

# City of London

## Tenancy and rent Policy

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## **1 Introduction**

- 1.1 The *City of London Tenancy Strategy* was prepared and published in fulfilment of the requirements of the Localism Act 2011. It sets out the matters to which the City of London Corporation (the City) and other social housing providers in the Square Mile are to have regard in formulating their policies on tenancies and their local approach to rent levels.
- 1.2 In response, this documents sets out the tenancy and rent policies of the City (in its function as a social landlord). These policies apply only to the City's stock of social rented homes – both within the Square Mile and outside. It has been developed in order to:
- bring the City's approach to tenancy and rent policy in line with its strategy
  - update policy in the light of changes to government legislation and/or guidance
  - reflect any changes in practice within the City, and
  - introduce new policies.
- 1.3 It also fulfils the requirement of the Regulatory Framework for Social Housing in England 2012 that the City publish a tenancy policy outlining the approach to flexible tenancies and other tenancy management policies for our own stock.
- 1.4 It should be noted that this policy does not deal with the allocation of tenancies. This is dealt with by the separately published Housing Allocations Policy.

## **2 Tenancy Strategy**

- 2.1 The *City of London Tenancy Strategy* sets out an expectation that lifetime tenancies should remain the predominant offer for those moving into social housing in the Square Mile. However, the strategy recognises and allows for the use of flexible tenancies for a fixed-term period in limited circumstances, and in doing so sets out groups for which such a tenancy would not be appropriate.
- 2.2 This policy sets out the City's response to the expectations of the strategy in relation to its own stock of social homes in the Square Mile and other London boroughs.

## **3 Types of tenancy**

### **Introductory tenancy**

- 3.1 The majority of new City of London social housing tenants will be introductory tenants for the first 12 months of their tenancy.

- 3.2 During an introductory tenancy a tenant has less security and fewer rights. For example:
- their home is at much higher risk of repossession if they do not keep to the tenancy agreement;
  - they cannot buy their home;
  - they cannot exchange homes with other tenants;
  - they cannot take in lodgers or sublet all or part of the property; or
  - they cannot make improvements to the property without the City's permission.
- 3.3 An introductory tenancy will automatically become a secure tenancy (or where a new property is advertised as such, a flexible tenancy) after 12 months unless:
- the tenancy has not been conducted satisfactorily and is being extended for six months; or
  - we are taking action to end the tenancy.
- 3.4 Where a tenant breaches the terms of an introductory tenancy, the City will let the tenant know so that they can take action to remedy the situation. If the tenant fails to do so, the City may decide to end an introductory tenancy. Where a breach is very serious, such as drug dealing or assault, the City may take action to end an introductory tenancy without providing the tenant an opportunity to take remedial action.
- 3.5 The City may seek to end an introductory tenancy in circumstances where a tenant:
- obtained their tenancy by making false statements, deliberately or by mistake or omitted to provide information which resulted in their obtaining a tenancy by false means
  - does not pay their rent
  - uses their home for illegal purposes
  - causes nuisance or annoys their neighbours
  - damages their home or a communal area where they live
  - breaches other conditions of their tenancy, or
  - is engaged in other anti-social behaviour.
- 3.6 If the City evicts someone with an introductory tenancy for any of these reasons, it will not offer them another home.
- 3.7 If the City decides to end an introductory tenancy it will issue the tenant with notice that it is taking court action to do so. Tenants have the right to ask for a review of the case, but must request this within 14 calendar days of receiving the notice. Such a review will be undertaken by a senior housing officer not directly involved in the initial

decision and will be concluded no later than the expiry date of the Notice of Possession Proceedings.

### **Secure tenancy**

3.8 The City supports and encourages the use of secure tenancies as the predominant social housing offer to new tenants (subject to completion of an introductory tenancy). A secure tenancy lets a home to a tenant for an indefinite period rather than for a fixed term. Such tenants can normally live in the property for the rest of their life, as long as they do not break the conditions of the tenancy. Secure tenants can only be asked to leave if the City has a court order to remove them.

3.9 Secure tenants can:

- rent out rooms where this does not cause overcrowding - but cannot sub-let the whole property
- buy their property through the Right to Buy scheme (subject to some exclusions such as sheltered accommodation)
- swap their homes with another council or housing association tenant - with the City's permission
- transfer their tenancy to someone else in certain circumstances
- make improvements to their home (only with permission from the City for some types of work).

### **Flexible tenancy**

3.10 In a limited number of circumstances the City may offer a flexible tenancy. This type of tenancy is offered for a fixed-term period following an introductory tenancy. The ability to offer fixed-term flexible tenancies does not affect existing tenants who remain secure. The City supports the limited use of flexible tenancies where they are appropriate to local or scheme-based approaches. Examples of circumstances in which flexible tenancies may be offered include:

- schemes targeting low income households in employment
- schemes linked to a specific support programme
- properties that are only available for a limited period such as those subject to major works or demolition
- some new developments using a local lettings policy to achieve one or more of the objectives for their use set out in the City of London Allocations Policy
- where this is a condition of grant received from the Greater London Authority.

3.11 It is not intended that a flexible tenancy becomes the predominant offer to all new tenants. Their use will be subject to agreement by the appropriate Committee of the

City and operated through an agreed local lettings policy or other mechanism in line with the City's allocations policy.

3.12 The City will not use a flexible tenancy for certain vulnerable groups. Examples of such groups include older people, adults with learning difficulties, adults with permanent support needs, households containing someone with long-term support or care needs and care leavers (adults who have spent time in the City's care as a child) .

3.13 Flexible tenants can:

- rent out rooms with the City's permission - but cannot sub-let the whole property
- buy their property through the Right to Buy scheme (subject to the same exclusion that apply to secure tenants)
- swap their home with another council or housing association tenant - with the City's permission
- transfer the tenancy to someone else in certain circumstances.

3.14 City flexible tenancies will generally be offered for a fixed-term period of five years in addition to any introductory period, unless exceptional circumstances require a shorter period. At the end of the fixed period the City may decide to:

- offer another flexible tenancy
- offer a secure tenancy
- not renew a tenancy

3.15 The City expects a large proportion of flexible tenancies to be renewed where tenancy conditions have been met and the tenant's (or tenants') circumstances have not substantially changed. However, there should not be a presumption that a tenancy will be renewed.

3.16 If the City decides not to renew a tenancy it will explain the reasons for this decision and give the tenant(s) a chance to challenge the decision.

3.17 At least eight months before a flexible tenancy is due to expire the City will undertake a tenancy review interview with the tenant(s) where they have indicated they wish to renew their tenancy.

3.18 Types of circumstances where the City would not renew the flexible tenancy:

- i. a household member has been convicted of criminal activity inside or in the vicinity of the property within the term of the tenancy being reviewed
- ii. a breach of tenancy terms, for example, involving ASB or substantial rent arrears
- iii. the property is under occupied by one bedroom or more\*
- iv. the property is overcrowded\*

- v. the property is an adapted property allocated to (or adapted for) someone with a disability who no longer lives in the property\*
- vi. the tenant's / tenants' household income is greater than the household income threshold set by the Greater London Authority for the 'First Steps' scheme and in place at the time the decision is made, or the qualifying income set in the City's Allocations Scheme (whichever is higher).

3.19 In circumstances iii, iv, v (\*) set out above, where:

- the review in other matters recommends the tenancy should be renewed, and
- the tenant has not already refused two reasonable transfer offers

the tenant should complete a transfer application (if not already completed) and remain in the property on a new flexible tenancy until they are able to transfer to a more suitable property.

3.20 Following the review meeting the City will review the tenant's (or tenants') circumstances (including those of their household) and will take the considerations set out above into account.

3.21 The City will issue a renewal decision notice to the tenant on whether they will renew the tenancy or not at least three months before the end of the tenancy term.

3.22 In the event that the City has made a decision not to renew the tenancy, the City will issue a notice to the tenant(s) giving at least two months notice stating that the landlord requires possession. This notice must be issued on or before the tenancy term expires. Where tenancies are not renewed the City will provide advice and support on future housing options either directly or indirectly by signposting to other services.

3.23 A tenant may request in writing a review of the renewal decision notice and will have 21 days from receipt of the renewal decision notice to request a review.

3.24 The review will consider whether the decision is in accordance with the City's Tenancy Strategy and this tenancy policy. Such a review will be undertaken by a senior housing officer not directly involved in the initial decision and will be concluded no later than the end date of the original flexible tenancy.

3.25 Where the City renews a tenancy, these should generally be for the same period that they were originally granted. In exceptional circumstances, a two year tenancy may be granted following a five year term if there has been a breach of one or more of the conditions of tenancy.

#### **4 Joint tenancies**

- 4.1 The tenancies listed above could be granted on a joint tenancy basis in the following circumstances:
- the proposed joint tenants are both eligible for housing as defined by legislation and
  - where the proposed joint tenants are married or civil partners or
  - where the proposed joint tenants live together as partners and the relationship is an 'established' one i.e. evidence is produced showing they have lived together, for at least 12 months prior to the joint tenancy application.
- 4.2 In the event of a relationship breakdown in a joint tenancy all of the tenants on the tenancy agreement remain jointly and solely liable for the rent. If one joint tenant leaves and stops making payments towards the rent, the City will ask the remaining to pay the full amount. Failure to pay the full rent may risk eviction.
- 4.3 Joint tenants should seek independent advice where a relationship breaks down. Once a tenancy has been granted in joint names the parties cannot simply agree to "take people off" the agreement. It might be possible to voluntarily transfer the tenancy into one name if both parties, and the City, agree to do this.
- 4.4 If one of the joint tenants gives notice to the City to end the tenancy, this is likely to end the tenancy for both joint tenants. The City has the discretion to grant a sole tenancy to the remaining tenant, and will consider this where the City is satisfied such a decision reflects good use of the City's housing stock (i.e. the property would not be subsequently under-occupied) and is in line with our priorities for meeting housing need.
- 4.5 A tenant who is removed from a joint tenancy - whether voluntarily or by order of the court – should seek housing options advice from the local authority in which their home is situated. Those who qualify may wish to apply to the City's housing waiting list. However, it should be noted that the City's allocations scheme does not award any additional preference for applicants in this circumstance and there is no duty for the City or another local authority to provide alternative accommodation other than where determined by homelessness legislation.

## **5 Demoted Tenancy**

- 5.1 Tenants of the City (and of other local authority and housing association landlords) can have their tenancy demoted. Demoted tenancies were introduced by the Anti-Social Behaviour Act 2003 to help local authorities deal more effectively with anti-social behaviour.
- 5.2 Where a secure or flexible tenant of the City (or someone who lives with a tenant or visits them regularly) has:



- behaved antisocially or caused nuisance in the area
- threatened to do so, or
- used their home for illegal activities such as drug dealing

the City may apply to the court to obtain a demotion order.

- 5.3 If the court grants a demotion order, the tenancy will cease to be a secure tenancy and become a demoted tenancy for an initial period of twelve months.
- 5.4 It should be noted that where a tenant, a member of their household, or a visitor to their home, is abusive, threatening or violent towards the City of London's staff or contractors engaged in the housing management of an area, the City will seek a demotion of their tenancy.
- 5.5 A demoted tenancy has fewer rights and less protection from eviction than a secure tenancy. If the problems that led to the demotion of a tenancy continue then the City will be able to evict a demoted tenant by serving a notice of seeking possession, and applying to the court on expiry of that notice. Demoted tenants also lose the right to buy and the right to exchange.
- 5.6 If there are no further problems and a tenant keeps to the terms of their tenancy they will become a secure (or flexible) tenant again at the end of the 12 month period.

## **6 Tenancy Succession**

- 6.1 When a tenant dies the tenancy can sometimes be passed on to another member of the family and this is known as succession. The Localism Act has changed the law relating to succession for new secure and flexible tenancies granted from 1 April 2012. Therefore there are different succession rights in law for those whose tenancy (secure or flexible) began on or after 1 April 2012, than for those whose tenancy began before that date.
- 6.2 Succession relates to a tenancy and not a property. Where the property of the deceased tenant is too large for the succeeding tenant (and they are not a spouse or a civil partner of the deceased tenant) and/or it has adaptations that are no longer required, the City will give the successor priority within the Housing Allocation Policy to bid for a suitable alternative. The statutory successor can bid for alternative properties for six months after which if no property is selected a direct offer will be made.

### **For secure tenancies granted before 1st April 2012**

- 6.3 The legal framework for secure tenancies granted before 1st April 2012 allows for one statutory succession to either:
- the deceased tenant's spouse or civil partner provided they were residing with the deceased tenant at the time of their death as their main home, or

- a member of the deceased tenant's family who had been residing with the deceased tenant for twelve months prior to the tenant's death as their main home.

6.4 Family members are defined as; parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews and nieces and partners. The law does not allow for joint succession, so if there are a number of potential joint successors they need to choose who will take over the tenancy. If they cannot choose, the landlord is able to do so.

#### **For all new tenancies granted on or after 1 April 2012**

6.5 For all new tenancies granted on or after 1 April 2012 the statutory right of succession of a member of the family has been removed. The law allows one statutory succession to a spouse or civil partner of the deceased tenant, who was living in the property as their main home at the time of the tenant's death.

6.6 A person that was living with the tenant as their husband or wife will be treated as their spouse and a person who was living with the tenant as if they were civil partners will be treated as the tenant's civil partner.

6.7 Where there is a statutory succession to a flexible tenancy, the tenancy will last until the flexible tenancy ends. The offer of a new flexible tenancy will then be considered in line with the policy for renewing flexible tenancies.

6.8 Where there is no tenancy succession, the City should seek possession of the home within a reasonable time frame, but not more than six months.

6.9 The City will seek to recover repossession of under occupied properties in order to ensure the best use of their stock; this is particularly the case in areas of high housing demand. Housing needs will be assessed in line with the City's standard set out in the Housing Allocation Policy.

6.10 There may be very exceptional and compelling circumstances where the City will use its discretion to grant further succession. Where this is the case it will be agreed by the Director of Community and Children's Services.

## **7 Mutual exchanges**

7.1 All city of London tenants with a secure tenancy agreement have the right to exchange their property with other secure or assured tenants, including the tenants of other landlords subject to certain conditions. Those who are an introductory or demoted City tenant, a housing association tenant whose tenancy agreement forbids it, or renting from a private landlord are not able to exchange. Tenants of sheltered accommodation can only exchange with another sheltered property, and not into general needs accommodation.

- 7.2 When an exchange has been agreed between the parties involved, they must contact their landlord(s) in writing for permission to carry out the exchange. City of London tenants are required to fill out and return a mutual exchange application form. If either of the parties have a joint tenancy, both parties need to sign the form. The City has 42 days from receipt of the mutual exchange application to provide the tenant with a written answer.
- 7.3 If a tenant carries out a mutual exchange without the City's permission they may be forced to move back to their original home or we may take legal action to recover possession of the property.
- 7.4 Mutual exchanges between tenants of social landlords usually take place via a deed of assignment where each tenant steps into the other's shoes and takes over the other tenant's tenancy type and terms.
- 7.5 However, the Localism Act 2011 introduced a new process for mutual exchanges for certain types of tenancies. The new process is for surrender of tenancy and grant of a new tenancy instead of using deeds of assignment. It applies where at least one of the tenants has a:
- fixed term assured shorthold tenancies of more than two years at a social rent granted after 1 April 2012
  - flexible tenancies granted by local authorities after 1 April 2012
- 7.6 The new landlord must grant the tenant(s) whose secure or assured tenancy predated 1 April 2012:
- a secure (not flexible) tenancy, (if they are a local authority) or
  - an assured (not assured shorthold) tenancy (if they are a housing association).
- 7.7 Existing tenants will therefore retain similar security of tenure to that of their original tenancy. Regulations provide that these provisions do not apply where an existing secure or assured tenant chooses to exchange with:
- someone with a flexible tenancy of less than two years
  - someone with a tenancy at an affordable rent, intermediate rent, mortgage rescue properties and shared ownership leases.

Where such an exchange occurs there would be no legal guarantee of security in the new tenancy. The landlord may choose to offer a secure or assured tenancy, but it would be up to the landlord

- 7.8 The City of London may refuse an exchange, but only for the reasons set out in Schedule 14 of the Localism Act 2011. They have 42 days to make that decision. The City can also attach reasonable conditions which need to be met before the exchange can take place.

## 8 Transfers

- 8.1 City of London tenants who would like to move to another City home can seek a transfer. The housing need of such applicants will be assessed in line with the City's Housing Policy Scheme. Where transfer applicants fall into a "reasonable preference" category they will be placed into the related priority banding. Reasonable preference is the priority given to housing applicants – such as those with a medical need to move, severely overcrowded households and homeless households.
- 8.2 Where a transfer applicant does not fall into any of the reasonable preference categories, their application will be assessed to see if it falls into one of the City's "qualifying groups" – groups we accept onto the housing waiting list as they are important to the City of London.
- 8.3 Existing tenants of the City of London who are under-occupying are a qualifying group for the housing register only where:
- they live in a City of London property with three or more bedrooms and are seeking to 'down-size' by two or more bedrooms, or
  - they live in a City of London two bedroom property and are seeking to down size by one bedroom.
- 8.4 Transfers are not available to those who seek a like for like property. Tenants seeking a move to a property of the same size, or where their wish to downsize does not fit within the above criteria for a housing waiting list qualifying group, should seek a mutual exchange.
- 8.5 In general sheltered housing tenants will only be able to transfer into alternative sheltered accommodation, and not general needs homes, except for the purposes of a management transfer.
- 8.6 A management transfer(s) may be offered in very exceptional circumstances. These circumstances include:
- tenants experiencing violence, serious threats and intimidating behaviour from outside of the home
  - witness protection or removal from a source of serious conflict
  - Social Services referral of a person in need of urgent re housing
  - facilitating the decanting (emptying for renovation or demolition) of a property or properties.
- 8.7 Management transfers will offer a home appropriate to the needs of the household. Only one offer will be made.
- 8.8 Some of the City's properties have rent levels that are below the formula for target social rents (see section 10 below). It is City's policy to raise these rents to the target

formula rent level when they become void as a result of transfer moves. However, where the transfer is

- as a result of either management transfer, or
- to downsize following the removal of the Housing Benefit subsidy for a spare room

the City may use its discretion to limit or not implement an increase in rents to target level where the move is from a property at a rent below the formula level to one that is also below that level.

## **9 Social housing fraud**

9.1 The City of London takes tenancy fraud seriously, not only because it can result in the unlawful occupation of City housing, but also because it deprives legitimate applicants (in many cases, families) of a home and results in them staying in costly temporary accommodation.

9.2 There are three main types of tenancy fraud:

- obtaining a tenancy by deception
- subletting the whole of the property
- fraudulent succession or assignment claims.

9.3 The City has a separate Anti-fraud and Prosecution Policy to tackle social housing fraud. See:

<https://www.cityoflondon.gov.uk/about-the-city/how-we-work/budgets-and-spending/Pages/social-housing-tenancy-fraud.aspx>

## **10 Rent policy**

### **Affordable Rent product**

10.1 In 2010 the Government introduced the Affordable Rent product. This form of affordable housing allows social landlords the flexibility to charge rents of up to 80 per cent of local market levels on both new properties and a proportion of re-lets, as part of an agreement to build new homes.

10.2 The higher rents secured on Affordable Rent properties allow reduced levels of grant funding for development of new housing association and council homes, and are therefore integral to the Greater London Authority (GLA)-funded affordable housing programme. The City is not currently a recipient of housing development funding from the GLA and is therefore under no obligation to consider converting its existing stock to Affordable Rent. The issuing of tenancies at social housing target rents will

remain standard practice. Exceptions may be sought for specific developments of new housing on a scheme-by-scheme basis.

### **Rent increases in City of London social housing**

- 10.3 The Government has published policy setting out their guidance for increasing rents in local authority owned social housing from April 2015 onwards. The Government's policy is that rent levels should increase annually by the level of the Consumer Price Index (CPI) plus 1 per cent for the next ten years. The service charges for properties will rise in line with the cost of providing services.
- 10.4 Social rents are calculated using a national formula rent that takes account of values of properties and local earnings relative to national earnings. These rent levels are described as target social rents. Many of the City's existing social homes are below the level determined by the target rent formula. Where such properties become void, the rent level on re-letting will be set at the target social rent level for that property.
- 10.5 The Government's policy recognises that authorities should have some discretion over the rent set for individual properties, in order to take account of local factors and concerns, in consultation with tenants.
- 10.6 As a result, the policy contains flexibility for authorities to set rents at up to 5 per cent above formula rent (10 per cent for supported housing and sheltered housing). The Government expects authorities to use this flexibility in a balanced way, and not set all rents at 5 per cent (or 10 per cent) above the formula rent.

### **Rent setting for new properties**

- 10.7 The rent levels for new homes developed to be social rented homes will be calculated using the national target rent formula.
- 10.8 As noted above, the City may deliver new homes at rents above a target social rent. Such an approach may be taken where homes are being developed to meet the needs of groups on low to middle incomes, or where in future the conditions of any grant received requires a mix of rent levels.
- 10.9 Rents for new homes will be increased in line the policy set out in 10.3.