 10.1 Following an offer to grant a fixed term tenancy, or notice that an introductory tenancy will become a fixed term tenancy when it comes to an end or confirmation of a fixed tenancy re-issue, an appeal can be made to the Council by the tenant on the basis that the length of fixed term tenancy is not in line with the Tenancy Policy.
- 10.2 An appeal must be made within 21 days of the tenant(s) receiving the above offer, notice or confirmation that a fixed tenancy will be reissued.
- 10.3 An appeal must be made in writing and contain all the information required by Regulation 2 of the Flexible Tenancies (Review Procedures) Regulations 2012 and should give us as much information as possible. The Council will aim to decide the appeal within 15 working days unless a longer period is required because it is necessary to obtain further information to determine the appeal.
- 10.4 An appeal will be investigated by an independent officer who has not been involved in your case, who is more senior than the original decision maker and who may contact you to request further information or to meet with you to discuss your appeal. The officer will investigate your appeal and will decide if the length of the fixed term tenancy is in line with our Tenancy Policy.
- 10.5 The appeal will be determined either on paper in accordance with Regulation 5 or at an oral hearing in accordance with Regulations 6 and 7.
- 10.6 It is expected that during the appeal, the tenant(s) should move into the property or remain in the property. Any necessary changes to the term of the tenancy will be made retrospectively, once a decision has been made on the appeal.
- 10.7 The outcome of an appeal will be set out in a letter giving summary reasons. The officer can confirm the original term offered or offer an alternative fixed term tenancy in the line with the Tenancy Policy.
- 10.8 The detailed provisions governing the procedure on appeals are contained in the Flexible Tenancies (Review Procedures) Regulations 2012.



### **Appeal about the decision not to re-issue a tenancy**

- 10.9 If a fixed term tenancy is not reissued, an appeal can be made by the tenant on the basis that this is not in line with with the Tenancy Policy.
- 10.10 An appeal must be made within 21 days of the tenant receiving the notice that the tenancy will not be re-issued.
- 10.11 An appeal must be made in writing and contain all the information required by Regulation 2 of the Flexible Tenancies (Review Procedures) Regulations 2012 and should give us as much information as possible. The Council will aim to decide the appeal within 15 Days unless a longer period is required because it is necessary to obtain further information to determine the appeal.
- 10.12 An appeal will be investigated by an independent officer who has not been involved in your case, who is more senior than the original decision maker and who may contact you to request further information or to meet with you to discuss your appeal. The officer will investigate your appeal and will decide if the refusal to re-issue is in line with our Tenancy Policy.
- 10.13 The appeal will be determined either on paper in accordance with Regulation 5 or at an oral hearing in accordance with Regulations 6 and 7.
- 10.14 The outcome of an appeal will be set out in a letter giving summary reasons. The officer can confirm the original refusal or overturn it, and remit it to the original officer to decide the length of the new fixed term.
- 10.15 The detailed provisions governing the procedure on appeals are contained in the Flexible Tenancies (Review Procedures) Regulations 2012.
- 10.16 If the original decision is maintained, the tenant will be informed of how they can complain to the Housing Ombudsman, or obtain independent housing advice.

## **11 Reviewing our Tenancy Policy**

- 11.1 This Tenancy Policy will be subject to annual reviews and any changes consequent on such reviews will be approved by the Cabinet Member for Housing and Property. Amendments at other times will be made through the Key Decision process. Any major changes will be consulted upon before a decision is taken to implement them.