

## Report for: **Cabinet**

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<b>Date of Meeting:</b>	21 January 2021
<b>Subject:</b>	Review of Housing and Homelessness Strategies (Part 2): Housing Allocation Scheme and Tenancy Strategy & Policy
<b>Key Decision:</b>	Yes  This decision is Key because it is likely to:  (i) be significant in terms of its effect on communities living or working in an area of two or more wards of the Borough.
<b>Responsible Officer:</b>	Nick Powell- Divisional Director- Housing Housing Services, Community Directorate
<b>Portfolio Holder:</b>	Councillor Phillip O'Dell - Portfolio Holder for Housing
<b>Exempt:</b>	No
<b>Decision subject to Call-in:</b>	Yes
<b>Wards affected:</b>	All wards
<b>Enclosures:</b>	Appendix 1- Amended Housing Allocation Scheme Appendix 2- Proposed Tenancy Strategy & Policy Appendix 3- EqIA Appendix 4- Tenancy Management challenges Appendix 5- Summary of consultation

## **Section 1 – Summary and Recommendations**

This report sets out the second part of the review of the housing and homelessness strategies, comprising the Housing Allocation Scheme and the Tenancy Strategy & Policy.

### **Recommendations:**

Cabinet is requested to:

- (1) Approve the amended Housing Allocation Scheme;
- (2) Approve the proposed Tenancy Strategy & Policy, including the proposal to end the use of flexible tenancies for general needs council lettings; and
- (3) Delegate authority to the Divisional Director for Housing following consultation with the Portfolio Holder for Housing to 1) agree Local Lettings Plans and 2) update the financial limits for accessing social housing on a yearly basis.

### **Reason:**

The Housing Allocation Scheme is a statutory requirement of Part VI of the Housing Act 1996 as amended by the Homelessness Act 2002 and the Localism Act 2011. The Tenancy Strategy is a statutory requirement under the Localism Act 2011. The Tenancy Policy is a requirement of the Tenancy Standard set by the Regulator of Social Housing.

## **Section 2 – Report**

### **1. Introductory paragraph**

#### **1.1 Introduction**

This report sets out the second part of the review of the housing and homelessness strategies.

Cabinet is requested to approve the proposed changes to the Housing Allocation Scheme and the Tenancy Strategy & Policy, which are statutory requirements under Part VI of the Housing Act 1996 (as amended by the Homelessness Act 2002 and the Localism Act 2011), the Localism Act 2011 and the Tenancy Standard set by the Regulator of Social Housing.

The suite of housing and homelessness strategies and policies sets out the Council's priorities for housing in Harrow and responds to changes in the housing sector, including the Housing and Planning Act 2016 and the Homelessness Reduction Act 2017 (HRA 2017).

The Housing Strategy and the Homelessness & Rough Sleeping Strategy were approved by Cabinet in November 2019.

The suite of housing and homelessness strategies and policies helps the Council meet its vision and corporate priorities, particularly 'Improving the environment and addressing climate change', 'Tackling poverty and inequality' and 'Building homes and infrastructure'.

The housing and homelessness strategies also assist Housing Services in meeting its priorities as detailed in the Smarter Housing Plan.

The housing and homelessness strategies set out our aims to ensure we have a supply of genuinely affordable housing to meet the needs of households in Harrow who cannot afford market housing and to target our limited resources of existing affordable housing, prioritise local applicants with the greatest housing need and meet the statutory duties placed on the Council as a local housing authority.

The documents reflect the priorities and feedback identified through consultation with stakeholders, including residents, officers, Members, Registered Providers ("RP") (housing associations) and voluntary & community sector organisations.

## **1.2 Housing Allocation Scheme**

The Housing Allocation Scheme sets out how the Council will allocate the rented social housing which it owns and housing association properties to which it has nomination rights.

The scope of the Housing Allocation Scheme does not include homelessness accommodation (such as Emergency Accommodation and Temporary Accommodation) which is dealt with in the Homelessness & Rough Sleeping Strategy. It also excludes some specific types of social lettings, such as Extra Care Housing for Older People which is allocated in conjunction with an Adult Social Care panel. Other lettings that are outside of the scope of the Housing Allocation Scheme are listed in Appendix 14 of the current scheme.

The Housing Allocation Scheme explains the options for people looking for a home in the London Borough of Harrow, and sets out which groups of people are priorities for an allocation of the public rented housing made available by Harrow Council and housing associations (registered providers) in our area.

The aim of Harrow's housing allocation scheme is to meet local priority housing needs, make the best use of Harrow's very limited social housing stock and be fairer to all by ensuring that the relatively few residents, who are in the most need of housing, wait as short a time as possible for an allocation of public rented housing.

## **1.3 Tenancy Strategy**

The Tenancy Strategy sets out the expectations for all social landlords in the local area in relation to the types of tenancies that will be granted, the length

of fixed-term tenancies when these are granted, the circumstances under which a particular type of tenancy will be granted and the process for reviewing tenancies at the end of the fixed term and the circumstances under which a tenancy may or may not be renewed either in the same property or in a different property.

## **1.4 Tenancy Policy**

As a social landlord, we are obliged to have our own Tenancy Policy which has regard to the Council's Tenancy Strategy. The Tenancy Policy should contain the way in which a tenant or prospective tenant may appeal or complain about the length and/or type of fixed-term tenancy offered and a decision not to renew the tenancy at the end of the fixed term period. It has information on how the needs of those who are vulnerable by reason of age, disability or illness, and households with children are taken into account including the use of tenancies which provide a reasonable degree of stability. It should also contain information on the advice and assistance to be given to tenants to find alternative accommodation if a fixed-term tenancy is not renewed.

## **2. Options considered**

### **2.1 Housing Allocation Scheme**

The Housing Allocation Scheme is a statutory requirement under Part VI of the Housing Act 1996 (as amended by the Homelessness Act 2002 and the Localism Act 2011) and sets out how social housing is allocated in Harrow.

The Council should keep the Housing Allocation Scheme under review. It is best practice to review Housing Allocation Schemes every few years to ensure compliance with the law and effectiveness in meeting local housing need.

The context in which the Council operates has changed since the last review of the Housing Allocation Scheme so it is important to review and update the Housing Allocation Scheme to reflect policy and legislative changes and set current priorities.

The Housing Allocation Scheme enables the Council to set out its priorities and policy and communicate these to applicants and other stakeholders.

Reviewing the Housing Allocation Scheme is necessary for the Council to comply with its statutory duty and to reduce the risk of legal challenge.

The following options have been considered in the review of the current Housing Allocation Scheme:

- a) Continue to use Choice Based Lettings for the majority of social housing allocations made in Harrow, in line with the current policy.

This option is recommended. While choice in Harrow is limited by the small social housing stock and the low turnover, the principle of choice is valued by applicants and stakeholders. Continuing to use Choice Based Lettings for the majority of social housing allocations would allow applicants on the housing register (waiting list) to continue to bid for council and housing association properties advertised by the council that they are eligible for. There are existing penalties for not bidding and for refusals which can be implemented more robustly and consistently and the effectiveness of these can be reviewed in 12 months.

- b) Suspend the use of Choice Based Lettings and instead use direct offers for all social housing allocations made in Harrow for a pilot period and then review.

This option is not recommended. While choice in Harrow is limited by the small social housing stock and the low turnover, the principle of choice is valued by applicants and stakeholders. Direct offers would address the challenges of applicants not bidding and of refusals but would remove the opportunity for applicants on the housing register (waiting list) to bid for council and housing association properties advertised by the council that they are eligible for. It is unnecessary to suspend Choice Based Lettings for a period because there are existing penalties for not bidding and for refusals which can be implemented more robustly and consistently and the effectiveness of these can be reviewed in 12 months.

- c) End the use of Choice Based Lettings and instead use direct offers for all social housing allocations made in Harrow

This option is not recommended. While choice in Harrow is limited by the small social housing stock and the low turnover, the principle of choice is valued by applicants and stakeholders. Direct offers would address the challenges of applicants not bidding and of refusals but would remove the opportunity for applicants on the housing register (waiting list) to bid for council and housing association properties advertised by the council that they are eligible for. It is unnecessary to end Choice Based Lettings because there are existing penalties for not bidding and for refusals which can be implemented more robustly and consistently and the effectiveness of these can be reviewed in 12 months.

## **2.2 Tenancy Strategy and Tenancy Policy**

The Tenancy Strategy is a statutory requirement under the Localism Act 2011. The Tenancy Policy is a requirement of the Tenancy Standard set by the Regulator of Social Housing.

The context in which the Council operates has changed since the current Tenancy Strategy and the Tenancy Policy were approved.

The Tenancy Strategy and Tenancy Policy enable the Council to set out its priorities and policy and communicate these to applicants, new council tenants and other stakeholders, particularly Registered Providers (housing associations).

Reviewing the Tenancy Strategy and Tenancy Policy is necessary for the Council to comply with its statutory duty and to reduce the risk of legal challenge.

The following options have been considered in the review of the current Tenancy Strategy and Policy:

- a) Continue to use flexible fixed-term tenancies, in line with the current strategy and policy, for all permanent lettings of general needs Harrow council housing (following a successful introductory tenancy)

This option is not recommended. This option would not resolve any of the challenges of administering and managing flexible tenancies. This option would not address the concerns of some tenants, such as having a different tenancy type to their neighbours, lack of security and not feeling invested in their neighbourhood and home (which may impact on willingness to decorate or maintain their home). Any legal challenges would still need to be addressed as they arise, such as a tenant challenging their flexible tenancy not being renewed.

- b) Continue to use flexible fixed-term tenancies for all permanent lettings of general needs larger family sized Harrow council housing (homes with 3 bedrooms or more) but end the use of flexible fixed-term tenancies for smaller homes (with 2 bedrooms or less) and reconsider the length of flexible fixed-term tenancy awarded for specific groups of tenants (such as awarding longer tenancies to those with young children)

This option is not recommended. While it would retain the original purpose for using flexible tenancies (providing the Council more flexibility in using its housing stock when the housing needs of tenants change and properties become under-occupied), it would not resolve any of the challenges of administering and managing flexible tenancies. This option would not address the concerns of some tenants. Any legal challenges would still need to be addressed as they arise.

- c) End the use of flexible fixed-term tenancies and use lifetime tenancies instead for all permanent lettings of general needs Harrow council housing (following a successful introductory tenancy), for current tenancies and future lettings

This option is recommended. Reverting to using lifetime tenancies would alleviate the challenges of administering and managing flexible tenancies. This option would also address the concerns of some tenants. All tenants would have the same tenancy status. This option would remove the risk of any legal challenges arising from the use of flexible fixed-term tenancies. In order to address the original purpose for using flexible tenancies (allowing the Council to require tenants to move if they are under-occupying at the time of the tenancy review) a review of the approach to under-occupation will be undertaken in early 2021 to ensure that opportunities to release larger family sized homes are maximised.

### **3. Current situation**

#### **3.1 Review of housing and homelessness strategies**

The first part of the review of housing and homelessness strategies focused on the Housing Strategy and the Homelessness & Rough Sleeping Strategy. The Private Sector Housing Strategy was incorporated into the new Housing Strategy. The strategies were approved by Cabinet in November 2019.

The current housing and homelessness strategies are as follows:

- Housing Strategy 2019
- Homelessness & Rough Sleeping Strategy 2019
- Housing Allocation Scheme 2013 (amended in 2015)
- Tenancy Strategy (2012) and Tenancy Policy (2012)

This second part of the review of housing and homelessness strategies focuses on the Housing Allocation Scheme and the Tenancy Strategy and Policy.

#### **3.2 Housing Allocation Scheme**

##### **3.2.1 Housing applications and Housing Register**

All housing applications are assessed in line with Harrow's Housing Allocation Scheme. If eligible the applicant will be advised of their priority band, their entitlement (maximum number of bedrooms) and their priority date. Applicants can ask for a review of the assessment decision. Housing Needs should be notified of changes in circumstances.

The housing register is made up of eligible applicants who are either home seekers (who are seeking social housing, usually for the first time) or transfer applicants (also known as choice applicants, who are already social housing tenants but need or want to move).

##### **3.2.2 Priority Bands**

The priority bands were reviewed in December 2015.

The priority bands are:

- A+ Emergencies and Under-occupiers
- A Urgent and High Priority
- B Standard Priority
- C Non-urgent
- C- Initial preference

##### **3.2.3 Choice Based Lettings**

The Choice Based Lettings (CBL) method allows applicants on the housing register (waiting list) to bid for council and housing association properties advertised by the council that they are eligible for. Some councils use CBL, others make direct offers instead, some use a mixture of CBL and direct

offers. Harrow Council mainly uses the CBL method along with some direct offers, as outlined in the Housing Allocation Scheme. Harrow Council uses the Locata CBL scheme.

### **3.3 Tenancy Strategy and the Tenancy Policy**

The Tenancy Strategy was approved/last reviewed in 2012. The Tenancy Policy was last reviewed in 2018.

#### **3.3.1 Flexible Tenancies**

Harrow Council introduced flexible tenancies in 2012 for general needs council tenancies in recognition of the extremely limited social housing supply in Harrow, to encourage better use in particular of large family homes. For example they could be used to require single people living in family homes that were previously suitable for their needs to downsize and enable them to be allocated to families. It is not mandatory for social landlords to use flexible tenancies. All new general needs Harrow council tenants are given a 1 year introductory tenancy usually followed by a 5 year flexible tenancy. Harrow Council chooses to offer a 5 year fixed term for the initial term and any subsequent tenancies. A flexible tenancy is a type of secure tenancy but for a fixed length of time which gives the tenant and the landlord rights and responsibilities. A flexible tenancy can only be ended by a court order. The flexible tenancy is reviewed prior to the end of the fixed period and may be renewed for a further 5 years. There is no limit on the number of times a flexible tenancy can be renewed.

#### **3.3.2 Review of Flexible Tenancies**

All flexible tenancies held by Harrow Council tenants are reviewed at least 9 months before they are due to end. This review meeting is carried out with the tenant in their home. The review is conducted initially by a Housing Officer. The review considers the tenant's housing needs, personal circumstances and any concerns regarding their tenancy such as rent arrears and anti-social behaviour. The outcome of the review is discussed and agreed with a manager. All flexible tenancies that have been reviewed to date have been renewed.

#### **3.3.3 Renewal of Flexible Tenancies**

Following the review, a tenant can be awarded another 5 year tenancy at their current address, a five year tenancy at a different property to suit their household needs or may not be offered a further council tenancy. We expect most flexible tenancies to be renewed after review.

We currently have a number of 'automatic renewal' categories, including:

- tenants or a member of the household with a disability and receiving qualifying disability benefits
- tenants with a member of the household with a severe learning disability or enduring mental health needs confirmed by Adult Social Care or Children's Services



- tenants receiving continued support from the Leaving Care team.

This means that following a review meeting, Harrow Council tenants in the above categories will always be offered a further 5 year flexible tenancy.

## **4. Why a change is needed**

### **4.1 National, regional, and local changes**

A range of changes have occurred since 2012 related to key policies, legislation and drivers contained in the housing and homelessness strategies.

These include:

- Changes to welfare benefits (e.g. Benefit Cap, Bedroom Tax/Under Occupancy Charge/Spare Room Subsidy, Universal Credit, benefits freeze)
- Housing & Planning Act 2016
- Grenfell Tower fire June 2017
- Homelessness Reduction Act 2017
- Social Housing Green Paper 2018
- National Rough Sleeping Strategy 2018
- Lifting of HRA borrowing cap
- Risks associated with Brexit
- National Planning Policy Framework (2019)
- draft New London Plan (2019)
- London Housing Strategy.

At a regional level the drivers have changed and include the London Housing Strategy and the London Plan. Sub-regionally a new West London (including Harrow) Strategic Housing Market Assessment (SHMA) has been completed.

The strategies should also reflect local changes to the Borough Plan (formerly known as the Harrow Ambition Plan), Housing Services' Smarter Housing Plan, regeneration plans, Adult Social Care pressures and challenges of income levels and affordability.

The Housing Evidence Base has been updated to reflect current data and trends in respect of affordability, population, homelessness, and housing need, social housing, supported housing and new supply. The Housing Evidence Base is provided as a background paper.

The proposed changes to the strategies are intended to make the strategies more relevant, compliant, and clearer to all stakeholders.

### **4.2 Housing Allocation Scheme**

The Housing Allocation Scheme was last reviewed in 2015.

Very few new lettings are made each year, so choice is very limited.

All applicants with a housing need (band A+ to C-) can bid, which encourages the idea that if they wait long enough and bid regularly, they will get social housing.

Households with an urgent need to move do not necessarily place bids for the first suitable property advertised on Locata, or they refuse properties after viewing. They remain in unsatisfactory conditions for long periods of time, waiting for an ideal property.

Some applicants do not attend viewings, despite having bid on a property, been shortlisted, and been invited to view. Reasons for refusals include size, location, no parking, and no lift. For Housing Association (now known as Registered Provider) properties, these also include the rent being higher than Council rents and no Right to Buy.

Refusals have a negative impact on void times and rent loss for the Council and RPs.

Some lower banded households are offered social housing which could have gone to households with more urgent housing needs, such as where a lower banded applicant successfully bids for a property that higher banded applicants have not bid for or have refused. This undermines the message that applicants face a long wait for social housing, raises expectations and discourages applicants from exploring other housing options.

It is important to be clear so that all households can make realistic decisions about their housing options.

The Council should keep the Housing Allocation Scheme under regular review generally. It is best practice to review Housing Allocation Schemes every few years to ensure compliance with the law and effectiveness in meeting local housing need.

### **4.3 Tenancy Strategy and Tenancy Policy**

Some tenants are concerned about the lack of security if they only have a five year tenancy. Some tenants may not feel invested in their neighbourhood or home, so may not decorate or maintain their home. So far there is no evidence of releasing larger properties, which was a key aim of using the flexible tenancy regime, and therefore there are concerns that flexible tenancies are inconsistent with tenancy sustainability.

There are a number of tenancy management challenges when using flexible tenancies. For example, if relevant dates are missed a flexible tenant becomes a secure lifetime tenant. Another challenge relates to renewing flexible tenancies and rent arrears, in that where a tenant with a flexible tenancy has accrued rent arrears and the court has awarded the Council a possession order suspended on terms (SPO), it would normally be considered reasonable to renew the flexible tenancy if the tenant has complied with the terms of the SPO. However, if the arrears have not been cleared by the end of the flexible tenancy, any court order is negated by the signing of a new tenancy and the rent arrears become former tenant arrears. The Council's

tenancy conditions allow these arrears to be added to the tenant's new rent account, but once a new flexible tenancy is granted the Council cannot rely on the SPO to enforce payment. This matter is pertinent where a tenant is in receipt of state benefits as there are limits set by the Department for Work & Pensions on the amount that can be deducted from benefits to be paid towards rent arrears. When granting a SPO the courts tend to order the tenant to pay the terms of the SPO so that the Council can only recover the set minimum payment each week towards the arrears. The current limit is £81.89 a month for tenants in receipt of Universal Credit. It is not common practice for courts to set a SPO requiring a higher monthly payment to clear arrears by the end of the flexible tenancy period. Cases such as these cause a negative impact on the Housing Revenue Account. Further challenges are listed in Appendix 4.

#### **4.4 Local and London-wide provision**

Flexible tenancies were adopted by a variety of social housing providers from 2012. Following policy reviews, many larger registered providers and local housing authorities have reverted to only awarding lifetime tenancies, citing legislative restraints, tenant anxiety and officer workload as the major reasons. Of our West London neighbours, Hillingdon remains the only borough offering flexible tenure with Kensington & Chelsea recently reverting to lifetime tenancies.

### **5. Proposed Changes**

#### **5.1 Proposed Changes to the Housing Allocation Scheme**

##### **5.1.2 Use of Choice Based Lettings**

We consulted on the option of suspending Choice Based Lettings and instead implementing direct offers for all lettings for a period but following feedback and further research we now propose to continue using Choice Based Lettings for the majority of social housing lettings but to implement more robustly the existing penalties for refusals and for not bidding and review again in 12 months.

We will monitor and review in 12 months using the following indicators:

- Number of lettings by band, bedroom size and waiting time, broken down by the protected characteristics of the applicants
- Number of applicants by band and bedroom size who have failed to bid, broken down by the protected characteristics
- Number of applicants by band and bedroom size who have refused a property where a direct offer has been made, broken down by the protected characteristics
- Number of applicants by band and bedroom size who have refused a direct offer and been downgraded, broken down by the protected characteristics
- Type of property refused
- Reasons for refusal

### **5.1.3 Other changes and amendments**

We propose minor amendments to the Scheme to address changes in law and other issues including:

- the Homelessness Reduction Act 2017
- the latest Homelessness Code of Guidance for Local Authorities
- Income Levels to Access Social Housing
- changes to West London and Pan London schemes
- changes to Registered Providers (housing associations) such as mergers
- 6 changes detailed below.

#### **a) Sheltered Housing for Older People**

Currently all sheltered applicants are awarded Band B. Urgent cases are awarded Band A general needs but prioritised for sheltered housing which is difficult to administer. Demand for sheltered housing in Harrow is outstripping supply.

We propose to introduce the following banding for Sheltered Housing for Older People:

- (A) Urgent Priority
- (B) Standard Priority
- (C) Out of Borough Applicants

As with the current scheme, applicants will be considered and put in bands that are either the general needs scheme or sheltered scheme and not both.

This change will not disadvantage any current applicants as those with an urgent need to move have already been awarded additional priority.

#### **b) New council owned housing used for temporary accommodation**

The Council is developing some new housing funded through the General Fund (GF) that then moves into the Housing Revenue Account (HRA) as social housing. This accommodation must be used as temporary accommodation (TA) while it is held in the GF.

We propose to allow those currently in this type of temporary accommodation to be offered a secure tenancy of the property they occupy when it moves from the GF into the HRA and can be let as social housing (e.g. 72 properties at the Gayton Road scheme).

This will be subject to suitability of the property and there being no recent tenancy issues such as arrears or ASB. Eligibility, suitability and occupancy checks will be made before granting a secure tenancy, as well as confirming a continuing homelessness duty.

### c) Local Lettings Plans

The current Housing Allocation Scheme allows an agreement between Harrow Council's Housing Services and a registered provider (housing association) called a Local Lettings Plan. This sets out how properties will be allocated in exceptional circumstances to meet area specific issues, for a specific block or estate.

We propose to allow Housing Services to implement a Local Lettings Plan for its own council housing stock, with delegated authority for the Divisional Director for Housing in consultation with the Portfolio Holder for Housing to authorise a Local Lettings Plans.

The purpose is to have a planned approach to the letting of high density/high rise schemes to ensure sustainable mixed and balanced communities.

### d) Over 50s Blocks

Some properties were previously designated for people aged 50 years and over but over time the age mix has changed, such as through the Right to Buy. We propose to end these types of allocations as the blocks are no longer occupied only by over 50s and there is no reason to prioritise this group.

### e) Local Residence Criteria

The Local Residence criteria will be removed for those that fall in either of the categories listed below:

- applicants that need to move because they are the victim of domestic abuse; or
- applicants who are Travellers.

The requirement for this amendment in respect of applicants who are victims of domestic abuse is contained in statutory guidance.

'Improving access to social housing for victims of domestic abuse in refuges or other types of temporary accommodation' published by MHCLG in November 2018 states in paragraph 19:

*Many people escaping domestic abuse may seek a place of safety in a refuge or other form of temporary accommodation before they apply for social housing, which may be in a different part of the country to their original home. This may be for a number of reasons: victims may need to put a safe distance between themselves and their abuser; they may want to be closer to their family and support network; and in some cases the choice of where they live may be constrained by the refuge spaces that are available. The Secretary of State therefore strongly encourages all local authorities to exempt from their residency requirements those who are living in a refuge or other form of safe temporary accommodation in their district having escaped domestic abuse in another local authority area.*

The amendment in respect of applicants who are Travellers arises out of a case brought against the London Borough of Hillingdon (and subsequent appeal) as Hillingdon Council's Allocations Policy required households wanting to join their housing register to have been living in the borough continuously for at least ten years. This was successfully challenged by three claimants who were Irish Travellers, on the basis that it indirectly discriminated against nomadic Gypsy and Traveller communities and this had not been justified.

f) Applicants accepted homeless by another council

Currently there is an anomaly in the Housing Allocation Scheme where applicants accepted as homeless by another council are given higher priority than those accepted as homeless by Harrow Council. We propose that this be corrected and that they also be awarded Band C.

## **5.2 Proposed Changes to the Tenancy Strategy and the Tenancy Policy**

### **5.2.1 Combining the Strategy and Policy**

The Tenancy Strategy and Tenancy Policy are currently separate documents and we propose to combine them into one document that will be known as "The Tenancy Strategy & Policy."

### **5.2.2 Succession**

We consulted on our approach to succession, specifically whether we should continue to offer succession over and above what the law requires for tenancies starting after 2012, to a family member living with the deceased tenant for at least 5 years before the date of death and to a live-in carer living with the tenant for 5 years and providing care for the deceased tenant for preceding 12 months and who gave up accommodation to provide care. The alternative would be for them to make an application for a discretionary tenancy.

The outcome of the consultation on our approach to succession was that there were mixed views and we will not propose any changes to our approach at this time.

### **5.2.3 Review and Renewal of Flexible tenancies**

We initially consulted on our approach to the review and renewal of flexible fixed-term tenancies.

We currently have a number of 'automatic renewal' categories, including:

- g) tenants or a member of the household with a disability and receiving qualifying disability benefits
- h) tenants with a member of the household with a severe learning disability or enduring mental health needs confirmed by Adult Social Care or Children's Services
- i) tenants receiving continued support from the Leaving Care team.

This means that following a review meeting, Harrow Council tenants in the above categories will always be offered a further 5 year flexible tenancy.

The outcome of the consultation on the review and renewal of flexible fixed-term tenancies was also mixed.

#### **5.2.4 Use of Flexible Tenancies**

More recently we have consulted on the continued use of flexible fixed-term tenancies.

Flexible Tenancies were introduced by the Localism Act 2011. The Housing & Planning Act 2016 intended to phase out lifetime tenancies and make fixed-term tenancies compulsory and would have allowed a fixed term of up to 19 years based on age of the youngest child in household. Anomalies and impracticalities of current legislation were to be resolved by the Housing & Planning Act under provisions which have not been implemented. The Social Housing Green Paper 2018 reversed the decision to phase out lifetime tenancies.

We propose to end the use of flexible fixed-term tenancies and use lifetime tenancies instead for all new permanent lettings of general needs Harrow council housing, following the successful completion of an introductory tenancy which is usually for one year. Existing flexible tenants will be transitioned to lifetime tenancies.

Reverting to using lifetime tenancies would alleviate the challenges of administering and managing flexible tenancies. This option would also address the concerns of some tenants. All tenants would have the same tenancy status. This option would remove the risk of any legal challenges arising from the use of flexible fixed-term tenancies.

Sheltered Housing applicants are currently offered lifetime tenancies so will not be affected by this change.

#### **5.2.5 Under-Occupation**

There is currently a dedicated officer who provides assistance to under-occupiers and a range of incentives are offered including Band A+ priority on the housing register. However alternative accommodation for under-occupiers is not readily available, particularly in view of the small social housing stock in Harrow.

In order to address the original purpose for using flexible tenancies (allowing the Council to require tenants to move if they are under-occupying at the time of the tenancy review) a review of the approach to under-occupation will be undertaken in early 2021 to ensure that opportunities to release larger family sized homes are maximised.

## **6. Consultation**

Consultation has been carried out with a range of stakeholders including:

- Cross-party Members Working Group
- Residents Board, a strategic group made up of selected council tenants and leaseholders
- Council tenants, through Housing Matters (our residents meeting for council tenants and leaseholders) and a survey in Homing In (our residents' magazine for council tenants and leaseholders)
- Online survey, open to any interested respondent
- Voluntary & Community Sector organisations
- Registered Providers (housing associations)
- Homelessness Task Force members
- Officers across Housing Services
- Officers across other council services.

A summary of the outcomes of the consultation is attached as Appendix 5.

### Ward Councillors' comments

Ward councillors have contributed to the review of the housing and homelessness strategies through the Cross-party Members Working Group and through additional presentations to the Labour Group.

### Risk Management Implications

Risks included on corporate or directorate risk register? **Yes** HRA risk is on the Housing Services risk register

Separate risk register in place? **No**

The relevant risks contained in the register are attached/summarised below.  
**Yes**

The following key risks should be taken into account when agreeing the recommendations in this report:

Risk Description	Mitigations	RAG Status
<p>HRA Business Plan viability is threatened</p> <p>Viability of HRA in medium term is under review in the context of a wide range of variables which can have a significant impact on the financial resources available to the HRA as reported to Cabinet :</p> <p>-HRA Business Plan update 8<sup>th</sup> Oct 2020 - HRA Budget 2021/22 and</p>	<ul style="list-style-type: none"> <li>▪ Void times and void loss- Housing Allocation Scheme sets out policy on non-bidding and refusals which helps to minimize void times and void loss and associated negative impact on HRA.</li> <li>▪ Use of flexible tenancies- proposal to end use of flexible tenancies will reduce the challenge of recovering former flexible</li> </ul>	<p><b>Amber</b></p> <p>(in line with the the risks cited on HRA Budget report, elsewhere on the agenda)</p>



Risk Description	Mitigations	RAG Status
MTFS 2022/23 to 2023/24, elsewhere on the agenda	tenant rent arrears and legal challenges relating to flexible tenancies, and associated negative impact on HRA.	
Statutory duties	<ul style="list-style-type: none"> <li>▪ Reviewing the Housing Allocation Scheme and the Tenancy Strategy &amp; Policy ensures that the Council complies with its statutory duty.</li> </ul>	Green
Under-occupation	<ul style="list-style-type: none"> <li>▪ Ending the use of flexible tenancies may reduce the ability to mitigate the risk of under-occupation, but there is no evidence to date that flexible tenancies are an effective tool to address under-occupation.</li> <li>▪ A review of the approach to under-occupation will be undertaken in early 2021 to ensure that opportunities to release larger family sized homes are maximised.</li> </ul>	Green
Risk of legal challenge	<ul style="list-style-type: none"> <li>▪ Reviewing the Housing Allocation Scheme and the Tenancy Strategy &amp; Policy to ensure they are compliant and up to date reduces the risk of legal challenge.</li> <li>▪ Ending the use of flexible tenancies will remove the risk of challenge in relation to flexible tenancies.</li> </ul>	Green

## Procurement Implications

There are no direct procurement implications resulting from the recommendation to this report. However if any procurement is required it will be conducted compliant with the Contract Procedure Rules.

## **Legal Implications**

The Housing Allocation Scheme is a statutory requirement under Part VI of the Housing Act 1996 as amended by the Homelessness Act 2002 and the Localism Act 2011.

The Tenancy Strategy is a statutory requirement under the Localism Act 2011. The Tenancy Policy is a requirement of the Tenancy Standard set by the Regulator of Social Housing. There is a requirement to keep them under review.

Article 13 of the Council's Constitution defines a 'key decision', which includes a decision likely to be significant in terms of its effects on communities living or working in an area of two or more wards of the Borough. Part 3A to the Constitution states the Cabinet is responsible for all key decisions.

### **The Housing Allocation Scheme**

The allocation of housing by local housing authorities is regulated by Part 6 of the Housing Act 1996. Section 159(1) of Housing Act 1996 requires that local housing authorities must comply with the provisions of Part VI when allocating housing accommodation. However, subject to this compliance, authorities may otherwise allocate housing in any manner they consider appropriate: section 159(7) Housing Act 1996.

Section 166A(1) of the Housing Act 1996 (as amended by the Homelessness Act 2002 and the Localism Act 2011) requires that every local housing authority must have an allocation scheme ("the scheme") for determining priorities between qualifying persons. This is a statutory requirement. It is best practice to review the schemes regularly (i.e. every few years) to ensure compliance with the law and good practice and that the scheme is addressing housing need effectively.

In formulating or amending its scheme, a local housing authority must have regard to its current homelessness strategy under section 1 of the Homelessness Act 2002. The scheme may be framed to give additional preference to particular descriptions of people (section 166A(5), HA 1996). However, a local housing authority must not allocate housing accommodation except in accordance with its allocation scheme: section 166A(1) HA 1996.

As a result of changes made by the Localism Act 2011, with effect from 18 June 2012, local housing authorities have been able to decide who "qualifies" for an allocation. Accommodation can therefore only be allocated to someone who qualifies under those local criteria (section 160ZA(6) Housing Act 1996) and local housing authorities can largely determine who qualifies (section 160ZA(7) Housing Act 1996). The Secretary of State does however have the power to prescribe classes of persons who are, or are not, to be treated as qualifying persons: section 160ZA(8) Housing Act 1996.

Where changes are to be made to the scheme, it is a requirement to consult with those affected by the changes including Registered Providers.

## **The Tenancy Strategy and Policy**

The Tenancy Strategy and the Tenancy Policy should also be reviewed and updated to ensure compliance with changes to legislation and statutory guidance.

### **Ending the use of flexible tenancies**

Since the Localism Act 2011 came into force on 01 April 2012, local housing authorities have had discretion not to offer a “lifetime” tenancy to a new tenant. The Localism Act 2011 introduced a power for local housing authorities to offer “flexible tenancies” to new social tenants. Flexible tenancies are secure fixed-term tenancies with a minimum term of two years. It was intended to give local housing authorities and housing associations greater freedom to manage their housing stock, ensure that social housing is allocated to those who need it most, and to ensure that lifetime tenancies are not given to tenants irrespective of how their circumstances might change in the future.

The Housing and Planning Act 2016 contains provisions which would limit local housing authorities’ ability to offer longer-term tenancies in certain circumstances. The aim was to phase out lifetime tenancies. However, in August 2018 the government announced that it will not implement these provisions “at this time”.

The current position is that local housing authorities still have discretion over whether or not to offer a flexible tenancy. Therefore, it is not mandatory for Harrow Council to offer flexible tenancies. Consultation has been carried out with a range of stakeholders.

## **Financial Implications**

### **Housing Allocation Scheme**

The Housing Allocation Scheme which is a statutory requirement under the Housing Act 1996 sets out how the Council will allocate HRA owned social housing units (and housing association properties to which it has nomination rights) to meet local priority housing needs, make the best use of Harrow’s very limited social housing stock and ensure that residents in the most need of housing wait as short a time as possible before being allocated public rented housing.

An effective approach to allocations and lettings reduces void times and therefore void loss to the HRA. It also minimises the amount of time that homeless households who have applied for social housing and are in the most need of housing spend in emergency/temporary accommodation which impacts on the GF.

There is a financial cost to legal challenges.

### **Tenancy Strategy & Policy**

The Tenancy Strategy is a statutory requirement under the Localism Act 2011. The Tenancy Policy is a requirement of the Tenancy Standard set by the Regulator of Social Housing.

The Tenancy Strategy and the Tenancy Policy set out expectations in relation to the types of tenancies that will be granted and associated issues. This has an impact on tenancy management, including rent and rent arrears which impact the HRA.

Both the Housing Allocation Scheme and Tenancy Policy & Strategy can attract legal challenges for which there is a cost to the Council.

The recommended option of continuing to use Choice Based Lettings with a more robust use of penalties for refusals and non-bidding is aimed at minimising the cost of void properties and temporary accommodation in the HRA and General Fund respectively whilst minimising the Council's exposure to legal challenges.

Choice Based Lettings is currently implemented in Harrow using Locata. Continuing to use Choice Based Lettings as the method of allocation and Locata as the scheme through which this method is implemented will require continuation of the annual subscription to Locata at an annual cost of £30,000 per annum in the HRA and will continue to require re-let to target rent for all void units which is assumed in the draft HRA Budget report.

Although there has been no financial modelling carried out to substantiate the financial impact on the HRA or cost of temporary accommodation on the General Fund, the proposals are considered reasonable and in line with assumptions used for the construction of draft budgets [included in the HRA Draft Budget 2021/22 and MTFS 2022/23 to 2023/24](#) appearing elsewhere on the agenda.

## **Equalities implications / Public Sector Equality Duty**

When making policy decisions, the Council must take account of the public sector equality duty (Section 149 of the Equality Act 2010) and in particular any potential impact on protected groups.

A range of stakeholders have been involved in consultation on the proposed changes to the strategies.

An EqIA has been completed in respect of the proposed changes to the Strategies and policies, which are intended to make them more relevant, compliant, and clearer to all stakeholders.

There is data available for some of the protected characteristics, particularly age, sex and ethnicity, but there is limited data for others. This makes it difficult to identify trends and to gauge the impact of the proposed changes on all groups with different protected characteristics. Data is currently held across

three systems (Locata, Civica and Northgate). Housing Services is migrating to a new digital platform (Cx) in 2021 and we anticipate that this will improve the recording and management of diversity data.

The diversity profile of applicants on the housing register and those to whom social housing is allocated is influenced by other wider factors, such as income levels (including welfare benefits), the affordability of private rented housing and of home ownership and the supply of affordable housing in Harrow, which in turn link to socio-economic factors such as education and employment. These factors are outside of the remit of the Housing Allocation Scheme but should be explored through the Borough Plan. Work will be undertaken during 2021 to explore and understand the over-representation of Black applicants on the housing register compared to the population profile of Harrow.

The EqIA is attached as Appendix 3. Based on the data available it is not anticipated that the proposed changes will have any negative impact on any groups with any specific protected characteristics.

The impact and outcomes of the new Housing Allocation Scheme and the new Tenancy Strategy & Policy will be monitored and reported to the Housing Services Senior Management Team.

### **Council Priorities**

The suite of housing and homelessness strategies and policies help the Council meet its vision and corporate priorities, particularly 'Improving the environment and addressing climate change', 'Tackling poverty and inequality' and 'Building homes and infrastructure'.

In particular the Housing Allocation Scheme contributes to the priority 'Tackling poverty and inequality' by meeting local priority housing needs, making the best use of Harrow's very limited social housing stock and ensuring that residents in the most need of housing wait as short a time as possible before being allocated public rented housing.

## **Section 3 - Statutory Officer Clearance**

### **Statutory Officer: Tasleem Kazmi**

Signed on behalf of the Chief Financial Officer

**Date: 13 January 2021**

### **Statutory Officer: Paresh Mehta**

Signed on behalf of the Monitoring Officer

**Date: 12 January 2021**

### **Chief Officer: Paul Walker**

Signed off by the Corporate Director

**Date:** 13 January 2021

**Head of Procurement: Nimesh Mehta**

Signed on by the Head of Procurement

**Date: 11 January 2021**

**Head of Internal Audit: Susan Dixon**

Signed on by the Head of Internal Audit

**Date: 12 January 2021**

## **Mandatory Checks**

**Ward Councillors notified: NO, as it impacts on all Wards**

**EqIA carried out: YES**

**EqIA cleared by: David Corby**

## **Section 4 - Contact Details and Background Papers**

### **Contact:**

Meghan Zinkewich-Peotti, Housing Strategy Project Manager  
Housing Services, Community Directorate, [Meghan.zinkewich-peotti@harrow.gov.uk](mailto:Meghan.zinkewich-peotti@harrow.gov.uk) tel. 020 8424 1346

### **Background Papers:**

- Housing Allocation Scheme 2013 (amended in 2015)
- Tenancy Strategy 2012
- Tenancy Policy 2012
- Housing Evidence Base
  - Affordability of Housing in Harrow
  - Homelessness and Housing Needs
  - New Supply
  - Population
  - Social Housing
  - Supported Housing

**Call-in waived by the Chair of Overview and Scrutiny Committee - NO**